

CONSULTATION QUESTIONS

SFCA does not propose to respond to Questions 1 – 17 in Section 1 of the consultation document as we have no locus to comment on the issues with which they are concerned.

Q 18 could be taken to apply to native freshwater fish species living in the vicinity of freshwater aquaculture sites. If that is the intention, we would oppose the creation of additional powers for Scottish Ministers on the lines described in para 47. If, however, this proposal relates purely to *marine* aquaculture sites we have no locus to comment and offer no view.

SFCA has no locus to comment on the issues discussed in Sections 2 & 3 of the consultation document, and we do not therefore propose to respond to Questions 19 – 22.

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently? (Page 29)

YES

At first sight it might be thought that SFCA has no material interest in the governance of DSFBs, but migratory fisheries do not inhabit a vacuum independent of the fisheries for other species that co-exist in the same waters. Section S45(1) of the Salmon & Freshwater Fisheries (Consolidation) Act 2003 gives DSFBs the general power to "... do such acts, execute such works and incur such expenses as may appear to them expedient ..." with the aim of protecting or improving the migratory fisheries within their district or increasing the population of salmon.

Some management activities conducted or agreed by DSFBs with the aim of enhancing migratory fisheries can affect the other species in the waters concerned, or restrict opportunities for anglers to pursue those species. Boards presently have no statutory obligation to consider the potential for such impacts, or to consult interested parties before implementing such measures, or indeed to gather sound evidence to establish whether the activities in question are likely to achieve their objectives in the first place. We believe this is wrong. It subordinates all other freshwater fisheries to the self-perceived interests of migratory proprietors, restrained only by the inadequate protections of the law regarding freshwater fish conservation and access for angling.

We therefore propose that in addition to being given a specific duty to act fairly and transparently; Boards should also be obliged, when developing and implementing management activities, to have regard to the effects on other freshwater species and to consult representatives of the anglers who pursue them. Furthermore, where a Board deems it necessary to implement measures for salmon conservation which are detrimental to a fishery for other species, the Board should be liable to compensate the proprietors or tenants of that fishery appropriately if they suffer consequent losses.

None of what we say above should be taken to mean that we favour extending the powers and responsibilities of DSFBs to encompass the management of non-migratory freshwater species in their Districts. On the contrary, we believe that this would be likely to institutionalise the imbalance that we are seeking to be eliminated. What is required is a level playing field which facilitates a reasonable compromise between the interests of migratory and other fisheries.

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

YES – in principle, subject to the content and scope of the Code in question.

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

We are attracted to the idea of a statutory Code of Practice, especially as a vehicle for protecting coarse fish populations and promoting improved access. However it may be difficult to gain initial acceptance for this from a wide range of stakeholders and there may be advantages in permitting the content to evolve flexibly on the basis of early experience. We therefore propose that a Code of Practice should be developed and implemented in the first instance as a voluntary device, but that Scottish Ministers should take powers to put it on a statutory footing in due course.

Statutory Carcass Tagging

26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout? (Page 31)

SFCA has no locus to comment on the issues raised in Question 26.

Fish Sampling

27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis? (Page 32)

It appears from the text of para 90 that Q 26 purely concerns migratory salmonids. Assuming this is the case, SFCA has no locus to comment on the issues raised in that question.

Management and Salmon Conservation Measures

28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders? (Page 32)

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

30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures? (Page 32)

SFCA has no locus to comment on the issues raised in Questions 28 - 30.

Dispute Resolution

31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures? (Page 33)

SFCA has no locus to comment on whether the measures described in Q 31 should be adopted in relation to internal disputes *within* the migratory fisheries community (eg between rod proprietors and netsmen). However, following on from the proposal we make in our reply to Q 23, and our comments about access in Section 7, we would support the creation of an appropriate independent dispute resolution mechanism (whether on a statutory or voluntary basis) to assist in resolving otherwise intractable differences over matters such as:

- conflicts between DSFBs and freshwater fisheries interests;
- assessing appropriate compensation to the proprietors or tenants of “other species” fisheries for any losses arising from salmon conservation measures;
- facilitating mutually acceptable arrangements for access in mixed fisheries.

Improved Information on Fish and Fisheries

32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries? (Page 34)

From the text of paras 101 & 102 it would appear that the proposal to which Q 32 relates refers purely to rod fisheries for migratory salmonids. If that is the case, SFCA has no locus to comment.

If, however, Q 32 seeks views on the creation of a legal requirement to provide effort and/or catch data for fisheries for other freshwater species, we would be strongly opposed. There might be situations where it would be desirable and feasible to collect such information for short periods in relation to coarse angling in specific fisheries; but in the main it would either be impracticable or unaffordable, or both, to do so on a large scale.

33. What additional information on the fish or fisheries should proprietors and/or Boards be required to collect and provide; and should this be provided routinely and/or in specific circumstances? (Page 34)

34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district? (Page 34)

SFCA has no locus to comment on the issues raised in Questions 33 & 34.

Licensing of Fish Introductions to Freshwater

35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances? (Page 35)

36. If so, why and in what circumstances? (Page 35)

SFCA has no locus to comment on the issues raised in Questions 35 & 36.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

It is apparent from the introduction to Section 5 (paras 107 & 108) that the measures it proposes purely concern aquaculture and sea fisheries. On that basis SFCA has no locus to comment on the issues raised in Section 5, and we therefore do not propose to respond to Questions 37 – 45.

SECTION 6 - PAYING FOR PROGRESS

46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities? (Page 43)

YES – subject to the comments which follow.

In principle we accept that individuals and/or businesses normally ought to pay for items of public sector work or services in the aquaculture and fisheries sector which benefit them directly and exclusively. It is probably also reasonable for businesses to meet the costs of publicly-delivered regulatory activities which do not actually benefit them, but are necessary to ensure that they conduct their operations in accordance with the law.

However, the benefits from much of what the public sector does in connection with aquaculture and fisheries do not accrue purely to specific individuals or businesses. For example, the habitats

and fish populations on which “wild” fisheries depend might reasonably be viewed as a common good, and one can therefore argue that public sector activities to sustain and protect them ought to be funded largely from general taxation. On the other hand, the proprietors and/or users of those fisheries benefit rather more than the public at large from such activities, so it is also probably reasonable to expect them to meet some proportion of the cost.

The matter of what that contribution should be and how it should be collected is complex and deserves an entire consultation of its own. SFCA would welcome the opportunity to work with other stakeholders to explore the alternatives available for this purpose, including the concept of a generic levy on freshwater anglers similar to the rod licences required in England and Wales; but our support for any particular measure would depend on there being demonstrable benefits to coarse angling and coarse fish populations.

47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced? (Page 43)

N/A – we do not object to the creation of charging provisions *per se*, although we reserve the right to oppose particular provisions if they appear contrary to the interests of coarse fish or coarse angling.

48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds? (Page 43)

N/A – we do not object to the creation of charging provisions *per se*, although we reserve the right to oppose particular provisions if they appear contrary to the interests of coarse fish or coarse angling.

SECTION 7: ANY OTHER ISSUES

(Para 142) If there are any issues not covered in this consultation paper on which you would like to comment, and/or you think we should consider for legislation, you may set them out below.

SFCA welcomes the Scottish Government's acknowledgement, in the Strategic Framework among other publications, that coarse angling and coarse fisheries now play an important and growing role in the freshwater fisheries scene in Scotland. However, certain aspects of the law regarding the protection of coarse fish stocks and access for coarse angling need to change if that role is to be sustained and developed to the full.

Protection of established coarse fish populations

Scotland's coarse fish are the resource on which our sport depends. Some species appear to breed quite freely in Scotland, but little scientific data is available on the status of existing stocks. Low average water temperatures and limited food supplies are likely to restrict the carrying capacity of some waters and reduce reproduction or growth rates, making populations deceptively fragile and vulnerable to any exploitation other than by catch and release. Protecting established coarse fish populations is therefore an essential precautionary strategy to avoid irreparable damage, yet the law currently offers no such protection. SFCA regards this as unacceptable and proposes a number of new statutory measures and policy changes to address the matter.

1. Use of nets and traps

Section 2(4) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 states that: "In any inland waters an owner or occupier may fish for or take freshwater fish, other than trout, by net or trap". Section 2(4) is an anachronism which should be removed and replaced by provisions which subject the use of nets and traps to regulatory controls. This would in general make it an offence to capture any freshwater fish except by rod and line; but the Scottish Government would be empowered to issue licences for other methods to be used in appropriate circumstances such as:

- to conduct bona fide scientific surveys;
- to rescue and relocate fish affected or threatened by drainage works or pollution;
- to eliminate an outbreak of infection or parasites that would otherwise cause serious damage;
- to eliminate recently-introduced invasive species that would otherwise cause serious damage.

2. Catch and release

The practice of catch and release is universal among British coarse anglers, but is not always followed by game anglers who capture coarse fish. Of greater concern is the growing threat to stocks from systematic "pot hunting", mainly by people of Eastern European origin who have a tradition of eating coarse fish. There is a need to educate anglers and proprietors more effectively about the desirability of catch and release, but that can only take things so far.

SFCA would favour making the deliberate killing of coarse fish captured on rod and line a criminal offence (it is not for us to offer a view on the killing of rod-caught salmonids). However we recognise that this could be contentious, and might in any event be difficult to enforce. There is potential to obtain significant benefits from the less controversial measures described below.

Even where proprietors do make catch and release a permit condition, it is virtually impossible to enforce - the Police have proved powerless to act on reports of fish removals in such cases. Some form of legislative underpinning is required both to deter fish removals and enable action to be taken in response to infringements. We therefore propose that an offence of unauthorised possession of coarse fish should be introduced, analogous to the provisions in Section 9 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 regarding the illegal possession of salmon or trout. This should specify that a person found in possession of any coarse fish without being able to show lawful right or written consent to remove them would be guilty of a criminal offence.

In addition, we propose that the Scottish Government should adopt and publicise policies that demonstrate commitment to the principle of catch and release for coarse fish, and provide tangible support for its implementation. These should include:

- Refusing to grant or renew any Protection Order in future unless permit conditions explicitly require that all coarse fish captured are released alive; and
- Refusing to grant or renew any lease of fishing rights owned by the Crown or a Scottish public body in future unless the person or angling club taking on the lease commits to introduce and enforce permit conditions requiring that all coarse fish captured are released alive; and
- Taking all practicable steps to press Scottish public bodies which directly manage and operate fisheries to introduce and enforce permit conditions requiring that all coarse fish captured are released alive.

3. Losses as a result of drainage or engineering works

The operators of reservoirs or other man-made facilities are presently under no general statutory duty to consider or ameliorate the effects of drainage or engineering works on non-migratory fish populations, except in regard to specified protected species. Losses in such situations can be catastrophic, yet they could often be largely avoided if steps were taken in advance to minimise the damage. SFCA proposes that legislation should be introduced to oblige the owner or operator of any water body who intends to carry out engineering works which involve draining or substantially lowering the water level to have regard to the potential impact on the populations of *all* fish species present, and specifically to:

- notify interested parties in advance; and
- take such steps as are reasonably practicable (including, but not confined to carrying out fish rescues) to minimise fish losses or mortalities due to the engineering works in question; and
- replace, or bear the cost of replacing, fish stocks lost due to the engineering works in question.

4. Predation by piscivorous birds

Predation by birds, especially cormorants, can be a significant threat to populations of smaller species like roach, and to juveniles of larger species. Cormorants are thought to have shifted to feeding inland due to declining stocks of sea fish, and their numbers are believed to be increasing. The current licensing regime for their control is so restrictive as to be worthless. It is imperative that less restrictive provisions should be introduced to allow effective control of these voracious predators. Similar problems exist elsewhere in GB and we understand that the Westminster government is reviewing the licensing procedures for the control of fish-eating birds in England & Wales. We urge the Scottish Government to have regard to developments in this context south of the border, and to take decisive action to protect Scottish freshwater fish stocks.

Unintended consequences of the Wildlife & Natural Environment (Scotland) Act 2011

Section 14 of the 2011 W&NE Act creates serious potential difficulties for coarse angling. The problem lies in the fact that S14 makes it an offence for any person to release, or allow to escape from captivity, any animal "... to a place outwith its native range ...". This part of the 2011 Act supersedes S14 of the Wildlife & Countryside Act 1981, which made it an offence "to release or allow to escape into the wild any animal of a kind which is not ordinarily resident in and is not a regular visitor to GB in a wild state". The rewording is highly significant because while almost all coarse fish are "ordinarily resident in GB", some species are only present in Scotland due to introductions, and the precise extent of the "native range" of those which can be regarded as indigenous (ie roach, pike and perch) is uncertain.

If a pedantic interpretation of S14 was adopted it would become unlawful to carry out any stocking of most coarse fish, even to waters that already contain the species concerned. Furthermore, S14 could even be taken to forbid "catch and release" practices for coarse fish where the water in which they are caught lies beyond their natural range. This is frankly absurd: returning a fish to the water at the site of its capture self-evidently has no adverse consequences in relation to the spread of non-native species, nor can it introduce diseases or parasites.

It is no exaggeration to say that this would shut down coarse angling in Scotland within a comparatively short time. Very few coarse angling tourists would come here if catch and release was forbidden (this is true, for instance, of Germany, which has adopted a "no release" policy albeit for different reasons). And, rather than kill their catches, virtually all Scottish coarse anglers would either travel elsewhere for their sport, give it up altogether, or switch to other branches of angling that were not subject to such restrictions. Those remaining – in particular the "pot hunters" of non-UK origin - would swiftly deplete stocks to the point where coarse fisheries ceased to be viable.

It seems inconceivable that the Scottish Parliament (which has otherwise been very supportive of the development of coarse angling) would have intended the W&NE Act to have the detrimental social and economic¹ impacts which will inevitably arise if S14 is not modified appropriately. We are aware that this legislation contains provision (S14 [2B]) for Scottish Ministers to specify exemptions. The question is therefore what exemptions are required to avoid that detriment without undermining the W&NE Act's fundamental purpose of protecting the natural environment from the introduction or spread of invasive non-native species.

In order for these exemptions to be effective and avoid additional unwanted complications, it is vital that they are clear, simple, easily understood, and readily enforced. There is no need for a complicated matrix of species-specific and/or catchment-specific delineations – two straightforward dispensations will suffice:

- *Exempt from the provisions of S14 any stocking of fish for which the appropriate authority (in the case of coarse fish this will be Marine Scotland) has granted statutory consent under S33A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (as modified by S35 of the Aquaculture and Fisheries (Scotland) Act 2007).*
- *Exempt from the provisions of S14 the return, alive to the water at the site of capture, of fish of any species caught on rod and line, where release takes place on the day of capture and the fish in question has not been moved to any other location between capture and release.*

We believe that the proposed exemptions described above are reasonable for anglers, workable for those who will have to enforce the law, and consistent with the intentions of the W&NE Act.

¹ See, for example, <http://www.scotland.gov.uk/Publications/2004/03/19079/34369> which estimates the economic value of coarse angling in Scotland at £4.9M (2004 prices)

Access for coarse angling

In order for coarse fishing to develop to its full potential in Scotland, responsible anglers should in general be able to obtain reasonable access to fish for coarse species where they are present.

Most of Scotland's coarse fish are found as naturally-occurring or long established populations in mixed fisheries that also contain salmonids. The opportunities to pursue them range from outright refusal to completely free access. In many of the mixed fisheries where coarse angling *is* allowed, it is nevertheless constrained by permit conditions on fishing methods, seasons, and/or "close days" designed to regulate angling for salmonids. At best, such conditions unnecessarily restrict coarse angling opportunities: at worst they can render it almost impossible in practice.

Protection Orders were introduced by the 1976 Act with the intention, *inter alia*, of increasing the availability, at reasonable cost, of fishing for all non-migratory freshwater species. From a coarse angling perspective, they have failed to achieve this aim. In reality, access for coarse fishing has not changed significantly in most PO areas. In some it has actually reduced; and in most it remains hampered by the kind of permit restrictions described in the preceding paragraph.

Whilst there is some scope to improve the Protection Order system, it seems to be unable to reconcile real and/or perceived conflicts between the interests of fisheries for migratory salmonids, trout, and coarse species in the same body of water. Nor are we convinced that it is fundamentally capable of serving as the vehicle for promoting access or protecting proprietors against unauthorised fishing in the 21st century. The context has changed greatly since 1976, and today's problems arise not from over-exploitation by busloads of otherwise responsible anglers but from vandalism and drunken aggression by a small minority of hooligans with rods. Unfortunately – but perhaps understandably - some proprietors try to avoid that by forbidding fishing altogether.

Responsible anglers should not be denied their sport because of the actions of this small deviant minority; but neither should proprietors have to endure the type of behaviour described above. This is a problem of Policing, and controlling it should not be left to volunteer fishery wardens or proprietors themselves. In order to facilitate robust action by the Police against the delinquents concerned it would be helpful to bring greater clarity to the law in Scotland on fishing without permission. At the moment the position is complex and confusing. Fishing for non-migratory freshwater species without legal right or written consent is:

- A criminal offence in a "proper stank or loch";
- A criminal offence in the rivers flowing into the Solway, except the Annan and part of the Sark;
- A criminal offence on waters specifically covered by a Protection Order;
- A civil offence on waters outwith a Protection Order area, or in parts of a Protection Order area which have been excluded (information on which is not well publicised);
- Not an offence at all in tidal and "public" waters;

In England and Wales, anglers have for many years accepted legislative provisions under which fishing without consent is a criminal offence in *all* inland waters. We propose – not without some hesitation – that the same should apply in Scotland.

A new mechanism is required to address access for angling, the protection of all fish populations and the sustainability of exploitation. In our view the development of an appropriate Code of Practice - initially on a voluntary basis, but with the potential to become a statutory Code in the longer term – coupled with a more comprehensive and inclusive approach to fisheries management planning at catchment level could serve as the foundations of such a mechanism. This is very much in line with the direction proposed in the Strategic Framework, and SFCA would welcome the opportunity to work with other stakeholders on these developments. We regard the Fisheries Forum Steering Group as a proven and appropriate vehicle for co-ordinating that.