

# THE LOCHBER DISTRICT SALMON FISHERY BOARD

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## **AQUACULTURE AND FISHERIES BILL CONSULTATION RESPONSE**

Dear Sir/Madam,

The Lochaber DSFB welcomes the opportunity to respond to the Aquaculture and Fisheries Bill consultation. Our specific responses are below but, in general, we would like to underpin these with the support of the broad and detailed response given by Dr Alan Wells of the Association of District Salmon Fishery Boards which has been received by your office. The responses below should be read in conjunction with the ASFB's general comments in their consultation response.

### **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, one of the weaknesses of the AMA process (as well as its many strengths) has been its lack of legal framework. They have been purely voluntary agreements. This has resulted in the aims of the agreements, such as CofGP lice control, not always being met and a complete lack of penalty for the companies responsible. Furthermore, the agreements have also been kept private through a confidentiality clause, which has engendered a lack of trust and transparency. We can see no genuine reason for not only FMA's to be given legal and enforceable status but also for them to be fully transparent and accessible.

*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?*

Whoever sets the boundaries, the Management Areas should be based on ecological protection as well as on the best options for farm husbandry and management. The

location of key salmon and sea trout rivers, as well as sea lice dispersal models (where available), should be taken into account.

Many of the existing boundaries were based on disease transfer back in the late 1990's ISA outbreak and are now outdated and not specifically designed to protect wild fish from fish farm impacts. An example is the Linnhe/Lorne/Sound of Mull areas. Currently wild smolts leaving the River Lochy and other smaller rivers at the head of Loch Linnhe must travel through at least 2 different Management Areas operating under 2 separate production cycles. Management Areas should be designed so that wild smolts only encounter one production zone and therefore are only (in the worst possible scenario) exposed to elevated lice numbers every second annual smolt cohort.

As it is unlikely that farmers will agree to these larger areas for commercial reasons, a power should be created for Minister's to enforce these vital provisions as wild fish recovery in some larger sea loch systems seems highly unlikely without them.

*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, this would strengthen the process.

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

Any such system should have legal powers of enforcement if necessary (see Q1).

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

Yes. Unused consents should play no part in ensuring sufficient buffer zones in Management Areas. These areas should be planned separately and robustly (see Q2).

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

We support the incentives in paragraph 20. However we believe that in order to ensure robust boundaries to MA's then revoking of a licence may be the only option in certain circumstances.

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

Yes, in certain circumstances this power may be needed for the robust creation of Management Areas (for reasons see above responses). Furthermore, we believe that there should be a mechanism for DSFBs and/or local communities to apply to Scottish Ministers for such a power to be used.

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

This should relate to all consents for both marine and freshwater production.

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

The Lochaber DSFB is quite unequivocal on this issue. Sea lice data should be published (as it is in Norway) on a public website and the lice numbers should be listed in a

disaggregated manner on a farm by farm basis. Anything that falls short of this will only ever be seen as an industry hiding behind the excuse of so-called 'commercial sensitivity'. Some of the major companies operating in Scotland already accept this requirement in other countries where they operate.

The fish farm industry has the potential to damage the environment, particularly through sea lice from farmed fish, therefore there should be complete transparency on this issue with timely and detailed statistics available for full and public access.

*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. The same website in Q9 could be used.

*Q11. What are your views on the timing and frequency of submission of such data?*

Ideally this should be done weekly as in Q9.

*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 undoubtedly. This applies both to wild and farmed fish welfare.

Furthermore in order for SEPA and Ministers to have meaningful control of fish farm impacts, sea lice emanating from salmon farms should be treated as a discharge and pollutant. Currently they are not, which we believe renders the control mechanisms placed on fish farms by SEPA not fit for purpose as it ignores one of the key potential pollutants.

*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?

The Lochaber DSFB is supportive of the sustainable growth of the shellfish industry and support the use of the marine planning system for decisions on this. We note that in cases where shellfish farms have replaced salmon farms in our region (eg Loch Eil) then partial recovery of sea trout stocks in local rivers has ensued.

## 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. The Lochaber DSFB is quite unequivocal about this matter and has been for many years. A control system that simply uses lice per farmed fish and takes no account of farm biomass or cumulative biomass in the sea loch is essentially meaningless and not fit for purpose. Furthermore, the lower threshold spring period does nothing to protect sea trout which are present in the estuaries all year round.

Marine Scotland Science, in responding to fish farm applications, routinely states: *“However, it should be noted that adherence to Integrated Sea Lice Management (ISLM) as described in the industry Code of Good Practice may not necessarily prevent release of substantial numbers of lice from aquaculture installations. The CoGP takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and posing a risk for wild fish particularly in the case of larger farms or management areas holding a large biomass of farmed fish.”*

It is therefore very clear to us that powers must be introduced to address this glaring omission in wild/farmed interaction management.

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. As well as technical standards for equipment, accredited training of personnel should also be introduced to ensure the best use of that equipment.

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. This power is vital. Escapees should be traceable to the farm of origin (which is possible using genetic techniques). The fish farm industry has the potential to significantly damage the environment with escaped fish spreading maladapted genetic material into wild

populations. Based on the 'polluter pays' principle, farm operators should willingly allow sampling of their stocks following an escape. Should this not be done willingly then a power should exist for Ministers to enforce sampling.

#### **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?*

The Lochaber DSFB entirely agrees with the need for all Boards to act fairly and transparently in the execution of their statutory and other varied duties. We believe that this requirement is being wholly met in this region and our activities are underpinned by an adherence to the ASFB Code of Good Practice. We are unclear whether a 'specific duty' needs to be introduced and would wish to have more details of how this might look and how it might be judged. We are not at all opposed to such a suggestion but are unclear about the details.

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

This Board adheres to the ASFB's Code of Good Practice. We are unsure whether a further Code would be necessary or if this is being suggested. We have no issue with any of the suggestions about transparency mentioned in the consultation document (eg open meetings, wide consultation, published minutes and accounts etc.).

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

We believe that if the statutory route is decided upon then both the Code of GP for aquaculture and the Code of Good Practice for wild fisheries should be made statutory contemporaneously.

*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?*

Yes this needs to be put in place as soon as possible and we note that the EA scheme is working well in England, as it does elsewhere such as in Ireland. The voluntary scheme being undertaken by some Scottish netmen is woefully short of what is needed – this is purely a marketing tool. All carcass tags must be individually numbered (unlike the current tags being used by some netmen). Introduction of such a scheme would significantly help this Board prevent illegally caught fish reaching the market and should be welcomed by the netting industry as a mark of the quality and legality of their product.

We are unclear if the proposals refer to both net and rod caught fish. As 93% of fish in the Lochaber region have been returned over the past 5 years, the issue of carcass tagging rod caught fish is a minor one. Furthermore, the sale of rod caught fish is illegal. We are not averse to carcass tagging of rod caught fish but would like to avoid any extra financial burden on our numerous local fisheries which are generally very small in size and budget.

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

Yes. Genetic analysis is a key tool in modern fisheries management, and without such information it is not possible for DSFBs to know the impact of the catch on individual catchments or to apply targeted conservation measures.

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

We are unclear why this should be necessary, unless a DSFB is not in place in a particular area. Where it is these changes should be made through the application of the DSFB.

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

See Q28. We are unclear about why this is necessary in areas with DSFB's in place.

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

Yes, notwithstanding the previous observations about some Board's being limited financially due to the nature of their fisheries and any further pressure on them financially may be difficult to sustain.

*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?*

We are unclear about the need for statutory provisions in this regard, but the introduction of some form of mediation (particular with regard fishery closure/limitation on conservation grounds) would be welcomed.

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

Yes in principle we agree with this. We are unclear as to exactly what shape this might take in relation to both rod and net fisheries and suggest that needs more detailed thought if it is to be a meaningful measure in both regards.

*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?*

We believe that rod catch data and (see Q32) effort data should be collected and provided. We also believe that all fisheries data should be freely available for all bodies involved in the management of Scottish game fisheries irrespective of who has collected it.

*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?*

We are unclear as to exactly what is being proposed here and, while we are not averse to its general suggestion, we are very conscious that this could potentially add significant financial burden to Fishery Boards. In the case of this region with its very limited budget and small, uneconomic and depressed fisheries this would be a matter of some concern.

*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?*

We believe that this issue is covered through the ASFB Code of Good Practice and the specific Stocking Guidance contained within in. See previous comments – if the ASFB Code and the Aquaculture Code were to be put into statute together then such a power would not be needed.

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

See Q35

## **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?*

The scope of this question appears to be limited to breaches of the requirements for, or conditions of, Marine Licensing requirements (under the Marine (Scotland) Act 2010), insofar as they apply to aquaculture operations. However, there is no explanation in the consultation document as to the scope of such requirements or conditions. We are in favour of strict liability in principle, particularly with regard to escapes from freshwater and marine cages. Such a system would be consistent with the proposal that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes.

*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?*

We are unclear about exactly what this refers to. If the suggestion is that, for example, there should be a charge made to a Board for a conservation application when we would be concerned and would not be in support as any such application is to deliver environmental benefit.

*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?*

It is worth noting that Scotland gets a huge benefit from the management of fisheries by DSFBs. DSFBs are funded by fishery proprietors in the district, to a value exceeding £3.5m in 2010. Board Members give their time on an entirely voluntary basis. To replicate this management model in the public sector would be massively expensive to the public purse. In addition, DSFBs are consulted on, and expend significant time and effort in responding to, planning applications for wind farms, run of river hydro developments, marine renewable developments, fish farm developments and other developments with the potential to impact on the freshwater or marine environment. Any decisions on the level of charges, or indeed the need for charges, should be taken in the light of the considerable value already provided by DSFBs.

*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?*

We believe that there is currently some duplication of effort and use of limited resource between DSFB's MSS Trusts etc. If their respective activities could be better coordinated and their findings collated then some savings would be likely.



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

**In response to this section we refer to the comments made by the ASFB below –**

### **Section 1**

☐ Paragraphs 37-41 in the consultation document suggest that discharges from wellboats and processing facilities might be an issue with regard to sea lice. As we set out in our answer to Q12 SEPA biomass consents under the Water Environment (Controlled Activities) Regulations 2005 are limited to ‘discharges’ such as fish waste and chemo-therapeutants, but these are not currently interpreted as including sea lice. If sea lice from wellboats and processing facilities are an issue (and thereby would require filtering measures), then it would appear reasonable that sea lice released from farms are also an issue, and therefore we believe that sea lice emanating from sea cages should be treated in the same manner as other discharges. This would deal with the current lacuna in law with respect to the control of sea lice emanating from cages.

### **Section 3**

☐ Enforcement notices under s6 of the Aquaculture and Fisheries (Scotland) Act 2007 allow Scottish Ministers to require the execution of such works, or the taking of other steps, with the purpose of the prevention, control or reduction of parasites. However, we have been informed by the Fish Health Inspectorate that any such notices are limited to observed problems with farmed fish and such notices cannot be utilised for the purpose of protection of wild fish. We do not believe that the 2007 Act specifically precludes such action, but if this is the case, we believe that the 2007 Act should be amended to allow such action to take place.

### **Section 4**

☐ At present, the powers of DSFBs to consent certain activities for the purposes of fisheries management (such as electro-fishing and collection of broodstock for hatchery operations) which would otherwise be illegal are only exercisable outwith the annual close time. During the annual close time, DSFBs need to apply to Scottish Ministers for authorisation to undertake such activities. Annual close times were historically set based on the commercial salmon fishing season with an extension beyond such close times for rod and line fishing. Whilst the definition of the salmon season based on salmon netting may have made sense historically, when salmon netting was the major part of the sector, this is no longer the case. Indeed, the vast majority of DSFBs have little or no netting interests within their districts. It seems incongruous, and a waste of scarce government resources, for DSFBs to have to apply to Scottish Ministers for exemptions from certain offences under the 2003 Act in order to undertake activities (which include essential fisheries management techniques such as electrofishing) during the annual close time, when they do not have to do so at any other time. This places an unnecessary burden on DSFBs and Scottish Government. We therefore propose that the period over which DSFBs can consent such activities should be extended throughout the year. In addition, where the Scottish Government receives an application for electrofishing for other freshwater species in waters containing migratory salmonids where a DSFB exists, we consider that the DSFB should be fully consulted prior to electrofishing taking place. This would allow DSFBs to ensure that any proposed actions or activities taking

place within the district do not interfere with, or compromise, existing programmes of routine sampling of juvenile salmon or sea trout.

☐ It is an offence to fish or take salmon during the weekly close time for net fisheries (6pm Friday – 6am Monday). In the case of fixed engine salmon fisheries (bag or stake nets), this is achieved by removing the ‘leader’, a net positioned perpendicular to the shore which diverts fish into the salmon net. Removal of the leader prevents fish from entering the nets. It has become apparent that, in some parts of Scotland, the weekly close time is often not observed if, for example, rough sea conditions make it too dangerous to remove the leader. For example, Usan Fisheries near Montrose failed to remove the leaders on their nets on 12 out of 18 weekends in 2011 – equating to a significant increased exploitation of fish throughout the season. We are content that exceptions to the weekly close time should exist and indeed ASFB do not want to see anyone’s life being put at risk. However, we are concerned at the potential for the current exception to the weekly close time to be exploited. The weekly close times were put in place for sound conservation reasons and therefore we believe that, where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity. Implicit in this, is the need for a requirement for netsmen to report all such occurrences when leaders are not removed.

☐ The North Atlantic Salmon Conservation Organisation has successfully negotiated reductions in salmon fisheries in their marine feeding grounds in the North Atlantic. Recently, MSFs have come under increased International scrutiny. NASCO’s success in achieving tight restriction of traditional high seas MSFs near Greenland and the Faroes has led to increasing pressure on all parties to the Convention for the Conservation of Salmon in the North Atlantic Ocean to address MSFs in their home waters. As we expect Greenland and the Faroes to adhere to the current tight restrictions on their fisheries, we must keep our own house in order – it would be a disaster for Scottish salmon fisheries if these high sea fisheries were to resume.

The extent of *active* net fisheries in Scotland has declined, particularly since the 1970s when the advent of salmon farming and the availability of cheaper farmed fish to the consumer had a marked effect on the commercial viability of salmon netting for wild stocks. However, since the millennium the price of wild Scottish salmon has increased markedly, and the recent purchase of previously lightly fished netting stations in Caithness by a major Scottish netting interest raises the prospect of an increase in netting effort in coming years. There remain a large and undefined number of inactive netting stations in Scotland, for which the netting rights still exist. The 1997 Report of the Scottish Salmon Strategy Task Force recognised that it would be inappropriate to prohibit the operation of active net fisheries, but that a mechanism should be established to prevent any increase in fishing effort, in line with our International commitments. The report therefore recommended that *‘All net fisheries (both outside estuary limits and net and coble fisheries above the head of the tide) operated or genuinely let in any two years in the period 1993 to 1996, inclusive, should be registered, and only those that are so registered should be permitted to continue operating’*. The report also recommended that *‘The number of traps fished at a bag-net or stake-net station, or the number of crews working a net and coble station outside estuary limits, should not be greater than those qualifying for registration’*.

Related to the above, ASFB believe that, when a netting station is put up for sale, or is to be leased to a third party (other than the proprietor), the relevant DSFB, or indeed a local angling club 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) could proceed. Such a mechanism would also prevent an increase in fishing effort, in line with our international commitments.

## Section 5

☐ There are a number of issues relating to gill netting of concern to salmon interests. The use of monofilament nets in Scottish waters is prohibited. However, many nets being used on the South Scottish coast are *multi-monofilament*. Despite the inclusion of the pre-fix 'multi', these nets are monofilament and are already illegal as highlighted in an English court ruling. The rules regarding gill netting in England have recently changed. Previously gill netting was dealt with under s6 of the Salmon and Freshwater Fisheries Act 1975 (as amended by the Salmon Act 1986) by way of bylaws set by the Local Fisheries Committee. However, the 1975 Act was repealed by the Marine and Coastal Access Act 2009, which set up a new framework for the governance of inshore fisheries via Inshore Fishery and Conservation Authorities (IFCAs). Some IFCAs have used these powers to remake the old sea fisheries committee byelaws prohibiting gill netting within certain specified locations. Such bylaws are in terms similar to the following:

*The placing and use of fixed engines for taking sea fish is prohibited in the following areas except when placed or used in accordance with the following conditions:*

*The headline of every fixed engine shall be at least 3m below the surface of the water at any state of the tide when set in the following areas less than 1 nm from the low water line along the coast and between the following eastward and westward boundaries.*

[All references to fixed engines in the above, refer to gill nets]

Such bylaws, which are also designed to prevent gill nets being placed near river mouths, reduce the likelihood that salmon or sea trout will be intercepted by gill nets set for sea bass or mullet, as salmonids fish generally swim within 3m of the surface and close to the coast. As the law currently stands, it is an offense to take salmon, but this does not prevent salmon being intercepted and killed in gill nets, so long as the fish are not landed. We believe that the Aquaculture and Fisheries Bill presents an opportunity for Scottish Ministers to take a power (if such a power does not already exist under the Inshore Fisheries (Scotland) Act 1984), via the most appropriate legislative vehicle, to regulate gill netting by order, along the lines of the English bylaws suggested above. Such orders should be made by Scottish Ministers under their own volition, or on application by a DSFB.

## Section 6

☐ The need for the equitable burden of conservation was recognised by the Mixed Stock Working Group. There is currently an imbalance in that burden between the exploiters of the resource. As previously noted, net fisheries accounted for over 45% of the retained catch, but only contributed 1.3% of the total funding raised by DSFBs for fishery management. This situation is clearly inequitable and should be addressed by the forthcoming legislation.

## Other

☐ There is currently a population of feral beavers on Tayside which has most likely been introduced illegally. It is also possible that some of these animals may have escaped from private collections. In either case, it is important that such animals, which may impede the

upstream access of migratory salmonids, are chipped, tested for disease and securely enclosed as a condition of ownership. We would seek assurance that the Wildlife and Natural Environment (Scotland) Act 2011 contains the necessary powers for Scottish Ministers to deal with these issues. If the relevant powers do not exist, we believe that the Aquaculture and Fisheries Bill may provide a legislative vehicle for changes to primary legislation in relation to this issue.

Yours faithfully,

Jon Gibb  
Clerk.