

# ARGYLL DISTRICT SALMON FISHERY BOARD

## Comments on 'Aquaculture and Fisheries Bill Consultation Document'

March 2012

### Introduction

The Argyll District Salmon Fishery Board is the statutory body responsible for the protection and conservation of stocks of salmon and sea trout across the district. The District for Argyll encompasses most of the mainland of Argyll excluding the Eachaig catchment in South Argyll: the Isle of Arran is also included within the Argyll District.

### 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. Since FMAs do not have any input from wild fisheries interests, we believe finfish operators should act fairly and transparently in line with District Salmon Fishery Boards.

*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?*

No. MA boundaries should be specified by Scottish Ministers based on best available science provided by Marine Scotland Science in consultation with marine finfish operators.

*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?*

Our only comment is that the arbitrator should be independent of the aquaculture industry.

*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?*

Paragraph 19 sets out a number of reasons why consents for unused sites may be held, including holding sites as buffer zones, as part of farm management area arrangements to assist in fish health and disease management. We would be extremely concerned if unused consents were the only mechanism available to achieve such an aim. Indeed, as we have stated above, FMAs should be set at an appropriate size, and with appropriate spacing to allow such buffer zones to operate effectively.

The most suitable option to promote use or relinquishment of unused consents will depend on the individual circumstances at the site in question, and with that in mind we can see merit in all of the incentives set out in paragraph 20. However, as highlighted above, there are situations when the most appropriate approach is to revoke a consent and ensure that no further consents are reissued in that area. This mechanism should also be reflected through the marine planning system.

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 consents.

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. This information is essential for local management of wild salmonid fisheries, as it allows identification of factors affecting wild fisheries that would otherwise be hidden.

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?

Monthly.

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, particularly with regard to fish movement/discharges. Such powers should be taken **and implemented** following enactment.

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

Yes. Such powers should be taken **and implemented** following enactment.

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?

Yes.

## **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?

Yes.

### 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. As farm sizes and/or the number of farms in a FMA increase, then the threshold should be reduced. This would be particularly relevant on wild salmonid migration routes.

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.

### 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?

Yes.

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

Yes. A Code of Good Practice currently exists that the Argyll DSFB has signed up to.

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

We believe that, similar to the Code of Good Practice for Scottish Finfish Aquaculture, the code should be non-statutory in the first instance. However, we would be content if there was a power for Scottish Ministers to adopt the code should they wish to do so in future.

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, such powers should be taken **and implemented** as soon as possible.

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?

No.

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

No. The consultation document does not set out the basis or need for combined salmon conservation powers and therefore we are unclear as to what advantage there is in combining these powers.

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.

### **Improved Information on Fish and Fisheries**

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

Yes. However, the Argyll DSFB believe that the collection and quality of data obtained will be of questionable use due to inherent inaccuracies.

*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?*

None.

*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?*

Paragraph 104 of the consultation document appears to suggest that this question might be limited to licensing functions on the introductions of salmonids to freshwater. However, we are working under the assumption that this question involves all aspects of the salmon and sea trout fisheries in a district. A number of DSFBs already collect and publish information on catches, conservation policies, monitoring, introductions and enforcement within their districts. We believe that the Code of Best Practice is the best way to ensure that this information is provided, in a consistent manner for all DSFBs. The operation of the Code in this matter could be linked to the proposed national strategy for the collection of fish data.

It is not clear from the consultation document, should such a power be invoked to require a DSFB to undertake additional functions above and beyond their core work, who would be expected to pay for such additional functions. It is important that any such power must be used in a proportionate way, which reflects the resources of the DSFB 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?*

Conditionally yes. See answer to Q36.

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

It is appropriate that Scottish Ministers might use such powers where DSFBs can be demonstrated as not fulfilling their duties.

## 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?*

Yes. Our comments here are restricted to the salmon and sea trout fisheries sector. It would have been useful if the consultation document had highlighted exactly which services/benefits are being referred to in relation to salmon and sea trout fishery management.

It would seem reasonable for charges for services/benefits and we believe that SEPA provide a good model here. For generic services such as setting up the framework of Controlled Activities Regulations, data collections standards etc. there is no charge. However, where a specific application is made, SEPA then levy a charge. In operation this appears equitable and proportionate. We would be concerned however, if any such charges were set at a level that put these services out of the reach of the smaller DSFBs.

It is also worth noting that the current CAR regime provides for the waiving of the application fee for an activity which delivers an environmental benefit. It would therefore seem logical that, where there is an application for e.g. conservation measures (where there is likely to be an environmental benefit) there should be no charge. In line with the SEPA model we would also expect Scottish Government to meet certain performance requirements. Specifically, applications to Scottish Ministers should be dealt with, within a statutory timeframe and we would expect the Act to reflect this.

*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?*

Not applicable.

*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 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 purposed 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**

- Presently, the Argyll DSFB, along with all other DSFBs, have the power to authorise stocking of rivers with wild salmonids, however we do not have the power to authorise the taking of broodfish for stocking programs outside the fishing season. The Argyll DSFB would like the power to authorise the taking of broodfish for stocking programs outside the fishing season