

CONSULTATION QUESTIONS [from Marine Concern](http://www.marineconcern.com)  
[www.marineconcern.com](http://www.marineconcern.com)

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

1. 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 (FMA), with sanctions for failure to do so, or to adhere to the terms of the agreement? (Page 9)

YES

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Appropriate Scale Management Areas (MAs)

2. 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? (Page 9)

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NO

Management Measures and Dispute Resolution

3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements? (Page 10)

YES

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4. How do you think such a system might best be developed? (Page 10)

Fully independent overview, open and accountable to the public

Unused Consents

5. Do you agree we ought to review the question of unused consents? (Page 11)

YES

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**6. What do you consider are suitable options to promote use or relinquishment of unused consents? (Page 11)**

Revoke  
Good management, reduced stocking and even enclosed containment means these are not required

**7. Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents? (Page 12)**

YES

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**8. Should any such power relate to all or to particular consents (and if the latter, which)? (Page 12)**

ALL

**Collection and Publication of Sea-lice Data**

**9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data? (Page 13)**

MUST NOT BE INDUSTRY LED and open to public

**Surveillance, Biosecurity, Mortality and Disease Data**

**10. 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? (Page 16)**

YES

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**11. What are your views on the timing and frequency of submission of such data? (Page 16)**

ASAP open and accountable

**Biomass Control**

**12. 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? (Page 16)**

**YES**

**XX**

**Wellboats**

**13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats? (Page 17)**

**YES**

**XX**

**Processing Facilities**

**14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants? (Page 17)**

**YES**

**XX**

**Seaweed Cultivation**

**15. Do you agree that the regulatory framework should be the same for all seaweed farms? (Page 18)**

**YES**

**XX**

**16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing? (Page 17)**

**YES**

**XX**

**17. If not, what alternative arrangements would you suggest? (Page 18)**

Licensed, checked and enforced: the only way for the future

### Commercially Damaging Species

18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species? (Page 19)

YES

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### SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry? (Page 21)

YES

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### SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

#### Sea-lice

20. 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? (Page 23)

YES

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#### Containment and Escapes

21. 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.) (Page 25)

YES

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#### Tracing Escapes

22. 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? (Page 26)

YES

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## **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 XX

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

YES XX

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

YES statutory

### **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)**

YES XX

### **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)**

YES XX

### **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)**

YES XX

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

YES XX

**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)**

YES

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**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)**

YES

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**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)**

YES

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**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)**

Anti predation methods and levels : routinely

**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)**

YES

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**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)**

YES

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

Introductions and associated problems can be a massive problem. All circumstances.

## **SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS**

### **Strict Liability for Certain Aquaculture Offences**

**37. Do you agree that strict liability criteria should apply – where they capable of being applied – for offences related to Marine Licensing requirements insofar as they apply to aquaculture operations and, potentially, in other situations? (Page 37)**

**YES**

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### **Widening the Scope of Fixed Penalty Notices**

**38. 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? (Page 38)**

**YES**

**providing high enough to deter**

**39. Do you agree that we should increase the maximum sum that can be levied through a fixed penalty notice to £10,000? (Page 39)**

**YES**

**but raise the limit**

**40. Are there particular regulatory areas that merit a higher or lower maximum sum? (Page 39)**

**YES**

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### **Enforcement of EU Obligations Beyond British Fisheries Limits**

**41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed? (Page 40)**

**YES**

**XX**

### **Powers to Detain Vessels in Port**

**42. 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? (Page 41)**

**YES**

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### Disposal of Property/Forfeiture of Prohibited Items

43. 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? (Page 41)

YES

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### Power to Inspect Objects

44. 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? (Page 42)

YES

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### Sea Fisheries (Shellfish) Act 1967

45. Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer? (Page 42)

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NO

### 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)

In the main the industry should foot the bill

NO

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)

The relevant industries should pay through licenses. General day to day running expenses could be supplemented through public funds.

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)

This is a massive industry...



## **Aquaculture and Fisheries Consultation: Additional Notes by Marine Concern**

Sent by email to; [Aquacultureandfisheriesconsultation@scotland.gsi.gov.uk](mailto:Aquacultureandfisheriesconsultation@scotland.gsi.gov.uk) (2-3-2012)

These observations and notes are supplied in addition to the online form proved by the Scottish Government. They can be made publicly available and cited as [www.marineconcern.com](http://www.marineconcern.com)

**(Please do not place any email address of the World Wide Web)**

The need for further control and enforced legislation to both the aquaculture and fisheries industries is long overdue. Furthermore any such controls and legislative processes MUST BE conducted by independent, publicly accountable bodies.

Throughout this response Marine Concern ([www.marineconcern.com](http://www.marineconcern.com)) agrees with the comment: “agree that Scottish Ministers should be able”, this statement is combined with a caveat that the Scottish Ministers have long term sustainability of the ecosystems and environmentally friendly processes in mind.

During several pre-legislative processes, consultations and “groups” (such as the Ministerial Groups) set up to address existing and new concepts within the marine environment, it has been seen that “preferred” groups/members have been chosen, sometimes not on what they can offer but “will they not create a fuss”. While this may make for an easy meeting it rarely delivers what is actually required for a real sustainable future. Effectively “closed shops” are not conducive to openness or transparency. There has been a tendency for these groups to be biased in favour of the commercial industries, and occasionally with NGO’s that do not have the resources to cope. For a fully open and accountable; sustainable future this MUST BE ADDRESSED as a matter of some URGENCY.

The consultation document contains statements such as, “*The industry has flourished and has ambitious aspirations for growth*”. Under the current conditions and observations this is a most worrying statement, one which if not sufficiently addressed and curbed will result in huge problems within and throughout Scottish waters in the future.

Comments such as, “*to grow, on a sustainable basis*”, need defining; sustainable for who or what? Sustainable here MUST mean the ecosystems that support Scotland’s unique marine environment, and this concept MUST come before ALL commercially led activities. Only in that way will our commercial industries be safe for our future population.

Voluntary arrangements simply don’t work and this is well documented: Legislation combined with penalties sufficient to offset the massive gains MUST BE IN PLACE, this must include confiscation of equipment and illicit profits.

Marine Concern is also concerned with the widely used term “best practice”, and “International Best Practice”. This is akin to the fin fish industries term for dealing with predators; “last resort” and “absolute last resort”; if last resort meant what is state’s there would be no requirement for the term “absolute last resort”, from what we have observed in the field the same concerns can be applied to “best practice”.

With reference to the comment, “*We want to promote openness and transparency*”, this is all that many NGO’s have wanted, requested and insisted one for many years: we will watch progress here with great interest.

There are two major issues not addressed within this consultation document: anti-predation methods and locational policy or spatial planning; this has been a great oversight and seriously weakens this piece of legislation. We fully understand that Planning and the Marine Act covers such issues but not sufficiently to ensure fully sustainable, environmentally friendly practices for our future and that of species and habitats important to other industries and potentially our own future.

The consultation document states that, “*the industry adheres to the highest environmental and husbandry standards*”, if this were the case then clearly the present system is inadequate and not fit for purpose, and/or the industry is not being “up-front”, open and accountable: Proves the need for ALL matters related to fall under legation with sufficient penalties to address the issues.

While the Code of Good Practice for Scottish Finfish Aquaculture (‘the Code’) is a voluntary concept its use as a tool will always be restricted. It was developed, effectively “behind closed doors”, with limited input from bodies outside the industry or those with hands-on knowledge of what is actually occurring in remote marine locations around Scotland.

While Marine Concern likes the idea of a “Scottish Technical Standard”, will this simply be as present where the industry dictates to government what it wants’ what it says is acceptable? Or will there be “real” involvement with those that do not simply have a financial interest? Furthermore any standard must be imposed on the industry and enforced with suitable legislation and effective powers to ensure compliance.

Compiled by Mark Carter

Marine Concern

[www.marineconcern.com](http://www.marineconcern.com)