

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Aquaculture and Fisheries Bill consultation

LINK's Marine Taskforce and Freshwater Taskforce (hereafter referred to as LINK) welcome the opportunity to comment on this consultation. We recognise that aquaculture and freshwater fisheries are nationally important industries for Scotland. This Bill provides a significant opportunity to ensure that Scotland becomes an international example for best practice, promoting the highest possible environmental standards whilst recognising the need to secure a vibrant economy supported by the contributions of both aquaculture and freshwater fisheries that must operate alongside each other in many areas.

A healthy marine environment is central to sustainable and successful aquaculture and fisheries management. Ensuring the sustainability of these sectors is essential to enable the Scottish Government to deliver its international commitments under the OSPAR convention, the World Summit on Sustainable Development, and the EU Marine Strategy Framework Directive. Furthermore, these sectors rely on a healthy marine environment, to ensure healthy and prosperous industries. Therefore, these sectors must operate within the carrying capacity of the environment.

We currently have significant concerns over the expansion of the aquaculture industry whilst many environmental issues remain to be resolved. Growth and development of this industry must be in line with the five principles of sustainable development as set out in the Sustainable Development Strategy and Scottish Planning Policy. Steps taken to improve the transparency and openness will help to build public confidence in the industry as it develops.

It is important that this Bill is considered within the wider marine and freshwater policy and legislative context. In particular, the Marine (Scotland) Act 2010 and the emerging systems of marine planning. Sensitive siting of fish farms is a key factor and can avoid many of the unintended and negative impacts of the industry. Using sensitivity mapping to identify suitable locations and guide decision making will be an important approach. Integration with the marine planning system also enables full and proper consideration of cumulative and in-combination impacts.

We also recognise that Scotland's freshwater (migratory salmonid) fisheries are managed by the network of District Salmon Fishery Boards (DSFBs) who work closely with a network of fisheries and rivers trusts. The DSFB network is self funded and delivers valuable management services to these fish and fisheries.

However, whilst we are supportive of the role and strengths of that network we also support the option for Ministers to intervene when necessary standards of operation are not being fulfilled.

We warmly welcome the additional powers proposed in the consultation which will modernise the sea fisheries regulations, to ensure increased compliance and accountability within the sea fisheries industry. Introduction of these measures should help to create credible threats and act as a real deterrent. We are, however, concerned about the resourcing of sea fisheries enforcement and compliance officers to ensure sure they are able to make full use of these powers.

The proposed Bill will give significantly more powers to the Scottish Government. LINK therefore believes that, in light of the proposed additional powers, it is essential the Ministerial Working Group on Aquaculture should be a fully inclusive and transparent group that includes representatives of all stakeholders in both its briefing and decision making process. At present, by far the largest proportion of this Group comprises industry members and bodies and this does not reflect the Scottish Government's wish to promote openness and transparency.

CONSULTATION QUESTIONS

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)

Farm Management Agreements have proved, in many cases, to be useful vehicles to allow farmers to coordinate activities and synchronise production in order to reduce and manage risks posed by infectious agents and parasites. This approach is critical to ensure Scotland's aquaculture industry develops sustainably and within environmental limits. Therefore, LINK's Marine Taskforce and Freshwater Taskforce (LINK) believe that, subject to the appropriate safeguards, it should be a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA) at a scale appropriate to manage the risks. Sanctions for failure to do so should apply. This was also a clear recommendation of the Ministerial Group on Aquaculture. However, we seek further clarification on the term 'appropriate safeguards'. We would be concerned if appropriate enforcement was not implemented so FMA process could easily be undermined. We seek reassurance that this will not be the case.

The Salmon Aquaculture Dialogue (SAD) supports this approach and used a multi-stakeholder process, involving over 500 people, which identified area based management as the best method of reducing the risk and spread of

disease and parasites and reducing the use of chemical treatments and their consequent environmental impacts. The SAD standard, managed by the Aquaculture Stewardship Council (ASC), now includes compulsory participation in an area based management scheme with a detailed list of requirements for compliance¹. LINK would advise the Scottish Government to take note of the SAD standards and use them as a guide to the establishment of regulations for FMA's.

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)

LINK strongly believes that boundaries for Management Areas must be determined based primarily on ecological grounds. Where there is limited information, a precautionary approach of selecting larger, rather than smaller boundaries, should be adopted. The proposed boundaries must be suitable to protect the local environmental and ecological features and account for natural geographic features such as lochs. They must also take account of the relevant cumulative and incombination effects of connected activities so they are within the carrying capacity of the marine environment. Consequently, operators should have primary *lead* in defining boundaries so strategies on, for example, sea lice, can be integrated fully. While determining boundaries operators should engage widely with other stakeholders; however the *responsibility* of final boundaries definition should be decided by Scottish Ministers following consultation with the Ministerial Working Group and other interested stakeholders to ensure activities and interactions taking place in the wider marine environment can be accounted for. Regional Planning Partnerships will have an important role to play once they are established, and their role in the process must be considered further.

LINK believe the Minister should have the ultimate power to define boundaries, but again, only following consultation with the Ministerial Working Group and others to ensure wider environmental considerations are taken account of. We stress boundary decisions should be determined primarily on ecological grounds.

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, we believe there should be a fully independent arbitration process.

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

¹ www.worldwildlife.org/what/globalmarkets/aquaculture/aquaculturedialogues.html

The arbitration process should be capable of maintaining its objectivity. Therefore, the proposed system should be undertaken by a suitably qualified independent arbitrator. We are concerned by the suggestion of an industry producer organisation as a possible independent arbitrator. The proposed arbitration system should not be industry led, nor led by another stakeholder with a vested interest.

Unused Consents

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

Yes, LINK agrees that the issue of unused consents should be reviewed. We seek further clarification on when such a review would be carried out.

The future identification of new sites suitable for aquaculture will take place within the parameters of the Marine (Scotland) Act 2010 and resultant marine planning process which we hope will prevent unsuitable sites being issued consents in future. The need for this sector to develop sustainably, within environmental limits, is highlighted in several policy documents, including 'Recipe for Success: Scotland's National Food and Drink Policy' and the 'EU Aquaculture Strategy'. MTF believes many concerns associated with fish farming can be minimised by selecting appropriate sites for farms. The wider planning process must help achieve this, including through national and regional marine plans. The role of the national and regional plans should be clearly recognised in the Aquaculture and Fisheries Bill.

LINK advocates that the planning process should identify areas suitable and unsuitable for the development of aquaculture. To ensure this is comprehensive, all available unused sites need to be incorporated back into the planning process.

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

LINK believe that, at the time the Bill is passed by the Scottish Parliament, sites identified as unused should be re-evaluated in terms of their suitability for aquaculture as defined by their consent. Those now deemed unsuitable for the consent issued, for example a shallow, poor tidal flow site that has a historic consent for salmon aquaculture, should have their consents revoked so that the area can be returned to the emerging marine planning process.

We believe all the further options listed in the consultation document are suitable to promote use or relinquishment of unused consents. LINK has concerns that, with such ambitious targets for the industry, if sites suitable for aquaculture development are left vacant and 'banked' there will be a greater pressure to develop sites which are less suitable for fish farms. Furthermore, we note that paragraph 19 references holding sites as 'buffer zones' as a reason for sites being unused; we would be very concerned if this was the only mechanism to achieve the appropriate spacing between farms. The planning system and

Farm Management Agreements should effectively manage the size and distance between farms to take account of cumulative impacts and carrying capacity.

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)

We strongly believe Scottish Ministers should be given powers to revoke all consents. Resting the decision ultimately with the Minister can ensure there is a final resolution process. In the case of a site being deemed inappropriate following review it is essential to have a mechanism in place to ultimately revoke the consent.

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

Such a power should relate to all marine and freshwater consents.

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)

Sea-lice are known to seriously damage the health of both farmed fish and wild salmonids. This is a crucial issue for the industry, the wider marine and freshwater environment and the economy of many communities; it therefore requires an appropriately robust response. The data from on-farm sea lice testing provides a critical resource to gain a broader understanding of the impacts on wild fish so that strategies to control sea lice can be fully assessed and effective ones developed and implemented. Lice levels on farms are currently only available under existing Area Management Agreements, but are bound by confidentiality agreements and therefore not publically available. As such, cumulative impacts cannot currently be adequately assessed as part of the planning process as planners do not have access to lice levels on existing farms in the area. LINK therefore strongly believes the results from sea lice monitoring from individual farms should be publicly available in a disaggregated form. It is crucial that this information be used in the planning system to effectively assess cumulative impact. Furthermore, it is anticipated that, in time, collation will result in a comprehensive historical record of sea lice data that can be used to investigate and inform a wide range of related aspects.

We understand that some within the industry are concerned this data is commercially sensitive, however full disclosure would demonstrate fish farms to be responsible and transparent operators and allow planning decisions to take account of the cumulative effect of fish farms in a given area. The industry must support the responsible development of their sector, as such, full public publication of sea lice data will be an important tool in the research to find innovative ways of combating sea lice which are the most significant threat to the future of the industry. Full disaggregated disclosure of data would also make significant steps towards achieving one of the Bill's key aims to "promote openness and transparency, including in the collection and publication of

information” of this industry. As outlined above, it must be remembered that sea lice contamination of wild fish from farmed fish has huge implications well beyond farms through its environmental, economic and social impact. Furthermore, full disclosure would ensure Scotland was in line with best practice at the international level (see response to question 10 below).

The Salmon Aquaculture Dialogue standards developed by the global multi-stakeholder Dialogue process determined that the standard should require frequent on-farm testing for sea lice, with test results made easily publicly available within 7 days of testing. This advice was provided under the Dialogue’s principles and ultimate goal to create global standards that, when implemented, are intended to minimise or eliminate the key negative environmental and social impacts of salmon aquaculture, while permitting salmon farms to remain economically viable. LINK strongly recommends that the Scottish Government take note of these standards to guide Scottish regulations on salmon aquaculture.

Surveillance, Biosecurity, Mortality and Disease Data

10. Do you agree that aquaculture businesses ought to be required to provide additional data as set out above? (Page 16)

Yes, LINK strongly agrees that the additional data and information set out in the consultation should be made available to Marine Scotland. Sanctions for non-compliance or for providing false or misleading information would be appropriate. Furthermore, we believe this additional data and information should be made publically available to scientists and other relevant stakeholders. Collation and submission of additional information is critical to ensure the appropriate responses, identification of patterns, trends and spread of disease. As with collation and publication of sea-lice data, we would anticipate that some within the industry may be concerned this data is commercially sensitive. However, access to this data will increase transparency and openness, and ensure early detection of diseases both by the regulators and further our understanding of the causes and effects. Openness and transparency is the key to gaining public confidence in this industry and should be an industry goal. As mentioned above in the case of sea-lice, the health and management of farmed fish has huge implications well beyond the farms themselves through their environmental, economic and social impact.

Norway takes a more transparent approach to the publication of data, with a greater amount of both sea lice and disease data being publically available. For example, an overview of aggregated sea lice numbers is available online², and the authorities have information about the individual companies. If a company exceeds the legal sea lice limit the result is made public. This practice is also applied to disease outbreaks. It is clear that Norway is currently setting the standard when it comes to openness and transparency. Scotland should at least bring itself in line with Norway and preferably aim to improve further and become a world leader in best practice.

² www.lusedata.no/default.aspx

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

All additional information should be collated and submitted in a way to minimise the burden on both the authorities and industry. The timing and frequency of submissions should be set at a meaningful period to allow for issues to be picked up and resolved at the earliest opportunity.

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)

LINK consider that Scottish Ministers should be given the power to require SEPA to reduce biomass consents in order to address emerging concerns relating to the health of both farmed and wild fish, as well as the wider marine environment. Sanctioning Ministers to have this power will ensure the interests of a sustainable aquaculture industry are adhered to. However, decisions must be based on the best possible information and this will rely on the collation and publication of sea-lice counts and information on fish mortality, movements, disease, treatment and production.

Wellboats

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

At present, there is insufficient regulation on wellboats to prevent the spread of parasites, disease and other biota. Control requirements on wellboats are urgently needed. LINK therefore strongly support the provision of control requirements through secondary legislation as an interim step. However, we seek further clarification on how these issues will be addressed in the longer term, and what timescales are being considered. We recognise that the costs, benefits and practicalities of additional measures need careful assessment, but with the planned growth and expansion of both the production and processing elements of the industry, it is vitally important that the health and resilience of the environment is of primary consideration when considering long and interim solutions. This will ensure a productive and healthy marine environment in the future.

Processing Facilities

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

We would support extension and implementation of any additional powers which improved biosecurity at all levels of the industry's operation; from farm to processing and distribution plants.

Seaweed Cultivation

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

Yes. All seaweed farms should fall under the same regulatory framework to ensure environmental interactions are fairly and appropriately managed. However, we recognise there may be differences between farms, for example if a site is new or has been previously used for mussel farming therefore appropriate equipment is already in the water. The detail of the regulatory framework should allow for these situations, for example by additional conditions attached to a licence, but the overarching framework should remain the same for all. This framework will provide an important opportunity to apply appropriate measures to control any potentially damaging impacts that could arise from the expansion of this sector, for example, to control the spread of non-native seaweed species.

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

We welcome the initiative to use this legislative opportunity to provide an appropriate regulation framework for what is expected to be a growing sector. Using the marine licensing system set out in the Marine (Scotland) Act 2010 to regulate the sector would be an appropriate approach. While we recognise that this sector has the potential to deliver benefits such as remediating/mitigating environmental impacts of finfish aquaculture and the potential to provide biomass and chemical components, any growth and development must be carried out within environmental limits and within the wider marine planning system. It is therefore timely to introduce regulations prior to further development of the sector, rather than to do so retrospectively.

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

N/A

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)

It is unclear from this question exactly which species these additional powers are intended for. The only example provided is *Mytilus trossulus*. Without further clarification on which species are considered "commercially damaging" LINK cannot comment on the suitability of the suggested, or any other, additional powers. However, it is important to recognise, that if it really is the intention for this industry to flourish and grow on a sustainable basis, as envisaged by the

consultation document, then the industry must develop within environmental limits and not disrupt structure and functioning of the marine ecosystem. It is this balanced ecosystem which in turn supports a healthy industry.

Responsibility must be taken by farmers and regulators to mitigate the effects of native species using appropriate measures, such as sensitively sited farms, in order to reduce interactions with native species.

While we don't anticipate this question relates to seals, we would like to note the Marine (Scotland) Act 2010 provides powers for a seal management regime. This is the appropriate framework under which any seal management should be regulated. We also highlight the licensing regime which already exists for protected species, including birds, in schedule 5 of the Wildlife and Countryside Act. Any additional powers which are introduced must be compliant with the requirements of the Birds and Habitats Directives, particularly in relation to European Protected Species.

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?

Yes. The proposal to incorporate the objectives of the Shellfish Waters Directive into the delivery of the Water Framework Directive will ensure the continued protection of coastal areas for shellfish production post 2013. River Basin Management Planning, together with additional targets to achieve the faecal coliform standard for shellfish in designated areas, could provide significant environmental benefits as well as benefits to the shellfish industry. The secondary effect of designation being that shellfish and filter feeders other than those harvested for human consumption are protected, as well as the wildlife that feed upon them.

LINK supports the *sustainable* growth of shellfish farming in Scotland. While the designation of shellfish waters and the provision of guidance on suitable areas for cultivation is welcome in this regard, there are wider constraints on production that require consideration, and growth can only be truly sustainable where these issues are addressed. For example, the effects of shellfish cultivation on wider biodiversity, particularly in terms of nutrient availability and the impact on other suspension feeders and throughout the food web must be considered. We look forward to the forthcoming consultation on a draft National Marine Plan and subsequent Regional Plans to provide strategic guidance on the expansion of the shellfish farming industry within the confines of wider objectives for Scotland's marine environment.

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)

LINK would support the case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken; however, we stress the associated risks of increasing resistance to therapeutants and the impact on other non-target species and the ecology of the marine environment must be considered. We recognise the pressing need to manage sea-lice and support action to address this issue which can have significant cost to the industry and substantial impacts on wild fish populations. However, lowering thresholds must not mean lice treatments are used routinely. Instead other suitable non-therapeutic measures should first be considered. Moreover, a strategic approach to sea lice control must be taken and therefore should be key consideration within Farm Management Agreements.

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)

LINK supports a system which ensures Scotland's aquaculture industry is in line with the best international practice and provides clarity for industry, regulators, suppliers and planners. We believe it is absolutely necessary for all finfish farms operating in Scotland to be using equipment that conforms to a Scottish Technical Standard as this creates a level playing field for all and could have a noteworthy impact on reducing the number of escaped fish. As human error is a significant factor in escapes, high standards should be conformed to for operation and installation of equipment.

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)

It is essential that escaped fish can be traced back to their farm of origin; this could make a considerable contribution towards preventing the spread and proliferation of disease, limiting the impacts of competition and displacement of wild fish populations and establishing liability. We would strongly support steps to increase accountability and transparency; however more clarity is required on how this would be carried out in practice. In particular, further information should be provided on how sampling would be targeted and the rationale behind not taking a universal approach.

We understand that genetic tools may now be available to identify populations of fish which may be held by farms. We would support the retention of such samples so that escapes can, as far as possible, be identified and related to the farm or company of origin.

We also see opportunities for this sampling of fish for tracing purposes to be seen in a positive light by the industry itself. For example, in the event of an escape it must be more desirable to identify the farm or operator of origin to allow necessary remediation actions to be taken promptly. In addition, the reputation of farms that operate robust containment strategies and do not have fish escapes taking place will be able to be identified as such as opposed to being seen as part of a single collective operation where blame is distributed equally to those with poor and good records on fish escapes.

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?

Yes. District Salmon Fishery Boards are custodians of nationally and internationally important natural assets (which, it should be noted, have suffered serious declines across the whole of the North Atlantic region), therefore it is critical that local management decisions are subject to wider scrutiny and a consistent standard of operation is developed across all of the Boards. Such a duty would provide a level of confidence that all Boards are operating in the public interest, and acting in a fair and open manner consistent with bodies holding similar legal functions and with others with a legitimate interest in the resource, its conservation and management.

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

Yes. A Code of Good Practice would ensure all District Salmon Fisheries Boards operate at a consistent standard across the country.

25. If yes, should such Code of Good Practice be statutory or non-statutory?

In the first instance, the Code of Good Practice should be established in a non-statutory form. As a contingency, the proposed Bill should contain a power to introduce measures requiring adherence to a Code, or sections of it, as deemed necessary by Scottish Ministers. We would support the development of such a code by the DSFB network itself in consultation with other relevant stakeholders, but believe that there must be measures and powers available to ensure compliance in order to ensure appropriate standards of management and governance within the management structures which exist.

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?

Yes. Statutory carcass tagging for wild Atlantic salmon and sea trout would significantly reduce the market in illegally caught fish. A system of tagging, working in combination with the existing ban on sale of rod caught salmon and sea trout would ensure that only legitimately captured fish, easily identifiable by tags that are only issued to licensed operators, are offered for sale. The scheme would not only help tackle poaching in adherence with international obligations to reduce the levels of illegal and unreported catch, but would improve the reliability of declared catch data, in turn aiding stock assessment and the conservation of salmon and sea trout.

In addition, tackling illegal netting will have wider conservation benefits as there is considerable potential for marine mammals and birds to become trapped or entangled in active (or abandoned) nets. Monofilament gill nets are very difficult for marine mammals and birds to detect and they can, and have, become entangled and drowned. Dolphins, porpoise seals and seabirds are all impacted, including bottlenose dolphins from the Moray Firth Special Areas of Conservation³.

The introduction of such a statutory carcass tagging scheme in Scotland would complement the existing scheme in England and Wales, where the Environment Agency has identified a potential loophole, whereby illegally caught fish can potentially be offered for sale as wild Scottish salmon which do not currently require a tag. Similar schemes exist in Ireland and it is widely acknowledged that a UK wide statutory system is required to effectively close down all opportunities to market illegally captured fish.

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?

Yes. As stated in the Report of the Scottish Mixed Stock Salmon Fisheries Working Group, Genetic Stock Identification (GSI) is an important tool, providing fisheries managers with evidence of the home river of the salmon or sea trout being caught by coastal net fisheries. Such research provides certainty on which stocks are being exploited, allowing fully informed management decisions that aid the conservation of salmon and sea trout. To be effective, GSI projects must have access to a representative quantity of samples and thus cannot rely on voluntary participation alone. As genetic analysis is also an important tool in the management of rod fisheries any new powers should not be limited to net fisheries. LINK therefore agrees that Scottish Ministers should have powers to take or require fish and/or samples from any fishery and would encourage the application of this power to take forward and gather evidence on the debate associated with the management of Mixed Stock Fisheries.

Management and Salmon Conservation Measures

³ Cetacean Strandings Investigation Programme Scotland, 1995-2000. Scottish Agricultural College Project Report to DITR.

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

Yes. Scottish Ministers must adhere to legal obligations under the Habitats Directive to maintain or restore European protected species including Atlantic salmon. Therefore, it is reasonable that where no Board exists, or a Board is not fulfilling its duties or failing to act in accordance with the conservation of stocks, Scottish Ministers should be able to call upon reserve powers to intervene and introduce measures that provide the appropriate level of protection.

The most significant area and catchment in Scotland without a DSFB is that associated with the River Clyde and Loch Lomond. In instances such as this Ministers and their agencies may usefully take a more active role in ensuring that appropriate management is being applied to important e.g. River Endrick SAC or developing fisheries and populations.

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

Yes. See our response to Q28.

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

Yes. The introduction of conditions requiring monitoring and reporting would allow assessment of whether or not the desired outcomes are being met, strengthening the efficacy of statutory conservation measures and allowing the informed review, refinement and improvement of these measures.

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?

It is important that a system is in place to help resolve disputes. Without any system in place, in-action would be the likely outcome in the absence of agreement. This could be at the detriment of the environment. Therefore, if it is not possible for disputes to be resolved, then we suggest a fully independent arbitration process, capable of maintaining objectivity, should be put in place. As for Farm Management Agreements, the process should be undertaken by a suitably qualified independent arbitrator.

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?

Yes, the collection and analysis of effort data would greatly strengthen the assessment of salmon and sea trout stocks. It is well understood that rod catch data alone is insufficient as it may be greatly affected by, for example, the level of angling effort or angling conditions. Therefore, a gauge of rod effort is required to determine with any confidence the underlying trends in the status of stocks.

Even a relatively simple measure of effort (i.e. days fished) could allow for trends in catch, due to changes in angling effort, to be differentiated from trends which may reflect more fundamental changes in stocks. The system adopted should ultimately be simple to administer and enforce while providing the adequate level of information; there would be considerable merit, for example, in a system that allowed the distinction between time spent fishing for salmon and sea trout separately.

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?

The routine collection and publication of information on for example, catches, conservation measures, monitoring, introductions and enforcement will serve to allow evidence based management aimed at the conservation of stocks and the delivery of multiple benefits. As in our response to Q23, in order to be fair and transparent, it is critical that local management decisions, actions and evidence are recorded and made available for scrutiny, and that this is carried out in a consistent manner across all of the Boards. Fishery Boards have a number of regulatory and statutory functions, for example in respect of salmon and sea trout movements and introductions, and there should be information available on these activities as a matter of course.

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?

Yes. See question 33 above.

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?

Yes. We recognise that DSFBs currently hold regulatory powers in relation to fish introductions in movements, for salmon and sea trout, where these Boards exist. Where these powers are exercised and delivered in a robust and transparent manner we are content for this licensing system to be retained. Where the system is failing we support the intervention of Ministers.

We are aware also that Ministers and their agencies currently license salmon and sea trout introductions in areas without a DSFB and also license the movement

other non-migratory salmonid fish. This system should, of course, also be robust and transparent in its operation

36. If so, why and in what circumstances?

As in our response to Q28, if it is evident that Boards are neglecting their duties or acting in a way that would compromise the conservation of stocks and the ability of Scottish Ministers to fulfil their legal obligations under the Habitats Directive, then it would be appropriate for Ministers to be able to call upon reserve powers to recall, restrict or exclude the jurisdiction of the Boards. However, such proposed powers should not be restricted to Habitats and Species Directive sites or designations. If the DSFB is not able to demonstrate the operation and application of its regulatory powers then consideration should be given to recall, restriction or exclusion of these powers.

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)

LINK fully supports measures to increase compliance and accountability within the industry. We therefore fully support strict liability for breaches of a Marine Licence. It is often difficult to prove liability for activities which occur in the marine environment due to the remoteness of location or the dynamic environment. Strict liability therefore makes it easier to hold individuals to account where there is regulatory non-compliance. The increased possibility of sanction should also have a beneficial impact on compliance. As noted in the consultation document, this change brings the aquaculture sector into line with the sea fisheries industry.

We request further information on any statutory defences which may also be introduced by the Bill.

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)

LINK supports widening the scope of fixed penalty notices so they cover all breaches of marine licences. This will give enforcement officers a full range of powers to draw upon. However, fixed penalties must be set at a level which presents a credible threat, and acts as a real deterrent. This is discussed further in the following question. We also believe there should be a limit set on the number of fixed penalties issued for regulatory breaches, before the accused is subject to criminal proceedings in order to deter repeat offenders.

Further, we believe there should be full public disclosure of the details of any fixed penalties issued. Public disclosure of sanctions is in the public interest and will help to promote compliance across industries.

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. It is important the fine levied reflects the benefits accrued and acts as a real deterrent. Increasing the maximum sum to £10,000 will help in this regard. Should offenders reject the option of a fixed penalty it is essential criminal proceedings are brought and vigorously pursued.

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

No comment.

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. LINK fully supports extending the scope of section 30(1) of the Fisheries Act 1981 to enable EU fishing restrictions and obligations to be enforced beyond the 200 mile fisheries limited in relation to Scottish vessels. It is right that Scottish vessels act within EU law wherever they fish. As noted in the consultation this amendment also brings Scotland into line with other UK vessels covered by similar enforcement powers under the Marine and Coastal Access Act 2009.

However, we request further detail on how this will be implemented and enforced. These provisions must be allocated sufficient resources to ensure their effectiveness.

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. Please see answer to question 44.

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. Please see answer to question 44.

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. LINK fully supports introducing all these powers in order to aid enforcement and encourage compliance. As stated in the consultation document all these changes will ensure sea fisheries protection officers in Scotland have the same powers as those acting under the jurisdiction of the Marine and Coastal Access Act 2009.

Introducing powers to inspect objects not obviously associated with a vehicle, vessel or relevant premises rectifies a clear gap in current sea fisheries enforcement officers' powers by enabling a thorough and appropriate inspection of all available evidence to determine whether or not a breach of licence condition had been undertaken. Again, it is imperative sea fisheries enforcement is allocated sufficient resources to enable them to make full use of these, and their existing powers.

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)

LINK agrees with the proposal to amend the Sea Fisheries (Shellfish) Act 1967 to make it clearer in its application. The Act has a key role to ensure the management of sustainable inshore fisheries in Scotland, particularly in light of the implementation of relevant aspects of the management plans developed by Inshore Fisheries Groups.

We strongly support an ecosystem approach to fisheries management to make them more sensitive to the needs of the marine environment. This approach must be reflected in the appropriate legislation. Through this Bill, we now have the opportunity to review the Shellfish Act to ensure it is fit for purpose by taking an ecosystem approach to managing the shellfisheries and its interactions with the surrounding environment and biodiversity. We therefore, strongly recommend the Act is reviewed and amended where required.

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)

LINK fully supports the polluter pays principle and cost recovery on this basis. However, the powers outlined in the consultation document have the potential to be very wide ranging. We therefore seek further information in relation to the scope of proposal (b) – more generic charges which might be applied at a broader (sectoral) level reflecting generic benefits to a group or sector arising

from public sector expenditure and resource commitment. In particular we seek clarity on what those generic benefits are which may be charged for.

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.

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)

No comment.

SECTION 7 – ANY OTHER ISSUES

Further considerations for the revised Aquaculture and Fisheries Bill

The Aquaculture and Fisheries (Scotland) Act 2007 contains the power to adopt the Code of Good Practice for Scottish Aquaculture as a legal requirement. However, this power has never been used. We note elements of the Code could become legal requirements under this Aquaculture and Fisheries Bill, for example, it may become a legal requirement for operators to participate in an appropriate Farm Management Agreement. In light of the passing of this Bill, we feel that it would also be timely for a multi-stakeholder group to review all elements of the aquaculture Code of Good Practice. Following a review and any amendments needed, the Code should potentially be statutorily adopted. This process could be undertaken by the Ministerial Group on Aquaculture, or one of its related working groups, should composition of the group reflect the range of stakeholders with interests in aquaculture (see comments on page 1).

This response was compiled on behalf of Scottish Environment LINK's Marine Taskforce and Freshwater Taskforce and is supported by:

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