

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)**

YES X

NO

Yes, but not completely. We support the recommendation of the Healthier Fish Working Group that Management Areas should be delineated by the industry through the Code of Good Practice for Scottish Finfish Aquaculture.

We also support the need for contractually binding Farm Management Agreements between companies operating in the same Farm Management Area and agree that all farms subscribe to a FMA. However, The Scottish Government should provide a light touch legal back stop for operators who fail to engage in productive and solution focussed FMAs, and nothing more.

With a light touch approach, The Scottish Government could incentivise operators within a suitable area to cooperate within a FMA. Such cooperation should not be led through Marine Scotland because they do not have the veterinary support or commercial approach to achieve this in an effective way. But fish farm companies do employ experienced veterinarians and fish health professionals and their involvement would be vital.

A system where Marine Scotland are used to broker and implement complex fish health and production strategies will be unwieldy, inefficient and probably of low efficacy. The most effective AMAs (Ewe, Linnhe/Lorn, and Roags) were just that because local interests on both sides of the argument worked effectively in a concise, efficient and solution orientated way.

The Scottish Government should be aware that Scotland, when compared to all the other salmon farming nations, has the most highly developed and credible area based management system already in place. The majority of production sites are within functional FMAs that work to the benefit of farmed and wild fish health. The Scottish Government should focus on the minority of production areas where this is not the case and FMAs are absent. It should set a published timescale for the inclusion of all sites within FMAs and use the proposed legislation as an effective backstop.

Finally it should be noted that the TWG (although far from perfect), assisted greatly the formation and development of FMAs. This led to "On The Ground" professionals from the aquaculture and the wild fish sectors, working together in an open and solution focussed manner to address problems and concerns

held or perceived by each group. Disengagement from the AMAs, led by senior members of the wild fish lobby, was unfortunate and clearly a decision made in favour of conflict rather than working together for solutions.

Marine Harvest Scotland remains an active participant in several AMAs, which continue to function outwith the TWG. This indicates willingness for the people on the ground to develop and maintain the solution focussed approach. The Scottish Government is simply required to set an ambitious agenda for further improvement and full participation in FMAs.

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)

YES

NO X

No. Farming companies have the greatest and time tested understanding of parasite and disease epidemiology. They should continue to define the areas, but should be supported and challenged by modelling and scientific contributions from Marine Scotland and should generally be supportively challenged by Marine Scotland, Scottish Government and wild fisheries interests.

Overall we believe that Management Areas should be determined by farm operators as recommended by the Healthier Fish working Group.

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

NO X

No, the Scottish Government should take a much lighter touch approach and seek to incentivise the development of such areas with respect to available scientific knowledge and reasonable commercial limitations of operating companies.

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

A legislative backstop should give the Scottish Government powers to implement FMAs or impose specific and limited sanctions if the industry has failed to develop a network of FMAs within a given timescale. We would suggest 2015. It is important that the industry which has and maintains the knowledge of what is required, does this in an orderly and voluntary way, with clear understanding that it is working to a deadline. The FMA boundaries should be set initially and a set of goals/ambitions for improving them should be published. This would include strengthening firebreaks, developing bioassays and monitoring resistance, coordinating treatments and expansion, implementing single year class and synchronous/contiguous following.

This should be underpinned by the SSPO FMA data base which would be used as a functional tool to improve and affect management decisions on the ground. It would be highly damaging and costly to the Scottish Industry if the Scottish Government chose to abandon this opportunity rather than try and stimulate such green shoot initiatives which have been presented to it.

We very much hope the Scottish Government chooses this route as there is a clear danger to over regulate and badly regulate, thereby stifling one of Scotland most promising industries.

Unused Consents

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

YES

NO X

What needs to be carried out is the completion of the Audit and Review process. It has been explained many times the reasons why consents are retained by the industry. All that is required is that the Scottish Government devises a basic system ensuring that if a consent is surrendered it is not utilised by a competitor causing the deterioration of a firebreak or FMA as a whole.

There needs to be an exception that companies should be allowed to hold a consent in a dormant state for a period of no more than 10 years to facilitate business activity such as expansion or following etc.

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

1. Ability for owners to conditionally surrender consents that they hold, so they may preserve firebreaks and well-functioning FMAs.
2. Acceptance of time limited dormancy.
3. A suitable and nominal charge made for unused consents being held, to encourage an amnesty after points 1 and 2 have been implemented.

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

NO X

No this is far too heavy handed and runs the risk of the Industry and the Scottish Government entering into protracted legal disputes. It sends a totally anti-business message to investors using global/ transferable capital to grow the salmon business in a variety of countries. However, we acknowledge that there may be rare cases where intervention is sensible. The example of a site owner not being traceable is a case in point.

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

No. Ministers' powers under the Town and Country Planning Acts are already well-defined.

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)

We hope The Scottish Government will realise that the SSPO database is the most dynamic and credible way to accumulate, react to and report from lice data. It can use The Aquaculture and Fisheries Bill to stimulate and incentivise the industry to deliver on world class public reporting of interpreted sea lice data.

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

NO X

No, the controls already in place within the Scottish salmon industry are amongst the most advanced in the world. The Scottish Government should use the Aquaculture and Fisheries Bill to improve the transparency and reporting ability of the industry. In addition we support the recommendations of the Healthier Fish Working Group.

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

We are in support of the recommendations of the Healthier Fish Working Group in relation to the timing and submission of data.

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

NO X

No, this is a very ill-conceived idea. Total biomass held on site has very little to do with fish welfare, and the deterioration of welfare. The biology of salmon farming moves so quickly that only the operator is able to wield satisfactory control of the stock. It is also clear that the operator has the most too loose by any loss of welfare standards. This is an unlikely event, given that there is access to a veterinarian with a duty of care for animals on the farm. It would be better to suggest powers to prevent the re-stocking of a site if welfare has been compromised in the previous cycle and it is not clear that appropriate corrective measures have been fully implemented.

Wellboats

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

YES

NO X

No, other than enforcing the measures set out in the ISA CoGP. It should also be noted that Stage 3 disinfection, specifically requiring the slipping of a vessel, is costly and not logistically possible. It should be replaced with inspections ensuring that the hull is free of fouling organisms and organic matter.

We are in support of a technical working group on well-boat design that will continue to raise the standard of well boats operating in Scottish waters.

Processing Facilities

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

YES

NO X

Where processing plants discharge directly to the environment the regulatory body is SEPA. Where discharge is to a third party, such as Scottish Water the consent is based on the bacterial loading of the discharge along with any residue of chemical treatment. All responsible producers ensure their discharges are treated. If this was shown not to be the case we would be in favour of stricter regulatory control through the use of an audit process.

Seaweed Cultivation

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

YES

NO X

The movement of organic material from one loch system to another is of concern.

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

YES X

No

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

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

NO X

It is impossible to answer such a vague question. So “no” without further clarification.

If this is aimed at the potential deleterious introgression of farmed genetics into the wild, then we need to understand if it is damaging. The industry and Scottish Government need to resource and urgently conduct research to ascertain the extent to which this has occurred and secondly how damaging or beneficial it may have been. It is totally unacceptable and completely open to challenge to try and regulate something which is not shown to be a problem.

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 X

NO

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

NO X

No. This suggestion is both premature and ill-conceived. The level of farmed derived lice which may be discharged into a coastal sea loch by a farm, with or without impact on migrating post smolts and sea trout, varies in every case as a result of differences in volume, salinity, bathymetry, flushing rate etc. It is certainly the case that in some areas, levels should be lower and in some areas they could be higher without presenting a hazard to vulnerable stages of wild salmonids. However the correct approach is to promote, and better resource, modelling simulations such as those Marine Scotland are conducting in Loch Torridon/Loch Linnhe. In this case MHS are supporting and working towards setting limits based on sound science. Prematurely pushing for lower treatment thresholds may over-use limited medicines available to fish farmers and drive resistance.

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 X

NO

We wish to see the knowledge gaps closed on the SARF Report Presenting Proposals for a Scottish Technical Standard as quickly as possible and thereafter the STS to be introduced as soon as possible.

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

NO X

No as this is a poor allocation of scarce resources. The Scottish Government should assist and stimulate work into acceptable methods of sterilisation and implement the highest standards of containment.

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 X

NO

Yes, this should include mandatory catch and release on any river where juvenile densities are below the carrying capacity of that system. A full and transparent declaration of numbers caught (retained and released) needs to be produced. It is also imperative that Boards require individuals fishing to submit a mandatory return which allows CPUE (Catch per Unit Effort) to be determined.

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

YES X

NO

Yes but before time is spent on this, the basics must be put in place. In particular, the accurate declaration of numbers, mandatory catch and release, where rivers are below optimal levels with regard to juvenile densities and CPUE data.

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

YES

NO X

Non 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 X

NO

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 X

NO

Yes, but only non- lethal adipose clipping on wild fish.

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

NO

Yes, if rivers are showing signs of stress.

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

YES X

NO

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 X

NO

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

NO X

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 X

NO

Yes, despite its well documented flaws, catch statistics are the basic barometer of our salmonid stocks health and the data urgently needs to be improved.

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)

1. All significant rivers should have juvenile abundance levels established at acceptable frequency and published.
2. What the strategy is for improving densities when they fall significantly below carrying capacity.
3. Mandatory catch and release.
4. For the avoidance of doubt it is not acceptable for Boards or proprietors to blame other factors without publicly showing what they are doing to improve poorly performing stretches of rivers.

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

NO

Yes, if you own or represent a salmonid river then you have a moral obligation to ensure that the output of juveniles is understood and is healthy.

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 X

NO

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

Yes but again with a light touch. It is quite sufficient to have legislative powers to request a justification prior to restocking a section of river. This then would be reviewed by qualified team members from Marine Scotland Science (MSS).

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

NO X

No, this is heavy handed and ill-conceived. It could potentially lead to a situation where a Farm Manager in a loch system experienced lice levels above the CoGP level (or other level) and was guilty of a theoretical offence by causing an unproven hazard. But a fisherman upstream, who caught a 20lb hen fish, which he killed, has committed no offence! We do not consider this to be an appropriate or workable suggestion.

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

NO X

No.

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

NO X

No

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

YES

NO X

It is a heavy handed approach taken from management of capture fisheries and is inappropriate for aquaculture.

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

NO

No comment.

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

NO

No comment.

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

NO

No comment.

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

NO

No comment

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)

YES

NO

No comment.

SECTION 6 - PAYING FOR PROGRESS

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

YES

NO X

No, if this is adopted we will end up with a surge in regulation as happened with SEPA.

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 industry should be made to achieve further progress by developing its own world leading standards further. It should be incentivised, with the presence of a legislative backstop to set a challenging timescale for further

improvement on escapes and lice control, publication of information and progress with the wild fisheries groups.

During 2011 Marine Harvest had 176 external audits comprising ISO 14001, ISO 9001, Freedom Food, PGI, Label Rouge and GlobalGAP. In addition we received customer audits and carried out 30 internal audits of our own. Furthermore, like other salmon producers who supply major retailers in the UK and overseas, we are scrutinised in our operations by extremely well qualified technical teams.

We are not quite sure what is left to audit that has not been audited.

So rather than incur further auditing time and expense for the operator why not use the results of existing scheme audits, which could be made available to Marine Scotland? Ways could be found to provide information for any gaps in existing audits should they exist.

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)

The Scottish Government has not effectively utilised its powers and leadership ability to positively influence this industry and its environmental footprint. It has unfortunately proposed heavy handed and badly conceived legislation, which if implemented is likely to damage one of its farming and industrial success stories. We strongly suggest that it suspends the majority of its heavy handed proposed legislation in favour of setting out a challenging agenda for effective and efficient self-regulation and development of the industry.

In short we are requesting a major change of direction from what is proposed. We are willing to participate and play our part in leading development of improved risk management and transparency of our activities under a challenging timescale. We believe that this is a more sophisticated development and framework that the Scottish Government should adopt and one which will secure positive development of one of Scotland vital coastal industries.