



COAST (Community of Arran Seabed Trust) was founded in 1995. Our vision for sustainable bio productivity in a protected Lamlash Bay has never wavered in all that time, despite the difficulties of persuading politicians and others that short-termism will not work when we think of the complexity and long term productivity and sustainability of the marine environment. Firmly rooted in the community and developed by local individuals and interested groups, the campaigning has been directed at every conceivable centre of influence. The first No Take Zone in Scotland in Lamlash Bay was achieved under Fisheries legislation in 2008. COAST is seen as a model for other communities to follow when seeking to protect their pristine, biodiverse marine environment. COAST is a Scottish Charity and a Company Limited by Guarantee.

Arran's experience with marine finfish aquaculture has given the island a keen interest in how this now multinational industry is managed by both on site workers and the companies, which started as small local businesses and have gradually been taken over by mostly Norwegian multinationals or private equity companies. In addition, the Crown Estate, Local Authorities, SEPA, Marine Scotland through the Fisheries Research Service (FRS), The Food Standards Agency in Scotland are all actively involved in the various aspects of leases, planning, animal health, economics and political strategy. Finally and most importantly the political will and expediency of Scottish MSPs, and present Scottish Government, expressed by the Cabinet Secretary of Rural Affairs and Environment are exerting influence on the future of aquaculture in the west of Scotland. For communities affected by aquaculture plans and present farm operations, it is extremely difficult at the present time to find out exactly what is happening. FOI requests have helped more recently. In recent years between 2008-2011 106 applications were lodged with Scottish local Authorities and 99 approved. In addition SEPA received 200 applications for increased fish farm activity and 185 were approved. So in that period 441 applications were received and only 34 refused. There is a real concern that the pace of applications is increasing for larger and larger farms. Such large industrial sites depending on dilute and disperse assimilation of contaminants into pristine water environments have not been allowed on land into rivers for decades. Because most of us cannot see below the waves the pollution and contamination is out of sight and out of mind. This cannot continue.

COAST is aware of a major international initiative, the Salmon Aquaculture Dialogue, piloted by WWF, and designed to establish a series of principles aimed at improving sustainability in the industry. Whilst we commend this constructive effort and indeed the draft standard for the Aquaculture Stewardship Council recognises the natural resource limitation of fishmeal

and the need for a sustainable sourcing policy it does not provide the full confidence that the salmon aquaculture industry will deliver. The backstop appears to be a switch to vegetable protein feed within five years, an objective which remains totally unproven. The draft standard also draws attention to the role of national governments in managing the cumulative impacts from multiple farms, a problem that is becoming increasingly serious in Scotland.

### **History of St Molios Finfish (salmon) Farm in Lamlash Bay:**

Fish farming started in Scotland in the late 1960s. Even then it was recognised that effluent from the farms would pollute the seabed and cause damage to the benthos.

Unilever established Marine Harvest as a subsidiary business, and that company soon expanded into Chile. The company was sold on several times and over time became Pan Fish, which, through an aggressive consolidation policy developed into the largest aquaculture company in the world, known as Marine Harvest. St Molios was a Marine Harvest farm. Competition authorities in France compelled Marine Harvest to sell its Pan Fish Scottish subsidiary and Lighthouse Caledonia was born. Lighthouse virtually collapsed in 2009 and was bought by the now named "The Scottish Salmon Company Ltd", which has a 5 man Board of Directors, two main board directors, one from Private Equity background and the second from Russian private equity background and aquaculture in Russia and 3 non executives directors, one from Norway with a financial background, one with a marketing background and the third ex CEO of Marine Harvest Europe and latterly CEO of Aquaculture Stewardship Council. 67% of the shares are lodged in a nominee account in Switzerland, most of the rest in Norway.

### **At the St Molios site in recent years:**

**2006**, 25,000 fish died at St Molios according to SEPA, due to Proliferative Gill Disease (PGD)

**2007** October and November 40% of the salmon died of PGD, with 8-10,000 fish being removed from the cages every day. Further investigations by FRS identified *Chlamydia*, gill pathology, parasites, amoeboid protists, a bacterial infection and focal haemorrhaging in liver and pyloric caeca. Requests by COAST through FOI eventually revealed to the community the extent of the problems.

**2007** Consistent overstocking at St Molios between February and June led to an exceedance of the legal "discharge consent" permitted by SEPA by as much as 20%. In April Marine Harvest was farming 239 tonnes of fish in excess of that allowed by law. FOI request again revealed the nature and extent.

In **November 2008** Lighthouse Caledonia applied to SEPA through CAR for a 66% increase in biomass. This was eventually refused by SEPA on the grounds of unacceptable impact on water quality and the company appealed although that appeal was much later withdrawn, just as it was becoming part of The Scottish Salmon Company (TSSC). Many in the community on Arran campaigned vigorously to prevent any expansion of the biomass, particularly on the deterioration of benthos conditions and water quality grounds.

In late **October 2011** an estimated 800-900 tonnes of salmon died at the site, now owned now by TSSC, each fish weighting about 1kg. The cause here was amoebic gill disease (AGD).

In all these cases of disease, under various owners, the community only found out by observing skips of dead fish and detecting the smell of rotting fish on the Arran ferry, as the dead fish were removed by tankers to be incinerated in Widnes. Subsequently SEPA and FRS assisted us in discovering exactly what was happening at the site.

This is an industrial site, the shoreline between Cordon and Kings Cross littered with industrial debris of blue nylon rope, floats and all sorts of industrial rubbish, from both fish farm and mussel farm and everyone denies they are responsible for any of it! This behaviour would not be allowed on a land site close to tourist venues. There has clearly been a lack of effective management over time, and with various owners of the site.

However Arran also campaigned against a proposed Marine Harvest finfish farm north of Lamlash Bay. This was to be a huge farm (800,000 fish up to 4.5kg in weight). A large majority on the island rallied to object on many grounds. The proposal was turned down by North Ayrshire Council Planning Department and the decision reconfirmed on appeal. It was felt by Arran that the EIA was biased. For example it suggested any waste would head down the Clyde. A simple experiment by local people with floats showed the effluent would head straight into Lamlash Bay, a holiday centre. The proposal directly conflicted with the aim of a No Take Zone in Lamlash Bay, and would have had considerable visual impact on the scenic value in a superb natural area. Arran lives by its tourism and degrading the scenic area with a huge industrial site was deemed unacceptable. Large automatic feed system, diesel generator, underwater lights would have affected the varied and abundant wildlife. 4 jobs were promised which equalled 0.000003% of Arran's income from tourism. Perhaps the most telling was the minimum 1170 tonnes of waste of which 258 tonnes would be solid waste (157 tonnes of uneaten food and 101 tonnes of fish excrement expressed as dry weight) discharged every cycle of 22 months, plus the chemicals to control disease and sea lice, close to outdoor watersports facilities and just after the completion by Scottish Water of a £3million investment to build an interceptor for Lamlash's sewage, which was designed to prevent a **mere 25 tonnes** of organic sewage waste entering the marine environment per year!

Our local authority, in this case North Ayrshire Planning Committee was an important factor for COAST and the whole community of Arran whilst opposing the Marine Harvest fish farm. The initial **local** planning decision for marine finfish aquaculture, when introduced in 2005 was an important step in the contribution of local marine communities having a say in fish farm planning. Previously it had rested largely with the Crown Estate. It is most important that decisions on fish farm applications stays with the relevant local authority at the first stage. Clearly any appeal stages will continue to rest centrally with the Scottish Government and independent planning inspectors.

It is against this background that this consultation is addressed by COAST.

## **INTRODUCTION: BACKGROUND TO THE CONSULTATION**

Some clear messages are here:

1. Aquaculture compliance with statutory regulations and rigorous enforcement by Scottish Government Agencies, Local Authorities and the Crown Estate
2. Legislative opportunity. These arrangements clearly do not go far enough
3. An important constraint is that the consultation paper does not consider issues and options related to locational policy for fish farms. These are some of the most contentious issues at the present time. Research clearly shows the adverse effect on wild salmon populations.
4. Marine communities are important stakeholders in inshore waters where fishing is held in trust by the government for all people and the rise in aquaculture limits inshore fishing activity. There is insufficient consideration given to this group of stakeholders. The scales are weighted to multinationals and those with lobby power way beyond that of local communities.
5. The importance of aquaculture, especially finfish farming is emphasised for jobs and economy. However so too are tourism, sea angling, yachting, watersports and diving, creeling and wildlife watching. The direct financial economic input into communities on the west coast from these activities far outweighs the direct input from aquaculture. Many small businesses depend on these other activities for their livelihoods. In taxes too these small businesses contribute since they are UK based, unlike many of the finfish companies, which are now off-shore, and contributing little to the treasury except through PAYE on low value jobs and the lease payments to the treasury through the Crown Estate. In the year to May 2011 the revenue to the Crown Estate from aquaculture was £2.5M.
6. Fish farming is damaging to the pristine waters of the west coast. Everyone knows it, research shows it, filmmakers have filmed the pollution and effect on the benthos. Some of the chemicals used are banned on land in the UK and in water in many parts of the world, so why are they still licenced for use in Scotland?
7. Many of the reasons visitors come to the west and NW of Scotland are to see nature at its best; unspoilt areas, wildlife, be that seals, cetaceans, birds, and enjoy tranquillity. These tourists are the life-blood which bring economic viability to many small and remote communities. From bed and breakfast to sea, loch and river angling boats, chandlery, food outlets and tourist souvenirs. This mosaic of small businesses must be considered. Without them, the aquaculture industry will have effected a second round of clearances of the Highlands

## **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**

However but this is insufficient. Additional to the fish farmers in any area must be local community involvement, which may include unincorporated groups as well as Fisheries Boards and NGOs.

Additional areas of responsibility must include

- Closure planning
- Cleaning up coastline in proximity of the farm. These are industrial sites and planning for clean up must be in place so farmers are held accountable

Transitional period for FMA arrangements also needs legal backing to ensure it ever happens

### **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)**

#### **NO**

Experience shows that many operators are unreliable. The experience on Arran is a lack of information. The Scottish Government must possess all the relevant information and make the decision. This information on any site including biomass, chemicals, mortality and disease, must be legally available to not just SEPA, Marine Scotland but those interested in the biodiversity and environmental status of sites

### **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**

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

Through expert panel which would include those with experience of the industry to cover the various issues raised. Certainly not containing just an industry body such as SPPO, although the SPPO must be involved in some resolutions, but without a majority vote. SPPO is perceived as a PR front and this panel must have credibility and integrity in the public's view.

## **Unused Consents**

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

**YES**

For several reasons:

- EIAs previously submitted may well be invalid at a later date
- Circumstances in any given area may change and other economic developments may be upcoming or more sustainable and added value economically to the community and area
- The changes in site leases by the Crown Estate is very unsatisfactory. Instead of sites for farms for a set lease time, they are beginning to be seen as speculative commercial investments, which may well result in legal challenges to closing a site for environmental reasons. All potential lease sites must be accompanied by complete EIAs so they are just not speculative from the outset. Any lease, which was initially granted up to 15 years ago, before EIAs were compulsory, must carry out a full EIA before a renewed lease is granted.

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

A maximum of 2 years. If the site has recently just closed or becomes financially unviable and left derelict, then immediately.

### **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** and also Local Authorities with their Planning powers

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

To all. Where recent scientific knowledge indicates damage to the environment or biosystems such as known wild salmon runs seriously affected by lice infestations, benthos deterioration, organic content in the water column detrimental to the natural ecology of an area.

## **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)**

Anything would be better than the present situation with PR working overtime to deny. So, use Norway's model. In fact any Norwegian multinational should already be working to Norway's fish farm standards which are much higher than Scotland's.

**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**

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

On line real time accessible to all interested stakeholders. The model could be like that of The Food Safety and Monitoring and Policy which works well. Again use Norway's model

**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**

**Wellboats**

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

**YES**

–as soon as possible; very important in disease and invasive species control but also in chemical discharges following boat in-tank treatments

**Processing Facilities**

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

**YES**

Does SEPA do this already for emissions, discharges and waste disposal for registered processes in aquaculture? With recent cuts in SEPAs budgets, how will this be done especially when aquaculture is often sited on island or at a great distance. HSE is important for health and safety. The Scottish Government needs clarity of policy

### **Seaweed Cultivation**

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

**NO.**

There is a clear distinction between growing seaweeds/plankton naturally with no additives and using waste from an aquaculture site to be used as feed for a second one. Recall BSE: any industrial site for such experimentation needs to be HIGHLY regulated.

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

**YES**

**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)**

**NO**

If a native species just happens to suddenly increase in numbers, maybe for the first time in 100 years, maybe because of commercial activity, or climate change, or natural processes, or within a protected area, it is not appropriate for man's convenience to try and eliminate it. Under the above logic any of Scotland's underwater benthos could be for the chop to enable more commercial fishing, aquaculture, shellfish, house building etc!  
The focus here should be on invasive 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? (Page 21)**

**YES**

Important that sufficient distance between finfish aquaculture and shellfish is maintained. Lamlash Bay mussel farm was closed from 13th April 2011-19th October 2011, due to DSP. It is less than 1km from the St Molios fish farm.

### **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**

#### **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**

It does seem extraordinary that Scotland has not already adopted the Norwegian standard, well developed and updated in 2010. Why has there been so much obfuscation in Scotland over time? Legal lead in times to comply to the statutory requirement must be very short.

#### **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**

### **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 the apply to aquaculture operations and, potentially, in other situations? (Page 37)**

**YES**

Yes we agree strict criteria should apply. The scope of Fixed Penalty Notices should be widened.

**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**

COAST would welcome extending the use of Fixed Penalty Notices to all areas where Marine Scotland has an enforcement role. COAST would expect caution to be exhibited where breaches were clearly of a nature whereby the offences would be more appropriately dealt with in the criminal courts

**ALSO NO**

There is concern here that all offences become seen as just an additional cost of production. Fixed penalty fines, without attendant court appearance and the possibility of a criminal record and adverse publicity, might seem a desirable, even cheaper and better PR option. If fixed penalties are used they must be **sufficiently high** to deter behaviours that do not comply with the law.

**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**

COAST would hope that an increase in the maximum sum that can be levied would be further increased in cases where repeat offences are identified. The fixed penalty notice must be much higher to deter. £10,000 is hardly a deterrent. £50,000 as a fixed penalty would be more of a deterrent.

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

**YES**

COAST believes that areas of particular environmental sensitivity such as maerl, seagrass, biogenic reef habitat etc should automatically invoke higher penalties where infringements are detected.

**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**

COAST believes that this amendment should be made to bring into line changes already made in England and Wales through the Marine and Coastal Access Act 2009. This would reduce the need for further subordinate legislation.

### **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**

COAST thinks it would be sensible to amend this in line with those measures introduced into statute in England and Wales. Given the intransitive nature of those vessels and the skippers, the potential for evasion appears to be high when the vessel is released prior to a court hearing.

**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**

COAST feels that there is a need for powers to allow disposal and/or forfeiture of any such catch is an essential requirement to ensure acceptable enforcement of commercial sea fisheries. COAST believes that the existing system of the seized catch being stored until court proceedings is expensive and unjustifiable.

### **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**

### **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**

COAST has experience of attempting to move forward a Regulating Order for Lamlash Bay in 2007. At that time our legal advice was that the process to attain a regulating order was too onerous on the proposer. That all previous orders had gone to a public inquiry; this was prohibitively expensive to even contemplate for small to medium sized fishermen's organisations and communities. We believe that both regulating and several orders have a place in fisheries management. That there needs to be a balance between the public's right to a common resource and regulating the number of vessels

fishing in an area. Marine Scotland will be very familiar with the Torridon fishery and the loss of its MSC accreditation due to a lack of appropriate legislation or the political will to move that forward.

COAST also feels that it imperative that both the Sea Fisheries (Shellfish) Act 1967 and the Sea Fisheries (Scotland) Act 1984 must be made to fit for purpose if Scotland is to be able to fulfill its obligations under the EC Directive 2008/56/EC, the Marine Strategy Framework Directive. This opportunity needs to be taken to improve the management of Scotland's inshore fisheries. COAST considers that one of the main issues facing both the industry and Marine Scotland is that they are uncertain who owns the resource. This has led to the well-documented 'race for fish' and in the Clyde at least has set the scene for increasing gear conflict. Area ownership of fisheries (beyond shellfish) is something we would positively endorse as long as the public ownership of the resource was ultimately recognised. There should be a full consultation exercise; a proper rent should be paid by those benefiting from several and regulated fisheries and these resources should be allocated along the similar lines to any other resource allocation licence.

## **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**

Finfish aquaculture is producing huge profits at the present time, and should be contributing to the Scottish Government towards the costs of environmental protection. SEPA must be fully funded to meet the enlarged role envisaged, really brought about because of the way the finfish industry has been run in the past.

However, as COAST has found too often recently the Crown Estate, Local Authority, Marine Scotland, SNH and SEPA all have roles to play and it is important that there is clarity for each, with clear accountability for their specific tasks. An example is industrial waste on the shore near Lamlash Bay. Eventually COAST was informed it was the local authority's role to clear up! As a public resource those benefiting must pay their part of both the management and the research required to attain a healthy profitable mixed fishery.

**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)**

**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)**

Political will is all that is required to fund the service adequately

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THE UNDERWOOD TRUST

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COAST winner of the 2008 Observer Ethical Conservation Project of the Year