

CONSULTATION QUESTIONS

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

The response below was formally approved by Argyll and Bute Council's Executive Committee on 8 March 2012 and should replace the earlier officers response submitted on 2 March 2012.

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?*

YES

~~NO~~

Support the proposal to create a legal requirement that all finfish operators in the marine environment must participate in a Farm Management Agreement, subject to suitable safeguards which recognise practical production differences between operators e.g. different growing cycles of different fish species. This would encourage operators to reach agreement on appropriate management arrangements and offer greater security to those who currently manage their operations with the code of good practice.

It is considered that where there are significant wild migratory salmonid interests and/or Area Management Agreements in place that it should also be a legal requirement that finfish operators participate and adhere to the agreement. The relationship between Area Management Agreements and Farm Management Agreements and their respective areas should be clarified by the Scottish Government.

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?*

~~YES~~

NO

The consultation document identifies the need for further scientific work and evidence on which to base decisions on the boundaries of Management Areas. To allow a consistent science based approach to defining boundaries, it is considered that Marine Scotland should have primary responsibility for determining boundaries but in doing so should consider relevant information from operators.

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?*

YES

~~NO~~

4. How do you think such a system might best be developed?

The suggestion that SSPO take responsibility for developing arrangements for access to an independent arbitration process, is considered appropriate.

Unused Consents

5. Do you agree we ought to review the question of unused consents?

YES

NO

Unused aquaculture sites have unnecessarily reduced capacity for development in certain areas of Argyll and Bute and unused sites with equipment in place can become a hazard to navigation. While the Council has powers to impose planning conditions on new planning permissions that could be used to deal with long term cessation of use, abandonment and removal of derelict equipment, there are difficulties in removing planning permissions for unused sites.

Instances where other aquaculture consents such as a marine licence and SEPA CAR licence are held for a specific location without intent to apply for planning permission, can restrict capacity for development. It is therefore considered that the question of unused consents should be reviewed to maximise the capacity for sustainable aquaculture development.

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

Planning permission

The Scottish Government Review/Audit of Crown Estate Leases granted prior to 1st April 2007 provided an opportunity to ensure that only those existing sites that were in use were granted planning permission. While The Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011, issued in March 2011, granted planning permission to sites deemed active within a specified time period, it is not yet clear which sites have been granted planning and therefore whether this process has fully assisted in removing development consent for unused sites. The issue of this order has also removed the opportunity to consider imposing additional appropriate planning conditions on these existing sites to assist management of planning permissions which become inactive in the future.

Planning authorities can impose planning conditions on new planning permissions granted for aquaculture to manage some of the issues surrounding unused sites. Standard planning conditions agreed by planning authorities can include:

- Requirement for development to be started within three years;
- Requirement for removal of equipment where sites have not been in use for a period exceeding three years; or where equipment is in a state of disrepair.

It should be noted that the second condition does not remove the planning permission.

In addition, planning authorities have powers to revoke planning permission under Section 65 of the Town and Country Planning (Scotland) Act 1997. The exercise of these powers are however complex, likely to be time consuming and resource intensive, particularly where a developer opposes any such removal. It is also only possible to use revocation in the first three years of an unimplemented planning permission. Revocation is therefore not considered as an appropriate route to tackle unused sites.

The use of a 'discontinuance notice' under Section 71 of the Act might be a potential option which would be relevant to all planning permissions, but still needs confirmation by Scottish Ministers and incurs compensation liability.

Crown Estate seabed lease

It is the Council's understanding that once all existing aquaculture sites are either transferred over to planning or not given planning consent then any sites not given consent should have to rescind their Crown Estate Seabed lease as an operator cannot have a full lease without all relevant consents i.e. planning permission, marine licence and SEPA CAR licence for finfish developments. This should effectively remove the seabed lease from the issue of unused sites.

CAR licence

It is suggested that where operators hold a number of SEPA CAR licences without planning consent and a marine licence, this consented biomass should not be considered in the Locational Guidelines calculations as these consents cannot be used without the other relevant consents being granted. This would prevent restrictions on capacity as a result of unused CAR consents and allow operators to keep hold of existing CAR consents while applying for other permissions.

Other options for all consents

It is considered that there needs to be a consistent approach for management of all types of unused consents (planning permission, CAR licence & marine licence) and therefore the Scottish Government should consider how best to apply the management options available to planning authorities in relation to planning conditions, to both SEPA CAR licences and marine licences.

Where unused consents (planning permission, CAR licence, marine licence) are being used as firebreaks or a buffer between finfish developments, the Scottish Government should consider options for Farm Management Agreements to include suitable measures that would ensure these firebreaks remain if the unused consents are given up. This may then free up capacity for other types of aquaculture development such as seaweed or shellfish farming that would not affect finfish farm management.

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

YES

NO

Given the difficulties expressed under question 6 above, a simpler route for revoking appropriate consents which is consistent across all the relevant consents needs to be considered.

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

The power to revoke consents should relate to all consents, including planning permission, SEPA CAR licence and marine licences.

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?

The effective management of sea lice is essential for the health and welfare of farmed and wild salmonids and is one of the most significant pressures currently faced by the industry. Openness and transparency is key to the success of an integrated strategy for sea lice management and it is considered that data should be collected and published on a site by site basis rather than aggregated across regions. In addition to aiding understanding of the incidence and potential

impacts of sea-lice and the consequent need and options for management measures, this information will assist regulators in guiding development to the most appropriate areas.

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?

YES

NO

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

The Council has no views on this matter.

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?

YES

NO

Currently SEPA can only reduce the biomass consented at a fish farm as a result of impacts from the discharge of waste on the seabed. This means there is no link between the amount of biomass farmed and the ability to effectively treat sea lice. The option to reduce biomass is also needed if a fish farm is unable to control sea lice at a certain level of biomass. An option to give Scottish Ministers powers to reduce biomass where it is considered necessary to assist management of sea lice is strongly supported and would act as a final additional mitigation measure to reduce the risk of salmon farming on wild salmonids, that could be taken into account in planning applications for new or modified sites.

Wellboats

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

YES

NO

Processing Facilities

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

YES

NO

Seaweed Cultivation

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

YES

NO

The Council welcomes the opportunity to comment on future options for the regulatory framework for seaweed cultivation. The Council has concerns about this kind of aquaculture development lying outwith planning control and accordingly made a representation to the Minister for the Environment and Scottish Government officials in December 2011.

The Council considers that all types of aquaculture development should be covered by the same regulatory framework and therefore seaweed farming should be brought under planning control.

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

YES

NO

Given that all aquaculture development other than seaweed farming is under planning control and local authorities have the appropriate experience and policy framework to deal with this type of development, it is considered that seaweed farming should be brought under planning control as a matter of urgency. The proposal in the consultation document for seaweed farming development to stay within the marine licensing system is therefore not supported.

17. If not, what alternative arrangements would you suggest?

While the marine licensing process will consider similar aspects in the determination of development applications, it is not as transparent, locally accountable or democratic as planning. As a system of statutory marine planning is still in the process of being developed there is currently no detailed policy framework to guide decision making for the marine licensing process.

Argyll and Bute Council and other local authorities have existing policy frameworks that are appropriate to guide future seaweed farm development. Council planning officers are also experienced in considering applications for finfish and shellfish farming developments which are similar to seaweed developments in terms of environmental effects and interactions with other activities.

There are significant benefits in terms of transparency and local accountability for aquaculture development applications considered under planning compared to marine licensing. Where there are conflicting issues on a development application the marine licence process does not benefit from local accountability and democracy in terms of decision making.

Recent marine licence applications for seaweed farming have caused concern for local communities and marine users in Argyll and Bute who are concerned that similar aquaculture developments are currently considered by two different consenting regimes. This anomaly presents difficulties for developers and those with an interest in the seaweed application in understanding the differences in policy and process of the two consenting regimes. It also presents difficulties in dealing with potential cumulative impacts with other aquaculture developments consented under the planning system.

Integrated multi-trophic aquaculture involves the cultivation of seaweed in combination with shellfish and/or finfish aquaculture. Given that finfish and shellfish are regulated through the planning system, it makes sense for the seaweed aspects to also be subject to the same consenting regime. This would also allow seaweed cultivation to be considered under permitted development rights.

Commercially Damaging Species

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

YES

~~NO~~

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

~~NO~~

Shellfish farming is a significant industry in Argyll and Bute, focussed mainly on the growing of mussels and oysters and has potential for sustainable growth. The industry relies heavily on a high standard of water quality and needs adequate protection of existing Shellfish Growing Waters to continue beyond 2013, under the Water Framework Directive.

The proposals to continue the protection of water quality for the growing of shellfish beyond 2013 and to align the requirements of the EU food hygiene regulations and the Water Framework Directive are welcomed and should assist the shellfish farming industry develop sustainably. There are however some concerns that need to be addressed regarding the proposed criteria for designation and environmental objectives of shellfish protected areas. These concerns were expressed in detail within the Council's response to the recent consultation on the 'Protection of Shellfish Growing Waters' in December 2011.

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?

YES

~~NO~~

The Council welcomes the proposal to give Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken. Current thresholds focus on the period of the spring smolt migration. However, as sea trout can be present in inshore waters all year round suitable thresholds to safeguard sea trout should be considered out with the spring migration period.

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?

YES

~~NO~~

Containment and escapes are still a significant issue for fish farmers and those with an interest in wild salmonids, particularly in light of the recent trend of companies looking for more exposed sites.

The proposed requirement for all finfish farms to use equipment that conforms to a Scottish Technical Standard is supported. While shellfish farms do not pose a risk in terms of containment and escapes, it is just as important that equipment including moorings and anchors are of a high standard to ensure farms do not pose a navigational risk. The proposed Scottish Technical Standard should therefore include shellfish development.

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?

YES

~~NO~~

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

~~NO~~

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

YES

~~NO~~

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

YES

NO

A Code of Good Practice for Wild Salmon and Freshwater Fisheries should be afforded the same status as the industry codes for finfish and shellfish farming.

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

~~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

~~NO~~

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?

No comment.

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

No comment.

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

No comment.

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?

No comment.

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?

No comment.

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?

No comment

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

~~NO~~

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

~~NO~~

36. If so, why and in what circumstances?

In the circumstances outlined in the consultation document e.g. where a Salmon Fishery Board is authorising its own actions.

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?

YES

~~NO~~

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?

YES

~~NO~~

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

YES

~~NO~~

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

~~YES~~

NO

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?

YES

~~NO~~

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?

YES

~~NO~~

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?

YES

~~NO~~

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?

YES

~~NO~~

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?

YES

~~NO~~

The opportunity should be taken to ensure that the definition of 'Shellfish' is consistent across all regulatory regimes in the Marine Environment and any amendments to the Act should support the application of Regulating Orders as a means of implementing regional management systems within Scottish inshore waters.

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?

YES

~~NO~~

47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced?

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?

N/A

SECTION 7 – ANY OTHER ISSUES

Scottish Government Review/Audit process

The consultation document invites comments on any other issue that consultees feel may need further consideration. Argyll and Bute Council and other Local Authorities have recently expressed concern to Scottish Government about the Review and Audit of those fish farm sites issued development Consent by The Crown Estate prior to 1 April 2007.

In March last year the Scottish Government issued The Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011 which granted permanent Planning Permission to a large number of sites in Argyll and Bute. Almost a year after its introduction Scottish Government have not, as yet, been able to provide information on which sites have been approved, what equipment has been approved, or the planning boundaries of these sites. To date the Council is unable to include these sites on the planning register, and is unable if required to carry out any enforcement action on these sites.

It is essential that information on approved sites is made available as soon as possible so that local authorities can proceed with their statutory duties. If not, serious consideration must be given to repealing the Order and undertaking meaningful consultation with local authorities and other stakeholders prior to granting planning permission for sites.

Improved systems for licensing

The Council considers that despite ongoing work by the different regulatory authorities and proposals set out in the consultation document, the overlap and interconnections between the roles and responsibilities of SEPA and Marine Scotland and the relevant regulatory processes still remain complex. This complexity is focussed around fish health management and its interactions with wild fish e.g. the use of sea lice chemicals in a well boat are licensed by Marine Scotland whereas bath treatments for the same chemicals are licensed by SEPA. In addition it is not clear who will be responsible for consenting discharge of waste and chemicals for marine fish farms beyond 3 nautical miles. Further opportunities to simplify this area of licensing should continue to be sought and discussed by the Ministerial Group on Aquaculture's Licensing working group.