



Environment and Rural Development Committee

27th Meeting, 2006

Wednesday 27 September 2006

The Committee will meet at 10.00 am in Committee Room 1.

1. **Aquaculture and Fisheries (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

David Ford, Aquaculture and Fisheries Bill Team Leader;
David Dunkley, Head of Freshwater Fisheries Policy;
Phil Gilmour, Head of Aquaculture Policy;
Dave Wyman, Head of Fish Health and Welfare Policy; and
Russell Hunter, Office of the Solicitor, Scottish Executive;

and then from—

Dr Rodney Wootten, Institute of Aquaculture;
Dr Alastair Stephen, Institute of Fisheries Management; and
Arthur Griffiths MRVCS, Chair of SEERAD Gyrodactylus salaris Task Force.

2. **Subordinate legislation:** Ross Finnie MSP, Minister for Environment and Rural Development, to move motion S2M-4835—

that the Environment and Rural Development Committee recommends that the draft Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 be approved.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

the TSE (Scotland) Amendment (No.3) Regulations 2006 (SSI 2006/430);

the Cereal Seed (Scotland) and Fodder Plant Seed (Scotland) Amendment Regulations 2006 (SSI 2006/448);

the Plant Protection Products (Scotland) Amendment (No. 2) Regulations (SSI 2006/449);

the Animals and Animal Products (Import and Export) (Scotland) Amendment (No. 2) Regulations 2006 (SSI 2006/450); and

the Pig Carcase (Grading) Amendment (Scotland) Regulations 2006 (SSI 2006/451).

4. **Environmental Levy on Plastic Bags (Scotland) Bill (in private):** The Committee will consider a draft supplementary Stage 1 report.

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240

The following papers are attached:

<u>Agenda Item 1</u>	
Briefing by SPICe [<i>Members only</i>]	ERD/S2/06/27/1a
SPICe Briefing 06/65: Aquaculture and Fisheries (Scotland) Bill	ERD/S2/06/27/1b
Submission from Institute of Aquaculture	ERD/S2/06/27/1c
Submission from Institute of Fisheries Management	ERD/S2/06/27/1d
Submission from Arthur Griffiths	ERD/S2/06/27/1e
<u>Agenda Item 2</u>	
The draft Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006	ERD/S2/06/27/2a
<u>Agenda Item 3</u>	
The TSE (Scotland) Amendment (No.3) Regulations 2006 (SSI 2006/430)	ERD/S2/06/27/3a
Extract from the Subordinate Legislation Committee's 33rd Report, 2006	ERD/S2/06/27/3b
The Cereal Seed (Scotland) and Fodder Plant Seed (Scotland) Amendment Regulations 2006 (SSI 2006/448)	ERD/S2/06/27/3c
The Plant Protection Products (Scotland) Amendment (No. 2) Regulations (SSI 2006/449)	ERD/S2/06/27/3d
The Animals and Animal Products (Import and Export) (Scotland) Amendment (No. 2) Regulations 2006 (SSI 2006/450)	ERD/S2/06/27/3e
The Pig Carcase (Grading) Amendment (Scotland) Regulations 2006 (SSI 2006/451)	ERD/S2/06/27/3f
<u>Agenda Item 4</u>	
Draft supplementary report [<i>Members only</i>]	ERD/S2/06/27/4a

AQUACULTURE AND FISHERIES (SCOTLAND) BILL

TOM EDWARDS

This briefing has been prepared in advance of the Parliament's consideration of the Aquaculture and Fisheries (Scotland) Bill, which was introduced to the Parliament on the 29 June 2006.

The main provisions are described in the order in which they appear in the Bill, together with comment selected from responses to the Scottish Executive's (2005) consultation on the proposals for the Bill.

The briefing is in 6 main sections which relate to the parts of the Bill:

- The first section looks at aquaculture, and the new powers to regulate it included in Part 1 of the Bill
- The second section is on *Gyrodactylus salaris*, and the powers to control it in Part 2 of the Bill
- The third section is about the regulation of fishing and the measures in Part 3 of the Bill
- The fourth section describes the miscellaneous provisions in Part 4 of the Bill. The general provisions in Part 5 of the Bill are not covered in this briefing
- The fifth section looks at access to angling opportunities for game and coarse fish
- The sixth section looks at the management of freshwater fisheries in Scotland

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KEY POINTS OF THIS BRIEFING

- Scotland is the third largest producer of Atlantic salmon in the world (after Norway and Chile). The farm-gate value of Scottish salmon production is estimated at £300 million per year, with added value of between £300 and 400 million (for example from processing), and a retail value of £700 million. The salmon farming industry is estimated to support the employment of 10,000 people
- Sea lice are external parasites of salmon. As well as being a costly problem for salmon farmers they can affect young wild salmon and sea trout migrating past salmon farms. Escaped fish are a loss to the fish farming industry and can affect wild fish populations by competing with them for food, and interbreeding. Part 1 of the Bill would introduce new powers to control sea lice and escapes from fish farms, and give a statutory underpinning to codes of good fish farming and shellfish farming practice.
- *Gyrodactylus salaris* is another external parasite of salmon which can be fatal. It is currently absent from the UK and Ireland, but has occurred on rivers elsewhere in Europe with devastating effect on wild fish populations. Controlling and eradicating it once established is expensive, and can have a serious impact on fisheries and other water users. Part 2 of the Bill would give Ministers new powers to deal with an outbreak.
- Game and coarse anglers have been estimated to spend around £113 million on their sport annually in Scotland, supporting 2,800 jobs. Salmon and sea trout are the most valuable fisheries, with salmon and sea trout anglers accounting for 65% of total spending.
- Salmon and freshwater fisheries legislation was recently brought together in the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Part 3 of the Bill contains a number of amendments to this Act which have been drawn up in consultation with a Freshwater Fisheries Forum. It also includes a technical amendment to sea fisheries law.
- Part 4 of the Bill contains a number of miscellaneous provisions relating to: introduction of live fish into inland waters; provision of information about fish and shellfish farming; allowing Ministers to make payments for compulsory slaughter of fish, and more generally to support the aquaculture industry
- Fishing for salmon without right or written permission is a criminal offence. Fishing for freshwater fish without right or permission is generally a civil offence. In river catchments subject to a Protection Order fishing for freshwater fish without right or permission is a criminal offence. The law requires that owners of fishing rights should increase access to angling in areas subject to a Protection Order, in return for the added protection of the criminal law. There is a perception that this system has not worked. The Executive has reviewed it and made a commitment to changing it. The Bill would not make extensive changes to this system, but the Schedule includes some minor amendments
- Salmon fisheries in Scotland are divided into Salmon Fishery Districts and the fisheries in each district are administered by District Salmon Fishery Boards. There are no bodies with equivalent responsibility for administering fisheries for freshwater fish at catchment level. The Scottish Executive is working on options for the future structure of fisheries management in Scotland, which it envisages being implemented in another Fisheries Bill in the next Parliament

AQUACULTURE

INTRODUCTION

The Scottish finfish farming industry has developed since the 1970s and Scotland is now the third largest producer of Atlantic salmon in the world (after Norway and Chile). Scotland also 6,000 tonnes of Rainbow trout. The cultivation of shellfish by man has a much longer history, today Scotland produces around 4,000 tonnes of shellfish per year.

The table below shows some statistics about aquaculture in Scotland:

Table 1 – Aquaculture production in Scotland 2004

Finfish				
Species	Production (tonnes)	Total Employment	No companies	No sites
Atlantic salmon	158,099	1161	69	315
Rainbow trout	6,352	152	38	43
Arctic char	3	79	5	8
Brown trout/ Sea trout	167		29	45
cod	8		14	20
halibut	187		9	17
Shellfish				
Species	Production	Total Employment	No companies	No sites
mussels (tonnes)	4,223	402	175	309
Pacific oyster ('000s)	3,586			
Native oyster ('000s)	162			
scallop ('000s)	100			
Queen ('000s)	1,441			

Source: Fisheries Research Services 2005a & b

Notes: Employment figures include part-time and seasonal workers; employment by species is not available for shellfish, some farms produce more than one species

The farm-gate value of Scottish salmon production is estimated at £300 million per year, with added value of between £300 and 400 million, and a retail value of £700 million. The salmon farming industry is estimated to support the employment of 10,000 people of whom 4,700 live in the Highlands and Islands ([Scottish Salmon Producers Organisation](#)).

Concerns have been raised about salmon farming's environmental impacts; the interaction between salmon and shellfish farms; and between farmed salmon and wild salmon and sea trout. There was an outbreak of Infectious Salmon Anaemia in 1999 which resulted in many thousands of fish being slaughtered. There have also been several large escapes of farmed salmon following damage to cages in winter storms. The price of farmed salmon has fallen in recent years, partly as a result of imports from Norway and Chile, which has had an impact on the viability of the industry in Scotland. The European Union has recently taken measures to restrict imports. In recent years there has been considerable consolidation in the ownership of the salmon farming industry, and today around 80% of salmon production in Scotland is controlled by businesses or individuals based in Norway (Scottish Parliament 2005). The merger of two salmon farming companies, Pan Fish ASA and Marine Harvest N.V is currently the subject of an inquiry by the [Competition Commission](#).

The Scottish Executive (2003a) has produced an aquaculture strategy which aims to make the industry more sustainable. The Executive favours a partnership approach to overcoming the issues facing the industry, for example, joint working between the industry and wild fishing interests has led to agreements about how to manage fish farms near salmon rivers.

In December 2005 the Scottish Executive (2005a) published a [consultation](#) paper containing proposals for new primary legislation on aquaculture. There were 436 responses to the consultation, 221 of these have been [published online](#). During the consultation period, ten public meetings were held around Scotland. A [summary](#) of these meetings is available online. In June 2006, the Scottish Executive (2006a) published its [response](#) to the consultation, which explains which proposals will and will not be taken forward in the Bill.

SEA LICE

Sea lice are a parasite of salmon and sea trout which feed on the skin and blood of host fish. Heavy infestations, especially of young fish, can be fatal. There are two species of sea lice found in Scotland, *Caligus elongatus*, a parasite that infests over eighty different types of marine fish and *Lepeophtheirus salmonis*, which infests only salmon and other salmonids.

Sea lice affect both wild and farmed fish, and controlling them is a major cost for salmon farmers. The spread of sea lice from farmed to wild fish has been implicated in the decline of wild salmon and sea trout stocks on the west coast of Scotland (Fisheries Research Services 2005c). A [long-term project](#) in the Shieldaig catchment in Wester Ross is investigating the ecology of sea lice and interactions between farmed salmon and wild fish (Fisheries Research Services 2005d).

Sea lice can be controlled with medicines added to the water or to the feed. Only a limited number of treatments are licensed for controlling sea lice. The amount of treatment that can be used at each site is regulated by SEPA.

The Scottish Executive established a [Tripartite Working Group](#) in 1999. Chaired by the Executive, the group was made up of representatives of the fish farming industry and wild fisheries interests. The group recommended the establishment of voluntary [Area Management Agreements](#) between salmon farmers and wild fish interests at a local level. The Agreements include a number of conditions, including a requirement for coordinated control of sea-lice. At present 14 agreements are in force (Scottish Executive 2006b).

The salmon farming industry has also developed a national strategy for the control of sea lice. This involves coordinated action to control sea-lice in defined management areas, with the aim of reducing lice during the spring which is the peak period for young wild salmon (smolts) and sea trout migrating downriver to sea. Complying with this strategy is a requirement of the Code of Good Practice for Scottish Finfish Aquaculture ([Scottish Salmon Producers Organisation](#)).

ESCAPES FROM FISH FARMS

Salmon are kept in various types of nets, tanks and cages at different stages of the production cycle, and there is a risk that fish could escape through e.g. storm damage or flooding.

Escaped fish are a loss to salmon farming industry. They also interbreed with wild fish. Interbreeding is a particular problem as salmon have evolved distinct genetic populations in different river systems. Escaped juveniles, or the progeny of escaped adults, also disadvantage young wild fish living in streams by competing for food.

Since 2002, fish farmers have been legally obliged to report escaped fish to Scottish Ministers¹. The table below shows the numbers of escaped fish from Scottish fish farms reported since 1999:

Table 2 – Number of escaped fish reported in Scotland 2000-04²

Year	Salmon from seawater cages	Salmon in freshwater	Rainbow trout	Other	Total
2000	411,433	9,108	63,440	-	483,981
2001	67,000	20,000	0	8,500	95,500
2002	367,405	0	82,400	0	449,805
2003	104,261	47,176	1,560	8,025	161,022
2004	82,646	1	0	10,000	92,647

Sources: [Scottish Fish Farms Annual Production Survey](#) 2001, 2002, 2003, 2004 and 2005.

PROVISIONS IN THE BILL ON SEA LICE AND ESCAPES

Section 1 of the Bill would give Ministers a new power to make orders to obtain information in relation to the control of parasites and on fish escapes. Section 2 would make it an offence not to comply with an order.

Inspectors

The Partnership agreement (Scottish Executive 2003b) contains a commitment:

We will reduce the number of bodies involved in regulating and controlling the aquaculture industry

The Scottish Executive proposes to give the [Fish Health Inspectorate](#) of the Fisheries Research Service responsibility for carrying out inspections under Part 1 of the Bill. The Fisheries Research Service is an Executive Agency of the Scottish Executive Environment and Rural Affairs Department (SEERAD). The inspectorate already carries out inspections to enforce fish health legislation, and provides an advisory and diagnostic testing service.

The Scottish Salmon Producers Organisation (SSPO 2006) said that neither the Fish Health Inspectorate or SEERAD had formally qualified staff to cover parasite control, containment or fish movements, and suggested that skills and resources would need to be enhanced to allow them to carry out this task. The Institute of Aquaculture of the University of Stirling (2006) said that the cost of this had been underestimated by the Executive. The SSPO suggested that if a regulator was required, other bodies such as the State Veterinary Service should be considered.

Section 3 of the Bill would create new powers for inspectors to inspect fish and shellfish farms for parasites and the measures in place to control them. Section 4 restricts the definition of parasites to the two species of sea lice, *Caligus elongatus* and *Lepeophtheirus salmonis*. Section 4 would also allow Ministers to change the definition of parasites by order.

The Fish Veterinary Society (2006) commented on the proposals for regulating sea lice control, and in particular on the availability of new and effective treatments:

¹ Under the Registration of Fish Farming and Shellfish Farming Businesses Amendment (No. 2) (Scotland) Order 2002

² S2W-16919

The management of sea lice has improved out of all recognition in the last 15 years. This has not been the result of regulation, but through the efforts of the industry, the work of industry scientists and the broader research community and most importantly because novel, safe and effective medicines have become available. However the ability to control lice remains in the balance since the development of resistance will jeopardise effective control. Only three new products have reached the market since 1998 and their use is severely curtailed by conditions attached to consents to discharge. [...] This undermines attempts to execute a control strategy which both manages the lice burden and mitigates the risk of resistance.

Section 5 of the Bill would create new powers for inspectors to assess the risk that fish might escape, whether escapes have occurred, the measures that are in place to prevent escapes, and to recover fish if they do escape.

The Association of Salmon Fishery Boards (2006) said on the issue of escapes that:

We believe that in order to properly monitor the escape problem some form of identification system is required. We are aware of the difficulties of this but believe that this issue is being blocked by industry at present on grounds that it would (unless pursued across all companies operating worldwide) place individual companies or countries at a competitive disadvantage. A further argument used is that such levels of traceability are not required in other agricultural systems. The obvious answer to this is that no agricultural system sustains such losses of stock to the environment with such potential consequences both in terms of disease transfer and genetic pollution. We therefore believe that we must continue to pursue a system that can wholly be relied on that allows the 'owner' of escaped fish to be identified. This will provide a considerable incentive to maintain the highest standards of containment.

Enforcement Notices

Section 6 would allow Ministers to serve an enforcement notice on a fish farmer where they have evidence that measures for controlling parasites and preventing the escape of fish are unsatisfactory. An enforcement notice could also be served on a shellfish farmer if they were not found to be doing enough to control parasites. A notice could say what action needed to be taken, and set a deadline for complying. It would be an offence not to comply with the notice. If a person was convicted of this offence, they would be liable to pay a fine of up to level 4 on the standard scale (currently £2,500).

The powers to control sea lice were generally welcomed by wild fishing interests. The Association of Salmon Fishery Boards (ASFB 2006) said on the power to direct treatment that:

The industry will inevitably react to what will be claimed as 'more regulation'. However, given the prevalence and potential impact of escapes and sea lice, it is not only entirely justifiable to extend regulation into these areas but it would (and has been) wholly inappropriate that these areas of impact have been unregulated for so long.

If a notice was not complied with within the timescale, Ministers could authorise inspectors to arrange for the work to be carried out and recover the costs from the fish farmer. The Scottish Salmon Producers Organisation (SSPO 2006) said that the agreement of the farmer's vet should be required, as otherwise this would invalidate the farmer's insurance. They made some detailed suggestions for the way the process of directing treatment could work, including

providing a right of appeal. They also highlighted the fact that there are no contractors at the moment who do this type of work. The Institute of Aquaculture (2006) pointed out that sea lice treatments were prescription only medicines which could only be prescribed by a vet. They questioned who would pay if a treatment did not work. The Royal College of Veterinary Surgeons (2006) also commented on this point. They explained that non-veterinarian inspectors could not overrule a company vet on the use of a treatment, and that if the inspectors employed a vet, they would first have to be deemed to have the fish under their care before they could prescribe a treatment, which they could not do if the fish were already under the care of a company vet. They suggested that the role of the inspector ought to be limited to specifying the results to be achieved.

A number of respondents commented on the interaction of the power to direct treatment, and the regulation by SEPA on the use of treatments. SEPA (2006) said it that without such powers the aim of introducing greater control of sea lice was likely to be fruitless. It said that consultation between the inspectorate and SEPA would be the key to minimising any potential for conflicts in the legislation.

Codes of practice

The production of a generic code of practice for fish farming was suggested in the Aquaculture Strategy (Scottish Executive 2003). A code has been drawn up by the four main fish farming trade associations, in consultation with the Scottish Executive, wild fish interests and environmental groups. The "[Code of Good Practice for Scottish Finfish Aquaculture](#)" was published in January 2006. This code builds on a number of codes of practice on both general and specific aspects of fish farming. These include a Code of Practice on the Containment of Farmed Fish, and a Code of Practice on the Control of Sea lice. A separate code of practice was produced during 2005 by the Scottish shellfish farming industry.

Compliance with the code of practice will be audited by the [United Kingdom Accreditation Service](#). However, this code, and the codes on containment and sea lice control are voluntary, and concern has been expressed that there is no scope to act against fish farmers who do not follow these codes. The British Marine Finfish Association (2006) said that complying with the code of practice at the same time as complying with new requirements introduced by the Bill would be an unacceptable cost to the industry, and that complying with the Bill would mean the industry would treat the code as a voluntary guidance document. They suggested that the code should be given a chance to work before the proposals in the Bill were implemented.

A power to designate statutory codes of practice for aquaculture was not proposed in the Scottish Executive's (2005a) consultation. Section 7 of the Bill would allow codes of practice on parasite control on fish and shellfish farms and on containment and prevention of escapes from fish farms to be given a statutory basis, and would allow for them to be enforced. Codes could be drawn up by the Executive, or Ministers could approve a code drawn up by a third party e.g. by the industry. Section 8 would require Ministers to monitor compliance with a code they had approved. If Ministers found that a fish farmer was not complying, they could serve a notice requiring them to comply. These notices would work in the same way as enforcement notices.

The Marine Conservation Society (2006) pointed out that the Aquaculture Strategy contained a commitment to a code of best environmental practice, and that in their opinion, the industry's code of practice does not address many key environmental issues.

GYRODACTYLUS SALARIS

Gyrodactylus salaris (GS) is a tiny external parasite which infests the skin, gills, and fins of salmon. Other fish can carry the parasite, but only salmon are severely affected.

Gyrodactylus salaris occurs naturally in the Baltic rivers of Finland and Russia. Baltic salmon are tolerant of the parasite and normally the infection causes them no harm. However, salmon in areas where the parasite does not naturally occur have little or no tolerance of it. GS was accidentally transferred to some rivers of the west coast of Sweden, to Norway and more recently to some rivers in northern Finland and northern Russia. A heavy build up of the parasites causes the disease gyrodactylosis which kills non-resistant salmon, and has wiped out salmon stocks on more than 20 Norwegian rivers. Studies carried out in Norway on fish from Scotland suggest that they would be susceptible to infestation ([Fisheries Research Services, Scottish Executive, DEFRA](#) (2003), [Environment Agency](#) (2003)).

GYRODACTYLUS SALARIS CONTROL IN NORWAY

Gyrodactylus salaris was detected for the first time in Norway in Atlantic salmon parr from a hatchery in Sundalsora, More og Romsdal County in 1975. Later the same year, it was detected in the river Lakselva in Misvaer, Nordland County. Altogether, the parasite has been detected in salmon parr/fingerlings from 45 rivers, 13 salmon hatcheries/farms and 26 rainbow trout farms between 1975 and 2004. The policy of the environmental and veterinary authorities is to eradicate *G.salaris* from infected rivers and farms. The procedure is aimed at eliminating the hosts (salmon and rainbow trout), and thus also the parasite, which does not have specialised free-living stages or intermediate hosts. By 31 December 2004, GS was confirmed eradicated from 15 rivers and from all hatcheries/fish farms. For 11 rivers the results of the eradication procedure has not yet been confirmed. The parasite is known to still be present in 19 rivers in Norway.

The main technique used to eradicate GS to date has been to treat the rivers with Rotenone, which kills all the fish in the river, and thereby deprives the parasite of a host. Once the river is parasite free, fish are then reintroduced.

The Norwegian Institute for Water Research has experimented with an alternative method of treating *Gyrodactylus salaris*, using Aluminium instead of Rotenone. The [final report](#) on this GYROMET project (Hytterod et. al 2005) found that:

It has probably succeeded in eliminating GS from the River Batnfjordselva. The results from this project show that using aluminium most likely will be effective in the battle against GS in every infected Norwegian river, irrespective of the water chemistry, size and complexity of the river system. The method can also be used to reduce further spreading of GS from and within newly infected rivers, and to reduce the negative impact of the parasite on the newly infected salmon population. The results from this project show that aluminium treatment has no significant effect on the fish within the river.

Gyrodactylus salaris is not present in Scotland, elsewhere in the UK or in Ireland. As its absence has been proven by a testing programme, EU safeguard measures have been introduced to prevent movement of fish in the salmon family from areas that are, or may be, infected to the UK.

There is still a risk that the parasite could be accidentally spread to Scotland. It can survive for several days in damp conditions, and so could be spread e.g. on fishing tackle or waders which had been used in a river where *Gyrodactylus salaris* was present. However, to date there has been no recorded instance of transfer of the parasite in this manner and the main way the disease is thought to have spread has been through movements of live fish

To combat this risk the UK government and devolved administrations have produced [advice](#) to anglers who have fished in areas known to be infected that fishing equipment should be cleaned and then either:

- Dried for 2 days at a minimum of 20°C
- Heated for at least one hour to at least 60°C
- Deep frozen for one day
- Disinfected in a special chemical solution

In Scotland, *Gyrodactylus salaris* is a notifiable disease under the Diseases of Fish Act 1937. This means that anyone who finds a fish which they suspect might be infested with the parasite must report it to the Fish Health Inspectorate of the Fisheries Research Service.

Under the 1937 Act Scottish Ministers also have powers to:

- inspect fish farms and other waters and to take samples;
- impose movement restrictions on fish, their eggs and food, to and from and within farms and waters which are infected or suspected of being infected;
- require the disposal of dead or dying stock and direct the manner of their disposal;
- grant authority for the removal of fish in infected waters for the purpose of controlling the spread of disease

PROVISIONS IN THE BILL

The Scottish Executive (2005a) explains that it considers that the existing powers of Scottish Ministers are sufficient to control an outbreak of *Gyrodactylus salaris*, but that further powers would be needed to attempt to eradicate it, if an outbreak were to occur. Part 2 of the Bill would give Ministers these powers.

Powers to control Gyrodactylus salaris

Section 2 of the 1937 Act allows Ministers to designate areas for the purpose of disease control. Within these areas they can only regulate the movement of fish and their eggs and food. Section 13 of the Bill would introduce a new provision into the 1937 Act which would allow Ministers to prohibit the movement into or out of an infected area of vehicles and other equipment, materials or substances e.g. fishing tackle or watersports equipment, unless they had been disinfected.

Under the 1937 Act, Ministers can only designate areas where they have grounds to suspect that the area is or may become infected. Section 14 of the Bill would introduce a new provision into the 1937 Act which would allow Ministers to designate areas if they suspected the presence of *Gyrodactylus salaris* anywhere in the UK, and to control the movement of fish, and their eggs and food within these areas.

Powers to eradicate Gyrodactylus salaris

Chemical treatments and barriers

In Norway, eradication programmes have used barriers to prevent upstream migration of fish. Below the barrier the river is treated with chemicals, above the barrier the parasite is denied a host as fish migrate down the river past the barrier. This can allow the river to become disease free without poisoning all of it.

In Scotland, there are existing barriers e.g. hydroelectric dams, with fish passes which allow salmon to migrate past them. Under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 it is an offence to prevent salmon from passing through a fish pass.

Under section 5 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 it is an offence to use chemicals to kill fish. Scottish Ministers are allowed to exempt chemical treatments for killing salmon under section 27, but there is no exemption for killing other fish. The Scottish Executive (2005a) considers that these powers need to be extended to make chemical treatments lawful under the Water Environment (Controlled Activities) Regulations 2005.

Section 15 of the Bill would introduce new provisions into the Diseases of Fish Act 1937 which would allow Scottish Ministers to construct barriers to the movement of fish for the purpose of controlling *Gyrodactylus salaris*. It would also allow waters in a designated area to be treated with chemicals to eradicate it.

Section 16 of the Bill would amend the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to allow Scottish Ministers to make regulations which would allow salmon passes to be closed.

Fish farms

Scottish Ministers have the power under the 1937 Act to prevent the spread of *Gyrodactylus salaris*.

Section 17 of the Bill would give Ministers wider powers designed to eradicate the disease by means of notices requiring:

- Removal of fish from any fish farm in marine or freshwater
- Draining, cleaning and disinfection of pools and cages
- Destruction of dead and infected fish
- Cleaning and disinfection of equipment, material or other substances likely to be contaminated with the parasite
- That the farm cannot be restocked without permission

Section 17 would also give inspectors the power to carry out any of these actions if they were not done by the fish farmer.

Other new powers

Section 18 of the Bill would give Scottish Ministers a wide catch-all power to “take such other measures as they consider appropriate” for the purpose of controlling, preventing or eradicating *Gyrodactylus salaris*.

Section 19 would give Ministers a discretionary power to make payments in the event of an outbreak. This would not cover compensation payments for killing fish as a separate power for this is included in section 29 of the Bill, but could include e.g. payments to other water users such as distilleries, whose businesses were affected as a result of an eradication programme.

Most of the respondents to the Scottish Executive's (2005) consultation on the Bill agreed that the powers to control the spread and eradicate *Gyrodactylus salaris* were necessary. Several respondents said that the priority should be to stop the parasite from getting into Scotland in the first place, and therefore the focus should be on controlling international movements of live fish, and requiring anglers to disinfect their clothing and tackle when entering Scotland. Others, though agreeing that disinfection would be desirable, questioned the practicality of enforcing this, given the number of entry points into the UK. The Scottish Anglers National Association (SANA 2006) said that as far as it was aware, the parasite had never been introduced in Europe by being carried on angling equipment. They suggested a continuing programme of public education, and the provision of disinfection facilities where possible. The Scottish Federation for Coarse Angling (SFCA 2006) thought that the powers for controlling GS should be available to combat the threat of another type of parasite or fish disease.

Cost of eradicating Gyrodactylus salaris

If there was an outbreak of *Gyrodactylus salaris* in Scotland, the Scottish Executive would not necessarily go ahead with an eradication programme. It would consider the benefits of eradicating the parasite and preserving salmon stocks with the costs to other water users and wildlife, and this would include public consultation. If a decision was taken to go ahead with an eradication programme, the cost would depend on the circumstances of the outbreak e.g. how localised it was, the nature of the river systems that were affected. The Financial Memorandum explains that the Scottish Executive has commissioned research on the potential economic impact an outbreak of GS might have on the Scottish economy. This will include a detailed assessment of the potential costs of control or eradication.

FISHERIES

INTRODUCTION

Most of the proposals in Part 3 of the Bill relate to freshwater fisheries, only section 26 relates to sea fisheries.

Freshwater Fisheries in Scotland

The table overleaf shows the species of freshwater fish found in Scotland:

Table 3 – Fish species found in freshwater in Scotland

ORIGINAL COLONISERS	INTRODUCTIONS		
	<i>Long established species</i>	<i>Non-native species (not native to Britain)</i>	<i>Locally non-native (native elsewhere in Britain)</i>
Allis shad, Arctic char, Atlantic salmon, Brook lamprey, Brown/sea trout, Common goby, Common sturgeon, European eel, Flounder, Golden mullet, Nine-spined stickleback, Powan, River lamprey, Sea bass, Sea lamprey, Sparling, Thick-lipped mullet, Thin-lipped mullet, Three-spined stickleback, Twaite shad, Vendace	Minnow, Perch, Pike, Roach, Stone loach, Rainbow trout	Brook charr, Common carp, Goldfish, Orfe, Pink salmon	Bullhead, Chub, Common bream, Crucian carp, Dace, Grayling, Gudgeon, Rudd, Ruffe, Tench

Source: Scottish Executive 2000

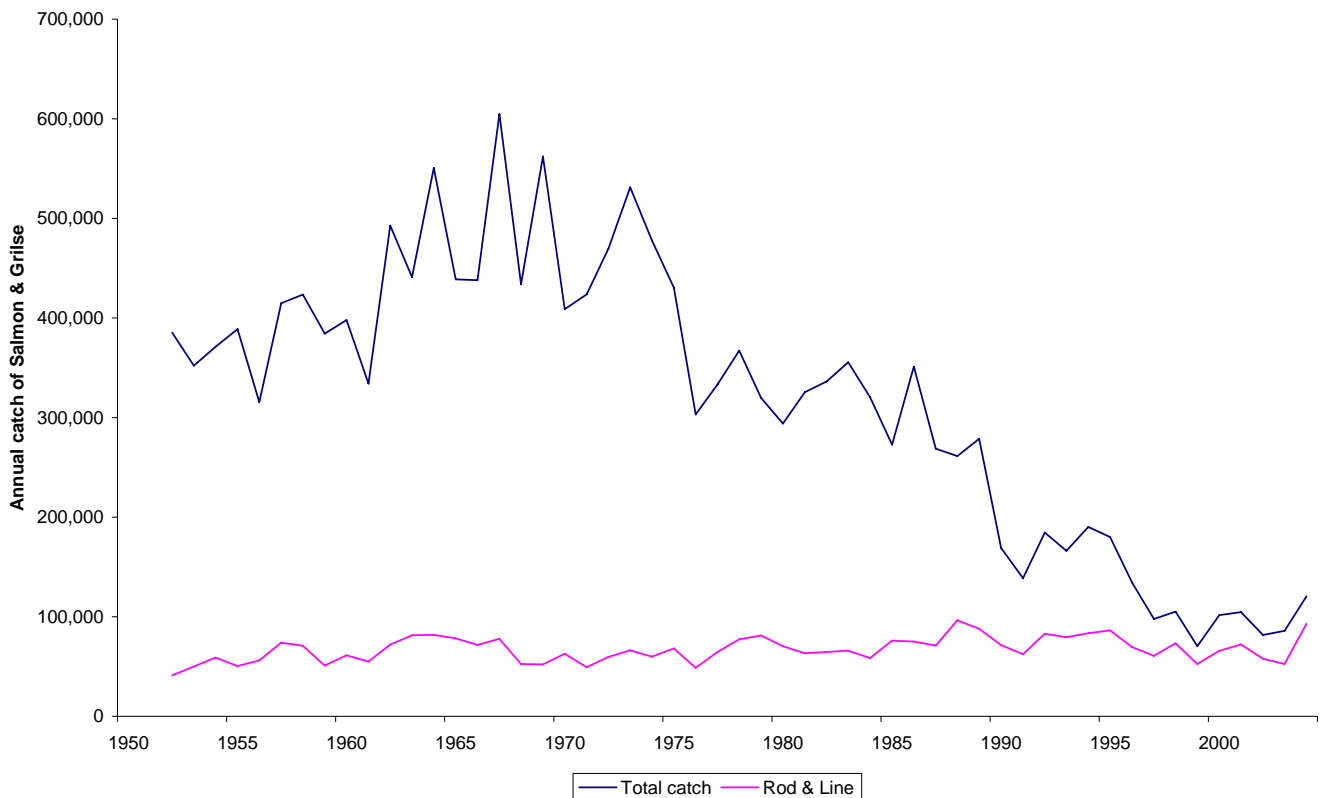
In contrast to sea fishing, freshwater fishing in Scotland is almost entirely a recreational activity. There are two main types of freshwater fishing: game fishing and coarse fishing. The most important game fish in Scotland are salmon, sea trout and brown trout. Salmon and sea trout are migratory, and spend part of their lives in freshwater and part of their lives in the sea. The more common and well known species of coarse fish include pike, perch, and roach. The abundance of game fish species in Scotland means there has been less of a tradition of angling for coarse fish than elsewhere in the UK, although the popularity of coarse fishing is growing. Coarse fishing is concentrated in the south west of Scotland, the Central Belt, Loch Lomond and the Perthshire lochs. Game fishing takes place in rivers, streams and lochs right across Scotland. Game fishing is usually done by fly fishing, although other natural and artificial baits can be used. In coarse fishing a variety of techniques using artificial and natural baits are used, depending on the target species and type of water being fished.

Catches of salmon and sea trout in Scotland have declined over the latter half of the last century although the salmon rod catch over this period has remained largely stable (see figure overleaf).

A number of factors are thought to have contributed to this decline in catch: reduction in netting due to a decline in stocks but also as a consequence of extensive net buy outs for conservation reasons. This decline in catch further reflects a general decline in stocks of fish which are thought to result from: netting of salmon at sea; disease, parasites and interbreeding with farmed salmon; predation; changes to the river habitat; and the availability of food at sea. Current policies are therefore aimed at restoring stocks by e.g. buying out netting rights, introducing catch and release for rod and line fishermen, relocating fish farms and restoring river habitats.

Stocks of other freshwater fish are generally healthy. Some freshwater fish stocks in less accessible waters are infrequently or never fished. Although there are therefore opportunities for new fisheries, fish in colder mountain waters grow very slowly, and could be vulnerable even at low levels of fishing.

Figure 1 – Salmon catches in Scotland 1952-2004



Source: Fisheries Research Service (2006). Notes: Total catch is made up of catches by rod and line, net and coble and fixed engine. Figures for rod and line include fish caught and released, which has been recorded separately since 1994.

Analysis of the Scottish Opinion survey by Sportscotland (2002) shows that recreational fishing and angling was the 15th most popular participation sport for adults and 21st most popular for young people (aged 8-15). Around three percent of the population (170,000 people) had taken part in recreational fishing or angling in the previous month. Adult participation rates for angling have not varied from about three per cent since data were first collected in 1987.

Many hotels, guest houses and other businesses throughout Scotland rely on visiting anglers for much of their income. Anglers also provide a source of income outside the main tourist season. Fishing tackle shops, ghillies (fishing guides), water bailiffs and numerous other people depend directly or indirectly on angling. The Scottish Executive (2004) commissioned a study on the [economic impact of game and coarse angling](#) in Scotland. This found that game and coarse anglers spent around £113 million on their sport annually, supporting 2,800 jobs. Salmon and sea trout were the most valuable fisheries, accounting for 65% of total spending.

A Scottish Executive consultation '[Protecting and promoting Scotland's freshwater fish and fisheries](#)' launched in 2000 (Scottish Executive 2000) set out the issues surrounding freshwater fishing, and sought views on how they could be resolved. The Scottish Executive published a Green Paper (Scottish Executive 2001) which listed 26 mostly non-legislative actions to resolve these problems. The Green Paper did envisage some legislative actions, including a review of the legislation, once it had been consolidated. The legislation was consolidated in the last session of the Parliament with the passing of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, which brings all the main domestic laws relating to salmon and freshwater fisheries into one place.

The Scottish Executive established a Fisheries Forum in 2004 to allow exchange of information and discussion of topical issues and to aid the consultation process and decision making for any new legislation. The forum meetings are held in public and are open to anyone. The forum also has a steering group, which is made up of representatives of all the main angling and fisheries management bodies plus other public and private sectors bodies with aquatic/environmental interests. The forum has developed the proposals for freshwater fisheries legislation which have been included in Part 3 of the Bill.

PROVISIONS IN THE BILL

Welfare of freshwater fish – gaffs, tailers, landing nets, pike gags and keepnets

Sections 1 and 2 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 set out the legal methods of fishing for salmon and other freshwater fish. Section 3 of the Act explains that gaffs, tailers and landing nets can be used to assist with catching fish by rod and line.

A gaff is a large hook attached to a pole which can be used to hook a fish to bring it ashore. A tailer consists of a loop of wire attached to a pole, when a fish is brought close to the shore the wire loop is slipped over the tail and tightened so that the fish can be lifted out of the water. They would normally only be used in salmon fishing, although there is nothing to prevent their use to land other fish. Both of these devices can cause severe injuries to fish. Section 20 of the Bill would ban the use of gaffs and tailers.

Some landing nets have knotted mesh. When they are used to land a fish, the knots can rub off the fish's scales, which can cause infection after the fish is released. Landing nets with unknotted mesh are available. For welfare reasons, section 20 of the Bill would amend the 2003 Act so that only landing nets with unknotted mesh could be used

A pike gag is a device used to hold open the jaws of a pike once it has been landed so that the hook can be extracted and prevent the pike from biting the angler. The concern is that using a gag may injure the fish. The [Pike Angler's Alliance for Scotland](#) is the representative body for Scottish pike anglers. They have a [code of conduct](#) which says that gags should never be used, and have also produced a [short guide](#) which explains how pike can be unhooked safely without using a gag. Section 22 of the Bill would ban the use of pike gags in Scotland.

Keepnets are normally made of concentric rings with netting between them that can be extended into a tube, held open at one end and fixed to the bank. They are used in coarse fishing to hold the days catch before releasing it, e.g. in an angling competition. As with landing nets, fish can damage themselves on nets made of knotted mesh or metal. Section 22 of the Bill would ban the use of keepnets with a knotted or metal mesh.

Rod and line fishing

The definition of rod and line fishing given by section 4 of the 2003 Act restricts the angler to using a single line, and also prohibits fishing with a set-line. This term is not defined in statute, but one court case (Scots Law Times 1980) has suggested that this would include fishing with a rod and line that was not held in the hands e.g. resting on a rod rest.

It is common practice for coarse fishermen in other parts of the UK to fish with several rods at a time held on rod rests, e.g. when ledgering, where a lead weight is used to sink a bait and hold it in a fixed position. Multiple rods could also be used for trout or salmon fishing from a boat in a

practice known as “trolling” or “harling” where a lure or bait is towed behind a boat, but the law would currently restrict this to one rod per angler.

Section 21 of the Bill would amend the definition of rod and line fishing in the 2003 Act to allow an angler fishing for fish other than salmon or trout to use up to 4 rods, and to allow the use of up to 4 rods when fishing for salmon or trout from a boat. This would allow the use of rod rests. It would also provide a statutory definition for a set line as “a fishing line left unattended in water and having attached to it one or more lures or baited hooks”.

Close times

Section 13 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 sets a weekly close time for salmon fishing. This is Sunday for rod and line fishing, and from 6pm on Friday evening to 6am on Monday morning for netting. The 2003 Act also provides for annual closures for salmon fisheries (different dates apply on different rivers) and trout fisheries (from 7 October to 14 March). There is currently no weekly close time for fish other than salmon, and no annual close time for other freshwater fish. In England and Wales there is a close season for coarse fish – from 15 March to 15 June, except on canals. The [Environment Agency website](#) says on the purpose of the close season:

The legal basis for the statutory close seasons is to protect fisheries from the impacts of angling during the breeding season. For coarse fish, a close season was introduced at the end of the nineteenth century, when coarse fish were usually killed upon capture.

Nowadays coarse fish are almost invariably returned to the fishery and therefore a close season may no longer be justified on all waters. Although the coarse fish close season may have benefits for wildlife, habitat and to other recreational users, these are incidental and close seasons cannot be imposed for these reasons.

Section 23 of the Bill would amend the 2003 Act to allow weekly and annual close times to be set for all species of freshwater fish. Different close times could be set for different species.

The Scottish Federation of Coarse Anglers (2006) said that there would be no benefit from having a close season for coarse fish, and no evidence of the need for one, as stocks of coarse fish were healthy at current levels of exploitation. They also pointed out that coarse fish spawn at different times throughout the year, so selecting a common close season would be difficult.

Conservation of freshwater fish

The Salmon (Conservation) (Scotland) Act 2001³ gave Scottish Ministers a general power to make regulations for the general purpose of conserving salmon. Prior to the Act, Ministers’ powers were limited to the purposes specified in legislation (e.g. to regulate the use of a bait or lure). The powers in the 2001 Act have been used to introduce a ban on the sale of salmon caught by rod and line.

There is no similar power which would allow Ministers to make regulations for the purpose of conserving freshwater fish. Section 25 of the Bill would insert such a power into the 2003 Act.

Another way the power might be used is to ban live baiting, a practice in which live fish with hooks and fishing line attached to them are used to attract larger predatory fish, especially pike.

³ The Act was consolidated and these powers now exist in section 38 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

Live baiting is thought to be responsible for the introduction of a species called the ruffe to Loch Lomond in the 1980s which has changed the ecology of the loch (SEPA 2001). The Scottish Executive (2006a) has said that it will not introduce a ban on live baiting on the face of the Bill, but will do this in subordinate legislation using the powers in section 25 of the Bill.

Representatives of coarse anglers were opposed to a ban on live baiting. The Scottish Federation for Coarse Angling (2006), Specialist Anglers Alliance (2006) and the Pike Anglers Club of Scotland (2006) explained that live baiting was often the only possible method of catching some coarse fish, especially large pike and perch, and that if it was banned it would deter anglers from visiting Scotland. They suggested an alternative approach, as in Denmark, where live baiting was restricted to fish caught from the same water on the same day as they were being used.

The Scottish Society for the Prevention of Cruelty to Animals (2006) is opposed to live baiting. It thought live baiting could be an offence under the Protection of Animals (Scotland) Act 1912 (and under the Animal Health and Welfare (Scotland) Act 2006 once enacted).

Sea fishing

The Fisheries Act 1981 (c.29) was a general purpose Act making amendments to the law on freshwater fishing, sea fishing and fish farming. Section 30 of the Act deals with the enforcement of community rules, i.e. of the Common Fisheries Policy (CFP).

Rules made under the CFP are normally made in the form of regulations (rather than directives). It is an established principle of Community law that regulations have 'direct effect' – that they apply in all Member States as soon as they come into force without a Member State needing to implement them in its national law. However, since criminal law is generally a competence reserved to Member States, regulations do not normally specify sanctions for offences. If a Member State intends that breaking a regulation will incur a criminal sanction, these are set out in its national law.

Some EU regulations, for example, a decision to close a fishery, may apply immediately they are agreed. Without any provision to the contrary, there would be no criminal sanction for Scottish boats which broke these rules until national implementing legislation had been passed. Subsection 30(1) of the Fisheries Act 1981 therefore provides a catch-all provision that if any fishing boat fishes within British fishery limits in contravention of a Community restriction, the master, the owner and the charterer (if any) are each guilty of an offence. This provision applies until such time as specific rules (if any) are made under subsection 30(2).

The Policy Memorandum explains that subsection 30(1) allows for immediate enforcement of Community *restrictions* (e.g. limits on days at sea), but not Community *obligations* (e.g. a requirement to carry satellite monitoring equipment). The technical amendments made by section 26 of the Bill would allow for immediate enforcement of both restrictions and obligations under subsection 30(1).

MISCELLANEOUS PROVISIONS

INTRODUCING FISH TO MARINE AND INLAND WATERS

Investigations have shown that the Infectious Salmon Anaemia outbreak in Scotland in 1998/9 originated at a single fish farm and was spread by moving fish to other farms (Fisheries Research Services 2001).

Section 27 of the Bill would give Ministers a power to control the introduction of live fish in marine waters. This would allow them to designate “specified areas” of sea within which it would be an offence to introduce live fish which have been in the sea from outside the area. Movements within the area and movements of fish from freshwater into the sea (e.g. of juvenile salmon) would not be affected.

The introduction of live fish into freshwater can also pose a disease risk. If fish which are not native to an area also escape into the wild, they can also have a serious effect on freshwater ecology. It is now illegal to release ruffe and a number of other species listed in the Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003 (made under the Import of Live Fish (Scotland) Act 1978). However, orders under the 1978 Act can only apply to fish which are non native to Scotland.

Section 28 of the Bill would introduce a new control on introducing any fish into inland waters in Scotland without the permission of Scottish Ministers (or in the case of salmon, District Salmon Fishery Boards would be able to give permission for restocking within the area of their board).

COMPENSATION AND OTHER PAYMENTS AND INFORMATION

Section 29 of the Bill would provide a legal basis for Scottish Ministers to draw up a compensation scheme following compulsory slaughtering of fish⁴ to control disease. It would be up to Ministers to decide whether to pay compensation or not. The details of a scheme would be set out in a statutory instrument which would be approved under the affirmative procedure⁵.

The Scottish Salmon Producers Organisation (SSPO 2006) thought that the Scottish Executive should be legally obliged to pay compensation for the slaughter of healthy fish.

Section 30 of the Bill would provide a legal basis for Scottish Ministers to make payments to support aquaculture, sea fishing and freshwater fishing. The Policy Memorandum explains that such payments would be made in support of priorities set out in the Aquaculture, Inshore Fisheries and Sea fishing strategies (Scottish Executive 2003a, 2005b & 2005c). For example the Strategic Framework for Sea Fisheries envisages support for seafood marketing through Seafood Scotland and Seafish, support for research and support for diversification in fishing communities. A key part of the inshore fishing strategy will involve supporting the development of local inshore fisheries management groups. Under the Strategic Framework for Scottish Aquaculture a programme of research has been funded through the Scottish Aquaculture Research Forum, and there has been support for training and the preparation of an export strategy. There is currently no strategy for freshwater fisheries, but the Fisheries Forum will begin work on producing one later in 2006.

Section 31 of the Bill would allow Ministers to make orders which would require fish and shellfish farmers to provide them with economic, social, and environmental information. At the moment the only legal requirements for fish and shellfish farmers to provide information to the Scottish Executive are set out in the Registration of Fish and Shellfish Farm Businesses Order 1985 (as amended). The Order requires fish and shellfish farmers to submit address and other basic details about the business, information about the quantities of fish and shellfish they keep, and also to notify Ministers of any escapes. The Policy memorandum explains that further information about the industry is needed in order to justify public sector involvement.

⁴ The definition of “fish” does not include shellfish

⁵ Where a draft instrument is laid and cannot come into force until it is approved by Parliament
providing research and information services to the Scottish Parliament

The need for this information was questioned by respondents to the consultation. The British Marine Fish Farm Association (2006) said it would only support this idea if the Executive could provide examples of similar requirements which applied to other industries, and explain how commercial confidentiality could be maintained.

ACCESS TO FISHING

The Partnership Agreement contains a commitment on access to freshwater fishing (Scottish Executive 2003):

We will continue to promote access for anglers to watercourses and the removal of prohibitive restrictions; promote the local management of watercourses and a proper balance between exploitation and conservation of freshwater species; and seek enhanced access whenever public investment improves fisheries.

LEGISLATION ON ACCESS

The rights to fish for salmon and freshwater fish in Scotland are privately owned. Fisheries are managed by the owners of those rights. The right to fish for salmon can be held separately from the ownership of land. The right to fish for other freshwater fish goes with the ownership of the land. Fishing for salmon without right or written permission is a criminal offence. Fishing for freshwater fish, including trout, without right or written permission is generally a civil offence, except in some of the rivers flowing into the Solway, in stanks⁶ or lochs where the fishing rights are owned by one person and where Protection Orders have been made. In these cases, fishing for freshwater fish without a permit is a criminal offence. Protection Orders were introduced under the Freshwater and Salmon Fisheries (Scotland) Act 1976⁷. The legislation requires that there should be an increase in access to angling in return for the additional protections conferred by an order.

The provisions of the 1976 Act were reviewed in 2003, and Scottish Ministers have subsequently said that they intend to repeal the provisions (Scottish Executive [2003c](#) and Scottish Parliament [2004](#)). The consultation on the Aquaculture and Fisheries Bill (Scottish Executive 2005) explained that:

There is a perception that protection orders have failed in parts of Scotland in their primary objective of guaranteeing increases in angling access as the legislation had intended, largely because voluntary monitoring mechanisms have proved inadequate. Angling access to some stretches of water at the inception of an order has occasionally been reduced over time. Problems have also arisen when new owners of freshwater fishing rights have been unaware of the protection order obligations that accompany those rights. Permit availability has been poorly advertised in some catchments and the delivery of permits in certain areas has been problematic.

The Scottish Federation for Coarse Angling (2006) also assessed the value of Protection Orders:

From a coarse angling perspective Protection Orders are a failure. They have not achieved their key objective of opening up a wider range of access. Only on

⁶ A stank is a reservoir or pond without an inlet or outlet

⁷ This has now been consolidated into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, in sections 48-51 and 66

Loch Awe does the current PO promote the coarse angling opportunities available in the fishery and encourage the conservation of coarse fish species. Conversely, on some waters covered by POs access to pursue coarse fish is denied altogether. In many others, coarse angling is tacitly discouraged or made almost impossible in practice by restrictions on baits or methods. In addition, there are protected waters where the proprietors cull coarse fish or make it a requirement of granting permits that all coarse fish captured are killed. However, the changes proposed are positive and we keep an open mind as to whether the system is capable of repair.

The ASFB (2006) summarised the view of the fisheries forum which the Executive has consulted on protection orders:

The Forum steering group has deliberated long and hard over the merits, or otherwise, of POs and has concluded that, whilst the system does have its faults, the principle of exchange of better managed access for the sanction of the criminal law can, and in many places is, an effective mechanism to both control and encourage access. In the many discussions had on this subject, in committee and in forum, no convincing evidence was submitted for the complete removal of the system whereas there was widespread support for its modification. Indeed there appeared to be widespread support for most POs and many examples of problems tended to be historical.

The Executive considers that it would be premature to alter the protection order system until new management structures for freshwater fishing have been put in place. In advance of that it proposed some amendments:

- Making it a mandatory requirement to set up a liaison committee to manage the fisheries subject to a protection order
- Making the existence of a protection order known to buyers when a property changes hands
- Removing the requirement to advertise an application for a protection order in the Edinburgh Gazette
- Removing the requirement for protection orders to cover a continuous area
- Removing fisheries from a protection order that did not comply with the requirements of the order

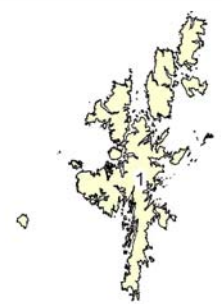
The Scottish Executive's (2006) response to the consultation indicates that it will consider the role of liaison committees as part of the work on the future management arrangements for freshwater fisheries so they would not be made mandatory in the Bill as introduced. It has also concluded that existing conveyancing law should give sufficient notice that a property is subject to a protection order. The other 3 proposals would be given effect by amendments made in the Schedule to the Bill, which is introduced by section 34 of the Bill.

MANAGEMENT OF FRESHWATER FISHERIES

During the development of the Bill there have been discussions regarding the future management structures of freshwater fisheries in Scotland. Scotland is divided into Salmon Districts, shown on the map overleaf. District Salmon Fishery Boards (DSFBs) are responsible for managing salmon fisheries in all but a few districts where a board has not been formed⁸.

⁸ It is up to the owners of salmon fishing in a district to decide whether to form a board. In some cases where there is no board all the salmon fishing in the district is owned by one person

Salmon Fishery Districts 2005



Code, Name	
1, Shetland	36, Irvine and Garnock
2, Orkney	37, Clyde (and Leven)
3, Caithness	38, Eachaig
4, Helmsdale	39, Argyll
5, Brora	40, Laggan and Sorn/Islay
6, Fleet (1 part)	41, Inner (Jura)
7, Kyle of Sutherland	42, Mull
8, Conon	43, Lochaber
9, Beaully	44, Arnisdale
10, Ness (2 parts)	45, Glenelg
11, Nairn	46, Crowe and Shiel
12, Findhorn	47, Loch Long
13, Lossie	48, Skye
14, Spey	49, Carron
15, Deveron	50, Kishorn
16, Ugie	51, Wester Ross
17, Ythan	52, Western Isles
18, Don	53, North and West
19, Dee (1 part)	54, Kinloch
20, Esk	55, Naver
21, Tay	56, Strathy
22, Forth	57, Halladale
23, Tweed	
24, Annan	
25, Nith	
26, Urr	
27, Dee (2 parts)	
28, Fleet (2 parts)	
29, Cree	
30, Bladnoch	
31, Luce	
32, Stinchar	
33, Girvan	
34, Doon	
35, Ayr	

Legend

 SFD November 2005

Scale 1 : 2,500,000
Sources: Salmon Fishery Districts, Scottish Executive 2005
Scottish Coast, Ordnance Survey Strategi 2006.

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Scottish Executive Geographic Information Service , Job:3957ac 19 Sept 2006

District Salmon Fishery Boards have existed since the nineteenth century. They are statutory, and the laws on their constitution and powers are set out in Part 3 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Board members are elected by the owners of salmon fishings within the district. There must be at least 3 owners elected onto a board, together with at least one co-opted representative of salmon anglers and salmon netsmen from within the district (if they are willing to serve on the board). Boards are elected every 3 years.

Boards are funded by an “assessment” levied on salmon fishing owners, and can also borrow money. They can appoint a clerk, and water bailiffs. They have a general power to act and carry out works for the protection and improvement of fisheries within the district, to increase the number of salmon, and to stock rivers with salmon. They can also apply to Scottish Ministers to make regulations on the baits and lures that can be used for salmon angling in the district, and to make salmon conservation regulations.

There is no equivalent body to District Salmon Fishery Boards with a role for catchment management of other species of freshwater fish. Management of these species is carried out by the landowners who own the fishing rights, and by angling clubs and associations.

PROPOSALS FOR CHANGE

The Scottish Executive (2000 and 2001) considered the management structures for freshwater fisheries in its review in 2000, and put forward some proposals for change in the Green Paper in 2001. It has since established a sub-group of the Fisheries Forum in 2004 to consider this issue.

The Executive (2005a) explained that the most favoured structure among stakeholders on the sub-group would be a “unitary authority” model where new bodies were created to manage all freshwater fish at catchment level. The Executive said that the work to develop this approach could not be done in time to include the proposals in this Bill, and that these proposals will have to be included in legislation in the future. The ASFB (2006) made a detailed submission on the future of freshwater fisheries management. They pointed out that the River Tweed Commissioners/Tweed Foundation provided a working example of how a “unitary authority” system might operate, as they have had responsibility for management of all species of freshwater fish in the Tweed catchment since 1969.

The Executive has commissioned independent research on the unitary management of freshwater fisheries in Scotland. The research will also provide approximate costs for the implementation of funding such a management structure. A [presentation](#) on the research was given at the last Fisheries Forum meeting in Dundee in January 2006.

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SUBMISSION FROM THE INSTITUTE OF AQUACULTURE

This response from the Institute of Aquaculture of the University of Stirling primarily relates to implications for Aquaculture reflecting the main focus of the Institute's research, teaching and advisory work.

INTRODUCTION

General Comments

The timetable for introduction of the Bill appears rushed. The new EU Fish Health Directive is an important piece of legislation and is likely to place specific obligations on Member States. It does not seem sensible to rush through a Bill when it is known that amendment is likely shortly after its publication.

There are few mentions of the Code of Good Practice, the production of which has involved considerable work by industry, wild fish interests, government, academia and veterinary interests. Throughout its development, the expectation was for a voluntary Code of Practice addressing the wish of Government to reduce regulatory burden. Indeed "the Executive's proposals are not intended to compete with the Industry Code". The proposals placed in the Consultation paper provide the possibility of a dramatic rise in regulation which, if applied, will seriously increase the cost of aquaculture in Scotland and lead to lack of competitiveness.

The Code of Practice will be independently audited and compliance will be evident to all. There is a danger in the proposals in the consultation that further auditing with resultant costs will be carried out by the Regulator, duplicating effort.

The Code of Practice has also been developed as a dynamic document which can be rapidly modified to take account of developing knowledge and improved methodology. Legislative instruments are much more unwieldy.

PART 1 Aquaculture

The Regulator

The consultation paper has a stated preference for a "voluntary approach" but on the other hand, regulation in a number of areas. It is also suggested that the

regulator both advises and enforces – the two functions should be clearly separated.

The proposed powers of the regulator cover a range of subject areas and it is unlikely that any one organisation will have the required expertise in house. FRS/SEERAD do not have the necessary expertise required in relation to management processes in fish farms, medicine application etc. There would need to be substantial investment in new staffing and this has been grossly underestimated in the financial calculations provided. FRS/SEERAD would however provide an effective means of enforcement.

There must be major concern at the possibility of a very dramatic increase in regulation of the industry. This flies in the face of the suggested preference for a voluntary approach. If the burden of extra regulation is increased by the application of significant charges, the industry in Scotland will be made increasingly uncompetitive. Reduction in regulation would be preferable.

Parasite Control

The National Treatment Strategy for the control of sea lice takes account of major differences in epidemiology between *Caligus elongatus* and *Lepeophtheirus salmonis*. The proposals address the situation with regard to *L. salmonis* but fail to suggest an alternative approach for *C. elongatus*. The “precautionary approach” can be taken to extremes and the National Treatment Strategy relating to sea lice control has provided a practical means of effective control agreed by government, the aquaculture industry and wild fish interests. Wild stocks have shown dramatic recovery in many river systems in the last two to three years for a range of reasons and current application of the National Treatment Strategy appears to be working well.

This proposal to make provision for parasites in general appears excessive and unnecessary. The control of parasites on fish farms is routinely provided by experienced health care professionals with experienced veterinary support. Local clinical control is a legal requirement for the provision of many veterinary medicines. It is unlikely that the proposed regulator will have sufficient professional experience and training and it is hard to imagine them providing the necessary local clinical control. This proposal would equate to having a regulator to control anthelmintic use in cattle and sheep. This suggestion takes the precautionary principle too far.

The aquaculture industry has developed best practice for sea lice control in conjunction with academia, company vets and pharmaceutical companies. The Regulator is unlikely to be able to improve the existing protocols for sampling and lice identification. Sea-lice monitoring by farms will be independently audited under the Code of Practice and audit results could be available for inspection by

the regulator. Treatment records are already provided to SEPA as a legal requirement – why duplicate?

The existing sea-lice medicines are all Prescription Only Medicines (POM-V) and may only be prescribed by a veterinary surgeon to protect the health and welfare of fish under his clinical care. Lice control involves a close working relationship between the veterinary surgeon and the farm health team and of paramount importance is the avoidance of compromising fish welfare and the development of resistance to existing medicines by unnecessary or ineffective treatments.

Whilst the aquaculture industry has worked closely with wild fish interests to do everything possible to avoid transfer of lice from farmed fish to wild fish, eradication of sea-lice is not possible because wild stocks (and especially in increasing numbers as at present in many river systems) will always carry and spread infestation to other wild and farmed fish. There is no established cause and effect relationship between lice burdens on farmed fish and the risk to wild fish. Whilst every effort is made to adhere strictly to the guidelines there are occasions when this will not be possible. For instance, should fish be suffering intercurrent disease, the application of a bath treatment may lead to problems with fish welfare and even mortality in the absence of any effect of a very small lice burden on the farmed fish. Similarly, fish (or at least, a proportion of the stock) may be inappetant and under such circumstances, an in-feed treatment would be ineffective, costly and increase the risk of development of resistance. In addition, on many sites, there is a restriction on the quantity of medicines which can be applied which is regulated by SEPA through Consents to Discharge – great care has to be taken to avoid exhausting available consents by inappropriate treatment. The above scenario highlights the need for close clinical control and local knowledge of farm conditions.

How would the regulator decide on whether to direct remedial action and what would constitute “evidence of a problem” – would this simply be triggered by a lice count and not take account of the local situation. What if mandatory treatment was seen to compromise the ability of the vet to protect the welfare of fish under his care. It is hard to imagine close liaison with the company vet resulting in a change to the veterinary advice provided – this would surely equate to admitting negligence. As regards SEPA, is it the intention to override SEPA discharge consents?

The entire issue of mandatory treatments would appear to be legally unacceptable as the Regulator would not have the “right to prescribe” and in some cases would have to override the Control of Pollution Act.

All treatments for sea lice control must currently be provided under veterinary prescription and records must be kept under existing medicines and environmental regulations. This information is available to statutory authorities at

present – why duplicate? The difficulty again is what constitutes a “sea lice infestation problem” and how would it be defined in law. Likewise, what constitutes “assisting the regulator”.

The question of when the Regulator would request records from farms lacks definition. The concept of third party notification is particularly worrying as this could lead to significant cost and effort triggered by those with an anti-Aquaculture agenda.

There are concerns over the powers of the regulator. In a court of law, the regulator would have to demonstrate that the competence and ability of the regulator is far superior than that of the existing farm health and veterinary personnel. Who would represent the Regulators? A non-veterinary Fish Health Inspector? To instruct treatment would be illegal. “Other actions” are not defined and suggest that the regulator can do as he pleases – this is not acceptable. Actions taken by the regulator would also have implications regarding liability and insurance. If the farmer disagrees and a treatment is applied, who pays if the treatment is ineffective or if fish die or suffer a loss in growth.

The regulator would have the option to either override discharge consents, instruct a reduction or complete removal of stock. The latter options would require compensation and would be arguable in terms of any beneficial effect on wild fish populations. It is currently difficult to achieve the best result in applying bath treatments, because discharge consents present whole site or management area treatments on the same day

The right to prescribe for therapeutic treatments lies with the veterinary surgeon who has clinical responsibility for the fish. The products used are POM-V medicines in food-producing animals. Thus it would appear to be legally doubtful if the Regulator has the power to direct treatment.

The suggestions of the use of contractors appears ill thought-through. Such contractors do not exist at present, and the farmer is unlikely to pay the contractor. They would need to be paid directly by the Regulator. Such contractors (or the Regulator) would need to be insured against claims for loss of growth or loss of fish during treatment – this would be extremely expensive, even if available. The cost of required treatment with the sole end-result being the perceived protection of wild fish would be the responsibility of the Regulator, not the farmer.

If treatments fail, the Regulator and the contractor would be responsible. Who pays? A single treatment applied in way hardly constitutes a strategy and may in fact act against the existing strategy developed in the Code of Practice. Rather than protecting wild fish, a single treatment applied in this way is more likely to lead to the development of resistance against the limited number of medicines available and create real future problems of control.

It will be necessary to derive a strategy with Caligus infections, where new infections can occur overnight, despite an effective treatment. What constitutes “too high” a level?

The same issues raised for sea lice regarding POM-V medicines apply to other diseases. Notifiable diseases are controlled for the good of the country rather than the farm – compensation should be available for any action carried out through powers related to notifiable disease. Vaccination strategy would presumably be handled in a similar manner to that applied for Foot and Mouth Disease, should it be used. It would require veterinary control. The suggestion that the regulator would take over farm management and medicines use in food animals with limited knowledge of local site conditions and local veterinary expertise would seem unworkable. The overall control of a vaccination plan for notifiable disease would surely be a governmental veterinary responsibility.

Data Collection

The proposal for data collected from farms seem excessive and are commercially sensitive. Data currently provided are sufficient.

Compensation for Compulsory Fish Slaughter

The proposal for an enabling power hardly encourages investors. Scottish Ministers could do as they wish. There should be specific provisions agreed in advance as to what compensation will cover and how much it will be.

It is perhaps questionable whether compliance with a Code of Practice should be used to decide compensation.

Fish Movements

Live fish movements constitute the highest risk for the spread of disease. Such movements may be necessary in some cases for operational reasons. The movement of clinically diseased fish is not possible under existing welfare legislation. Carrier fish are notoriously difficult to detect.

Legislation to manage movement is not appropriate – this is an industry role. Risk assessment and management are the norm in the aquaculture business. Authorisation of movements in situations where the greatest risk applies seems sensible.

We believe it is essential to use Code of Practice Management Areas, not original ISA Management Areas, in order to avoid confusion and allow effective

operational management of farms. What will lead the Regulator to ban a movement?

If consents are needed for broodstock and processing movements on each movement occasion, there would need to be a rapid response capable of modifying consents at a few hours notice, including weekends and holiday periods. Vagaries of the weather and a variety of operational reasons will require daily modification of plans.

It may be that perhaps a permission which allows movements from A to B over an extended period would be a practical means of control. Record-keeping is essential to allow rapid response to allow control in disease outbreaks.

G salaris

This parasite presents one of the most serious risks to wild salmonids in the UK. The major risk is the importation of live fish, especially from freshwater or brackish environments. There is also a lesser risk from contaminated fishing tackle, pleasure boats etc. The main activity should be prevention of access by these routes through control of imported fish and disinfection procedures for tackle and boats. Control in wild populations has not been particularly effective in other European countries despite extreme measures and all possible efforts should be applied to keep the parasite out.

While we agree that Scottish ministers should have the power to apply chemical treatments to water courses more details are required on the proposed means of eradication. The practical use of aluminium sulphate is questionable at the present time and even when Rotenone has been used, reinfection has often occurred. The danger in wild fish populations is that the condition will be widespread before it is diagnosed. Contingency plans are urgently needed.

The treatment of farmed fish in freshwater would constitute a medicinal use. There are no products specifically authorised for this indication and we are unaware of any product licensed for use in any food animal, which could be used effectively even within the terms of the `cascade` provision of the Veterinary Medicines Regulations. Medicinal treatment of animals in this context can only be authorised by a veterinary surgeon. The Regulations also make it an offence for an animal keeper to be in possession of an unauthorised medicine.

The CoGP specifies (2.2.1) that `Only those substances that are permitted under European and UK legislation must be used in fish destined for human consumption`. In addition under EU Regulation 2377/90 (as amended), any pharmacologically active substance used for a medicinal purpose in a food animal must be entered into Annex I, II or III. The use of substances for eradication would be acceptable.

Compensation would be required if treatments made fish unsaleable or if treatment resulted in death of the fish stocks as well as the parasite.

If Scottish ministers have the power to require clearance of fish farms compensation should be provided. Treatment, if available legally, may work in farmed fish.

Regulatory Impact Assessment

The costs and range of manpower required for the proposed activities in the Aquaculture Bill have been grossly underestimated.

The financial impact on industry has similarly been underestimated. Many of the proposals required additional manpower, may have significant impact on profitability and could cause particular difficulties with investor confidence, insurance coverage etc.

The direct effect of application of many areas of regulation could result in closure of fish farms and resultant job losses and decreased investment.

SUBMISSION FROM THE INSTITUTE OF FISHERIES MANAGEMENT

The Institute of Fishery Management (Scottish Branch) wishes to provide a written submission in response to the call for evidence which was recently issued for the above bill. IFM (Scottish Branch) is a non-political organisation which promotes sound, practical fishery management based on good science and information. Unlike many other organisations involved with fisheries in Scotland, we have no vested interest (for example proprietorial or angling interest), and as such, our role revolves purely on what is in the long-term interests of fish populations and sustainable fisheries.

We support the majority of the provisions within the bill. However, in some cases, we believe the bill could go further to further to protect and enhance the wild fish resources in Scotland, and we expand on these areas further below. It is worth pointing out at this stage that Scotland's fisheries are renowned worldwide, in terms of diversity, and both cultural and economic importance. A recent study commissioned by the Scottish Executive demonstrated that:

- anglers spend £113million on angling in Scotland;
- the industry supports around 2,800 jobs
- angling results in the Scottish economy producing over £100million of annual output
- angling generates nearly £50million in wages and self employment income to Scottish households

It is therefore **vitaly important** that the measures contained in the bill will be effective and meaningful, and backed with sufficient resources to ensure effective implementation, compliance, and enforcement.

We have the following comments:

1. Aquaculture

There have been long-standing demands over many years for tighter regulation of the aquaculture industry. We understand and accept that the industry is a vital driver for the Scottish rural economy, however it has expanded with little effective regulation over the past 20 years, resulting in an industry which is largely unsustainable in environmental terms. For example, it is now widely accepted both by the industry itself and by the Scottish Executive that salmon aquaculture has had a marked adverse impact on stocks of wild salmon and sea trout in Scotland.

Proposed Inspectorate

A critical and key element is that the proposed inspectorate for aquaculture outlined in the Bill has a strong and clearly defined enforcement role to deal

with recalcitrant operators. The inspectorate **must** have sufficient regulatory function and authority to deal with problems quickly and effectively. Of particular relevance is the need for **robust** penalties. Of paramount importance is the need for the inspectorate to have sufficient resources, both practical and financial, to ensure effective monitoring and enforcement. It must also be seen to be operating in a transparent manner and be fully independent.

Definition of parasites

We welcome the proposals in Section 1:4 to include both *Caligus elongatus* and *Lepeophtheirus salmonis* within the definition of “parasite”. It seems illogical that the definition did not include all parasites; from a fishery management perspective, it would be sensible to include all species where these are known.

Section 1:7-8 – Code of practice for escapes and parasite infestation

A proposed code of practice with enforceable penalties is a welcome concept. However, it is not possible to offer further comment without knowing what this code might contain. Again, penalties must be of sufficient magnitude to encourage compliance. It is very disappointing that the bill does not address fish farm escapes where an opportunity could have been taken to confer a liability offence on operators where escapes occurred due to negligence. Escapes of farmed fish are one of the industry’s weakest areas of operation and escapes have been shown by a wide range of research to pose a wide range of potentially serious risks to wild stocks, for example:

- spread disease/parasites
- contaminate the genetics of discrete populations of wild stocks, thereby threatening production and diversity of wild populations
- juveniles out-compete and displace wild stocks at certain stages of the life cycle
- attract illegal fisheries at sensitive times of the wild salmon life-cycle
- interfere with expensive research and monitoring programmes

We believe that the Scottish Executive must reconsider their position on the issue of escapes of farmed fish.

Aquaculture movements

We are concerned about issues associated with farmed fish movements. We note that seawater-to-seawater transfers are to be dealt with through subordinate legislation. However, we remain extremely concerned that transfers between freshwater to freshwater and freshwater to seawater are not to be regulated. We would urge the Committee to investigate this issue.

2. Gyrodactylus salaris (Gs)

We believe that Gs poses one of the single, most serious threats to all freshwater fisheries in Scotland. Should it ever be introduced, it will, without doubt, damage and alter the face of freshwater fisheries irrevocably. Accordingly, we believe that the measures contained in the bill must be implemented fully without delay, backed up by a robust programme of preventative measures, and adequate levels of monitoring and enforcement to ensure this deadly parasite does not reach Scotland. **Of key importance is the need for the Scottish Executive to deploy sufficient resources to back up the provisions in the bill. Without these, the provisions will be worthless.**

Obviously, the first priority must be to ensure that the disease does not enter the country in the first place and accordingly all the recommendations made by the Scottish Executive GS Task Force must be implemented. As stated above, we cannot emphasise enough the need for adequate resources to be directed to ensure proper measures are implemented to exclude the parasite from Scotland. The Bill does make provision for these resources. It is worth pointing out that the likely cost of effective 'defence' provisions will be minuscule in relation to the likely costs associated with containment and eradication (if the latter is possible).

Whilst a contingency plan has been produced (and is to be tested), we believe it is vital that an assessment is made now of what action (either containment or eradication) will be necessary to each river system. For example, it may or may not be possible to eradicate Gs from a large and complex systems such as the Tay or Ness. However, if we have to assess that at the time of an outbreak, we could lose valuable weeks or months in the process. That assessment needs to be done now, and not on a case-by-case basis at the time of any outbreak.

3. Fisheries & Miscellaneous

We generally welcome the proposals contained in the remainder of the bill. We are particularly pleased that the Bill will address for the first time the issue of **movements of fish** between and within river catchments in Scotland. Inappropriate movements of fish and their eggs have huge potential to undermine the sustainability of native fish stocks in Scotland, and in some cases aquatic ecosystems have been altered irrevocably (for example the introduction of ruffe into Loch Lomond). Such movements of fish can threaten diversity and therefore productivity, introduce disease and parasites, new species can prey on native species and compete for food and habitat. As such, delicate and unique aquatic ecosystems could be changed forever.

Again, our key concern in this area is the direction of adequate resources to administer and police such a system. The vast majority of fishery law enforcement in Scotland is undertaken by fishery board staff who are privately funded, and as such, there will a compelling need to ensure these persons

are adequately trained and resourced to deal with any new regime regulating fish movements.

Finally, we note that the **Protection Order** system is to be modified slightly, however we continue to be disappointed that this system, which in its current form has been in place since 1976, is not responsive or linked in any way to the ability of fish stocks to support a fishery. We very much hope that this will be addressed by the development of a new, National science-based fishery management regime, which is currently being considered by the Scottish Executive and the Freshwater Fisheries Forum. We very much welcome this development which we hope will herald a new era in fishery management in Scotland based on good science and information, with accountable and transparent streamlined organisations which will be tasked with managing all species in the future.

SUBMISSION FROM ARTHUR GRIFFITHS

Background

Gyrodactylus salaris (Gs) is a freshwater, monogenic, ecto-parasite, found infecting the skin, fins and gills of Atlantic salmon, and some other species of salmonids. It is less than 1mm in length, and is one of many gyrodactylid species found infecting salmonids. This particular species is thought to have been introduced from Sweden to Norway on salmon smolts during the 1970s, rapidly spreading to rivers and hatcheries by the 1980s, incurring losses of approximately 300 t of Norwegian Atlantic salmon. The parasite's grazing activity can lead to death by causing salt and water imbalances, and is associated with serious declines in the number of salmon in affected river systems.

The Disease and Possible Spread

It is maybe assumed that in the first instance an introduction of the disease into Scotland would be to a single location, most likely leading to a rapid infection of a single river system (catchment). If no action is taken to prevent transfer then it maybe be assumed that, over time, Gs will become established throughout Scotland leading to the decimation of wild salmon populations and the loss of upwards of 2000 full time jobs many in remoter areas.

The most likely method of transfer from infected areas is on fish or in infected water.

Controls exist to prevent fish movements from infected areas abroad, and powers are currently being sought to prevent/regulate movements if an outbreak occurs anywhere in the UK. There also exists a possibility that transfer can occur on wet clothing, angling and boating equipment.

Containment

If the disease is ever suspected in Scotland, the planned response is the implementation of agreed emergency control measures to contain the infection. Initially control measures would be very similar to those applied during an outbreak of Foot and Mouth Disease and be aimed at preventing the movement of susceptible species until the extent of the outbreak could be determined. Thereafter essential movements could be allowed under licences which would specify the conditions under which the movements could be undertaken. Ministers already have powers to control disease by use of movement controls and removal and disposal of dead and dying fish. These powers, in relation to individual premises, are contained in Section 4 of the Diseases of Fish Act 1937. However these powers do not allow Ministers to impose a blanket standstill to prevent all movements within Scotland. If *G salaris* is found in say a fish farm it is likely that at least part of the associated catchment will also be affected and pose a risk to other fish farms and to wild salmon in that and possibly other catchments.

The powers referred to above should be sufficient to control disease particularly when enacted along with the Additional Guarantees under Commission Decision 2004/435/EC concerning the importation of live salmonids from areas that are infected with *G. salaris*. These powers will NOT however be sufficient to eradicate the disease nor are they likely to prevent the inevitable change in the balance of the environment that will occur if a major species is left to die out from disease.

Eradication and Chemical Usage

The only means at present available to eradicate the disease is to treat the waters with either rotenone or Aluminium sulphate. Both will kill the parasite but rotenone also kills all the fish in the treated water. Rotenone has little residual problems but Aluminium sulphate can affect the pH of the water for a considerable period after use.

The Norwegians have successfully used Rotenone to destroy the parasite and have carried out some field trials with Aluminium sulphate. Both methods require the use of dams to control water flows and also to prevent the upstream migration of possibly infected fish once treatment is completed. It may not be feasible to treat all Scottish waters using chemicals but Ministers need the powers to so do if the conditions are conducive and it is the best solution for dealing with disease in the particular infected waters. Any proposed treatment would need to be assessed under The Water Environment (Controlled Activities)(Scotland) Regulations 2005.

Use of Barriers

The Norwegian eradication programme relies on the erection of barriers which allow for water flows but prevent migration of fish upstream. The river is treated below the barrier but fish above the barrier are able to migrate downstream and so deny the parasite a host. Without the power to erect barriers an eradication programme would have to rely on chemical treatment of the whole catchment. This would have a much wider environmentally impact than the selective treatment that the use of barriers permits. The prevention of up stream migration of fish will require Ministers to have powers to close fish passes where these exist. Such action in the early stages of an outbreak may go a long way to limiting the spread of the disease and maintain the upper reaches of a catchment free of disease.

Removal of Fish

The parasite will readily migrate from dead fish and find another suitable host if one is available. It makes sense therefore to remove as many parasites from the water as possible to reduce the risk of further disease spread. Ministers do not, at present, have powers to order the depopulation of fish farms.

Risk from Leisure Pursuits

Scotland's waters are used and enjoyed by many for leisure pursuits and such people do not normally pose a great threat in terms of fish diseases. However, it is common for fishing gear, boats, canoes etc to be used on more than one catchment and as they are rarely dried and the parasite can survive in moist

conditions off the host such activities do present a risk of disease transfer. There is also the possibility of anglers fishing infected Norwegian waters and being able to fly back and fish on Scottish waters the next day. The risks from all these activities can be much reduced by disinfection of the equipment. The issue of disinfection at ports of arrival has been discussed with airport authorities who are reluctant to co-operate without legal enforcement. Mandatory disinfection at points of entry has not been recommended by the Task Force because it felt that there were too many such points and policing them would require a manpower input that was disproportionate to the risk.

Access Issues

Any action to contain or eradicate *G. salaris* will require action and control by all fishery owners in infected catchments. It will thus be necessary for Scottish Ministers and their agents to have access to all necessary land at the waters edge and land allowing access thereto, to carry out the containment/eradication programme.

Industrial Users of Water

There are many Industrial Users of water in Scotland. The three largest are the Scotch Whisky Trade, the Hydro Electric Industry and Scottish Water. The use of containment or eradication measures to deal with an outbreak of *G. salaris* will have an effect on all three industries. The Contingency Plan that has been developed, with major stakeholder input recognises the problems that these industries will face if water transfer operations have to cease to allow chemical treatment. It also looks at the issues surrounding the distilling sector and SEERAD is working with the industry to find workable solutions. The building of barriers and the use of chemicals takes many months to plan and action will be taken to minimise any deleterious effects on these industries.

Environmental Issues

The use of chemicals in an aquatic environment will need careful management and the preparation of an Environmental Impact Assessment before any recommendation can be made to Ministers on what treatments are appropriate. Officials are currently investigating a generic assessment that could be used to assess individual treatment plans if the need arises. The more complex the water system and the more protected species it contains, the more difficult will be the assessment. What must be borne in mind is that whatever action/non-action is contemplated there will be an effect on the environment as losing a major species, either by disease or eradication will affect the balance of the environment to the advantage of some species and the disadvantage of others.

SSI DESIGNATION FORM

SSI Title & No:	The Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006, (SSI 2006/draft)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)	✓	Negative	10.4		
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	The purpose of this instrument is to ensure that the provisions in a number of Acts which deal with the welfare of animals are amended to include references to the Animal Health and Welfare (Scotland) Act 2006 where appropriate.						

Laid Date	13 th September 2006	20 day date	3 rd October 2006
1st SLC Meeting	19 th September 2006	40 day date	7 th November 2006
Lead Committee Report Due	30 th October 2006	Other Committee Report Due	

SE Contact	Ian Strachan, 46178
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The TSE (Scotland) Amendment (No.3) Regulations 2006, (SSI 2006/430)						
Responsible Minister	Lewis Macdonald, Deputy Minister for Health and Community Care						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	The purpose of this instrument is to allow the occupier of a slaughterhouse to consign a whole carcass containing spinal cord to a cutting plant in another Member State which has agreed to receive such carcasses.						

Laid Date	17 th August 2006	20 day date	23 rd September 2006
1st SLC Meeting	5 th September 2006	40 day date	13 th October 2006
Lead Committee Report Due	9 th October 2006	Other Committee Report Due	

SE Contact	Jillian Boddy, 01224 285 164
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	17 th Aug 2006	PO Letter received	✓
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	✓			
Additional Information								

Subordinate Legislation Committee

Extract from 33rd Report, 2006 (Session 2)

Subordinate Legislation

The Committee reports to the Parliament as follows—

**The TSE (Scotland) Amendment (No.3) Regulations 2006,
(SSI 2006/430)**

1. The Committee asked the Executive, with reference to the amendment of regulation 33 of the principal Regulations made by regulation 3 (a), (b) and (c) of the present Regulations, whether new subparagraph (c) of regulation 33(2) is intended as an alternative to sub-paragraph (a) or (b) or to both.
2. In its response in Appendix 3, the Food Standards Agency explained that new paragraph 33(2)(c) of the principal Regulations as inserted, is intended to be an alternative to both paragraphs (a) and (b). Regulation 33(2) (a) and (b) are connected by the word “and” and are intended to relate together to the circumstance of the removal of the spinal cord of a sheep or goat over 12 months of age at slaughter in Scotland. New regulation 33(2)(c) however is added and connected using the word “or” and is intended to relate to the different circumstance of the removal of the spinal cord of such a sheep or goat in another member state. Provided paragraph (c) is complied with there is no requirement to comply with paragraphs (a) or (b).
3. Although the Committee considers that in practice and given the context, the provision would most likely be interpreted as the Food Standards Agency intends, it nevertheless believes that regulation 33(2) as amended is ambiguous.
4. **The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that its meaning could be clearer, and also on the grounds of defective drafting of the amendments made to regulation 33(2) of the principal Regulations.**

APPENDIX 3

The TSE (Scotland) Amendment (No.3) Regulations 2006, (SSI 2006/430)

In its letter of 5 September the Committee asked the Executive to explain –

“with reference to the amendment of regulations 33 of the principal Regulations made by regulation 3 (a), (b) and (c) of the present Regulations, whether new subparagraph (c) of regulation 33(2) is intended as an alternative to sub-paragraph (a) or (b) or to both.”

The Food Standards Agency responds as follows:

New paragraph 33(2)(c) of the principal Regulations as inserted intends to be an alternative to both paragraphs (a) and (b). Regulation 33(2) (a) and (b) are connected by the word “and” and are intended to relate, together, to the circumstance of removal of spinal cord of a sheep or goat over 12 months of age, at slaughter, in Scotland. New regulation 33(2)(c) however is added and connected using the word “or” and is intended to relate to the different circumstance of removal of spinal cord of such a sheep or goat in another member state. Provided paragraph (c) is complied with there is no requirement to comply with paragraphs (a) or (b).

SSI DESIGNATION FORM

SSI Title & No:	The Cereal Seed (Scotland) and Fodder Plant Seed (Scotland) Amendment Regulations 2006, (SSI 2006/448)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	The purpose of this instrument is to increase the maximum weight of cereal seed that a lorry can carry from 25 to 30 tonnes.					

Laid Date	4 th September 2006	20 day date	24 th September 2006
1st SLC Meeting	12 th September 2006	40 day date	13 th October 2006
Lead Committee Report Due	9 th October 2006	Other Committee Report Due	

SE Contact	Anne Watson, 46178
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment	✓	European Regulations/ Directives				
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The Plant Protection Products (Scotland) Amendment (No. 2) Regulations, (SSI 2006/449)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	The purpose of this instrument is to implement EC Directive 91/414/EEC which establishes a system whereby plant protection products may not be placed on the market or used unless they have been authorised and added to Annex 1 of the Directive.					

Laid Date	4 th September 2006	20 day date	24 th September 2006
1st SLC Meeting	12 th September 2006	40 day date	13 th October 2006
Lead Committee Report Due	9 th October 2006	Other Committee Report Due	

SE Contact	Mary Lourie, 44403
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	✓			
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The Animals and Animal Products (Import and Export) (Scotland) Amendment (No. 2) Regulations 2006, (SSI 2006/450)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	The purpose of this instrument is to temporarily allow registered horses to stay out of the country for up to 60 days, rather than the current 30 day limit, so that they can compete in the Endurance World Cup or Asian Games.					

Laid Date	1 st September 2006	20 day date	23 rd September 2006
1st SLC Meeting	12 th September 2006	40 day date	13 th October 2006
Lead Committee Report Due	9 th October 2006	Other Committee Report Due	

SE Contact	Karen Lindsay, 46178
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	1 st Sept 2006	PO Letter received	✓
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	✓			
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The Pig Carcase (Grading) Amendment (Scotland) Regulations 2006, (SSI 2006/451)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	The purpose of this instrument is to implement EC Directive 2004/370 which has amended the original Pig Carcase Regulations to withdraw a derogation which applied to the method of calculating the weight of a cold pig carcase.					

Laid Date	4 th September 2006	20 day date	24 th September 2006
1st SLC Meeting	12 th September 2006	40 day date	13 th October 2006
Lead Committee Report Due	9 th October 2006	Other Committee Report Due	

SE Contact	Gerry Smith, 45235
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	✓			
Additional Information								

SSI DESIGNATION FORM