



Environment and Rural Development Committee

28th Meeting, 2006

Wednesday 4 October 2006

The Committee will meet at 9.30 am in Committee Room 6.

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

Andrew Grant, Independent Veterinary Consultant, Fish Veterinary Society;
and

Professor Sheila Crispin, President, Royal College of Veterinary Surgeons;

and then from—

Andy Rosie, Area Manager for Highlands, Islands and Argyll and Bute, Scottish Environment Protection Agency (SEPA);

Ian Pritchard, Head of Scottish Marine Estate, the Crown Estate; and

Dr Ron Stagg, Deputy Chief Executive, Fisheries Research Service;

and then from—

George Hamilton, Natural Resources Manager, Highland Council;

Peter Middleton, Fisheries and Marine Resources Officer, Comhairle nan Eilean Siar; and

Audrey Martin, Senior Planning/Development Officer, Argyll and Bute Council;

and then from—

Doug MacLeod, Chairman, Association of Scottish Shellfish Growers;

Sid Patten, Chief Executive, Scottish Salmon Producers Organisation;

Richard Slaski, Executive Director, Federation of Scottish Aquaculture Producers; and

Angus MacMillan, West Minch Salmon Ltd, organic salmon producer.

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

the Water Services and Sewerage Services Licences (Scotland) Order 2006 (SSI 2006/464); and

the Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465).

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The following papers are attached:

<u>Agenda Item 1</u>	
Paper from SPICe <i>[for Members only]</i>	ERD/S2/06/28/1a
Submission from the Fish Veterinary Society	ERD/S2/06/28/1b
Submission from the Royal College of Veterinary Surgeons	ERD/S2/06/28/1c
Submission from the Scottish Environment Protection Agency	ERD/S2/06/28/1d
Submission from the Crown Estate	ERD/S2/06/28/1e
Submission from the Fisheries Research Service	ERD/S2/06/28/1f
Submission from the Highland Council	ERD/S2/06/28/1g
Submission from Comhairle nan Eilean Siar	ERD/S2/06/28/1h
Submission from Argyll and Bute Council	ERD/S2/06/28/1i
Submission from the Association of Scottish Shellfish Growers	ERD/S2/06/28/1j
Submission from the Scottish Salmon Producers Organisation	ERD/S2/06/28/1k
Submission from the Federation of Scottish Aquaculture Producers/ British Marine Finfish Association	ERD/S2/06/28/1l
Submission from Angus MacMillan	ERD/S2/06/28/1m
<u>Agenda Item 2</u>	
The Water Services and Sewerage Services Licences (Scotland) Order 2006 (SSI 2006/464)	ERD/S2/06/28/2a
The Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465)	ERD/S2/06/28/2b
Extract from the Subordinate Legislation Committee's 35th Report, 2006	ERD/S2/06/28/2c

SUBMISSION FROM THE FISH VETERINARY SOCIETY

The Fish Veterinary Society (FVS) is a division of the British Veterinary Association which is the representative body for veterinary surgeons. FVS has a membership of over 90 including 65 veterinary surgeons, many of whom have a long standing professional association with aquaculture. We have confined comments to those areas where veterinary surgeons have significant and legitimate interest. These comments essentially reiterate the points made by FVS in our response to the consultation exercise.

Parasite Control

1. Frontline fish health services in Scottish aquaculture are provided by veterinary surgeons, this is no different from any other livestock sector. It is not clear how regulation will bring any benefits in parasite control. If it is believed that sea lice management is less good than it could be, then efforts should be directed at those areas which presently hamper best practice, namely lack of availability of a range of effective medicines and constraints on consents to discharge.

2. What expertise will the proposed regulator (FRS) bring which does not exist already? How is the staff qualified to deliver advice on fish health and welfare? There is already in place an infrastructure delivering practical health care to farms on a daily basis, provided by experienced professionals. It is not clear what additional competence, experience and expertise will be brought to this area by the regulator. The idea that `spot checks` can form part of a lice control *strategy* cannot be defended.

3. The proposal to grant powers to the regulator to enforce treatment has far reaching implications and is of dubious value. At present all of the available medicines for sea lice are in the Prescription only Medicines (POM) category (now POM-V). They may only be prescribed by a veterinary surgeon acting to protect the health and welfare of animals under his care. Along with this right to prescribe come ethical obligations, legal liabilities and a duty of care. Treatment decisions are necessarily complicated and require a close working relationship with the farm which goes beyond a simple reaction to a lice count. It is not clear what additional competence, experience and expertise will be brought to this area by the regulator. How will the regulator enforce mandatory treatments when the right to prescribe lies elsewhere? What liability will the regulator assume for his actions? We do not believe that there is any precedent for such clinical regulatory oversight in veterinary practice.

The management of sea lice has improved out of all recognition in the last 15 years. This has been the result not 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 novel actives have reached the market since 1998 and their use is seriously curtailed by conditions attached to consents to discharge. Is it the intention to grant to the regulator the power to over-ride the Controlled Activity Regulations? Given the regulatory burden confronting pharmaceutical companies there is not a development pipeline likely to produce for the market, novel products. This undermines attempts to execute a control strategy which both manages the lice burden and mitigates the risk of resistance. The greatest risk of encouraging resistance is frequent treatment which selects for resistance and it is accepted as a principle of parasite control that over vigorous use of medicines in pursuit of a goal is undesirable. The relationship between lice burdens on farmed fish and the risk to wild salmonids has not been established let alone quantified.

4. The regulator intends to take powers to engage third parties to undertake treatment. This proposal raises issues of liability and indemnity. Where are the contractors who will be available to carry out treatments under the direction of the regulator? How will they gain access to a farm and where will they find insurance to cover their liability in the event of a problem? Will they bear responsibility for the welfare of the fish they are treating?

5. A single enforced treatment does not constitute a strategy, it is short term measure with a specific objective in mind which may have little or nothing to do with the health and welfare of the fish. It is not clear if the target lice level is that referred to in the Code of Good Practice (CoGP) or to some other as yet undisclosed figure. As stated above, over-treatment in pursuit of a target not clinically relevant increases selection pressure for resistance which is contrary to the interests of both the aquaculture and conservation sectors.

6. The pitfalls described above of appointing a regulator with the powers proposed in relation to sea lice, apply equally to powers to direct treatment for notifiable diseases. Whatever treatments (which could only be vaccines) might exist in the future for viral diseases would require to be prescribed by a veterinary surgeon. It is extremely unlikely that novel viral vaccines would be other than POM.

Compensation

1. There is no rational reason to treat fish farmers differently from terrestrial farmers in respect of compensation for compulsory slaughter. It is questionable whether such a scheme should discriminate between farmers who comply with the CoGP and those who do not. The purpose of a scheme should be to promote compliance with national disease control and to increase investor confidence.

Fish Movements

1. Industry shares the desire to mitigate the risk of introduction and spread of disease. Government proposes to *manage* not just *authorise* all movements. This is a major responsibility given the complexity of operational details involved in fish movements. Is the regulator proposing to certify and attest to facts relating to fish health by a positive release process?
2. How is the regulator going to determine, for the purposes of regulating/authorising/certifying each movement of fish, that the population is not harbouring a potentially serious pathogen while appearing clinically healthy?
3. `Standstill` might not be an appropriate or practicable response to a novel disease and this is too sweeping a power. Previously unseen disease conditions have appeared in the last ten years and have been dealt with in the absence of regulation.

Freshwater fisheries - Gyrodactylus salaris

1. 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.

Summary

- Regulation is inappropriate in the context of parasite control. It is doubtful that these proposals will bring any significant benefits. If government wishes to improve matters it should exercise powers where most good will result i.e. expedite the availability of novel therapeutants and lighten the regulatory burden which limits effective deployment of available medicines.
- There is no justification for proposing powers to control any parasites since effective management of any parasites in livestock involves a complex set of factors of which a treatment decision is but one. The powers proposed in the Bill duplicate the existing health service provision with no clear benefits to farmers or the conservation lobby. Sporadic intervention by inspectors will have little impact.

- The Bill proposes that the regulator takes powers to collect data on lice monitoring. Most farming companies already do this and have supported the science which has provided the basis for logical assessment of lice burdens and treatment decisions. It is not clear how the regulator will use any data collected other than to enforce single treatments which serves no useful strategic purpose.
- The industry has expressed satisfaction with existing health service provision through farmers` relationships with their own veterinary surgeons who exercise their legal and ethical obligations in the interests of fish health and welfare.

Agenda Item 1

**Environment and Rural
Development Committee**

4 October 2006
ERD/S2/06/28/1c

SUBMISSION FROM THE ROYAL COLLEGE OF VETERINARY SURGEONS

Background: RCVS, veterinary surgeons and fish health

1. The Royal College of Veterinary Surgeons is the regulatory body for veterinary surgeons in the UK, responsible under the Veterinary Surgeons Act 1966 for supervising their education and professional conduct.
2. The 1966 Act makes it unlawful (subject to a number of exceptions) for anyone other than a veterinary surgeon to practise veterinary surgery. "Veterinary surgery" is widely defined, and includes the diagnosis of diseases in animals and the medical or surgical treatment of animals. "Animals" is not defined, except to the extent that the Act says that the term includes birds and reptiles. When the Bill which became the 1966 Act went through Parliament it was clearly the intention that it should not cover fish, but it is debatable whether the words of the statute gave effect to that intention. Fish are plainly animals, and there is nothing in the Act to exclude them from its scope. Further, the enactment of the Medicines Act 1968 two years later brought in the regulatory regime for medicines under which certain products for the control of fish disease can only be prescribed by veterinary surgeons. RCVS is seeking legislation to bring the 1966 Act up to date and has proposed that a new Act should cover non-human animal species in general.
3. Whatever the legal situation may be, fish farms these days are advised by veterinary surgeons. Most farmed salmon are produced under the care of veterinary surgeons employed by the producer.

The Aquaculture and Fisheries (Scotland) Bill

4. When the Scottish Executive issued its consultation paper in December 2005 RCVS expressed concern over the proposal which is now embodied in section 6 of the Bill. This provides for the service of enforcement notices on fish farms. The purposes for which such notices may be served include the prevention, control and reduction of parasites, and a notice may require the taking of such steps as the Ministers consider necessary. RCVS recognises the need for reserve powers to intervene, but there is an issue over powers to direct veterinary treatment.
5. Paragraph 14 of the consultation paper made it clear that the steps which an enforcement notice might require could include "directing mandatory therapeutic treatment". In responding to the consultation RCVS offered the following comments:

"A veterinary surgeon who has a fish farm under his or her care is responsible for advising on the control of parasites. Non-veterinarians would not be qualified to substitute their judgment for that of the veterinary surgeon, and other veterinary surgeons who did not have the fish under their care could not properly do so.

There would be a specific problem if the Regulator took the view that treatment with a prescription-only medicine in the POM-V category was called for. Paragraph 3 of Schedule 3 to the Veterinary Medicines Regulations 2005, SI 2005/2745, provides that such a medicine may only be supplied on veterinary prescription, and paragraph 5 requires the prescribing veterinary surgeon to carry out a clinical assessment of the animals first and have them under his or her care. A veterinary surgeon employed by the Regulator would not be able to prescribe a POM-V product without having the fish under his or her care. If, moreover, the veterinary surgeon who was responsible for the fish thought that the medicine in question ought not to be used it would be wrong for him or her to prescribe it.

An effective Regulator must clearly have powers to ensure that fish farms keep parasites under control, in order to protect other farmed fish and wild fish. The Regulator's role ought, however, to be limited to specifying the results to be achieved, leaving it to the operator to take veterinary advice on how to achieve them."

6. The Executive's Response to Consultation of June 2006 did not address this question. From subsequent discussions RCVS understands that the Executive's Fish Health Inspectorate, which does not currently employ any veterinary surgeons, would not intend to impose particular treatments. It is nevertheless a matter of some concern that section 6 of the Bill provides such wide powers.

SUBMISSION FROM THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

Aquaculture and Fisheries (Scotland) Bill

I write regarding the Call for Evidence in relation to the above Bill passed to SEPA on 30 June 2006. As you may be aware, SEPA has been involved in various stakeholder discussions held during the preparation of the Bill. SEPA also submitted a substantive response to the formal consultation on the draft Bill and this response is attached for your information as an Annex to this letter. I have not therefore revisited these comments here but I take this opportunity to re-iterate SEPA's broad support for the Bill.

The Bill contains a wide range of provisions some of which are beyond SEPA's direct remit however, there are some areas of interest to the Agency particularly the provisions with respect to Aquaculture and the possible outbreak of *Gyrodactylus salaris* in Scotland. Addressing the questions in the Call for Evidence dealing with these areas in turn:

Aquaculture Regulations of Parasites and Escapes

The Bill proposes the establishment of a regulatory regime with respect to sea lice infestations on farmed stock and escapes from farm cages. SEPA understands that Fish Health Inspectorate staff will be responsible for operating the regime. Sea lice and escapes have been identified as issues lying outside current regulatory control and therefore the proposals as set out in the Bill are necessary, appropriate and are welcomed by SEPA. The introduction of a regime which aims to ensure the better management of parasite infestations and a reduction in escapes will have significant benefits for wild fish populations and the component of the rural economy that depends in whole or in part upon such fish for their livelihood.

Definition of "parasite"

SEPA advised in the formal consultation response that the definition of parasite should be wider than merely sea lice affecting salmonids but accepts that in terms of the current threats to both farmed and wild fish that these specific species of sea lice are probably the most important pathogens.

Powers of inspectors

SEPA supports the proposals in the Bill for Inspectors to have powers to require the submission of data, powers to inspect fish and premises, direct treatments or arrange for third parties to undertake treatments. In order to ensure that the new provisions with respect to aquaculture are credible and enforceable, it is important that inspectors have an appropriate array of powers such as those set out in the draft Bill. It will be

important that adequate offence provisions must be drafted accordingly to make it an offence punishable in court to fail to comply with the terms of a notice served by the regulator under this legislation.

Gyrodactylus salaris (Gs)

SEPA is a member of the *Gyrodactylus salaris* Working Group and has contributed to the production of the Gs Contingency Plan. SEPA recognises the threat posed by Gs to Scottish salmon populations and the need for a clear and coherent strategy for dealing with the parasite should it arrive. SEPA supports the regulations proposed in the Bill for dealing with Gs insofar as the Agency's duties under the Water Environment Water Services Act 2003 and the Water Environment (Controlled Activities) (Scotland) Regulations 2005 allow. The arrival of Gs in Scotland would have significant implications for all users of the water environment, biodiversity and businesses dependant upon water abstraction, angling and other forms of aquatic recreation and proposals to contain or treat the parasite may in the short or medium term pose a threat to the interests of those sectors. The inclusion of an enabling power in the Bill giving the Scottish Ministers the power to establish a scheme and make payments to those parties who suffer losses as a consequence of the Scottish Ministers exercising their powers in relation to all aspects of Gs is therefore welcomed.

As regards the wider provisions of the Bill dealing with angling and other issues, SEPA refers to the comments made at the earlier consultation stage as attached in the Annex below and offers no further comment at this point. In the interest of transparency SEPA is content that this response in its entirety be made freely available to the public.

Annex

AQUACULTURE AND FISHERIES BILL CONSULTATION (ORG13-A1785)

1. I am writing in response to the above consultation which is of considerable interest to SEPA given the Agency's function as one of the primary regulators of the Scottish aquaculture industry. SEPA has contributed significantly to the development of the Strategic Framework for Scottish Aquaculture (SFSA) and recognises the important contribution that these Bill proposals will have in realising the vision in the SFSA. In a general sense therefore the proposals outlined in the consultation are welcomed by SEPA.
2. SEPA has a particular interest in the sections of the consultation dealing with aquaculture issues and *Gyrodactylus salaris* as these directly impinge upon the Agency's regulatory role. However the other sections dealing with broader fish health issues and wild fisheries are also of some interest particularly given SEPA's broadening interest in the health and viability of wild fish populations as a means of defining the quality and status of waterbodies under the Water Framework Directive.

3. The issues of escapes of farmed fish and the impacts of sea lice have caused concerns amongst all groups with an interest in fish farming or wild fisheries but have so far remained outside the regulatory framework in Scotland. The proposals in the consultation address this anomaly, will lead to the better protection of salmonid stocks and are welcomed by SEPA.
4. The control of sea lice is an area which is of particular interest to SEPA given that the means of controlling infections includes the use and discharge of medicines into the marine environment. Significant strides have been made in controlling sea lice on farmed stock and therefore the risk of cross-infection to wild fish through the Tripartite Working Group initiative. SEPA recognises that the importance of the recently published Code of Good Practice for Scottish Finfish Aquaculture (CoP) in further addressing this issue. SEPA however considers the threat posed by sea lice to be of significant enough importance that a regulatory backstop such as that suggested in the consultation is essential in order to ensure as broad a compliance with the identified objectives as possible.
5. SEPA also recognises that there may be circumstances in which the regulator attempting to deal with a sea lice infection at a fish farm may issue a notice to treat the farm stock which the operator may be unable to comply with because of conflicting conditions in a licence issued under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) limiting the quantity or rate of release of medicines into the environment. SEPA acknowledges there is a need to reconcile these conflicting requirements and accepts that, at the limited number of sites likely to be involved, and in the interests of protecting wild salmonid fish stocks, strict adherence to the CAR license conditions may need to be set aside on a temporary basis, following appropriate consultation with SEPA. The inclusion of provisions either as a consequential amendment to CAR or through the application of appropriate clarifying license conditions appears to offer appropriate safeguards. SEPA therefore accepts the need for such provisions to be made as essential in dealing with the difficult problem of sea lice infections, and will develop contingencies to ensure these situations are not repetitious in nature.
6. SEPA is currently considering the implications of the new European Fish Health Directive and it is clear that this new piece of legislation may have implications for a number of the provisions set out in the consultation document.
7. In responding to the consultation I have endeavoured to answer the questions as they are presented in the document and where relevant offering comments on the issues. There are however a number of questions which lie outwith SEPA's scope of interest and where no comment is offered. In the interest of transparency SEPA is content that this response in its entirety be made freely available to the public.

Part I Aquaculture

Question 1

Do you agree that FRS/ SEERAD would make the most suitable Regulator?

8. Yes – SEPA believes it is essential that sea lice be dealt with as a fish health issue and therefore SEPA supports the proposal that the Fish Health Inspectorate (FHI), part of Fisheries Research Service (FRS) is the most appropriate regulator in association with SEERAD. The FHI is already closely involved with the aquaculture industry; it is an identified authority on fish disease and fish pathogens, and undertakes regulatory functions on SEERAD's behalf. In addition, FRS has a network of inspectors in place and has the required administrative systems to undertake the new duties outlined in the consultation document. Inevitably additional resources are likely to be required to fulfil the proposed new duties however given the existing FHI structures and expertise the need for additional resources will be considerably less than the costs of establishing a new agency.
9. Some stakeholders have suggested that SEPA may be a suitable candidate to assume this role. SEPA however does not support this view as it is not sensible to split responsibility for regulation of fish diseases between SEPA and FRS. This would simply lead to confusion and duplication of expertise and effort in monitoring and enforcement visits. In addition, SEPA presently has limited specialist expertise in sea lice biology or epidemiology.

Question 2

Should there be an enabling power to permit the option of charging in the future?

10. Yes - the levying of additional charges upon regulated industries is always a contentious issue and given the commitment by the Scottish Executive to reduce the regulatory burden upon the aquaculture industry it may be difficult to justify an extra charging burden initially. Adequate resources are however a key factor in effective regulation and it is reasonable to expect that those regulated should contribute to the cost of operating a regulatory regime. Therefore, powers to permit charging should be included in the Bill. A charging regime which levied charges on fish farm operators failing to meet objectives on providing data, or effectively treating sealice infections may provide added incentives to encourage compliance.

Question 3

Should the Bill make provision for parasites in general, or restrict itself only to sea lice?

11. The Bill should make provision for parasites in general - SEPA considers the issue of sea lice and the possible interaction of lice arising from farms with wild stocks to be the major environmental concern relating to the aquaculture industry which has remained outside the regulatory framework in Scotland. If practical however it would be prudent to make the provisions of the Bill applicable to parasites in general rather than restrict the scope of the Bill to sea lice alone. The culture of new species of fish may give rise to novel, as yet unknown, parasite infections and therefore the Bill should include wider provisions to address this need if necessary.

Question 4

Should the Regulator have both advisory and enforcement functions?

12. Yes – modern regulation requires a range of approaches including both the provision of advice and the use of enforcement, as far as this is possible without conflict arising from these two roles.

Question 5

What powers should the Regulator have as regards the inspection of data and investigation of potential parasite problems on farms?

13. SEPA supports the need for regulatory powers to inspect and obtain data on sea lice levels at a farm. SEPA also supports the regular publication of sea lice data perhaps in a regional or anonymised format for the whole of the Scottish fish farming industry as is done in some competitor countries such as Norway and Ireland.

Question 6

Should the Regulator have the power to direct treatment?

14. Yes – SEPA strongly supports the principle that the regulator should have the power to direct treatments for sea lice. Such powers are essential if the provisions of the Bill with respect to sea lice are to be effective. As discussed above, SEPA is aware that there are potential conflicts with other legislation however these are not considered to be insurmountable and without such powers the aim of introducing greater control of sea lice infections at fish farms in Scotland is likely to be fruitless. Consultation between the regulator and SEPA is likely to be a key part of this process and should minimise the likelihood of conflict between the new regulatory regime and existing legislative requirements.

Question 7

Should the Regulator have the power to arrange treatment through a third party contractor where a direction to treat has not been complied with?

15. Yes – although in certain cases the recovery of the costs of such treatment are unlikely to be guaranteed. Provisions to permit this in terms of regulation 5, and regulation 9(6) of CAR requires further consideration in such circumstances.

Question 8

Should the Regulator have the powers to direct treatment for notifiable diseases?

16. Yes – if the principle of directing treatment of sea lice infections which may pose a risk to wild stocks is to be adopted then the same approach should apply to other diseases which may put non-farmed fish at risk through the release of infective agents from the cages of a fish farm.

Question 9

Should escapes proposals apply to all the farm types outlined above?

17. Yes - the proposals should apply to all finfish sites other than re-stocking hatcheries. The major risks here may be “genetic” pollution and spatial competition. The potential damage to brown trout populations from a release of rainbow trout in

freshwater catchments may be comparable to an escape of farmed salmon into a sea loch and it is recommended that both freshwater and marine farms should be included within the provisions of the Bill. Restocking hatcheries will in almost all cases hold fish native to the stream on which they are based posing no increased risk to indigenous populations.

Question 10

Should shellfish farms and restocking hatcheries be exempted?

18. Yes – for the reasons outlined above. Farmed shellfish are generally derived from indigenous stocks so escapes pose no environmental threat in these circumstances.

Question 11

Do you agree that the Regulator should have powers to inspect and direct with respect to preventing escapes?

19. Yes – a robust regulatory system requires to be supported by the regulator having rights to inspect and powers to direct operators to take remedial or preventative action for example through the issue of formal Notices. The regulatory authority may also benefit from the power to duly authorise specific third parties where perhaps specialist engineers may need to enter the premises or installation and carry out work on the regulator's behalf.

Question 12

Do you agree that the Regulator should have a role in improving containment to prevent fish escapes?

20. Yes – as discussed in relation to Question 4, effective regulation involves both advisory and enforcement roles and where the regulator is for example aware of changes in procedures or new or more effective techniques which may lead to improvements in containment then these should be brought to the operators attention through the provision of advice or ultimately via the issue of a Notice should this be required.

Question 13

Should the Executive introduce a strict liability offence for escapes from fish farms?

21. Yes – creating a new offence provides the regulatory backstop required to encourage the adoption of best practice with respect to this issue. Although the burden of proof is lighter for a strict liability offence, there is still a requirement to prove that the accused party is responsible for the action or neglect that caused the offence. This poses a challenge for the regulator in the collection of evidence required to prove the source of any escape of fish unless the new powers are supported by additional requirements such as the marking or tagging of fish in a way that allows the origin of escaped fish to be reliably traced.

Question 14

What elements should be addressed in containment plans?

22. The list provided in the consultation document appear to be comprehensive, the inclusion of a requirement for safe working platforms is welcomed as a health and safety benefit to SEPA staff and other regulators required to conduct inspections of cage fish farms sites.

Question 15

Do you have any views on the above [escapes notification] proposals?

23. The proposed requirement to notify Scottish Ministers of escapes closely resembles the existing notification requirements. SEPA is supportive of this approach, in particular, the additional requirement to include details of medicines administered to the escaped fish. This latter step will allow health authorities to warn the public where escaped fish have been recently treated with certain medicines and may pose a risk to the health of consumers thus reducing the likelihood of such fish entering the human food chain.

Question 16

Do you agree that the Regulator should have powers to investigate escapes and suspected escapes from fish farms whatever the source of the information?

24. Yes - a robust regulatory system requires that the regulator has powers of entry and inspection including the right to inspect aquacultural premises / installations in response to third party information. This is essential to address the non-compliance with reporting requirements.

Question 17

What data, in addition to the production survey data, do you believe are appropriate to submit?

25. SEPA strongly recommends that fish farmers should submit annual data returns summarising their sea lice count data and associated treatment activities. This will assist the regulator in planning monitoring strategies and focusing regulatory intervention on companies failing to comply with sea lice monitoring requirements or in carrying out effective treatments when infection thresholds are reached. It is fundamentally important that the regulator is provided with sufficient data to do the job effectively.

Question 18

Do you agree that financial assistance be given to fish farm operators to relocate where there is a clear environmental benefit in doing so?

26. Yes – if there is sufficient justification to re-locate fish farm sites, for example in terms of a need to protect important wild salmonid stocks, then financial support may be appropriate to assist the operator make preparations to obtain the necessary authorisations to allow the relocation to occur. The work of the relocation working group may in time give rise to criteria by which the desirability to move a given site can be objectively assessed. Where a given site poses a

significant enough risk to the environment in its broadest terms then assistance should be provided.

Question 19

Do you agree that the Scottish Ministers should have powers to close fish farms where there is a clear public interest to do so and where owners are not in a position to relocate?

27. Yes - this question is related to Question 18 given that there may be circumstances where a farmer is unable or unwilling to relocate a site even with financial assistance. In such extreme cases it may be appropriate to consider "closing" a fish farm if there are significant reasons for doing so. SEPA is of the opinion however that this approach should be seen as an option of last resort with consideration given to including a reasonable lead-in period thereby allowing the company concerned to make contingency plans.

Question 20

Under what circumstances might it be useful for the Scottish Ministers to have discretionary powers to pay compensation to fish farm operators?

28. Parallels are often drawn between outbreaks of certain diseases in terrestrial farm animals leading to compulsory slaughter (for example swine fever and foot and mouth disease) where compensation is paid to the farmers involved and fish farming where no compensation is paid in relation to compulsory slaughter following for example an outbreak of Infectious Salmon Anaemia (ISA). There are diseases or infections such as ISA and perhaps *Gyrodactylus salaris* which might require compulsory slaughter of stock and it may be possible to justify compensation in such cases. With regard to site closures, SEPA does not believe that payment of compensation would be justified as a matter of course, even where a site is compulsorily closed, provided there is an adequate lead-in period, perhaps extending to 6-8 years, to permit the business to plan for the closure.

Question 21

Do you agree with the need to regulate live fish movements out of, and between, marine farm management areas?

29. SEPA has no comment to make on this aspect.

Question 22

Do you agree there is no general need to restrict live fish movements between freshwater fish farms?

30. SEPA has no comment to make on this aspect.

Question 23

Is the proposed power to bring in a national standstill provision in case of a novel disease appropriate?

31. SEPA has no comment to make on this aspect.

Question 24

Should the Regulator be empowered to licence the transfer of fish by wellboats in Scotland?

32. SEPA has no comment to make on this aspect.

Part II Freshwater Fisheries

Question 25

Should the Bill include enabling powers to eradicate Gyrodactylus salaris where the circumstances are appropriate?

33. Yes - SEPA has been involved in the work of the GS working group and recognises that in certain circumstances it may be appropriate to attempt eradication of the parasite most probably through the destruction of host fish. This would mirror the approach taken in Norway however, the situation in Scotland with respect to how rivers are utilised by a range of users and the legislative background pertaining to waterbodies is very different to that in Norway. Scottish rivers are often used for a range of recreational purposes, for domestic, agricultural and commercial water abstractions, and are home to sensitive species, perhaps most notably the freshwater pearl mussel. These issues pose considerable challenges to any proposal to eradicate GS. The number of watercourses where such an approach may be appropriate might in fact be very limited. In situations where these difficulties can be overcome, eradication is perhaps the best means of dealing with an outbreak of GS.

Question 26

Should the Scottish Ministers have the power to apply chemical treatments to watercourses for the purpose of eradicating GS?

34. Yes – SEPA's role in enforcing water pollution legislation would make it very difficult for the Agency to authorise the widespread use of toxins to kill fish in rivers in Scotland in view of the likely damage to non-target species and therefore, an over-riding power is required. It is appropriate that such powers reside with Scottish Ministers.

Question 27

Should the Scottish Ministers have the power to apply chemical treatments to freshwater farms for the purpose of eradicating GS?

35. Yes – freshwater fish farms within an infected catchment could provide a significant reservoir of hosts for the parasite and it is therefore essential that such sites can, if required, be treated to remove hosts or parasites that may lead to infection of wild fish stocks. As with question 7 above, further thought will be required to address the requirements of CAR.

Question 28

Should the Scottish Ministers have the power to authorise the removal of dead and moribund fish from watercourses for the purpose of eradicating GS?

36. Yes – a failure to remove dead and moribund fish may lead to such fish being ingested by scavenging birds and mammals posing a risk of further spread of infection. It is important however that the disposal of these dead fish is considered in drafting new legislation, in particular how the new powers might interface with the Animal By-Products Scotland Regulations 2003 and relevant waste management legislation.

Question 29

Should the Scottish Ministers have the power to remove dead and moribund fish from freshwater farms for the purpose of eradicating GS?

37. Yes – for the same reasons given in SEPA's response to Q. 28 above.

Question 30

Do you agree with the proposal for the Scottish Ministers to impose standstill notices?

38. Yes – on discovery of an outbreak of GS it is essential that movements of fish be halted until the extent of the outbreak is known and the fate of any fish removed from the infected catchment is determined. Such fish may require to be destroyed or returned to the source farm for subsequent destruction to minimise the risk of spread of GS. Again, it is important that the disposal of these dead fish is considered in drafting new legislation, in particular how the new powers might interface with the Animal By-Products Scotland Regulations 2003 and relevant waste management legislation.

Question 31

Do you agree with the powers to erect barriers and close fish passes?

39. Yes – the erection of barrier is an activity which may require to be licensed under CAR however where such barriers are intended to stop the passage of migratory fish SEPA must assess the relative merits of the case. Conflicting interests between salmon and sea trout here may present challenges for example. CAR provisions should enable Scottish Ministers to intervene on contentious issues once SEPA has come to a conclusion.

Question 32

Should Scottish Ministers and their agents have powers of compulsory access?

40. Yes – effective treatment of an outbreak of GS might be hindered by a landowner who was unwilling to grant access to agents acting on behalf of the Scottish Executive. Where the treatment of GS is considered to be in the public interest powers of access, inspection and remediation are essential.

Question 33

Do you agree with the power to require clearance of fish farms in these circumstances?

41. Yes -freshwater fish farms within an infected catchment could provide a significant reservoir of hosts for the parasite. It is essential that stock at such sites can, if required, be cleared to remove hosts or parasites that may lead to infection of wild fish stocks in circumstances where an effective treatment cannot be achieved.

Question 34

Should powers for mandatory disinfection of recreational gear be introduced?

42. Yes – if it is practical to introduce such powers and if they will be effective then this option should be seriously considered. Anglers arriving to fish on Scottish rivers may however enter the country from a number of ports and airports both in Scotland and England and thus it may be difficult to enforce such legislation at the port of entry without similar provisions being introduced in England. Such an approach is however a robust means of dealing with the risk of introduction of GS via recreational equipment. Disinfection whether introduced as mandatory via powers in the Bill or as some form of best practice guidance should feature prominently in the scope of measures for preventing the spread of GS.

Question 35

Do you agree with the proposal to make Liaison Committees mandatory?

43. SEPA has no comment to make on this aspect.

Question 36

Do you agree with the proposal to remove the requirement to advertise in the Edinburgh Gazette?

44. SEPA has no comment to make on this aspect.

Question 37

How else should protection orders be publicised, beyond the requirement set out in the 2003 Act that the applicants give notice in such other newspapers as the Scottish Ministers direct?

45. SEPA has no comment to make on this aspect.

Question 38

Do you agree with the proposal that protection orders need not cover contiguous fisheries?

46. SEPA has no comment to make on this aspect.

Question 39

Do you agree?

47. SEPA has no comment to make on this aspect.

Question 40

How should buyers find out/be told that protection orders affect their property and be alerted to what their responsibilities are?

48. SEPA has no comment to make on this aspect.

Question 41

Should the Bill make provision to regulate the movement of fish into inland waters?

49. Yes – the structure of populations of native wild fish may be seriously impacted by the introduction of non-native fish into inland waters. Such introductions have often been inadvertent for example through the escape of live bait and the implications

are in many cases not yet understood however, the growing importance of fish stocks as a measure of waterbody quality means that the movement of fish into inland waters should be more closely regulated.

Question 42

Do you agree with the proposals to permit the use of rod rests?

50. SEPA has no comment to make on this aspect.

Question 43

Are the limits on the number of rods correct?

51. SEPA has no comment to make on this aspect.

Question 44

Do you agree with the ban on live vertebrates as bait?

52. Yes – the proposals to ban the use of live vertebrates, principally fish accords with the need to regulate fish movements into inland waters discussed in Question 41 and therefore such a ban is justified as a means of protecting natural fish stocks.

Question 45

Do you agree with the proposals to prohibit the use of tailers, gaffs, pike gaGS and landing nets with knotted nets?

53. SEPA has no comment to make on this aspect.

Question 46

Do you agree that foul-hooking should be clearly prohibited in law?

54. SEPA has no comment to make on this aspect.

Question 47

Do you agree with the proposals to make provision empowering the Scottish Ministers to make orders specifying annual or weekly close times for freshwater fish?

55. SEPA has no comment to make on this aspect.

Question 48

Do you agree with this approach?

56. SEPA has no comment to make on this aspect.

Question 49

Do you agree that the current law prohibiting the obstruction of salmon during their spawning runs should be extended as described?

57. Yes – the law protecting salmon during their migration should be extended to all times of the year to ensure these fish are not impeded during their migrations whenever they occur. However, it must be recognised that there may be a need on an exceptional basis for installation of temporary structures or extensive river maintenance activities which may unavoidably obstruct the passage of migrating fish for a limited period. Such activities are rare and in any case require a license

under CAR and SEPA can impose license conditions to minimise their impact and limit the duration of the obstruction.

Question 50

Should the Executive widen the existing passage of salmon rules to cover all freshwater fish at all times of year?

58. Yes – rivers can be used as a conduit by a range of fish species to complete their life cycle and the law protecting salmon during their migration should be extended to other species and to all times of the year to ensure these fish are not impeded during their migrations.

Question 51

Do you agree with the extension of the definition of fish?

59. Yes – non-native freshwater crustaceans such as the signal crayfish and Chinese mitten crab may pose a significant threat to indigenous species and indeed the structure of watercourses and it is important that powers are available to deal with such threats.

SUBMISSION FROM THE CROWN ESTATE

Role of The Crown Estate in Aquaculture

The role of The Crown Estate in aquaculture is at present two-fold. Our primary responsibility is as owner of the seabed and around half the foreshore in the UK. We lease areas of seabed and foreshore for commercial operations, including salmon and shellfish farm site development. Our secondary role is that of non-statutory planning authority for aquaculture development. This will change when formal planning powers are given to local authorities by the Scottish Executive, hopefully later this year.

Research and Reinvestment

The Crown Estate has reinvested over £2.5 million of fish farming revenue into research, development and education-related projects since commercial rents were first introduced in 1987. The reinvestment strategy has aimed to improve the viability of fish farming with a view to securing a long term, economically and environmentally sustainable future. The Crown Estate is a main contributor of funds to the Scottish Aquaculture Research Forum (SARF),

Development Measures

In addition to support through the Aquaculture Research Fund, we are working closely with the salmon industry on a range of development measures aimed at restoring confidence within the industry itself and amongst both consumers and the financial community. A fund of up to £600,000 was made available and projects completed include:

- A marketing initiative in partnership with Scottish Quality Salmon, launched in summer 2004 emphasising the health benefits derived from eating farmed salmon.
- 100% funding for an industry award scheme sponsored by The Crown Estate and highlighting areas of good practice within the salmon farming industry with particular emphasis on environmental performance and business entrepreneurship.
- Significant funding for preparing and publishing the Code of Good Practice for Scottish Finfish Aquaculture, launched earlier this year by the Deputy Minister for Environment and Rural Affairs.

Part 1 – Fish Farms and Shellfish Farms

Building on the work of the Tripartite Working Group to resolve conflicts between the salmon aquaculture industry and wild fisheries interests the

establishment of Area Management Agreements has been an important step forward. This part of the Bill consolidates this work and is helpful. In particular:-

- Although The Crown Estate is not responsible for the control of parasites we are fully supportive of initiatives that work towards the maintenance of a healthy stock of both farmed and wild fish whilst at the same time promoting a sustainable aquaculture industry. One example of this is our involvement in the Tripartite Working Group (TWG) project where the TWG Project Manager is based on secondment at our office in Bell's Brae.
- Proposals relating to the availability of site specific information about the prevention, control and reduction of parasites are welcome. It would be helpful if the definition of "parasite" were to also include the genus *Argulus*. This species of freshwater louse can present a problem in freshwater fisheries and may impact upon salmon and sea trout in fresh water.
- The powers that will enable the inspection of fish farms are welcome. However, this section of the legislation will only be effective if penalties for infringement of notices are sufficient to act as a deterrent. It is not clear which organisation is to be responsible for carrying out the inspections or what standards they would be working to.
- There is no provision in the Bill for there to be an obligation on the part of fish farm managers to notify the inspectorate in the event that an escape of caged fish occurs. A current example of the need for this occurred in the Clyde where fishery managers have no idea where the recent influx (September '06) of escaped fish have come from or the number that have escaped.

Part 2 - Gyrodactylus Salaris (Gs)

- The effect of the regulations on the containment and in particular the treatment of Gs would have a major impact upon businesses, especially on biodiversity and other water users (eg water abstraction for the public supply as in the case of the Spey). However, an outbreak of Gs would have such devastating consequences for angling and economic activity generally that measures as draconian and with wide ranging knock-on implications as proposed would seem to be unavoidable if there is to be any prospect of preventing Gs spreading and of then being eradicated.

Part 3 – Fisheries

The preparatory work for this legislation was undertaken through The Scottish Freshwater Fisheries Forum. The fact that it follows fairly closely the proposals outlined in the consultation paper issued in December 2005 means that the proposals in this aspect of the bill are generally to be welcomed.

- Proposals on welfare and conservation measures are generally welcome and appropriate although there is concern that legitimising the

use of four rods by anglers when fishing for species other than salmonids has the potential to create problems where anglers may claim to be attempting to catch coarse fish but in fact are not. Additionally, it would have been helpful if in this section there were a prohibition of the sale or purchase of monofilament gill nets.

- The proposal to control the unauthorised introduction of fish to inland waters is welcome.
- It seems unlikely that the proposed amendments to Protection Orders for freshwater fish will have a marked impact upon access to fishing. There appears to be an element of misunderstanding about the present arrangements which have been criticised on occasions without justification.



Aquaculture and Aquatic Animal Health Programme



Introduction

The FRS Aquaculture and Aquatic Animal Health Programme aims to support a healthy and sustainable Scottish aquaculture industry and to safeguard the health of wild fish stocks, through regulation and scientific advice supported by high quality research.

Cultivated and wild stocks of fish are routinely inspected for the presence of particular diseases and parasites. Where a notifiable disease is confirmed, measures are implemented to minimise any impact on farmed and wild stocks and to reduce the spread of disease. A team of fish farm inspectors, based at Aberdeen visit fish farms and carry out health testing of fish and shellfish. This helps to maintain the high health status of Scottish aquaculture. The inspectors also regulate trade in live fish and shellfish to ensure that disease is not imported from other countries with a lower fish health status.

Staff maintain the national register of fish and shellfish farms, and provide advice to the Scottish Executive on fish farming matters, and especially on appropriate measures to control infectious diseases. A diagnostic and advisory service is provided for fish farms and fishing proprietors, and health tests are carried out for export and broodstock certification. The inspectorate monitor compliance with the industry codes of practice on fish health and welfare, which helps to maintain the standard of husbandry and health across the industry.

The technical and administrative services provided by the Programme are backed up by an active research programme.

Current investigations are concerned with:

- A range of viral, bacterial and parasitic diseases affecting commercially important species;
- The development of new methods for diagnosing disease;
- The epidemiology of the major fish diseases;
- The immunology of fish, and their defence against disease;





- The development of new vaccines;
- The potential for the spread of disease between wild and farmed fish;
- The interactions of new species;
- The scientific basis for management of the coastal zone;
- Genetic manipulation techniques.

The Programme occupies a laboratory building at the east end of the Aberdeen site with a range of molecular biological, bacteriological, virological, parasitological, histological and aquarium facilities. A modular office building in the centre of the FRS Marine Laboratory site houses the Fish Health Inspectorate. Much of the Programme's experimental work takes place at the Marine Research Unit at Aultbea, on the west coast of Scotland, where salmon and other fish can be reared

under controlled conditions using a gravity fed fresh-water supply, and pumped seawater from nearby Loch Ewe.

FRS Marine Laboratory is a centre for the dissemination of information on aquaculture developments and techniques, and produces a range of information leaflets and reports including the annual surveys of Scottish fish and shellfish production.

The Programme collaborates widely with universities and institutes in the UK (Aberdeen, Glasgow, St Andrews, Plymouth, Stirling) and overseas (Crete, Norway, The Netherlands, North America, Denmark and Spain).

The FRS Marine and Freshwater Laboratories collaborate, both nationally and internationally with universities and other institutions with interest in marine, freshwater and fisheries science. *Information and literature about FRS and the scientific programmes are available from the FRS website at www.frs-scotland.gov.uk*



Providing Science that is Respected, Relevant and Responsive



FRS is organised into five scientific programmes of work, each with a broad aim, specific objectives, tasks, and targets. The objectives for each Programme are given below and information leaflets describing the function of each Programme are available separately.

Fisheries Management Programme provides sound and objective advice on the sustainable management of marine fisheries founded on a programme of research, monitoring and assessment of the marine resources around Scotland.

Aquatic Environment Programme protects the quality of the Scottish aquatic environment, aquaculture and fisheries, by undertaking a programme of monitoring and research in support of the provision of scientific advice and the enforcement of environmental legislation.

Aquaculture and Aquatic Animal Health Programme supports a healthy and sustainable aquaculture industry and safeguards the health of wild fish stocks through regulation and scientific advice supported by high quality research.

Freshwater Laboratory Programme monitors the state of Scottish anadromous and freshwater fish populations and undertakes a programme of research in support of the provision of scientific advice to both help protect fish and develop sustainable fisheries.

Marine Ecosystems Programme carries out research which will provide the scientific basis for an ecosystem approach to fisheries management, and which will allow FRS to deliver advice on specific issues relating to the sustainability of fisheries, conservation, and the impact of climate change on living marine resources.

Introduction

Fisheries Research Services (FRS) is an agency of the Scottish Executive Environment and Rural Affairs Department (SEERAD). The aim of FRS is to provide expert scientific and technical advice on marine and freshwater fisheries, aquaculture, and the protection of the aquatic environment and its wildlife. This is to ensure, as far as possible, that the policies and regulatory activities of Government are supported by full and up-to-date knowledge.

FRS achieves its aim by:

- conducting research, monitoring and surveillance;
- performing regulatory and enforcement activities;
- representing the Scottish Executive at national and international meetings;
- communicating issues and information to all stakeholders.





The scientific programmes are commissioned by Policy Divisions within SEERAD and other organisations including the Department for Environment, Food and Rural Affairs (DEFRA), the European Commission, and the Food Standards Agencies (FSA, FSAS). FRS and the Scottish Executive work closely with Scottish fishing and fish farming industries and wild fish interests. Collaborative initiatives include the Scottish Fisheries Inshore Advisory Group, the Industry/Science Partnership, the Scottish Scallop Advisory Committee, the Aquaculture Health Joint Working Group, the Tripartite Working Group and the Scottish Fisheries Co-ordination Centre. FRS also enjoys close links with universities, the Aberdeen Research Consortium (ARC) and other scientific institutions within Scotland and elsewhere in the United Kingdom. These contacts with other organisations, both national and international, are maintained through a range of collaborative research projects and studentships.

FRS comprises two main laboratories, the FRS Marine Laboratory in Aberdeen and the FRS Freshwater Laboratory near Pitlochry. Fisheries research in Scotland dates from 1882, when the Fishery Board for Scotland was established. In 1898 the Board established a marine laboratory and hatchery at the Bay of Nigg in Aberdeen. The Freshwater Laboratory originated as the Brown Trout Research Laboratory at Faskally in 1948. FRS overall now has more than 300 staff in scientific, technical, professional and support roles.

Research Facilities and Services

Shore-based activities at FRS Marine Laboratory agency headquarters in Aberdeen are conducted in well-equipped research laboratories offering a comprehensive range of analytical facilities. Other purpose built facilities include a range of marine aquaria. Sea-going investigations are conducted aboard the Laboratory's own research vessels FRV *Scotia* (68m) and FRV *Clupea* (32m) or from chartered commercial vessels. FRS Freshwater Laboratory is based in a modern facility on the banks of Loch Faskally near Pitlochry with a freshwater hatchery and aquarium at Almondbank. FRS also has field stations located at Montrose, Deeside and at Shieldaig and Aultbea on the west coast of Scotland.

Support Services provide engineering and electronic workshops, computing, graphics, media, library and a range of administrative functions in support of the FRS scientific programme. The well-established FRS libraries (at both the Marine Laboratory Aberdeen and Freshwater Laboratory Faskally) hold some 20,000 volumes.

The results of our scientific research are published in peer-reviewed journals, in several in-house publications and in a comprehensive range of information leaflets. FRS Annual Report and Accounts is also published each year.

Information and literature about FRS and the scientific programmes are available from the FRS website at www.frs-scotland.gov.uk



Freshwater Laboratory



The work of the Laboratory is carried out in liaison with Scottish District Salmon Fishery Boards, with independent fishery research trusts and foundations, with angling bodies, and with the Tripartite Working Group, a forum of wild and farmed fish interests also supported by the Scottish Executive. The Scottish Fisheries Coordination Centre is based at the Laboratory.



Introduction

The FRS Freshwater Programme is based at the Freshwater Laboratory, Faskally, Pitlochry and at ancillary facilities in Montrose (Angus), Deeside, Almondbank, (Perthshire) and Shieldaig (Wester Ross). The FRS Freshwater Laboratory is responsible for monitoring the status of migratory and freshwater fish populations in Scotland. It conducts research in support of scientific advice provided to the Scottish Executive in order to help protect fish and promote the development of sustainable fisheries. Laboratory staff also contribute to the salmon management activities of the International Council for the Exploration of the Sea and to the North Atlantic Salmon Conservation Organisation. Work on salmon and sea trout continues to form the majority of the research programme because of the high value of these species and their heavy requirements for stock management advice.

Current activities include:

- Monitoring the catches of salmon and sea trout in Scotland in order to detect changes and follow trends in abundance;
- Estimating the proportions of Scottish salmon populations caught in home water and high seas fisheries to assess the effects of fishing activities on spawning numbers;
- Assessing the long-term effects of both fishing and environmental changes on the abundance and structure of salmon and trout populations;





- Provision of forensic evidence and expert opinion in prosecutions of suspected poachers;
- Undertaking detailed investigations into the genetic differences among populations of salmon, trout and Arctic charr in order to establish appropriate limits for management units and the effects on wild stocks of fish escaped from farms;
- Developing improved techniques for estimating the abundance and diversity of fish populations;
- Assessing the distribution of juvenile salmonid and other freshwater fishes in Scottish fresh waters;
- Assessing the effects of the biological environment on freshwater fish populations, including the effects of fish-eating birds and other predators and competitors;
- Assessing the effects of physical and chemical changes in the freshwater and estuarine environments on fish populations, especially those brought about by water abstraction, pollution, land-use and climate change;
- Studying the development of individual fish and fish populations experimentally, to gain a clearer understanding of the responses of freshwater fish resources to different management regimes;
- Determining the biological status of introduced species, such as rainbow trout and brook charr, and the effects of the exotic North American signal crayfish on native fishes;
- Developing techniques for restoring stocks by habitat improvement or the release of hatchery-reared fish.

For further information on any aspects of the freshwater laboratory programme please contact the Director at the address below. Additional information is available from the FRS website at www.marlab.ac.uk



SUBMISSION FROM THE HIGHLAND COUNCIL

General comments:

Highland Council recognises the importance of the aquaculture sector and particularly the contribution made by the salmon sector. The Council supports the vision for Scottish Aquaculture set out in the “Strategic Framework for Scottish Aquaculture” and Industry Codes of Good Practice, which the Council considers must be signed up to and implemented by all operators.

Highland Council recognises the importance of healthy freshwater fisheries and their contribution to the economy in the Highlands. The Council supports the Executive’s vision for freshwater fisheries and contributed to the consultation: Protecting and Promoting Scotland’s Freshwater Fish and Fisheries.

Specific comments:

1.0 Aquaculture

General

The Council recognises the “enabling” role of the draft Bill with respect to aquaculture and looks forward to further consultation in respect of Orders proposed under the future Act.

Information

Highland Council welcomes the powers the draft Bill proposes for Scottish Ministers to gather information from fish and shellfish farmers. In order to minimise the regulatory burden, the Council believes that the Bill should identify the categories of information which ministers would be empowered to require of the industry.

Part 1 of the draft Bill proposes Scottish Ministers (or their representatives) have powers to gather information regarding the containment of fish and shellfish, the prevention of escapes and the recovery. Highland Council considers that this power be extended to permit the gathering of information regarding the prevention, control and reduction of parasites on fish and shellfish farms.

Parasites

Highland Council welcomes the powers of enforcement the draft Bill proposes for Scottish Ministers and the purposes for which inspection can be undertaken.

Part 1 Subsection 4 of the draft Bill defines “parasite” as either *Caligus elongates* or *Lepeophtheirus salmonis*. Highland Council sees no need to limit the definition so that it requires an Order under the future Act to expand the definition. The Council considers that the definition should be expanded from the outset to embrace all parasites and that this would take account of development phases in fish and shellfish aquaculture. Parasites of shellfish can have an important impact on population as evidenced by the recent *Bonamia* outbreak in the west Highlands. The Council considers that it should be sufficient to define “parasite” without naming organisms specifically.

Containment and escape: fish

Highland Council welcomes the powers of inspection the draft Bill proposes for Scottish Ministers and the purposes for which inspection can be undertaken.

Enforcement and enforcement notices

Highland Council welcomes the enforcement powers the draft Bill proposes for Scottish Ministers and the range of purposes for which enforcement. Highland Council considers that, where Ministers are satisfied satisfactory measures are not in place, Ministers should be required to serve notice.

Codes of practice

The Council welcomes powers to formally approve, monitor and particularly to enforce codes of practice. Where the Council has concerns with this section of the draft Bill these relate to enforcement and in particular to the phrases: “material regard” and “Scottish Ministers may”.

The Highland Council considers that Scottish Ministers should have powers to approve relevant codes of practice and “should” be required to take action against those not complying with an approved code.

Part 1: Section 8(1) of the draft Bill already requires Ministers to monitor compliance with codes of practice they approve. It seems sensible that Ministers should also be required to take action in cases where non-compliance can be shown.

“Material regard” remains open to interpretation and may lead to inconsistency in approach. Circumstances constituting material regard should be identified in order that Ministers are aware in what circumstances they should act. The Council suggests that failure to comply with an approved code (once established) is itself material regard.

Discretionary compensation

Highland Council supports the extension of compensation for compulsory slaughter of farmed fish and shellfish. Where a business is required to slaughter

stocks for the purpose of managing or eradicating an infectious disease for the greater good we believe that it should not be denied financial compensation. The Bill proposes discretionary powers to pay such compensation which prompts concerns about possible delays in establishing whether specific operators in a specific disease outbreak would or would not be eligible for compensation. The Council is concerned that “discretionary powers” will in practice mean delays in responding to situations which demand rapid action.

2.0 Freshwater Fisheries

The Council welcomes the Bill where it deals specifically with freshwater fisheries conservation and management. The Council welcomes the fact that its contribution during the Bill consultation is reflected in the measures incorporated.

The Council has long been concerned that the current system of Protection Orders (POs) does little more than protect individual rights to fish and contributes very little by way of increasing affordable access to fishing. The Council therefore welcomes the Bill provisions aimed at amending the PO system to make it more flexible to the need of anglers and riparian owners. In particular the Council welcomes the measure allowing the removal of a fishery from a PO if increased access is not established.

However the Council remains concerned that POs fail to set conservation objectives and are not subject to monitoring for their effectiveness. The Council welcomed the consultation proposal that PO liaison committees should be mandatory and considered this may provide the means to establishing conservation measures and establishing monitoring procedures. The Council is now concerned that the proposal for mandatory liaison committees is not reflected in the Bill.

The Council remains concerned that, notwithstanding POs and the role they play in fisheries management, there is a need to completely overhaul the system of freshwater fisheries management in Scotland. The Council contributed to the separate APEM consultation on fisheries management and has already supported a more local/regional approach. The Council looks forward to forthcoming consultation as the Executive takes this issue forward separately.

SUBMISSION FROM COMHAIRLE NAN EILEAN SIAR

- 1 Comhairle nan Eilean Siar welcomes the thrust of the proposals in the Aquaculture and Fisheries (Scotland) Bill. The overall aim of the Bill is to build public and international confidence in Scottish aquaculture and freshwater fisheries by demonstrating that relevant appropriate statutory provisions are in place to ensure the long term sustainable development of those fisheries. This is a sensible and appropriate aim which is supported by the Comhairle.
- 2 At the local level in the Outer Hebrides working arrangements between aquaculture and freshwater fisheries interests operate well with “Area Management Agreements” at the forefront of these partnerships. These arrangements offer examples of good practice and may offer appropriate exemplars for replication elsewhere in Scotland.
- 3 Despite welcoming the general thrust of the proposals, the Comhairle is highly concerned about the extent of regulation required to safeguard and protect the biodiversity and sustainability of wild fish stocks compared with the impact on businesses of complying with those regulations. The regulatory burden should not be increased to such an extent that it economically disadvantages the operators within that market through unnecessary restrictions or additional charges.
- 4 Significant resources have been invested in developing and promoting the aquaculture industry’s Code of Good Practice. The Code offers a valuable alternative to detailed regulation on the activities of the industry and this may offer an appropriate starting point in regard to additional regulation.
- 5 It is recognised that regulatory power is required in order to address specific issues in relation to inspection, parasite control, fish escapes and enforcement orders. The Comhairle supports that regulation but believes it should be utilised in an appropriate manner, in close co-operation with industries and local authorities. The regulatory approach requires to be sensitive to the operational challenges faced by businesses in remote rural communities and should be applied in an open manner that avoids over-interpretation and bureaucracy.

Inspection and charging

- 6 In principle the Comhairle welcomes a Regulator with clearly defined powers and responsibilities. These powers and responsibilities, however, must be matched by appropriate resources to carry out that role.
- 7 The Comhairle is pleased to note the proposal not to introduce a general enabling power for charging or a specific power to allow for the charging of both farmed and wild fish movements. Any charges that are levied,

however, should be used sparingly and selectively, with an assessment of the potential impact on small rural businesses.

Parasite control

- 8 The Comhairle is pleased to note that the Executive has recognised the dangers of over-regulation through the proposed use of inspection, enabling and discretionary powers in the Bill. This is complemented by reference to a risk based approach underpinned by the Code of Good Practice in relation to enforcement notices.

Containment of farmed species

- 9 It is noted that the Scottish Executive proposes an advisory and enforcement role for inspectors in relation to containment measures on farms. The Comhairle is pleased to note that inspections will be made according to a risk based approach underpinned by the Code of Good Practice.

Data collection

- 10 Whilst data gathering for specific industry purposes is to be encouraged the Comhairle is concerned about the unspecified nature of the data required. This power requires to be used in a sensitive manner which recognises the operational challenges faced by small businesses and avoids unnecessary bureaucracy.

Fish farm relocation

- 11 The Comhairle fully supports the power to offer financial assistance to fish farm operators who wish to relocate where there is a demonstrable environmental benefit from doing so. The Comhairle notes that Scottish Ministers already have the powers to offer such assistance and consequently the proposal may be viewed as unnecessary as part of the Aquaculture and Fisheries (Scotland) Bill.
- 12 It is essential if the industry is to be incentivised that sufficient resources are made available by the Scottish Executive to make the relocation power effective. The rules and eligibility governing any support scheme should also be transparent and easily applied.
- 13 It should be recognised that the closure of “poorly sited farms” will be contentious and should be used as a measure of last resort and undertaken in consultation with local authorities. The methodology to identify “poorly sited farms” should be clear and transparent.

Compensation for fish slaughter

- 14 The Comhairle supports the proposal which enables payment of compensation in respect of losses suffered by fish farmers owing to outbreaks of disease and where fish destruction has been ordered.

Fish movements

- 15 The Comhairle agrees with the need to regulate live fish movements out of, and between, marine farm management areas especially in relation to disease risk status.

Gyrodactylus salaris

- 16 The main conservation concern is the potential introduction of *Gyrodactylus salaris* into the ecosystem and the measures and powers required to eradicate it. In general the Comhairle supports the measures set out in the Bill.
- 17 There is concern, however, that the Executive does not intend to implement a scheme for the mandatory disinfection of recreational equipment at ports of entry in Scotland in order to prevent the introduction of GS. The highest standards of biosecurity should be encouraged through mandatory disinfection and this effort would be most effective focused at well-defined ports of entry.

Conclusion

- 18 In general terms the proposed Bill seeks to introduce new powers which strengthen existing voluntary arrangements including the Code of Practice for Scottish Finfish Aquaculture and Area Management Agreements. This includes the establishment of a Regulator with clearly defined powers and responsibilities.
- 19 The Bill recognises the regulatory burden facing the industry and seeks to provide powers that act to underpin the industry's code and which do not add unnecessarily to that regulatory burden.
- 20 The proposals within the Bill would appear to offer reasonable and sensible steps to deal with key environmental factors such as the spread of disease and parasite control.

SUBMISSION FROM ARGYLL AND BUTE COUNCIL

1. INTRODUCTION

Argyll and Bute Council welcomes the opportunity to contribute to the Enterprise and Rural Development Committee's inquiry into the Aquaculture and Fisheries (Scotland) Bill. Whilst the Council will not be directly involved in the main categories of the Bill, namely improvements to the rules on parasite control, containment and treatment of farmed fish, access, fish health and welfare considerations and conservation measures, the Council recognises the importance of the aquaculture industry to the economy of Argyll and Bute. To this end the Council submitted a formal response to the Scottish Executive's consultation on the Bill which was launched in December 2005. The Council welcomes the principles of the Bill which seeks to introduce powers which will help support the aquaculture industry and help build public and international confidence in fish and shellfish farming by underpinning the voluntary approach set out in the Scottish finfish aquaculture's and the Scottish shellfish aquaculture's codes of good practice.

Argyll and Bute Council is the second largest local authority area in Scotland incorporating a coastline in excess of 4,500 km, numerous peninsulas separated by deep sea lochs and a total of 25 inhabited islands. In addition a significant proportion of our population lives adjacent to or in close proximity to the coast and many derive their livelihood from marine and coastal activities. The quality of our coastline is also important to the image of our area and Scotland as a whole as perceived by those at home and abroad. The Council recognises that the quality and diversity of the coastal and inshore waters is one of our prime assets which requires protection and wise management.

The Council is committed to working with its partners in order to create employment in our remote island and rural areas to ensure the sustainability of these communities. The aquaculture industry is one of the few that can provide all year round well paid employment in many of our more remote and fragile areas, and the Council is committed to working with the industry at a local level to ensure its sustainability through appropriate management. To this end the Council recognises the importance of Forums such as the Highlands and Islands Aquaculture Forum on which the Council is represented.

The Argyll and Bute Structure Plan 2002 outlines the Council's objectives for coastal planning and emphasises the necessity of working with all the relevant sectors to fully harness the productive capacity of the marine and coastal areas whilst safeguarding its unique environmental qualities through sustainable development. In addition policy PL AQUA 1 of the modified

Finalised Draft Local Plan recognises the potential of the Councils evolving Integrated Coastal Zone Management (ICZM) process to further inform and direct the assessment of aquaculture development within our area.

Aquaculture is seen as the most significant new industry to emerge in the highlands and islands in the last quarter of the 20th Century. Aquaculture makes a significant contribution to the economy of the area and in particular to those more remote and fragile areas. It is often the case within these areas that, although the actual numbers employed are low, the significance of them to the sustainability of these fragile communities is very high.

There is no doubt that Aquaculture, as an industry, continues to offer opportunities to continue to generate employment and income in many of Argyll and Bute's more remote and peripheral areas. However, the Council also recognises that to do this the industry has to be properly regulated in order to build consumer confidence, overcome conflict with other coastal and marine interest groups and to secure sustained growth and compete within the global market. It is imperative to ensure that the industry works closely with other stake holders and the development of local area management agreements is one way of achieving this.

2. THE BILL

The Bill, which is divided into five parts, sets out the key proposals to build investor confidence and to protect the sustainable and biodiversity of wild fish stocks. The Council welcomes these principles.

The policy ideas contained within the Bill were originally developed in consultation with stakeholders through the Highlands and Islands Aquaculture Forum (HIAF), of which the Council is a member, and the Freshwater Fisheries Forum and in a series of ongoing bilateral meetings. It is imperative to ensure that there is buy-in from the industry to the provisions set out within the Bill in order to secure its success.

The Bill follows on from "A Strategic Framework for Scottish Aquaculture" (SFSA) published in 2003 and associated action plans containing priorities for action on economic, environmental and social issues. Included within the Framework was an objective to "enact legislation governing the aquaculture industry in Scotland". It is the case that new legislation was deemed necessary in order to effect some of the changes identified in the SFSA and also in order to address any anomalies that come to light in existing law

With respect to the regulation of the Bill the Council, like the Executive, would prefer that a voluntary approach should deliver the required outcomes. However, it is recognised that some of the proposals, notably in the areas of parasite control, containment and fish movement, will require the oversight of a regulator. The regulator would also have the responsibility of enforcing any relevant legislation. It is proposed that the Fish Health Inspectorate within the Fisheries Research Services (FRS) would provide a suitable basis of experience for a Regulator. The proposed Regulator would act on behalf of

the Scottish Ministers in conjunction with Scottish Executive Environment and Rural Affairs Department (SEERAD) officials and would liaise closely with other regulatory experts such as the Scottish Environment Protection Agency (SEPA). It would also be important to ensure that there was liaison between the Fish Health Inspectorate and the local planning authorities with regard to new fish farm proposals particularly once the transfer of planning powers take place in 2007.

The Bill primarily looks at introducing regulation in respect of the following:

- Parasite control for both farmed and fresh water fish including gyrodactylus salaricus (GS), an external parasite affecting salmonids in fresh water,
- Containment of fish to prevent escapes
- Requirement on the industry to submit data in respect of production and economic issues. This is currently done on a voluntary basis and collected by FRS.
- Discretionary powers to pay compensation for compulsory fish slaughter
- Control of fish movement in relation to farmed fish and wild fish
- Amendments to rules on access in respect of protection orders as they apply to freshwater fisheries to enhance the system of control.
- Introduction of miscellaneous amendments to existing legislation which are primarily of a technical nature and cover areas such as the definition of fishing by rod and line.

In the main the primary issues covered by the Bill relate to fish health and as such will not directly impact on the statutory duties of the Council particularly given that the regulator will be the Fish Health Inspectorate within the FRS. The Bill originally was to provide enabling powers such as the introduction of financial assistance in respect of relocation of fish farms where there is an environmental benefit. However following the consultation process it was decided that these powers were unnecessary as they already existed under Section 31 of the 1981 Fisheries Act. In addition it was decided to not introduce powers to close fish farms as the "clear public interest" could not be defined. It was on these two matters that the Council originally confined their comments on the Bill to as they were more relevant to them as a local planning authority.

3. CONCLUSION

The overall aim of the Bill is to build investor confidence and to protect the sustainability and biodiversity of wild fish stocks as well as the industry itself and the Council welcomes this. Aquaculture as an industry offers opportunities to continue to generate employment and income in many of Argyll and Bute's more remote and peripheral areas and the Council wishes to support the industry where they can. However, it is also the case that the industry has to be properly regulated in order to build consumer confidence, overcome conflict with other on-shore interest groups and to secure sustained growth and compete within the global market. The aquaculture industry itself

has been working with key partners to achieve this and the Bill will help to further reinforce this work.

The health of our freshwater fisheries is important to the bio-diversity and economic development of our area, particularly as regards tourism. It is hoped that the Bill will help to secure the long-term sustainability of these fisheries.

As previously stated there is no doubt as to the quality and diversity of Argyll and Bute's coast and inshore waters making our coastal area one of our prime assets. It is therefore vital that this resource is used sustainably. Working closely with our key marine and coastal stakeholders, of which the aquaculture industry is one, is seen as one of the best way of achieving this. Although our coastal area contributes to our wealth and diversity it is also an essential component of the fragile and peripheral characteristics of our area. The coastal area of Argyll and Bute provides a unique resource from which our present and future economic and social well-being can be derived. It is imperative that we understand more clearly how distinctive and valuable this resources is. By examining the nature and extent of human interaction with our coastal area, and by considering the current and potential levels of economic output associated with this, it may be possible to identify better approaches in which the people of the region can participate in longer-term benefit. In examining the development of the coastal area it has to be recognised that it is a living and working environment which is home to a large proportion of Argyll and Bute's population and that it must accommodate development for the future. It is also an important environment which requires protection and one within which there are limits.

Argyll and Bute Council, through the Argyll Marine Natura project, which has been running for over three years, has been involved in securing the sustainability of our local marine and coastal resource through the drawing up of long term management strategies for the Firth of Lorn and Loch Creran. This has been done through engagement with local fishermen, shell fishermen, fish farmers, boat operators, divers, statutory undertakers such as SNH, SEPA and SEERAD and other local stakeholders. In addition the Council is currently working on the development of Integrated Coastal Zone Management (ICZM) plans for Loch Fyne and Loch Etive. This project which has been running for two years is based on local stakeholder involvement to secure the long term sustainability of these marine and coastal areas. If resources can be secured it is the Council's intention to roll these plans out to other loch systems within our area. The ICZM plans will help the Council to fulfil its role in enabling the aquaculture industry to plan positively for the future. The aquaculture industry is actively engaging in the ICZM process for both Loch Fyne and Loch Etive. With the transfer of planning powers in respect of aquaculture from the Crown Estate to the Local Planning Authorities these coastal plans will provide a development framework to better regulate and promote aquaculture development to ensure that it reflects local community views, avoids conflict with other water users and respects sustainability principles.

SUBMISSION FROM THE ASSOCIATION OF SCOTTISH SHELLFISH GROWERS

1. The marine aquaculture sections of the A&F Bill are clearly focused on aspects relating to finfish farming (in particular salmon farming and sea lice issues). The major concerns of the shellfish cultivation sector are to ensure that obligations, constraints and responsibilities designed for the salmon industry do not, inadvertently, ensnare our operations.
2. It is to be hoped that these additional controls will not add to any incremental difficulties to those that the shellfish sector may well experience from the extension of planning controls for aquaculture to the inshore waters for Local Authorities (already the industry encounters difficulties in securing planning permission for depuration facilities, and the solution of moving such operations 'offshore' to a raft location, will doubtless become more difficult once LAs have planning permission control over that option).
3. In terms of the Bill, the references to 'the industry Code of Good Practice' again indicates a drafting view that there is only one such Code, whereas in fact the shellfish Code of Good Practice was launched by the ASSG several months before that of the salmon industry. The ASSG has no problem with the Bill adding weight to our objective of spreading 'good practice' across shellfish operators.
4. We are however, concerned that the open-ended requirement to supply "information as may be specified by Order relating to the economic, social and environmental aspects of fish and shellfish farming" may prove onerous to the typical 'micro' and 'small' enterprises of the shellfish sector. In particular, if it became a requirement to collect and report values of an extensive array of environmental parameters, this could prove economically damaging to the already thin profit margins experienced by the overwhelming majority of shellfish farms.
5. It is clear that the "movements" of stock referred to in the Bill are finfish – however, there are several compelling arguments that regulation of shellfish translocation should be a priority for the sector. Such licensing - perhaps triggered by reports or observations of specific parasites or pest species - would reduce the potential for moving such parasites and pests around Scottish waters. Movements would be licensed/monitored between 5 or 6 regions of Scottish waters, ensuring that in the event of a parasite/pest problem resulting from an inadvertent import to a single site, the problem was not 'exported' around the entire coast.
6. And if, as a result of the introduction of a parasite related disease or the prospect of economic damage due to the introduction of a pest species, there was a requirement for destruction of stock, shellfish farmers should be entitled to the same scale and form of compensation as finfish farmers.

SUBMISSION FROM THE SCOTTISH SALMON PRODUCERS' ORGANISATION

The Scottish Salmon Producers' Organisation (SSPO) is pleased to have the opportunity to give evidence to the Committee on this important piece of legislation. The SSPO response to this Aquaculture and Fisheries (Scotland) Bill is based on the industry's commitment to good practice, environmental responsibility, sound commercial judgement and a vision of how Scottish salmon farming can and should compete successfully in a global market.

The salmon farming industry has made an impressive commitment to participation in the voluntary, independently audited *Code of Good Practice for Scottish Finfish Aquaculture*. This Code has been developed in full consultation with the industry's key stakeholders. While recognising the underlying principles of this Bill, the industry believes the voluntary approach through a robust and independently audited Code of Good Practice (CoGP) is the most effective, flexible and cost-effective means of achieving a sustainable aquaculture industry.

Code of Good Practice for Scottish Finfish Aquaculture

1. The SSPO welcomes the Executive's clearly expressed support for the industry, its Code of Good Practice (CoGP) and the relationship between the Code and the proposed powers outlined in the Bill.
2. Currently 95% of the salmon industry is signed up to the Code, therefore the provisions of this Bill would particularly relate only to the small number of companies in the industry who fail to sign up for the Code or are found to be in significant non-compliance with no indication of remedial action being taken.
3. We trust that in view of the proposed timescale for the legislation to be introduced and implemented that the Code of Good Practice will have the opportunity to prove itself.
4. The industry believes that many of the principles and provisions of the Code of Good Practice should be incorporated into future Guidance Notes relating to the Bill.
5. It is also industry's view that any legislation should ensure compliance with robust standards of practice by those companies that are not subject to the Code of Good Practice.

Guidance Notes

1. The SSPO is happy to comment on the proposed Bill as it currently appears, but is acutely aware that the Guidance and Procedural Documentation, including the extremely important Guidance Notes for the Authorised Inspectors, have yet to be developed.

2. We believe it is vital that the development of Guidance commences urgently, and with full industry participation, to ensure the Bill is efficient, fit for purpose and cost-effective and that the Code of Good Practice and those salmon farmers already compliant with it are given due recognition.
3. We also believe that the Guidance Notes should have legal recognition alongside the Bill.

Comments on Part 1 – Fish Farms and Shellfish Farms

Authorised Inspectors

1. The industry notes that neither FRS Fish Health Inspectors nor SEERAD Aquaculture Policy Division currently have any staff with formal qualifications to cover many of the responsibilities included in the Bill.
2. We believe other organisations, such as the State Veterinary Service should be considered to complement FRS. Levels of expertise within State Veterinary Service, for example, especially in surveillance, monitoring, and providing guidance on enforcement action, would enhance existing or proposed arrangements, and assist with remote area provision.

Sea Lice Control

1. The industry's CoGP includes a section on sea lice control, based on the long established National Treatment Strategy that contains best advice on sea lice management. In the event that the Executive decides to approve by Statutory Instrument part of a Code of Good Practice, this chapter should be considered and used as Guidance for Authorised Inspectors when inspecting farms.
2. We believe it should not be necessary for the Authorised Inspectors to inspect farms routinely to investigate potential parasite problems since the CoGP chapter on sea lice management is particularly robust and should be given sufficient time to roll out and prove itself.
3. The industry has also made significant progress in the management of sea lice through Farm Management Agreements and Area Management Agreements to promote better and more productive working relationships in the interests of long-term sustainable salmon farming and wild salmon fisheries.

Provision of Data (in relation to parasites and containment)

1. Industry would be happy to have further discussions with the Executive to explore how the significant quantity of data already available from Area Management Agreements might be interpreted and used to positive effect.
2. The Bill should also require such information from the wild fish sector to assess issues in their fullest context.

3. We note that as soon as the information is provided to the Scottish Ministers, it may be disclosed to any member of the public, on request, under the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”) (or the related Environmental Information Regulations) with possible unfair commercial consequences.
4. The industry would consider that records collated in an approved fashion and available for inspection by Authorised Inspectors would be a more appropriate method of sharing information.
5. We are also concerned that if a fish farmer were obliged, by law, to provide such information, it would be inherently unfair if the information disclosed were then used in evidence against the farmer in subsequent criminal proceedings, in effect breaching the farmer’s legal privilege against self-incrimination.

Containment

The CoGP section on containment remains best advice and should be incorporated into the Guidance that Authorised Inspectors use to audit farms.

Enforcement Notices

1. As the vast majority of fish farms are compliant with the CoGP, the SSPO believe that if Enforcement Orders are to be part of the Bill, there should be reasonable controls in place governing their use. This would include requiring detailed veterinary advice being sought, inspectors being open to discuss different courses of action and a practical right of appeal. This should not prevent the implementation of protective measures that are genuinely urgent.
2. In addition, should such ‘directed treatment’ effectively constitute a follow up treatment, this would be subject to a SEPA consent, and therefore may be refused, meaning the Authorised Inspectors would be in breach of the Environmental legislation if they insisted on such treatment and leaving the farmer vulnerable to other consequences, such as reduced biomass consents in the future.

Comment on Part 4 – Miscellaneous Provisions

Movement of Fish

1. We believe that the Bill should require that decisions on, and approval for, the movement of fish be based on acceptable outcomes from risk assessments rather than requiring written consent of Ministers. Risk assessment-based approaches are strongly advocated in the industry’s Code of Good Practice, in new European Fish Health legislation and by the OIE.
2. The restriction on the movement of fish would greatly encumber the industry’s ability to operate efficiently and cost-effectively.
3. The industry is happy to provide notification of fish movements including broodstock, in line with recommendations in the CoGP, including risk assessment.

Mandatory Information Collection – economic, social and environmental aspects of fish farming

1. The industry is supportive of the principles of developing high-level indicators to monitor the performance of the industry and to allow the Scottish Executive to formulate future aquaculture policy.
2. The industry is happy to explore ways in which certain data might be shared, although we consider that the Executive is already well informed, from information obtained through the Annual Production Survey as well as through extensive data voluntarily produced by producers and trade bodies. If further information is indeed required for the purposes of developing future policy, we are concerned that such benefit as may exist may be outweighed by the administrative and financial burden that is likely to be imposed on fish farmers in generating, compiling and processing this data.
3. The industry would be reluctant to adopt data collection commitments that required extra administration and cost, compromised Stock Exchange rules or required changes to companies' current financial reporting structures. Any agreed data collection protocols must be suitable for companies of all sizes.
4. Industry would stress that the issues of commercial confidentiality and administrative and financial cost of collating such data, and that referred to in earlier sections of this submission, are very important and would require further exploration with the Scottish Executive.

Background Briefing on *A Code of Good Practice for Scottish Finfish Aquaculture*

1. Scottish Salmon Producers' Organisation welcomes the development of the Code of Good Practice for Scottish Finfish Aquaculture (CoGP) and the very positive salmon industry commitment to participating in it.
2. The CoGP is a major achievement for Scottish finfish farming, and clearly demonstrates the progress made in Scottish aquaculture over the last 10 years. It also represents the most comprehensive and open exercise of its kind ever undertaken by any food producing industry in the UK.
3. The CoGP has been developed by the Scottish Finfish Aquaculture Working Group. All interested stakeholder groups have been consulted including: the Scottish Executive Environment and Rural Affairs Department; Scottish Environment Protection Agency; Scottish Natural Heritage; Veterinary Medicines Directorate; Fisheries Research Services; WWF Scotland; Scottish Environment Link; RSPB Scotland; the Association for Salmon Fisheries Boards; Rivers and Fisheries Trusts of Scotland; Scottish Anglers National Association; Sea Trout Group; local authorities and the public.
4. The CoGP comprehensively sets out the standards that farmers must demonstrate. Compliance with the Code will be independently audited by UKAS-approved

Inspection Services. A certification body accredited to UKAS has been appointed to ensure parity and consistency between inspections and audits, and also to facilitate the collation of audit reports.

5. A core principle of the Code is that it is an evolving document, designed to embrace new developments and new science so that it becomes established as a credible, robust and modern reflection of good aquaculture practice. A Code of Good Practice Management Group will be a forum for discussion about new developments, international examples of aquaculture management, scientific findings and emerging issues. The Group will seek to manage the Code in a way that is most relevant to the Scottish industry and its stakeholders.

6. Details of the Code of Good Practice

There are more than 300 main specific compliance points in the CoGP, plus additional sub-points in many cases. These cover all aspects of finfish good practice:

- Consumer reassurance - traceability, use of approved treatments.
- Fish Health - good husbandry, area management, harvesting operations.
- Protecting the environment - including sea lice management and containment standards.
- Welfare and husbandry - breeding and stocking density.
- Feed and feeding - feed formulation and sustainability of fish feed.
- The CoGP also contains detailed annexes giving further technical guidance on good practice, including the National Sea Lice Treatment Strategy, Integrated Sea Lice Management, Containment, and a Veterinary Health Plan.

7. Scottish Quality Salmon Product Certification Schemes for Tartan Quality Mark salmon, Label Rouge Scottish Salmon and PGI*Scottish Farmed Salmon continue to be available to the industry in addition to the CoGP.

*PGI is *Protected Geographic Indicator* awarded by the European Commission for products with specific geographic differentiation.

Agenda Item 1

**Environment and Rural
Development Committee**

4 October 2006
ERD/S2/06/28/11

**SUBMISSION FROM THE FEDERATION OF SCOTTISH AQUACULTURE
PRODUCERS/ THE BRITISH MARINE FINFISH ASSOCIATION**

INTRODUCTION

1.The British Marine Finfish Association (BMFA) represents the interests of members developing the cultivation of ‘new’ marine species, e.g. halibut and cod.

OPENING GENERAL STATEMENT

2.The BMFA understands that the aquaculture section of the Bill contains some **positive initiatives** with respect to compensation and movement controls into freshwater. The BMFA also understands the background to the backstopping ‘regulatory’ aspects of the proposals in the Bill, and has been involved in discussions with officials who have sought to reassure on these provisions. There is no doubt that, from an aquaculture perspective, the main purpose of the Bill is to ensure that **salmon sea lice** and **fish containment** are covered by more than just the industry’s comprehensive Code of Good Practice.

3.However, the BMFA’s directors believe that in some instances the Bill goes too far beyond these understandable requirements (sea lice and escapes), and strays into other areas that present an **additional** and **unreasonable** regulatory burden on the ‘new’ marine species aquaculture sector. This is in direct contravention of the undertakings that lie behind Partnership for Government Agreement 328.

OVERALL COMMENT ABOUT THE BILL

4.There appears to be a large element of ‘enabling’ power within the Bill, covering a variety of areas. The need for this approach is understood, but the Executive is effectively asking us to trust it that all the detailed secondary legislation and regulation will be fit-for-purpose. We would wish to see an undertaking that stakeholders will be fully involved as these are developed.

DETAILED CONSIDERATION OF SECTIONS OF THE BILL

1 Information about fish farms and shellfish farms

This section relates to technical and biological information. As long as its gathering does not impose significant additional work for our members, we have no major objection.

4 Meaning of parasite in Part 1

No marine finfish species can host the parasite *Lepeophtheirus salmonis*. It appears that farmed cod are also not affected by *Caligus elongatus*, although more experience

might be valuable in this regard. However, farmed halibut can briefly and seasonally be host to some *Caligus*. The parasite is naturally occurring on various species of wild fish, and these are the source of the infestation. Fortunately the skin of halibut is in no way damaged by these brief infestations, and after a short period of time the *Caligus* disappears.

The provisions in the Bill, taken to their extreme, might cause a situation where the Regulator visits a halibut farm during one of these periods, and ‘instructs’ the farm operator to undertake a treatment to kill the *Caligus*. The operator would not normally be so inclined (nor would their veterinary adviser) because the *Caligus* is causing no problem, and is known to be a natural and temporary situation. The chemicals used to treat sea lice (of whichever species) are highly toxic, and the industry uses them very cautiously, with SEPA’s detailed oversight. The Dangerous Substances Directive is very clear about its desire to see the use of such substances decline, rather than increase. Any unnecessary use might be grounds for infraction proceedings.

Specific recommendation: Remove *Caligus elongatus* from the face of the Bill – it is not the main issue, and is an unwelcome distraction.

7 Code of practice

(1) The Scottish Ministers may by order approve, whether in whole or in part, any code of practice issued (whether by them or by another person) for any of the purposes of—
30

The proposition of Scottish Ministers formally ‘approving’ part of any Code of Practice is, in our view, a bold step. BMFA does not recollect this suggestion in the Bill Consultation, nor do we recall the discussion about the consequences of this in the Regulatory Impact Assessment. That it would have financial and manpower-resource implications is very clear. We are aware that there is a lengthy Cabinet Office paper that discusses circumstances under which government should become involved in voluntary industry codes of practice. It can and does happen, but the overall tone of the paper is rather cautious. Whilst not rejecting this suggestion out of hand, we wonder **why it is necessary** in this case? The suggested matters for ‘approval’ are all the main aspects of the industry that are already covered by the other provisions in the Bill. Why have both?

12 Interpretation: Part 1

“fish farm” means any place used for the purposes of fish farming;

We are very concerned to ensure that all **restocking hatcheries** are included in the definition of ‘fish farm’. They conduct exactly the same activities as food-production fish farms and hatcheries, and they are categorically part of water catchments – which drain into the sea. Any problems that we perceive might occur (in environmental or fish health terms) from ‘fish farms’ could occur from restocking hatcheries. Perhaps this is covered by the definition of ‘fish farming’ above, but we are concerned that it is not.

14 Preliminary designation of area by order

After section 2ZA of the 1937 Act (as inserted by section 13 above), insert—

“2ZB Preliminary designation of area: *Gyrodactylus salaris*

(1) If at any time the Scottish Ministers have reasonable grounds for suspecting 35 that any of the inland waters of the United Kingdom or the marine waters adjacent to the United Kingdom are infected waters by reason of the presence of the parasite *Gyrodactylus salaris*,.....

BMFA fully understands the desire to have powers to control, and specifically eradicate, GS (should it ever appear in our waters). The worrying aspect of this part of the Bill is the inclusion of ‘**marine waters** adjacent to...’. These are the areas where our members are conducting their businesses, in fully saline marine conditions. BMFA had believed that GS could not live on a host in the marine environment, although now we recognise the potential for an infected brackish water fish to pass quickly through coastal waters from one estuary to an adjacent one.

If this provision is scientifically justified, BMFA can have no objection. However, the issue of **compensation** (see later) becomes paramount.

17 Clearance of certain fish farms

After section 5B of the 1937 Act (as inserted by section 15 above), insert—

“5C Clearance of certain fish farms

BMFA would again stress the importance of full compensation for any clearance of fish farms because of GS.

19 *Gyrodactylus salaris*: Scottish Ministers’ power to make payments

After section 5E of the 1937 Act (as inserted by section 18 above), insert—

“5F *Gyrodactylus salaris*: Scottish Ministers’ power to make payments 5

(1) The Scottish Ministers may, in accordance with a scheme made by them by order, make payments in respect of such matters, as may be specified by them by order, in connection with the exercise of their powers under section 2ZA, 2ZB, 5A, 5B, 5C or 5E.

BMFA welcomes this provision, since it recognises that **more business damage might be caused by movement restrictions than by the clearing of actual infected farms.**

27 Unauthorised introduction of fish into certain marine waters

After section 2B of the 1937 Act (designated areas: authority to remove fish), insert—

“2C Unauthorised introduction of fish into certain marine waters

This is a **major issue** for fully marine species aquaculture, where fish do need to be regularly moved from marine hatcheries in one part of the country to marine on-growing farms in other parts. Keeping these parts of the industry geographically separate is best practice in terms of biosecurity and disease control, and this provision in the Bill potentially penalises marine farmers. (Salmon farmers can move their smolts to on-growing farms without this burden). There is already ample provision in law for the prevention of such movements if any notifiable disease incident occurs.

We suggest:

- Either a rewording of the Bill to make it clear that marine hatcheries are not ‘designated marine areas’

- Or a guarantee that a blanket ‘consent to move’ will be given to all operators

We also have the prospect of moving marine species from sheltered **nursery cage** sites to more exposed **ongrowing cage sites** at some point in the life cycle. This is also ‘routine business’, and a procedure dictated by the biology and welfare needs of the species (not out of some sort of economic imperative to keep sites full to capacity). We need a very light touch in this area as well – possibly an annual blanket permit to undertake movements.

In either case we have absolutely no objection to the Executive having access to our movement records. What we cannot have is applications for individual permissions to move fish, with all the delay and red tape involved – for no obvious benefit to anyone.

28 Unauthorised introduction of fish into inland waters

(1) Section 24 of the 2003 Act is repealed.

(2) After section 33 of that Act (salmon fishing: regulations as to baits and lures), insert—

“Unauthorised introduction of fish into inland waters

33A Unauthorised introduction of fish into inland waters 10

BMFA is actually very supportive of this provision in the Bill, subject to a sensible approach to managing the provision.

4) Where—

(a) the fish concerned are salmon or the spawn concerned are salmon spawn, and 20

(b) the inland waters concerned are in a salmon fishery district for which there is a district salmon fishery board, the district salmon fishery board are the appropriate authority.

In any other case the **Scottish Ministers are the appropriate authority**.

The appropriate authority is Scottish Ministers, i.e. SEERAD, i.e. FFA2. There needs to be an enforcement arm, and since we believe fish health is the main driver for this provision, the **FRS Fish Health Inspectorate** should be the responsible body.

29 Payments in respect of fish destroyed

This is a welcome inclusion in the Bill, and BMFA is broadly supportive. However the word **compensation** is not used, and this is a concern. ‘Payments’ imply one-off schemes that come under State-Aids rules, and there could be considerable delay in putting these in place (ISA took almost 2 years). The recent outbreak of VHS in Yorkshire has illustrated once again just how important it is to give businesses prompt reassurance. If this is the route chosen, we suggest that the Executive puts a generic ‘emergency state aids for aquaculture’ model into place, and have it pre-approved by the Commission. Then, if a crisis occurs, emergency aid can be given almost immediately (when it is most needed, for our smaller companies).

The main omission here is **payment as compensation for businesses damaged or destroyed because of movement restrictions** whilst attempting to eradicate disease. This provision is contemplated for GS outbreaks (reference section 19), but must

apply to **all** diseases. In the Yorkshire VHS situation, the fish destroyed on the affected farm were worth some £100,000, but 33 other farms were financially damaged by the movement restrictions. Anecdotally, just one of these farms has lost £200,000 + because of this.

31 Information about fish farming and shellfish farming: economic, social and environmental aspects

BMFA remains very uncomfortable about some aspects of this intrusion into business details, from government departments that are not mainstream 'financial regulators' (i.e. Revenue & Customs). We understand the need to have information upon which to develop 'evidence-based' policies within government, but would urge Scottish Ministers to find some other way to achieve this, short of yet more mandatory form-filling for our small businesses.

SUBMISSION FROM ANGUS MACMILLAN

Introduction

Thank you for the opportunity to address the committee as an indigenous Scottish salmon farmer and processor operating in the organic sector.

I do not intend to repeat what has already been submitted by SSPO in terms of a Code of Good Practice and will therefore concentrate on elements in the Bill that have an impact on the indigenous industry and the organic sector. I should however say that I fully support the submission by the SSPO in this regard and particularly the request that the guidance notes which are still to be developed are agreed with the industry before inclusion in the Bill.

The fear of Scottish Salmon Producers is that they will not be able to compete in the global market of salmon production and this is also true for the organic sector. This sector has risen from zero to three thousand tonnes in five years and is therefore small in terms of Scottish production. However, it is a growing market and has potential to grow to ten thousand tonnes in five years. Overall Scottish production this year is approximately 120 thousand tonnes.

Inspection and Charging

In addition to the elements within the Bill there is also a Regulatory Impact Assessment required. It is of vital importance that the Scottish salmon farming industry is not burdened with additional costs that impact on their efficiency and cost competitiveness in comparison with other global producers. This is equally true for the organic sector. There is nothing within this Bill that would result in costs being reduced and in fact some elements of the Bill would indicate that charging would take place. This would increase the burden of cost and in addition the Regulatory Impact Assessment has not demonstrated any of the additional costs.

This is a matter of concern especially when we compare, as precedents, what is happening with other regulators e.g. SEPA who, in the fullness of time will move to a full cost recovery regime without the industry having any control over this process.

The industry is also concerned that the inspection regime will not have the necessary expertise to undertake the duties outlined in the Bill.

Availability of Sites

Organic salmon sites require to have particular characteristics in order to achieve accreditation from the certifying bodies in the UK; mainly the Soil Association. These characteristics would include separation distances from other sites, good water exchange and good water quality, and smaller sites with low stocking densities. The siting of these cages must be sympathetic to the surrounding environment with low visual impact and an

ability to balance suspended solids and nutrient deposits. The integrated aquaculture approach allows this to be achieved.

If the organic sector is to develop to anything approaching its full potential in the coming years, it is essential that these sites are made available to the industry. The Bill should recognise this and establish mechanisms to ensure that it can be achieved.

New Powers

I am pleased that the strict liability offence in respect of escapes has been removed from the proposals, as well as some of the other suggestions that have been removed from the initial draft Bill. However, I would urge the Committee to look further at the movement of live fish particularly with regard to importation from outwith the UK of smolts and eggs unless provided for in another form.

Summary

- The vision for the Strategic Framework for Scottish Aquaculture was to create the basis for a cost-efficient and competitive industry that could co-exist with other stakeholders including sea users and the wild fish sector. All aspects of the Bill should be measured against these criteria.
- The Bill as it currently stands does not reduce either the costs to the industry or the burden of regulation.
- The Consultation Paper and draft Regulatory Impact Assessment do not identify the costs of implementation of this Bill.
- It is vitally important that regulation is kept to a minimum and continued support is given to the industry in order to establish a system which will then lead to market stabilisation.
- For the organic sector to flourish and expand in order to meet the market potential, it is imperative that appropriate sites are made available to the industry. Rationally, this should not be left to the market or to the goodwill of multinational producers since the process that delivered such sites into the hands of these interests in the first place was neither open nor fair and in many cases removed a vital natural resource from the ownership and control of local communities. That is an error that must now be redressed and that process should be underpinned by legislation.

SSI DESIGNATION FORM

SSI Title & No:	The Water Services and Sewerage Services Licences (Scotland) Order 2006, (SSI 2006/464)						
Responsible Minister	Rhona Brankin, Deputy 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 make provision in relation to the information to be contained in applications from prospective retailers for water services and sewerage services licenses, and for their notification.						

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	Angela McTeir, 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 Environmental Noise (Scotland) Regulations 2006, (SSI 2006/465)						
Responsible Minister	Rhona Brankin, Deputy 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 transpose and implement Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise.						

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	David Wallace, 40401
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								

Subordinate Legislation Committee

Extract from 35th Report, 2006 (Session 2)

Subordinate Legislation

The Committee reports to the Parliament as follows—

The Environmental Noise (Scotland) Regulations 2006, (SSI 2006/465)

1. The Committee asked the Executive to explain the reasons for the late implementation of EU Directive 2002/49/EC which should have been implemented by Member States on 18 July 2004.
2. In its response printed in Appendix 3, the Executive states that work began to transpose Directive 2002/49/EC in 2002 however this involved a major data gathering and management exercise involving a large number of complex technical issues.
3. The Executive further explains that it was not possible to bring forward transposing Regulations in the absence of a clear understanding of how the system for information gathering and mapping noise should best be implemented. Similar Regulations in England, Northern Ireland and Wales are only now being made. 7 Member States were also delayed in transposing the Directive.
4. The Executive indicates that critical dates to comply with the principal obligations in the Directive do not commence until 30 June 2007 and that it currently expects to meet those targets.
5. Whilst the delay is regrettable, the Committee accepts that the job of transposing this Directive was particularly complex and technical.
6. **The Committee draws the attention of the lead Committee and Parliament to this instrument on the grounds that there has been a delay in implementing the relevant EU Directive which the Executive has explained.**

