



Environment and Rural Development Committee

29th Meeting, 2006

Tuesday 24 October 2006

The Committee will meet at 2.00 pm in Committee Room 6.

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

Graham Hutcheon, Chairperson of the Environment Committee, Malt Distillers Association of Scotland;

Dr Alastair Stephen, Ecological Adviser, Association of Electricity Producers;

Mike Dales, Access and Environment Officer, Scottish Canoe Association;
and

William Shearer, Consultant, Salmon Net Fishing Association of Scotland;

and then from—

Dawn Purchase, Mariculture Officer, Marine Conservation Society;

Libby Anderson, Policy Director, Advocates for Animals; and

John Thomson, Director of Strategy and Operations (West), Scottish Natural Heritage.

2. **Budget process 2007-08:** The Committee will take evidence on the Executive's Draft Budget 2007-08 from—

Campbell Gemmill, Chief Executive, Calum MacDonald, Director of Environmental and Organisational Development, Colin Bayes, Director of Environmental Protection and Improvement and John Ford, Director of Finance and Corporate Services, Scottish Environment Protection Agency (SEPA).

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

the Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465); and

the Plant Health (Scotland) Amendment Order 2006 (SSI 2006/474).

4. **Decision on taking business in private:** The Committee will decide whether to consider its future work programme in private at its next meeting.

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

The following papers are attached:

<u>Agenda Item 1</u>	
Paper from SPICe <i>[for Members only]</i>	ERD/S2/06/29/1a
Submission from the Malt Distillers Association of Scotland	ERD/S2/06/29/1b
Submission from the Association of Electricity Producers	ERD/S2/06/29/1c
Submission from the Scottish Canoe Association	ERD/S2/06/29/1d
Submission from the Salmon Net Fishing Association of Scotland	ERD/S2/06/29/1e
Submission from the Marine Conservation Society	ERD/S2/06/29/1f
Submission from Advocates for Animals	ERD/S2/06/29/1g
Submission from Scottish Natural Heritage	ERD/S2/06/29/1h
<u>Agenda Item 2</u>	
Briefing paper from SPICe <i>[for Members only]</i>	ERD/S2/06/29/2a
Paper from SPICe <i>[for Members only]</i>	ERD/S2/06/29/2b
Submission from SEPA	ERD/S2/06/29/2c
Submissions from various organisations	ERD/S2/06/29/2d
<u>Agenda Item 3</u>	
The Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465)	ERD/S2/06/29/3a
Extract from the Subordinate Legislation Committee's 35th Report, 2006	ERD/S2/06/29/3b
Letter to the Convener from the Deputy Minister for Environment and Rural Development	ERD/S2/06/29/3c
The Plant Health (Scotland) Amendment Order 2006 (SSI 2006/474)	ERD/S2/06/29/3d

Agenda Item 1

**Environment and Rural
Development Committee**

24 October 2006
ERD/S2/06/29/1b

**SUBMISSION FROM THE MALT DISTILLERS ASSOCIATION OF
SCOTLAND**

After discussion with our President and the Chairman of the Scotch Whisky Distilling Environment Committee and our colleagues in The Scotch Whisky Association we have decided that we do not wish to submit any further evidence but would simply endorse the submission made by The Scotch Whisky Association in September. We append a copy of the Submission made by the Association for reference.

The Scotch Whisky Association (SWA) is the trade association representing the Scotch Whisky industry at home and abroad. The industry is committed to protecting the water environment and promotes its sustainable use. The availability of high quality water is vital to the industry's long term future and we welcome the decision of the Committee to examine aspects of the Aquaculture and Fisheries Bill.

Our key area of interest in the Aquaculture and Fisheries Bill is Part 2 of the Bill - *Gyrodactylus salaris: Containment and Treatment*. We welcome the opportunity to appraise the Committee of our serious concerns regarding the significant operational, economic and other impacts that the proposed Bill's eradication measures could cause for the Scotch Whisky industry, depending as we do on good quality water supplies.

The industry's concern, as we noted in our response to the Executive's consultation on the Bill, is its strong opposition to Ministers being granted wide powers which could see water courses being rendered useless for commercial and recreational purposes, without appropriate consultation. If unchecked eradication were to be an option open to Scottish Ministers, there is a real concern that insufficient attention would be given to the relevant social and economic costs of such an action. In the rush to solve one problem, the potential implications for important indigenous industries – such as the Scotch Whisky industry – whose raw materials (in the form of fresh river water) could be seriously affected by chemical eradication – could be ignored. The impact on the reputation of the Scotch Whisky industry is likely to be felt long after measures to eradicate *Gyrodactylus salaris* have been taken. We question whether the draft Bill takes adequate account of the longer-term reputational affect that eradication measures might have on our sector.

Potential impact of the use of chemical agents on the distilling industry

The Scotch Whisky industry is Scotland's leading indigenous industry, a major contributor to both the Scottish and UK economies, supporting 65,000 UK jobs often in rural, disadvantaged areas of Scotland. Chemical eradication must be reserved as a last resort and should only be considered necessary after all preventative measures have failed.

Restrictions on water use due to chemical contamination could have an immediate impact on whisky production. Distilleries require supplies of fresh water for both production and cooling purposes. If chemical treatment were to be used in one catchment/river and not another the effect might be localised, introducing a competitive disadvantage. Where a burn is treated high up in a large catchment, we are concerned that water quality might be affected throughout the catchment – with potential impacts to a large number of distilleries. Catchments used by the industry may well have a water throughput time significantly slower than in areas where chemical eradication has already been tested. Rivers in Norway for instance may be short spate rivers with few feeders – this model does not fit larger Scottish catchments. Affected distillers would have no option but to halt production – Malt whiskies are characterised by the fact they are produced at a single distillery and the production of Blended whiskies rely on casks of whisky from individual malt and grain distilleries, in varying proportions. Whilst the temporary use of potable mains supply might be acceptable for cooling purposes (though we doubt that given the large volumes required, this would be practicable), use of tankered-in supplies for production purposes is simply not an option for our members for product integrity and cost reasons.

A further area of concern is that of consumer perception. Scotch Whisky has a worldwide reputation for high quality, not least for the use of pristine water supplies in the production process. There will be a need for the Executive to work closely with the Industry (and other affected sectors) to ensure that the integrity and international image of the category is not damaged by reckless, adverse publicity around the use of 'chemicals' in water supplies.

Taking this forward, we would note that the industry has welcomed the opportunity to be involved in the latter stages of the Executive's development of a contingency plan should chemical treatment be used.

Need for adequate prevention measures

We are concerned that there appears to be an acceptance by the Scottish Executive that an outbreak of Gs is inevitable; we do not believe this to be the case. Gs can only be brought into the country by movement of live fish or contaminated fishing tackle. We firmly believe that the priority should be to avoid incidences of Gs occurring in the first place. For example, fishing tackle could be treated prior to use in Scottish waters. If stringent control measures are put in place – in both Scotland and the UK – an outbreak could be prevented. As much effort as possible should be devoted to prevention rather than focusing on subsequent river treatment.

Proposed powers for Ministers to make payments

We are interested to note the inclusion in the Bill of Section 19, which gives Scottish Ministers powers to develop schemes for compensation. We would be interested to understand how other countries that have undertaken chemical eradication in the past have managed such schemes and the limit of compensation available. We would wish that any new Powers for Ministers be accompanied by responsibilities to take proper account of the **full** impact of any mitigation measures, including compensation arrangements for long-term losses of future revenues due to brand erosion.

Agenda Item 1

**Environment and Rural
Development Committee**

24 October 2006
ERD/S2/06/29/1c

SUBMISSION FROM THE ASSOCIATION OF ELECTRICITY PRODUCERS

The Association of Electricity Producers (AEP) is the UK trade association representing electricity generators. It has some 90 members ranging from small firms to large, well-known public limited companies. Between them they embrace nearly every generating technology used in the UK, including not only conventional large-scale generation but a variety of technologies, some of them innovative. A number of the Association's Members operate in Scotland many of which own, operate and plan to develop hydroelectricity stations. The Bill could affect those Members.

The Association welcomes the opportunity to submit evidence to the Committee on measures to eradicate *Gyrodactylus salaris* (Gs) within Scottish waters in future. We recognise the importance of preventing an outbreak of Gs and quickly eradicating any outbreak which does occur. However, it is vital that the impacts of any measures taken are proportional and reasonable and the impacts of the measures on the environment and on businesses are fully understood. Costs and loss of revenues which result from measures being taken should be fully reimbursed.

The Association of Electricity Producers has a number of concerns with the Bill as it relates to the G.s. issue:

1. It would appear that the consequences of G.s. arriving in Scotland are extremely serious – at least for the Atlantic salmon populations and all those interested in the species. The AEP would like to seek reassurance that everything is being done to prevent the parasite arriving here in the first place. From our understanding we believe a ban on the import of live fish would be sensible, based on the “precautionary principle”.
2. The G.s. section of the proposed Bill gives the impression that the Atlantic salmon is pre-eminent in its status in Scottish rivers. The AEP represents companies that have established good working relationships with their neighbours and communities where they operate, and would like reassurance that before eradication is considered a full consultation of all interested parties takes place. There are a large number of other interests on the rivers in Scotland that may not view the salmon in the same way as those involved in drafting the Bill. From a biodiversity perspective, eradicating (or attempting to eradicate) the parasite will have huge effects on other parts of the riverine ecosystems.

3. The AEP recognise that if G.s. is introduced into a Scottish river, and after full consultation an eradication plan is agreed; then its members will participate in the process and cooperate in preventing fish access where dams/weirs and fish passes exist. This should not inconvenience the hydroelectricity industry to any significant degree. However, if the local eradication (or containment) plan involves stopping diverting water from one catchment or sub catchment to another then this is a completely different issue. It is the AEP's understanding that similar exercises have taken place in Norway where parts of certain hydro schemes have had to be "mothballed" for a number of years in an attempt to eradicate G.s. This would be seen as unacceptable as there could be significant losses in renewable energy generation and a subsequent loss in revenue.
4. If the Bill leads to enabling legislation that results in reduction in renewable energy output and loss of income then the AEP and its members will require full compensation. One of AEP's members has calculated that if water is not allowed to be diverted in one of its schemes, the loss of energy would be the equivalent of that produced by a 20-25 turbine wind farm and the loss in revenue on an annual basis would be in the region of £4million.
5. The AEP would like to seek assurance that if there is an eradication procedure agreed, then the work will be undertaken by the relevant authorities at no cost to the hydro industry. All fish treatments and collection of dead or moribund fish will be undertaken by adequately trained professionals and the resulting carcasses will be cleaned off any hydro facilities by them and disposed of in an appropriate manner.
6. The AEP suggest that the financial consequences of the Bill are not sufficiently clear. It is aware that the Scottish Executive has commissioned a financial impact assessment of the consequences of G.s. being introduced into Scotland but has not seen any published data.

Agenda Item 1
**Environment and Rural
Development Committee**

24 October 2006
ERD/S2/06/29/1d

SUBMISSION FROM THE SCOTTISH CANOE ASSOCIATION

The Scottish Canoe Association (SCA) represents the interests of canoeists and kayakers who paddle on the inland and coastal waters of Scotland. As well as working to improve opportunities for access to those waters we also seek to work with those who protect the quality of our water and waterways.

Over the past year we have taken part in one of the Scottish Executive's working groups looking at the threat from the parasite *Gyrodactylus salaris* (Gs). Many paddlers from the British Isles travel abroad each year to practice their activity and the potential for us to bring back this parasite, or some other similar parasite, does exist. We have therefore been pleased to work with other members of the Executive Working Group to contribute to national policy as well as working with the Norwegian Canoe Association in developing our own advice to canoeists.

The SCA's Gs advice is on our website at the following location:
<http://www.canoescotland.com/Default.aspx?tabid=492>.

We feel that it is worth mentioning that the passing of the Land Reform Act has enabled a Scottish Executive Working Group like this to be more inclusive. Now that canoeists have statutory rights to be on inland water we are regarded as legitimate users of the rivers and other waterways of Scotland and therefore more likely to be included in such debates. By participating in the Working Group the SCA has been able to gain an understanding of the issues surrounding Gs, express our determination to work with others to keep this parasite out of Britain and develop and promote our own guidance to canoeists.

Whilst we share the same aim as everyone else in this debate to keep the parasite out of Britain, we recognise that if it does ever come in we will then be looking at implementing a plan to eradicate the parasite. We hope that will never happen, but we accept that it is wise to plan for the eventuality and consider what contribution we can make to assist the eradication process. For that reason we are keen to retain an involvement in the debate and are pleased to be invited to contribute to the process of developing this Bill.

Along with other recreation bodies that were involved in the management of access during and after the breakout of Foot and Mouth Disease in 2001, the SCA hopes that everyone concerned can gain from the lessons that were learned. The importance of treating recreational activities equally and fairly, and of providing accurate information to the public were key lessons that should be remembered for the future management of such outbreaks. We believe that

such lessons would be important to remember for any water-based disease controls that might need to be implemented.

In terms of the Bill as Introduced, we would like to make the following comments.

In section 7 where the current version of the Bill suggests that Ministers “may” by order approve a Code of Practice. We would like to see “may” replaced by “will”. The Scottish Outdoor Access Code is written into the Land Reform Act. The access provisions in the Act could not be enacted until the Code was drawn up and passed by Parliament. This Bill could make the same requirement for a Code. In fact we would argue that the Bill should stipulate what kind of Code there should be. We believe that the Aquaculture and Fisheries Bill should be supported by a Code of Best Environmental Practice. Such a Code will have to be developed if it is the requirement of the accompanying legislation.

Section 13 of the Bill mentions treatment of equipment. In the event of Gs getting into Scottish waterways this would become necessary in or close to infected waters, but there would be a need to ensure equal treatment of different water users. We are concerned that some managers would seek to place blanket bans on canoeing whilst insisting that anglers disinfect before and after a days fishing. We would like to see a safeguard to ensure a consistent policy for the management of all activities on the same piece of water.

Section 15 refers to the use of barriers on rivers. We recognise that this could be an effective means of eradicating the Gs parasite from a river system, but would wish to seek recognition that this could have safety implications for anyone on or in the river. The method of constructing barriers and providing information about them to the public would be vital aspects of their use, and we would wish to be part of a working group looking into their use.

The value of a working group during the eradication phase cannot be emphasised sufficiently. The group that was formed to devise the “Comeback Code” during the Foot and Mouth crisis performed a vital role, but had the National Access Forum not broken down following the launch of the draft Land Reform Bill on the same day that Foot and Mouth Disease was confirmed in Northumberland, there would have been a ready made group that could have reacted much more quickly. The speed at which a relevant group can be convened is an important element to consider in the development of an action plan to deal with a disease outbreak, and we would urge the committee to consider this point during the consideration of the Bill.

ANNEX D

Respondent Information Form and Consultation Questionnaire

AQUACULTURE & FISHERIES BILL – PROPOSALS FOR CONSULTATION

This form can be completed electronically online at:

<http://www.scotland.gov.uk/Consultations>

You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. All consultation responses are recorded for analysis; completing this questionnaire online will help the Scottish Executive achieve this more efficiently. However if you prefer to complete a paper copy, please return your completed questionnaire to the address at the end of this form. We are inviting responses to this consultation paper by 24 February 2006.

Please complete the details on the Respondent Information Form below. This will help ensure we handle your response appropriately.

Name:	Mr G Keith Allan (Sec + Treas)
Organisation: (if applicable)	The Salmon Net Fishing Association of Scotland
Postal Address:	
Post Code:	
E-mail:	
Telephone Number:	

1. Are you responding as: (please tick one box)

- An individual? (go to Q2a/b and then Q4)
- On behalf of a group or organisation? (go to Q3 and then Q4)

2. INDIVIDUALS

A. Do you agree to your response being made available to the public (in the Scottish Executive library and/or on the Scottish Executive website)?

- Yes (go to 2b below)
- No, not at all (we will treat your response as confidential)

B. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response and name available, but not my address
- Yes, make my response available, but not my name or address

3. ON BEHALF OF GROUPS OR ORGANISATIONS

The name and address of your organisation will be made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

- Yes
- No, we will treat your response as confidential

4. SHARING RESPONSES/FUTURE ENGAGEMENT

We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

- Yes
- No

**QUESTIONNAIRE:
AQUACULTURE & FISHERIES BILL – PROPOSALS FOR CONSULTATION**

The Scottish Executive welcomes your comments on all or part of the questions listed below. If necessary continue on an additional page, numbering your answers and firmly attaching them to the end of this document. Please write clearly in **BLACK INK**.

PART 1 – AQUACULTURE

Chapter 1 Regulator

Question 1: Do you agree that FRS/SEERAD would make the most suitable Regulator?

Yes, in the absence of any other suitable body

Question 2: Should there be an enabling power to permit the option of charging in the future?

Yes, as long as charge levels are fair and reasonable.

Chapter 2 Parasite control

Question 3: Should the Bill make provision for parasites in general, or restrict itself only to sea lice?

Yes, parasites in general.

Question 4: Should the Regulator have both advisory and enforcement functions?

Yes.

Question 5: What powers should the Regulator have as regards the inspection of data and investigation of potential parasite problems on farms?

As much power as is needed.
i.e. full power

Question 6: Should the Regulator have the power to direct treatment?

Yes.

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?

Yes, will suitable contractors be available?

Question 8: Should the Regulator have the powers to direct treatment for notifiable diseases?

Yes.

Chapter 3 Containment

Question 9: Should escapes proposals apply to all the farm types outlined above?

Yes.

Question 10: Should shellfish farms and restocking hatcheries be exempted?

No.

Question 11: Do you agree that the Regulator should have powers to inspect and direct with respect to preventing escapes?

Yes.

Question 12: Do you agree that the Regulator should have a role in improving containment to prevent fish escapes?

Yes.
Escapes need to be investigated and made public.

Question 13: Should the Executive introduce a strict liability offence for escapes from fish farms?

Yes.

Question 14: What elements should be addressed in containment plans?

Yes, all elements in Figure 1

Question 15: Do you have any views on the above proposals?

Fish Farm operators must notify
Scottish Ministers of an escape
immediately by telephone.
Followed by 36-1 - 36-3 . 8.5

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?

Yes

Chapter 4 Data Collection

Question 17: What data, in addition to the production survey data, do you believe are appropriate to submit?

Data already received on a voluntary
basis ie. production figures should
be made compulsory. Farm gate
prices should be readily available

Chapter 5 *Fish farm relocation*

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?

Yes.
Compensation should be at true market value.

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?

Yes,
Should the proposed regulator not have this power?

Chapter 6 *Discretionary power to pay compensation for compulsory fish slaughter*

Question 20: Under what circumstances might it be useful for the Scottish Ministers to have discretionary powers to pay compensation to fish farm operators?

Chapter 7 Fish movements – fish farms

Question 21: Do you agree with the need to regulate live fish movements out of, and between, marine farm management areas?

Yes
The target should be to minimize movements kept for inspection by the regulator.

Question 22: Do you agree there is no general need to restrict live fish movements between freshwater fish farms?

Fish movements between freshwater fish farms should be minimalized and written records kept for inspection by the regulator.

Question 23: Is the proposed power to bring in a national standstill provision in case of a novel disease appropriate?

Yes.

Question 24: Should the Regulator be empowered to licence the transfer of fish by wellboats in Scotland?

Yes.
These powers should be enforced rigorously and no movement of fish from other countries should be allowed into the UK at all and definitely not by wellboats.

PART 2 – FRESHWATER FISHERIES

Chapter 8 *Gyrodactylus salaris* (GS)

Question 25: Should the Bill include enabling powers to eradicate GS where the circumstances are appropriate?

Yes.

Question 26: Should the Scottish Ministers have the power to apply chemical treatments to watercourses for the purpose of eradicating GS?

Yes.

Question 27: Should the Scottish Ministers have the power to apply chemical treatments to freshwater farms for the purpose of eradicating GS?

Yes. If G.S. is found on a freshwater fish farm, slaughter followed by incineration of fish and chemical treatment of the fish farm would be the best policy

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?

Yes, Incident and position should be recorded if possible.

Question 29: Should the Scottish Ministers have the power to remove dead and moribund fish from freshwater farms for the purpose of eradicating GS?

Yes, see question 27

Question 30: Do you agree with the proposal for the Scottish Ministers to impose standstill notices?

Yes.

Question 31: Do you agree with the powers to erect barriers and close fish passes?

Yes.

Question 32: Should Scottish Ministers and their agents have powers of compulsory access?

Yes.

Question 33: Do you agree with the power to require clearance of fish farms in the circumstances?

Yes.

Question 34: Should powers for mandatory disinfection of recreational gear be introduced?

Yes, Anglers and canoeists who visit Scandinavia should be encouraged to disinfect equipment before leaving those countries and again on entry to the UK.

Chapter 9 Amendments to rules on access

Question 35: Do you agree with the proposal to make Liaison Committees mandatory?

No comment

Question 36: Do you agree with the proposal to remove the requirement to advertise in the Edinburgh Gazette?

No comment

Question 37: How else should protection orders be publicised, beyond the requirement set out in the 2003 Act that the applicant give notice in such other newspapers as the Scottish Ministers direct?

No comment.

Question 38: Do you agree with the proposal that protection orders need not cover contiguous fisheries?

No comment

Question 39: Do you agree?

No comment

Question 40: How should buyers find out/be told that protection orders affect their property and be alerted to what their responsibilities are?

No comment

Chapter 10 Fish movements – wild fish

Question 41: Should the Bill make provision to regulate the movement of fish into inland waters?

Yes. Crustaceans should also be included in this part of the Bill. Why are Fish Farms exempt? They should at least operate under the authority of the Regulator in this matter.

Chapter 11 Miscellaneous amendments

Question 42: Do you agree with the proposals to permit the use of rod rests?

Yes, in coarse fishing.

Question 43: Are the limits on the number of rods correct?

Four rods seems a bit excessive.

Question 44: Do you agree with the ban on live vertebrates as bait?

Yes, live baiting should be banned completely in Scotland to prevent any further introductions of alien species.

Question 45: Do you agree with the proposals to prohibit the use of tailers, gaffs, pike gags and landing nets with knotted nets?

No comment.

Question 46: Do you agree that foul-hooking should be clearly prohibited in law?

Foul hooking is unavoidable.
Snigging, i.e. fishing with heavy sinkers and treble hooks if not already banned should be.

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?

No comment

Question 48: Do you agree with this approach?

We need to know what these powers are before commenting.

Question 49: Do you agree that the current law prohibiting the obstruction of salmon during their spawning runs should be extended as described?

Para 100 does not make it clear if this is to apply to the non-tidal parts of rivers only or whether it would apply to the tidal parts. If the intention is to avoid obstructions erected in civil engineering schemes large and small in non-tidal parts of rivers, it would be very helpful to all fish species. We understand para 100 would not affect ~~essentially~~ fishing operations, but feel this should be made clear.

Question 50: Should the Executive widen the existing passage of salmon rules to cover all freshwater fish and all times of year?

No comment.

Question 51: Do you agree with the extension of the definition of fish?

Yes.

Please return your completed form to: Angus Yarwood
Fisheries Bill Team
SEERAD
Room 409, Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY

THE SALMON NET FISHING ASSOCIATION OF SCOTLAND

MEMORANDUM

of the

CONSTITUTION OF THE ASSOCIATION

1. NAME

The Name of the Association shall be "THE SALMON NET FISHING ASSOCIATION OF SCOTLAND".

2. OBJECTS

The objects of the Association shall be the defence, protection and advancement of the interests of salmon net fishing in Scotland. The means by which these objects may be attained will include the following:-

- (a) The opposition, by means of memorials, public appeals, deputations, and communications with Members of Parliament, of measures that may be introduced in Parliament, which, in the opinion of the Association, shall be injurious to the interests of the industry they represent, and the support of measures introduced for the protection and development of commercial salmon fisheries and the stock of salmon in Scotland.
- (b) The occasional meeting to discuss subjects of importance to the industry, and applications or representations from individual members of the Association.
- (c) The acting as a centre for mutual communication and support, including the defence of the members of the Association in test cases and actions of importance tending to prejudice the right of property in salmon net fishings in Scotland, and the exercise thereof.
- (d) To promote the interests of salmon net fishing and the encouragement of scientific research on salmon problems and the rendering of assistance to those engaged in this work.

3. EXECUTIVE

The Executive of the Association shall consist of not less than six or more than twelve members who shall be appointed by the Association in Annual Meeting to serve for a period of three years. One-third of the Executive shall retire each year by rotation but shall be eligible for re-election. Each year the Executive shall appoint one of their own number to serve as Chairman of the Association for the ensuing year and they may also appoint a Vice-Chairman in like manner to serve for the same period.

4. SECRETARY AND TREASURER

The Executive shall appoint a Secretary and Treasurer, whose remuneration and period of office shall be fixed by the Executive.

5. MEMBERSHIP

The Association shall be open to all owners or lessees of salmon net fishings in Scotland, including the District of the River Tweed, whether individuals or firms, or their duly authorised mandatories – the word "Owners" to include Trustees, Curators, Commissioners or Factors. The Association shall also be open to Associate Members, being any individual, firm, company or other body who, in the opinion of the Executive of the Association, would further the objects of the Association and the interests of salmon net fishing in Scotland. The subscription rate, if any, for Associate Members will be decided in each individual case by the Executive of the Association. Associate Members will not be entitled to hold any office and may attend meetings of the Association, but will not be entitled to vote. Former members of the Association may, on retiral, become "Retired Members" at a subscription rate of one-half of the minimum ordinary rate as provided in Clause 6. Retired Members will not be entitled to hold any office, other than that of Honorary Vice-President, and may attend meetings of the Association, but will not be entitled to vote. The Association in Annual or Special Meeting can also appoint as an Honorary Member any person who has given distinguished service to the Association but who is not an owner or lessee of salmon net fishings in Scotland.

6. SUBSCRIPTIONS

All members of the Association who are operators of net fishings shall be liable for annual subscription to the Association at a rate proportionate to each One Hundred Pounds, or part thereof, of the total value of fishings owned and/or occupied by them, as such total value shall be disclosed in the relative Valuation Roll or Rolls applicable to the year in which the subscription falls due or, in the case where the value of the fishings is not disclosed in the relative Valuation Roll or Rolls, at a rate proportionate to each One Hundred Pounds, or part thereof, of the total rental value of the fishings owned and/or occupied by them. Such rate of subscription shall be fixed on the recommendation of the Executive at the Annual Meeting in each year.

Subscriptions shall be payable each year upon the first day of October for the year next ensuing. An additional subscription may be levied when the Association is called upon to undertake financial responsibility in opposing Parliamentary Measures, contributing towards Test Cases or the like, or in meeting any exceptional expenditure. Additional subscriptions will not be levied unless approved at the Annual Meeting of the members of the Association.

7. MEETINGS

An Annual Meeting of all members of the Association shall be held on or about the month of October for the consideration of all matters affecting the Association. Special meetings of the Association shall be called by the Secretary as occasion requires. At all General Meetings eight members shall form a quorum. Seven days' clear notice shall be given of each meeting of the Association, or each Executive Meeting, except in cases of urgency.

8. VOTING

In all cases where a vote falls to be taken at a meeting of the Association the matter in dispute shall be decided by a majority of the individuals present, or represented by formal written proxy, at such meeting, irrespective of value. The Chairman shall have a casting vote in addition to his deliberate vote.

9. POWERS OF EXECUTIVE

The Executive shall have power to exercise all ordinary acts of administration within the limits of Clause Second hereof. Their powers of any additional subscriptions in any year and the method of determining its apportionment among individual members. Their powers shall not include the committing of the Association to exceptional expenditure in (1) opposing any measures in Parliament; (2) the adoption of any Test Case; or (3) the defence of any complaint or prosecution, without the consent of the Association. Five members of the Executive shall form a quorum. The Executive may delegate to a Committee any of its powers and may empower them to co-opt other Members. The Executive shall meet as often as may be required and shall meet if called upon by the Chairman or on the written request of three members. The Executive shall have power to remove from membership any member who in their opinion is acting contrary to the best interests of the Association. The Executive shall have power to fill vacancies in their number. Members so appointed shall hold office until the next Annual Meeting. The Executive shall have power to appoint Honorary Vice-Presidents of the Association who must either by Ordinary Members or Retired Members.

10. ALTERATION OF CONSTITUTION

No alteration of the foregoing Constitution shall be valid unless the same shall be submitted by way of resolution to an Annual or Special Meeting of the Association, of which meeting notice shall have been sent to each Member, accompanied by a copy of the proposed resolution, at least thirty clear days before such meeting.

As altered and ratified at the Annual Meeting of the Association held in Perth on 27th October 2000.

G Keith Allan,
Secretary and Treasurer,

Agenda Item 1

**Environment and Rural
Development Committee**

24 October 2006
ERD/S2/06/29/1f

SUBMISSION FROM THE MARINE CONSERVATION SOCIETY

MCS is a UK charity dedicated to the protection of the marine environment and its wildlife. One of our key aims is the sustainable management of fisheries including the development of sustainable and environmentally sensitive fish farming practices.

Introduction

The Marine Conservation Society (MCS) welcomes the opportunity to submit written evidence in support of Part I (Aquaculture) of the Scottish Executive's Draft Aquaculture and Fisheries (Scotland) Bill. MCS is unable to comment on Part II (Fisheries) as it is outside our remit. MCS fully supports this Bill and believes that this legislation will provide a legal backstop and will serve to underpin the voluntary Code of Good Practice developed by the Scottish aquaculture industry.

The additional measures outlined in the Bill to improve data gathering, inspection and enforcement will help towards implementing the environmental principle as identified in the Strategic Framework for Aquaculture:

" An industry should work in harmony with nature, managing and minimising transient environmental impacts, and avoiding significant, cumulative, long-term or irreversible changes to ecological systems, to cultural remains or valued landscape and scenery."

Part I: Aquaculture

To achieve the objectives set out in the Strategic Framework for Scottish Aquaculture and to ensure that the objective as set out in the Ministerial Foreword of the Aquaculture and Fisheries Bill consultation document to:

"...deliver an industry which is truly sustainable, diverse, competitive and that work in harmony with the environment."

- is it essential that the industry Code of Good Practice is further developed and a Code of Best Environmental Practice is produced as soon as possible. This will allow regulators and inspectors to promote clearly defined best practice to the aquaculture industry thus enabling them to achieve true sustainability.

One of the key issues not currently incorporated with the current Code of Good Practice, that needs to be incorporated into a Code of Best Environmental Practice is feed sustainability, arguably the most urgent and

important issue facing the aquaculture industry today. The farming of carnivorous fin fish continues to expand, with UK production of farmed salmon in 2004 reaching over 158,000 tonnes compared with just over 32,000 tonnes in 1990¹.

Also not included in the current Code of Good Practice is guidance for siting future fish farm developments to mitigate impacts on wild salmonids, biodiversity or avoidance of predators. The use of a more integrated approach to siting of farms with other users within the area needs to be adopted.

1) Parasites

Parasite definition has been limited in the Bill to only cover two sea lice species, *Caligus elongates* and *Lepeophtheirus salmonis*, with provision for adding further “problematic” parasites in the future. MCS would request the committee to ensure that the regulator is charged with closely monitoring the situation of potential additional problematic parasites; particularly in relation to the farming of novel species such as Atlantic cod, as the aquaculture industry diversifies.

In addition to the accepted current methods of sea lice control, provision should be made for inspectors to be kept informed/promote alternative methods of sea lice control in an effort to move away from sole dependency on chemical based sea lice treatments. Alternatives such as sea lice attractant traps and repellents and sea lice vaccines are such examples. An informed inspector acting in an advisory capacity will be in a position to suggest such alternatives to achieve the aims as set out in the National Strategy for the Control of Sea Lice on Scottish Salmon Farms. In particular:

“Further recognition by the industry of the importance and benefits of non-therapeutic approaches to sea louse management and control.”

2) Containment

MCS supports the work already achieved by the Containment Working Group and the translation of this work into the Code of Good Practice (CoGP). The CoGP has adopted this guidance as recommendations that should be applied and not requirements that must be applied.

It is essential that a minimum legal requirement be introduced for cage/net/pen design that ensures that containment equipment specifications meets or exceeds the demands (experienced and anticipated) of the environment in which they are used. Inspections by the proposed regulator could ensure that compliance with such legal requirement takes place, ensuring a minimum standard of equipment was achieved.

Incorporated within the containment plans provisions should be made to combine effective containment and predator control measures. An example being the use of double netting on cages, which not only provides an

additional barrier to predators but also ensures, even in the event of net damage, that fish remain contained. This is an example of best practice on which inspectors could advise upon.

MCS is disappointed that the proposal for making fish farm escapes a strict liability offence is not being carried forward. For example if an inspector, with the power to investigate escapes, were to find that a fish farms equipment was not adequate and did not comply with current minimum legal requirements or Codes of Practice surely any escape from such an inadequate containment system should be treated as a liability?

It has been estimated that up to 2 million Atlantic salmon escape each year in the North Atlantic² ;it was reported in January 2005 over 620,000 salmon escaped in one storm event in Scotland alone³. In 2000 FRS estimated 411,433 farmed Atlantic salmon escaped from marine sites in Scotland⁴.

The impacts of escaping farming salmon on wild salmon stocks are well documented, and include:

- Dilution of genetic diversity of wild salmon from interbreeding with escaped farmed fish.
- Displacement of redds of wild salmon by later spawning escaped/hybrid fish.
- Increased competition for resources created by escaped fish.

3) Fish Farm Relocation

MCS is disappointed that the proposal for Scottish Ministers to have the power to close fish farms if it is in the public interest to do so is not being carried forward. MCS urges the committee to obtain reassurances from the Executive about what measures can and will be taken as an alternative.

If for example, a fish farm was located in shallow water, in an area which was adjacent to a wild salmonid migratory route and therefore causing adverse effects to wild populations, and was adjacent to a seal haul out site, increasing the risk of predator damage and therefore escapes, how would the impacts of this farm be remediated if relocation was refused?

References.

- 1) FAO Global Aquaculture Statistics. <http://www.fao.org/figis/>
- 2) Mc Ginnity, P. Prodöhl, P Ferguson, A. Hynes, R. Ó Maoiléidigh, N Baker, N. Cotter, D. O' Hea, Cooke, D. Rogan, G. Taggart, J & Cross, T. 2003. Fitness reduction and potential extinction of wild populations of Atlantic salmon, *Salmo salar*, as a result of interactions with escaped farmed salmon. The Royal Society. **270**, 2443-2450
- 3) Joint Marine Programme. 2005. The 629,000 that got away. Press Release.
- 4) Fisheries Research Services. 2001. Scottish Fish Farms Annual Production Surveys 2000. SEERAD Edinburgh.

SUBMISSION FROM ADVOCATES FOR ANIMALS

1. Advocates for Animals is grateful to the Environment and Rural Development Committee for the opportunity to give evidence on the above Bill. Our comments relate only to those aspects of the Bill that are connected with fish welfare.

Fish welfare

2. Advocates believes that fish may be unusually vulnerable to disregard of their welfare because it was thought for so long that they did not feel pain. Fish and other non-mammals lack the part of the neural mechanism that generates the subjective experience of suffering (the neocortex), and it has recently been argued on that basis that fish could not suffer. However, it is now widely recognised by scientists that fish have the capacity for suffering, although it may be different in degree and kind from the human experience. A summary was published this year by Huntingford et al¹, who stated that “painful stimuli are, at least, strongly aversive to fish. Consequently, injury or experience of other harmful conditions is a cause for concern in terms of welfare of individual fish. There is also growing evidence that fish can experience fear-like states and that they avoid situations in which they have experienced adverse conditions.”¹

3. Animal welfare organisations have raised concerns about the welfare of farmed fish for several years now. These include an unnatural lifestyle that prevents the performance of natural behaviours; high stocking densities; and the stress of handling, crowding and grading procedures. Aquaculture is an intensive rearing system that imposes artificial challenges on species (principally salmon and trout) that are probably not equipped to cope well with them.

4. Parasite burden is a good example, exacerbated as it is by the confined conditions of the farm cage. Sealice pose an extremely serious welfare problem that can amount, as the Policy Memorandum (para 15) states, to: “literally eating the fish alive”. We note that there is provision within the Bill to extend the list of defined species by regulation, and we welcome this.

5. Advocates acknowledges nonetheless that the industry in Scotland has re-examined many of its practices and that there have been improvements, for example in the slaughter methods applied to both salmon and trout.

¹ F A Huntingford, C Adams, V A Braithwaite, S Kadri, T G Pottinger, P Sandøe and J F Turnbull. Current issues in fish welfare, *Journal of Fish Biology* (2006) **68**, 332 - 372

6. It is welcome that the Scottish Executive, in its recent animal welfare legislation, recognises the sentience of fish and the need to protect farmed fish; and it is valuable that the finfish industry has produced a comprehensive and robust Code of Good Practice. The question to be resolved in this context, therefore, is whether the legislation currently proposed does enough to underpin these provisions.

Part 1 – Fish farms and Shellfish farms

7. We noted in our response to the Scottish Executive consultation that we felt the Bill was too limited in its scope, and that we would have preferred the legislation to provide for the welfare of the fish kept in fish farms.

8. The Bill gives powers for the approval and monitoring of codes of practice for fish farming on the subjects of parasite control and prevention of escapes. However, the industry Code of Good Practice - referred to as the benchmark for the Scottish Executive - also includes chapters on fish health and welfare. Advocates for Animals considers that these issues are sufficiently important to merit inclusion as subjects suitable for adoption and monitoring by the Scottish Executive.

9. We acknowledge that the industry Code of Good Practice for Scottish Finfish Aquaculture has been voluntarily endorsed by up to 95 per cent of the producing industry. However, voluntary endorsement is not binding, and there remains the question of the five per cent who have not signed up to the Code. This is acknowledged by the Executive in the Policy Memorandum (para 66), which says: “relying wholly on a voluntary approach leaves unanswered the question of how to tackle farms which do not sign up to or adhere to the codes of good practice. As yet not every fish farm has signed up to adhering to the code and there is no mechanism to enforce adherence.” The Memorandum also states that the only sanction is the potential to publish which companies have been judged through audit procedures to meet the standards set out; and that even the sanction of expulsion would not necessarily play any part in rectifying bad or poor practice.

10. Advocates believes that, as a matter of principle and in recognition of scientific knowledge about fish sentience, fish reared in fish farms should receive the same level of protection from the state as other intensively-reared animals. Welfare codes issued by the Scottish Executive for other species have evidential status in case of any prosecution for animal welfare breaches. It appears that that would not necessarily be the case for the industry Code of Good Practice.

11. Para 5 of the Policy Memorandum supports the “robust voluntary approach” taken by the fish farming industry and the shellfish farming industry on parasite control and the containment of fish, and would only envisage using the power for Ministers to approve a code if problems arose with the industries’ codes. Advocates for Animals sees this as a “light touch” and believes it would be reasonable to ask for this to be available for welfare. We would like to see flexibility provided within the Bill to allow Ministers, if necessary, also to approve codes of practice on other topics including

welfare, and this could be achieved by the addition of a sub-paragraph to Section 7(2).

12. Regarding the potential approval of a Code of Practice on parasite control: fish that are eaten alive by sealice suffer considerably and treatment must be given. It is noted that a previous evidence session referred to the ability or otherwise of fish farm operators to apply sealice treatment once their discharge consent was used up, and whether treatment could be carried out in well boats (OR 4 Oct 2006, col 3538). Advocates wishes to stress that, when treatment for sealice infestation is necessary, it must be carried out. It would be quite unacceptable to leave fish to suffer from this parasite burden. Nonetheless, we accept that there is real concern over the toxicity of the compounds used to treat sealice. It is hoped that alternative approaches to control may be developed which would avoid the need for substantial chemical treatments.

13. We believe that the provisions in Section 8 for the monitoring and enforcement of any approved Code of Good Practice are appropriate.

14. Given that the voluntary code does not include all fish farms, we believe that the powers of inspectors, provided in Section 9, are necessary.

Part 2: *Gyrodactylus salaris*

15. We note the new power under Section 16 for Ministers to bring legislation to close salmon passageways such as fish passes to move upstream past dams or lades. We are uncertain of the welfare consequences of such a closure, and would ask whether this has been assessed.

16. We note that Section 17 provides powers for Ministers to require the clearance of certain fish farms in waters infected, or suspected to be infected, by the parasite *Gyrodactylus salaris*. This involves the withdrawal of all fish from the waters of the farm, and the destruction of all live fish that show signs of the parasite or the disease that it causes.

17. Our concern here is founded on the experience of other large-scale culls, such as that undertaken in the foot-and-mouth epidemic of 2001 (an analogy has been drawn between the diseases by expert veterinary witnesses appearing before the Committee). We are aware that animal welfare can be a casualty in such situations, and that there are practical difficulties in organising mass slaughter. The Code of Good Practice (para 5.10.2.1) refers to emergency culling, saying that this should be addressed in a farm's Veterinary Health Plan. However, the generic health plan shown in the Code does not specify a recommended technique for emergency slaughter, and it would be useful to know which methods would be approved in such circumstances.

Part 3: Fisheries

Salmon and Freshwater Fisheries

18. We welcome the prohibition in Sections 20 and 22 on the use of the gaff, tailer, pike gag and knotted and wire landing nets in salmon and freshwater

fisheries. These devices are all unacceptable on welfare grounds. We note that the use of the gaff is prohibited in England and Wales under a national by-law. Some fishing clubs (both game and coarse) in Scotland already prohibit or frown on the use of these items, although the use of a “quality tailed” has been seen recommended on a Scottish fishing website.

19. We agree with the amendment to the 2003 Salmon and Freshwater Fisheries (Consolidation) Act, provided by Section 21(2), to make foul hooking illegal, and with the provision in 21(2)(b) that prohibits the leaving of any fishing line with one or more baited lures in water unattended. It is clearly bad welfare to catch a fish but not land and despatch it as soon as possible.

20. Advocates supports the proposal by the Scottish SPCA in its written submission, that – as fishing offences are likely to occur in remote areas – it may be necessary to make provision to allow for the prosecution of offences to proceed on the evidence of a single witness, as in Section 19A of the Wildlife and Countryside Act.

21. Section 25(5) and (6) provides for the prohibition of certain baits and lures, to be specified by regulation. We understand that the intention is to prevent the transfer of live fish to bodies of water, as this can lead to an increased risk of disease and parasites to existing stocks, as well as competition between new and indigenous species in a given water. As would be expected, Advocates for Animals deplores the use of live vertebrates as bait on welfare grounds, and therefore welcomes this proposal. Nonetheless, we see no reason why this prohibition should not be specified on the face of the Bill: such use of vertebrates would seem to us to contravene the Animal Health and Welfare (Scotland) Act 2006, making the need for reform more urgent.

Agenda Item 1

**Environment and Rural
Development Committee**

24 October 2006
ERD/S2/06/29/1h

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

We broadly welcome the provisions of the Bill as introduced and are pleased to note that many of the recommendations that were made by us in our letter of 21 February 2006 responding to the consultation document have found their way into the Stage 1 version.

Many of the wide range of complex aquaculture and fisheries management issues that the Bill addresses are of direct interest to SNH. We welcome in principle measures geared to improving the regulation of the aquaculture industry and the management of our fish and fisheries resources. As we know you recognize, the Bill – despite its extensive scope – does not tackle all the important current issues in the field of aquaculture and fisheries management. We are hopeful that those which it omits, such as the location/relocation of fish farms and the review of freshwater fisheries management structures, will be effectively addressed in other ways, either through the drafting of further legislation or, in the case of fisheries management structures, under the auspices of the Freshwater Fisheries Strategy.

SNH's response to the Bill is attached at Annex A. In our response to the Aquaculture & Fisheries Bill Consultation Paper on 21 February 2006, we suggested that the Policy Memorandum which accompanied the Bill should explain: a) why new statutory powers are sought in some cases but not in others; b) how action in Scotland relates to wider action at the UK and international scales; and c) how Ministers propose to weigh up complex and competing issues of public interest. Whilst much of this ground has been covered within the current document, we feel that the argumentation may not have been set out as fully as might be expected, particularly insofar as *Gyrodactylus salaris* control measures are concerned. This weakness may, however, be remedied through the Strategic Environmental Assessment for the Gs Contingency Plan.

ANNEX A

PART 1 – FISH FARMS & SHELLFISH FARMS

Section 1 Information about fish farms and shellfish farms

We support the powers proposed in the Bill. We believe that the provisions outlined in S1 of the Bill will provide a solid regulatory backstop to the National Treatment Strategy and the aquaculture Code of Good Practice. All farm operators, and not just those within AMAs, should be required to collect appropriate parasite control and fish containment data. SNH is pleased to note that the Bill, in its current form, reflects this.

The regulator should have powers to require any farm to make data available on request, or to collect data directly, and to require treatment or other actions. In the

event of refusal, the regulator should have powers to intervene to treat a lice infestation, and to recover costs later.

Section 2 Information offences

We agree that a refusal to provide the data specified under Section 1, or the provision of false data, should be treated as an offence. If provision is to be made to serve an enforcement notice (as detailed in S6), then this action must be based on accurate and up-to-date data. Refusal to provide such data could be used as a means of averting enforcement – something that should clearly be avoided.

Section 3 Inspections: parasites

SNH agrees with this Section of the Bill and has no further comment to make.

Section 4 Meaning of parasite in Part 1

Clearly this element of the Bill reflects the relative importance of *Caligus elongatus* and *Lepeophtheirus salmonis* within the aquaculture industry as it stands today. Marine and freshwater aquaculture is currently undergoing a process of change and new species are now being considered for, or are already in, commercial production cycles around Scottish coasts. By farming new species at commercial levels, it is entirely possible that this activity will introduce opportunities for new species of parasites which do not, in the wild, currently present a problem to wild conspecifics or other fish. SNH is content that provision exists, in S4(2), to modify the meaning of the term 'parasite' within the Bill.

Section 5 Inspections: containment and escape of fish

SNH does not agree that containment should be a matter for self-regulation and, despite the containment provisions contained within the existing industry CoGP, agrees with this Section of the Bill. It should be noted that the industry currently has an obligation to inform SEERAD once an escape has occurred under the Registration of Fish Farming and Shellfish Farming Business (Amendment) (Scotland) Order 2002 and it is unclear whether this Order will be repealed should this Section of the Bill remain intact after passing through Stages 2 & 3.

Section 6 Enforcement notices

SNH agrees with this Section of the Bill and supports the view that if the Regulator has the power to direct treatment then (s)he should also have powers to pass associated costs on to the Industry if it can be demonstrated that a liability exists.

Section 7 Code of practice

SNH welcomes engagement by Scottish Ministers in the development of Codes of Practice for the aquaculture industry. We are, however, unclear as to how this may affect the existing industry CoGP.

Section 8 Monitoring and enforcement: code of practice

Once an agreed Code of Practice has been developed, SNH support the view that adherence to these should be enforceable by Scottish Ministers.

Section 9 Powers of inspectors: entry

SNH agrees with this Section of the Bill and has no further comment to make.

Section 10 Entry: supplementary

SNH agrees with this Section of the Bill and has no further comment to make.

Section 11 Offences: general

SNH agrees with this Section of the Bill and has no further comment to make.

Section 12 Interpretation: Part 1

“fish” – The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and the Import of Live Fish (Scotland) Act 1978 includes crustaceans in the definition of 'fish'. If this is the definition which is to be adopted within the Bill, then this may need clarification.

“fish farm” - SNH does not consider that restocking hatcheries should be exempted from this part of the Bill. Considerable empirical evidence exists that accidental releases from hatcheries over long periods of time can have a significant impact on native fish stocks, either through genetic introgression or through competitive interactions.

PART 2 - *GYRODACTYLUS SALARIS* CONTAINMENT AND TREATMENT

Section 13 Order under section 2 of the 1937 Act: additional powers

SNH agrees with this Section of the Bill and has no further comment to make.

Section 14 Preliminary designation of area by order

SNH agrees with this Section of the Bill and has no further comment to make.

Section 15 Construction of barriers to movement of fish, treatment of waters with chemical agents etc.

SNH broadly agrees with this Section of the Bill but notes that there are a number of factors that may affect the views of SNH, fellow public bodies, and other interested parties on the appropriateness of certain control measures. Examples of these may include the potential impact of chemical-based treatment on human health, recreation, features of conservation interest and compliance with a wide range of other relevant EU Directives and physio-chemical (such as pH) or fluvial (discharge) parameters. The Gs Contingency Plan, its Strategic Environmental Assessment, and

associated decisions made by Scottish Ministers, will be crucial in reaching appropriate conclusions on the type or range of actions required.

Section 16 Further powers by regulations under section 31(1) of the 2003 Act

SNH agrees with this Section of the Bill and has no further comment to make.

Section 17 Clearance of certain fish farms

SNH agrees with this Section of the Bill and has no further comment to make.

Section 18 *Gyrodactylus salaris*: Scottish Ministers' powers to take other measures

SNH broadly agrees with this Section of the Bill but reiterates the comments made in respect to S15 (above).

Section 19 *Gyrodactylus salaris*: Scottish Ministers' powers to make payments

SNH agrees with this Section of the Bill and has no further comment to make.

PART 3 - FISHERIES

Section 20 Use of gaff, tailer or landing net

SNH agrees with this Section of the Bill and has no further comment to make.

Section 21 Rod and line

SNH agrees with this Section of the Bill and has no further comment to make.

Section 22 prohibition against using pike gags and certain keepnets

SNH agrees with this Section of the Bill and has no further comment to make.

Section 23 Close times for freshwater fish

SNH strongly agrees with the provisions expressed in this Section of the Bill.

Section 24 Exemption from certain offences

SNH agrees with this Section of the Bill and has no further comment to make.

Section 25 Freshwater fish conservation regulations

SNH strongly supports the inclusion of this provision within the Bill and believes that these, along with the provisions provided in S23 for the specification of weekly and annual close times for fish other than migratory salmonids and trout, provide a good basis for better fisheries management in Scotland.

Section 26 Enforcement of Community obligations

SNH agrees with this Section of the Bill and has no further comment to make.

PART 4 - MISCELLANEOUS

Section 27 Unauthorised introduction of fish into certain marine waters

SNH agrees with this Section of the Bill and supports the imposition of controls to regulate the unauthorised movement on fish into marine habitats.

Section 28 Unauthorised introduction of fish into inland waters

SNH strongly supports the inclusion of these measures within the Bill provisions. Control mechanisms provided by existing legislation are not considered to offer adequate protection to the indigenous fish fauna of Scotland. However, whilst SNH agrees that new controls are needed, we believe that these should not be confined to movements of fish which are considered to be non-native to Scotland. We also have concerns about the potential for the movement of fish within and between Scottish catchments where there is a risk to local (genetic) biodiversity.

Once fish have been delivered it is known to be common practice to discharge the water in which they have been transported either into the same waterbody, or into a nearby watercourse. Non-native flora and fauna (including fish parasites) can also be transported with consignments of fish to inland waters. Once established, the costs of control, containment or eradication of introduced species may be significant. SNH suggests that issue be considered with respect to the proposed provisions within the Bill.

Section 29 Payments in respect of fish destroyed

SNH agrees that it may be useful for the Executive to have powers to pay compensation, but these should be deployed only in cases where the problems do not result from mis-management.

Section 30 Payments for certain purposes

SNH agrees that it may be useful for the Executive to have powers to pay for aquaculture and fisheries development, promotion, organisation and research. The inclusion of sea fisheries and the sea fish industry within S.30(3) appears slightly anomalous as this sector has not been fully covered elsewhere within the current Bill. Given the fact that so many of the indigenous freshwater fish found in Scotland spend at least part of their lives in marine or estuarine habitats, this issue may merit further consideration.

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

SNH has no specific comment to make on this Section of the Bill

PART 5 - GENERAL

Section 32 Crown application

No comment

Section 33 Offences by bodies corporate

No comment

Section 34 Minor and consequential amendments

No comment

Section 35 Ancillary provision

No comment

Section 36 Orders

No comment

Section 37 Interpretation: general

No comment

Section 38 Short title and commencement

No comment

SUBMISSION FROM SEPA FOR SCRUTINY OF THE BUDGET PROCESS

Thank you for providing SEPA with the opportunity to submit written evidence to the Committee, in advance of the oral evidence session on 24 October 2006. My apologies for the delay. We were a bit unclear on what the committee would already have seen or received.

You might wish to remind members that SEPA's Corporate Plans and Annual Reports are all in the public domain, as are charges documents, etc and that the annual report and accounts is laid before Parliament each year. Given that there is a great deal of information available, I have therefore only provided the attached short annex document just to highlight key budget issues in relation to grant in aid, charging, staffing, new duties and efficiency savings.

ANNEX

Funding

SEPA's operations are funded in two main parts – first, by the Scottish Executive as part of the delivery of a core public service and, secondly, applying the polluter pays principle, by charges on regulated operators. Revenue from operator charges has been increasing both absolutely and as a share of total revenue and is planned to reach nearly 50% of income in 2007-08. This increase is largely due to the implementation of new regulatory requirements placed upon charge payers. It was also a requirement of SEPA's Policy and Financial Management Review undertaken by the Executive in 2002/3 that full cost recovery be achieved as soon as possible for all chargeable activity.

Table 1 Funding of Revenue Operations 2002-08

£m	2002-03 Actual	2003-04 Actual	2004-05 Actual	2005-06 Actual	2006-07 Budget	2007-08 Plan
Grant in aid ex capital	22.1	27.9	27.3	31.6	33.1	32.7
Income from charges	18.5	20.2	24.4	26.5	30.3	32.3
Other income	0.2	0.1	0.4	0.5	0.4	0.4
Total income for revenue operations	40.8	48.2	52.1	58.6	63.8	65.4
Charges as % of total	45.3	41.9	46.8	45.2	47.5	49.4

In addition to the Grant in Aid to fund revenue operational costs SEPA also receives funding from the Executive to pay for capital expenditure. The total Executive funding of SEPA for revenue and capital is shown in Table 2.

Table 2 Total Executive Funding 2002-08

£m	2002-03 Actual	2003-04 Actual	2004-05 Actual	2005-06 Actual	2006-07 Budget	2007-08 Plan
Revenue Operations	22.1	27.9	27.3	31.6	33.1	32.7
Capital	2.1	2.1	2.2	2.5	3.2	2.2
Total	24.2	30.0	29.5	34.1	36.3	34.9

SEPA is expected to move toward full cost recovery on all its charging schemes, subject to Ministerial approval of any proposed increases in charges. Table 3 compares income from charges and the related activity costs for the period 2002-06 and shows forecast income from charges for this year 2006-07 and next.

Table 3 Fees and charges 2002-08

£m	2002-03 Actual	2003-04 Actual	2004-05 Actual	2005-06 Actual	2006-07 Budget	2007-08 Plan
Income	18.5	20.2	23.8	26.5	30.3	32.3
Expenditure	22.0	22.7	24.4	26.8	n.a.	n.a

(Under)/over recovery	(3.5)	(2.4)	(0.6)	(0.3)		
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As part of our drive for even greater transparency in our charging schemes we have established a model of charge-payer engagement which involves them from the initial development of the scheme enabling them to influence the scheme design and therefore its implementation costs. (This mechanism is in addition to separate charge payer input to PPC and WFD consultation mechanisms.) The costs of schemes are independently audited.

In addition, we have completed a benchmarking exercise of our main charging schemes with the Environment Agency of England and Wales which is about to be made available to charge payers on the SEPA web site.

Increased Duties and Resulting Activities for SEPA

Table 4 Main areas of activity resulting from new Directives implemented by SEPA 2002-08. All involved Executive funding input.

Water

Water Framework Directive (Controlled Activities Regimes etc)
 Bathing Waters
 Floodline service
 Flood maps
 Flood warning dissemination
 EC Shellfish Monitoring
 Nitrate Directive - Groundwater NVZ
 Oil Storage Regulations
 Environmental Monitoring of Marine SAC's
 Aquaculture

Waste Management

National Waste Strategy
 Waste Producer Audits
 ELVs/WEEE (End of Life Vehicles and Waste Electrical and Electronic Equipment)
 Agriculture, Mines and Quarries Regs
 EU Landfill Directive
 Review of Special Waste
 Transfrontier Shipment of Waste
 Waste Arisings (Data)
 PCB Regulations (Polychlorinated Bi-Phenyl compounds)

Air

Scottish Pollution Inventory
 EU Emissions Trading Scheme
 Control of Major Accident Hazard (COMAH) Regs
 Solvent Emissions Directive
 Petrol Vapour Recovery

Radioactive Substances

Radioactively Contaminated Land

Support for Nuclear Decommissioning Authority Activity

Land

Contaminated Land Regs

Cross-compliance duties relating to CAP/SFP etc

Other

Nature Conservation (Scotland Act) & Scottish Biodiversity Strategy

EC Strategic Environmental Assessment Directive

Assessment and Management of Environmental Noise

NETREGS

Environmental Economics Analysis

Human Health and the Environment Analysis

Emergency Planning under Civil Contingencies Act

Environmental Liability Directive

Staffing

To support this additional work SEPA has increased its staff numbers as shown in table 5

Table 5 Staff Numbers 2002-08

	2002-03 Actual	2003-04 Actual	2004-05 Actual	2005-06 Actual	2006-07 Estimate	2007-08 Plan
Average Number Full Time Equivalent Staff Employed*	963	1025	1093	1144	1201	1270

* Figures taken from SEPA's Annual Reports.

Efficiency Savings

As part of the Scottish Executive's Efficient Government Programme, SEPA undertook to deliver total efficiency savings of £4.1m over the period 2005-08, representing 12.5% of the planned 2007-08 GIA (ex capital) received from the Executive. These savings have been utilised to support the cost of the implementation of new Directives. Achievement against target is shown in Table 6.

Table 6 Efficiency Savings 2005-08

£m	2005-06	2006-07	2007-08
Current Target			
Cash	0.7	2.0	2.0
Time	1.6	2.0	2.1
Efficiencies Delivered			
Cash	2.4	0	0
Time	1.7	0	0

The Cash Releasing savings target set for the 3 year period has been exceeded by the end of the first year. These savings were achieved from procuring the same level of supplies and services at less cost and from carrying out the same level of activity with less resource freeing up resource for other activities.

Time releasing savings target set for the 3 year period is on track to deliver the required 2.1m over the three years. These savings were achieved by making more efficient use of current office space thereby increasing the number of staff housed within our current buildings rather than acquiring new buildings. In addition through more efficient working this enabled current staff to take on new work arising from new Directives.

Noting the effort in relation to efficiency, we would hope that assessments of effectiveness will also be undertaken. SEPA's engagement in collaborative effort with others inside the SEERAD "family" – the "On the Ground" work, for example, as well as externally with other NDPBs and local government etc on shared services should also be noted.

SUBMISSIONS FROM VARIOUS ORGANISATIONS FOR SCRUTINY OF THE BUDGET PROCESS

The Committee agreed to invite a number of interested third parties to provide written submissions in relation to its decision to focus on SEPA in part of its scrutiny of the Scottish Executive's Draft Budget for 2007-08. Submissions have been received from six organisations, and are attached in alphabetical order below.

SUBMISSION FROM CBI SCOTLAND

Thank you very much for inviting CBI Scotland to comment on budgetary issues relating to SEPA. We have a number of general points that we would like to make and that we hope will assist the Committee in its deliberations.

Business recognises that protecting the environment for current and future generations is a legitimate public policy goal, and that a well designed and adequately funded regulatory and enforcement regime is necessary. Effective regulation enables policy-makers to reflect public concerns over actual or perceived risks, and provides a clear and transparent framework within which businesses can operate. Regulation carries a financial cost and business accepts that. It is the price that it 'pays' for being an integral part of society.

We acknowledge that SEPA is demonstrating a genuine desire to minimise the regulatory burdens and costs on business, and that its charging regimes are becoming more transparent. This is welcomed by business, as is the extensive consultation that it undertakes with business before it sets its charges. But, as always, the key issue is the extent to which its good intentions are put into practice on a consistent basis and, here, there is much more to do.

The underlying problem is not one of 'bad intent' on the part of SEPA but rather its culture. RPI or RPI+ charge increases are taken for granted. We believe that SEPA does not have enough incentive to improve its performance, because it knows that it can simply pass cost overruns on to its 'customers', a luxury few businesses enjoy. Many of them can not pass on any cost increases to their clients. SEPA aims to achieve a 3% efficiency saving each year, but what sanctions will ultimately be available, and what redress will our members have, if they do not achieve this?

We have also noted that SEPA's general efficiency target is to determine 72% of licence applications within the statutory time limits. This is unacceptably low. Quite frankly, any private sector business that only 'delivered' on time to its customers 7 times out of 10 would not be in business for very long. Again

because it has no 'competition', SEPA is not being subjected to the same pressures to improve its service as the private sector. The Scottish Executive must take the lead here and put in place incentives and sanctions that will drive improved performance.

SEPA plans to raise £32.3m from charges in 2007-08. On the surface, this does not appear to be a large sum of money. But management and compliance time, plus the resultant opportunity cost of that spending, will all contribute to a much larger 'total' cost for business. And, for some businesses, it will represent a major burden at a time when most of their other costs are rising substantially and when global competition is putting intense pressure on their profit margins. Against this backdrop, Scottish firms will not welcome additional charges imposed unnecessarily by SEPA.

That is why it is absolutely vital that SEPA adheres to the principles of good regulation set out in the Hampton Report. Regulation must be proportionate. It must be risk-based, so that the main burden and cost only falls on those activities that pose a genuine risk to the environment or those companies that have consistently and wilfully disregarded their duties. Activities that pose no risk to the environment and companies that have a proven track record of good environmental practice, must be subjected to light-touch and, therefore, low cost regulation.

While SEPA expresses a desire to behave in this manner, it still does not always do so in practice. We witnessed this at first hand last year over the Controlled Activities Regulations. The regulatory regime that has been implemented does not put sufficient emphasis on genuine risk assessment. So, in the case of water abstractions, the volume of water abstracted is a key determinant of the level of controls that SEPA will apply, when it should be entirely based on a thorough assessment of the risk the abstraction process actually poses to the environment. Under this 'volume-based' approach, many more business processes will be subject to an expensive licensing process than would be the case using a genuinely 'risk-based' assessment. This was particularly disappointing because it followed a very extensive consultation process through the National Stakeholders Forum.

SEPA is increasingly expected to regulate new and different activities. In some cases it will have to introduce particularly large and complex regulatory/charging regimes. We accept that this is a significant challenge for SEPA when it comes to determining what type/level of regulation and enforcement will be necessary and, therefore, what charges it will have to apply to cover its costs.

This was the case with the PPC Charging Regime. It was introduced in 1999 but the full implementation of the regulations will not be completed until 2007. The existing charges are not sufficient to cover SEPA's costs and, as a consequence, 'inflation busting' increases are going to be applied in 2006-07 and 2007-08. SEPA will no doubt argue that it made the very best attempt it could to estimate the likely costs of monitoring and enforcing what was a whole new set of regulations. We do not deny SEPA's good intentions with

PPC but it must do better in future. Business investment is underpinned first and foremost by certainty. They need to know what they will pay as quickly as possible so they can budget and plan, and it is very damaging when costs change unexpectedly. We expect SEPA to improve its performance in the area of budgeting and costing, and ongoing and extensive dialogue with stakeholders will play an important role in this regard.

Our members consistently raise a wider issue regarding the regulatory regime: the piecemeal and inconsistent manner in which new charging schemes are introduced. What we have, therefore, is a situation in which; for example, PPC charges are set up in a different way from the charges arising from the Controlled Activities Regulations. Business desperately needs consistency and the Scottish Executive and SEPA should be putting all their efforts into developing a system built around a single environmental permit or licensing regime covering all regulated activities. Until such a regime is in place, charging principles should be consistent across different regulatory regimes.

(The Scotch Whisky Association has indicated that it is not submitting its own evidence but fully supports the submission by the CBI Scotland.)

SUBMISSION FROM NFU SCOTLAND

Thank you for the opportunity to provide comments to the Committee to inform its scrutiny of SEPA's budget. I also apologise for delay in sending this paper to you.

Before making specific comments relating to SEPA activity, it is worth briefly outlining the general issues relating to Scottish agriculture and environmental regulation, over which there is a great deal of industry concern.

General comments

- Scottish agriculture is subject to an array of regulatory pressures arising from EU Regulations and Directives on food safety and animal welfare policy, but particularly arising from environmental policy.
- The Scottish farming industry supports science-based regulation which seeks to protect the environment; indeed Scottish agriculture has a strong reputation on that front. If implemented in accordance with the five principles of better regulation (proportionate, accountable, consistent, transparent and targeted), regulation can deliver significant benefits to rural communities, the wider public and farmers themselves.
- However, there is an unprecedented level of concern within the farming industry that the regulatory system, particular environmental, is failing to achieve its objectives or deliver any measurable public benefit, despite the massive and increasing burden it represents to individual businesses.

- The concern is exacerbated by the imbalance of power in the food supply chain, which results in low farmgate prices. As the Committee observed during its food chain inquiry, farmers' weak position requires them to absorb the cost of new regulation without a corresponding increase in prices. On top of that, the ability and willingness of processors and retailers to pass their costs down to farmers results in agricultural businesses having to absorb the cost of regulation affecting other players in the supply chain, as well as their own.
- There are a number of particular concerns relating to the implementation of environmental regulation in Scotland. These include:
 - A strong perception that legislation is 'goldplated'. There is evidence that regulation is implemented more strictly in the UK than elsewhere in the EU and, in some cases, more strictly in Scotland than the rest of the UK.
 - Too literal an implementation of regulation can lead to unintended and negative side-effects, which run contrary to existing government policy and, in some instances, the objectives of the original directive or regulation.
 - There is little analysis or consideration of non-regulatory options prior to implementation.
 - Regulations tends to be introduced cumulatively, with little apparent regard as to whether existing regulation is addressing the issue.
 - Implementing rules and charges are often blunt, with no consideration of differing circumstances and priorities in different geographic locations.
 - The charges for administration and monitoring are not transparent.
 - There is no apparent and meaningful cost/benefit analysis of regulation prior to implementation.
 - In some cases, implementation of environmental legislation is delayed until, under the threat of European infraction proceedings, regulations are introduced that are disproportionate and have no scientific justification.
 - Once implemented, there is rarely any assessment of the effectiveness of regulation. This lack of analysis leads to a number of problems. Firstly, it fuels the perception that environmental charging schemes are as much about raising revenue for enforcement authorities as delivering public benefit. Secondly, when new regulation is proposed, there is no meaningful basis to determine if existing regulation already addresses the issue. Thirdly, no 'best practice' is identified for developing regulation, leading to the repetition of mistakes.

The Committee should be aware that NFUS has fed these views into the Davidson Review in the Cabinet Office and the inquiry being undertaken by Jim Wallace on behalf the European Committee. NFUS has also established

an Regulatory Action Group to identify scope for rationalising the existing burden of regulation.

Beyond the principled points above and turning to issues of specific relevance to SEPA, it is important to stress that NFUS does have an open dialogue with the Agency. Recent discussions have been constructive and SEPA is clearly now more aware of the concerns of the farming industry. Below are the broad areas of concern for the farming industry, followed some specific regulatory examples.

Broad SEPA-related issues

- There is a lack of information and understanding within the industry as to the public benefits being delivered as a result of SEPA's charging schemes or the regulation to which they apply. NFUS welcomes SEPA's commitment to strengthen its communication with industry, indeed NFUS is participating in this process by nominating farmer representatives to SEPA's area advisory boards.
- There is a lack of transparency in charges. There is also no explanation as to why charges in some instances are higher in Scotland than in England. Against a background of diverging charges, NFUS was informed in March 2004 that a bench-marking exercise was underway to compare all SEPA and Environment Agency costs and charges. The report was initially promised by November 2005. The latest commitment was for the report to be published in September/October 2006, however NFUS has yet to see sight of it. Despite this, charges under some SEPA schemes have been set until 2008, above the level in England and with increases above the rate of inflation.
- NFUS questions the effectiveness of enforcement authorities also undertaking the role of advisers to government on regulatory issues. SEPA both advises the Scottish Executive at an early stage on the level of regulatory implementation required, then undertakes the enforcement and collection of associated charges. It is questionable if there is any incentive in this process to adopt a 'lighter-touch' approach to implementation.
- Likewise, the Scottish Executive policy of requiring SEPA to move to full cost recovery has no associated policy of ensuring SEPA activity represents best value. SEPA has no competition for its services. A blunt requirement to recover costs without independent scrutiny of the activity which gives rise to these costs is of concern.
- NFUS questions the wider principle of charging industry for the administrative and monitoring activities of SEPA, which are requirements of EU Directives. Such work is carried out in the wider public benefit and, as such, the under-funding of SEPA's work by the Scottish Executive is unacceptable.
- NFUS welcomes SEPA's target of 3% efficiency savings each year, but, in the absence of any sanction for failure, questions its effectiveness.

- NFUS recognises the report by KPMG into the calculation of SEPA charges. However, whilst such independent scrutiny is welcome, it is important to recognise that the report effectively scrutinised SEPA accountancy under different charging schemes, and did not challenge the work which gives rise to the charges in the first place. Independent scrutiny of SEPA activity is crucial to instilling confidence in its efficiency.
- It is also important to note that the SEPA's budgeted income from industry under charging schemes does not reflect the total cost to industry, which is far higher when the total resource required to comply with SEPA regulation is taken into account.

Specific SEPA-related issues

The following examples emphasise the general concerns raised above.

Controlled Activities Regulation (Water abstraction charges)

Agricultural water use for irrigation and drinking water is modest relative to other water users, particularly public supply. However, we completely accept that farming has a responsibility in meeting the requirements of the Water Framework Directive.

A favourable transition scheme, which ran until 30 September, was welcome. However, concerns remain over SEPA's charging policy after this date. From this date, the charge for new water abstraction licences is £2944 (a rise from £214 for registering an activity prior to 30 September). This charge has not been justified.

Additionally, we have no explanation as to why it will cost as much to set up a licence for a farmer abstracting 2000 cubic metres of water a day as it will for more significant environmental activity (such as discharges from landfill sites). The calculation of the charges was subject to the scrutiny of an independent auditor, but the auditor was in no position to challenge to extent to which the SEPA work was necessary.

NFUS believes that some of SEPA's assumptions in its calculations are wrong, and has presented scientific evidence to that effect (in particular the SEPA assumption that less than 10% of the water abstracted by a farmer is returned to the watercourse from which it was taken). SEPA has committed to a review of the scheme after two years but won't consider this evidence in the meantime, nor has it presented scientific evidence to justify its own contention.

Waste – charges for recycling road planings

When tarmac-surfaced roads are renewed, the top surface is removed by machinery. The material is a mixture of stones and tar, usually called road planings. These planings are not usually reused for public roads. However, it is possible to reuse/recycle such material to cover car parks, driveways and farm roads. This has the clear environmental benefit of avoiding reusable material being sent to landfill as waste.

Unfortunately, the current waste directive can be interpreted as meaning that all road planings are waste. SEPA's view is that road planings can be reused, but only under a Waste Management Licensing Exemption, which is subject to a charge. The charge itself is relatively small (£58 for less than 25 tonnes and £158 for up to 150 tonnes). However, NFUS questions the sense of charging for an environmentally beneficial activity, especially as it increases the likelihood of such material being disposed of in landfill sites which itself exacerbates an environmental problem.

NFUS recognises that SEPA is operating under an EU Directive and the Union is working in Brussels to amend the Directive. However, in England, the Environment Agency has waived the charges and registration for small amounts of road-planings. Scotland needs comparable relief.

Charges under the Integrated Pollution Prevention and Control (IPPC) regulations

These charges affect pig and poultry business over a certain size. Since 2001/02, Scottish IPPC scheme charges have been increasing faster than those of the Environment Agency (EA) and are scheduled to increase even more. The EA has only set charges until April next year. Based on those figures, Scottish farmers are already being charged application fees which are 7.8% higher and annual subsistence fees that are 13% higher than those charged in England. The figures are outlined in the table below.

		England (£)	Scotland (£)	Differential (%)
Charge		2006/2007	2006/2007	2006/2007
Application		3331	3590	7.78
Small	Farm	2229	2521	13.10
Subsistence				
Large	Farm	2794	3157	12.99
Subsistence				
Variation		339	390	15.04
Transfer		339	251	-25.96
Surrender		339	2598	666.37

Charges for disposal of sheep dip

Farmers wishing to dispose of sheep dip require an authorisation from SEPA to do so, which carries a charge. The current annual charge to maintain such an authorisation is £170.10. In England the charge is £138. SEPA has not demonstrated that more work is needed in Scotland to maintain an authorisation, nor has it explained why its costs are higher than for the same work in England.

Beyond these specific examples, it is important to note that NFUS has worked successfully with SEPA in a number of areas. In particular work between local farmers, NFUS and SEPA to improve bathing water quality in specific areas has paid significant dividends with all of Scotland designated bathing waters passing EU tests for the first time in 20 years.

Additionally, SEPA and NFUS are working together with angling interests to ensure farmers can continue to use crucial animal health products whilst protecting the water environment at the same time.

However, there is significant concern over the accountability, transparency and proportionality of regulation, including that on which SEPA advises, enforces and raises revenue.

A more 'common-sense' approach to tackling regulation is urgently required which ensures that regulation and the associated charges can be clearly and measurably justified in terms of the public benefit delivered in return. Crucially, there must be independent scrutiny of the activity of agencies such as SEPA to ensure efficiency and best value.

SUBMISSION FROM THE SCOTTISH CROFTING FOUNDATION

The Scottish Crofting Foundation welcomes the opportunity to comment on the Executives' planned expenditure for 2007/08. While we appreciate that the scope of this inquiry is focused in particular on budgetary issues relating to the functions of SEPA, we would also like to use this opportunity to make a number of brief general comments on other aspects of the planned budget, objectives and priorities.

Objectives for Environment & Rural Development expenditure

- A number of the objectives and targets relate quite rightly to environmental improvement and mitigation of impacts on the environment. Little is made, however, of the conservation and enhancement of areas of already high environmental value, outside of those covered by UK or European designation. The UK has signed up to a target of ensuring the viability of High Nature Value farming by 2008 and this does not appear to be fully reflected in either the conservation target based only on designated sites, nor the land use target which talks only in economic terms of the productive use of land in the Less Favoured Area. A target which recognises the connectedness of environmentally sound land management, the

provision of healthy local food, the preservation of landscape and biodiversity and the viability of rural communities would be an enlightened one.

- The priorities for 2007/08, while all very worthwhile, read as a somewhat urban agenda for the countryside, hinting at thinking that rural issues are more or less covered by CAP support and rural development mechanisms. This thinking is not borne out particularly in the planned expenditure for ERAD, but the focus in the objectives, targets and priorities is somewhat inescapable. While it is accepted that not all rural issues fall within the remit of ERAD, rural communities are mentioned infrequently and only in connection with rural service delivery. We would be keen to see measures supporting the community-based development of rural areas, based on sustainable management of natural resources and a commitment to continuing the process of decentralising public sector jobs in appropriate numbers to remote rural areas.

Specific expenditure

- The announcement on the implementation of CAP reform in Scotland promised that the historic basis of payments would be reviewed at the first available opportunity. The current allocation of £433M is based on historic production levels and is not, we believe, the best mechanism in the longer term to reflect the increasing policy imperative of support for non-market goods. With the first date for review being 2009, we would support discussion of other options being set in motion in the forthcoming financial year.
- The Less Favoured Area Support Scheme is set to amount to £61M out of a predicted £130M spend on rural development support and intended to contribute to the target of maintaining agricultural activity in the LFA area. It's effectiveness in achieving its aims is, we believe, likely to be severely hampered by current proposals which effectively amount to the decoupling of this support.
- The current distribution of LFASS which sees the highest payments going to the best quality of land is also highly problematic in ensuring that this scheme delivers on its objectives of supporting and retaining agricultural activity in areas constrained by natural handicaps. In retaining the current distribution on an historic basis the scheme is failing to recognise the changed circumstances and drivers brought about by the 2003 reforms to the CAP.
- The Crofting Community Development Scheme – a hugely successful mechanism which support land-based and community development in remote rural areas – has no budgetary allocation for the financial year 2007/08. This is a very great shame as this scheme has been highly effective in assisting in a range of beneficial developments for rural communities.

- On the other hand, we are pleased to see that the Crofting Counties Agricultural Grants Scheme – a relatively small but fundamentally important mechanism supporting active land use in the Highlands and Islands – retains its own budget for the year 2007/08. We would support this scheme remaining a stand-alone assistance outside the Land Management Contract mechanism.

SEPA – functions and budgetary issues

The only issue raised by SCF members in the past year relating to the function and operation of SEPA has been in regard to the revised system of charging for ordinary licenses, particularly in relation to the disposal to land of spent sheep dip and for abstraction / impoundment etc.

There is a concern that the cost of regulatory permissions and licenses could become excessive for small rural businesses to bear and while the need for regulation and licensing is accepted, many are concerned at the potential for increasing cost in achieving necessary permissions.

SUBMISSION FROM THE SCOTTISH ENVIRONMENTAL SERVICES ASSOCIATION

SESA is the trade association for the managers of Scotland's waste and secondary resources. SESA's Members wish to be enabled to invest in waste management infrastructure and services to assist in Scotland's move towards a more sustainable, high recycling and high resource recovery society.

KEY MESSAGE

Whilst SESA welcomes the proposed increased funding for sustainable waste management, we are not convinced that this will be sufficient to provide enough facilities to ensure that Scotland plays its part in complying with EU law. Whilst SESA's Members provide cost effective waste management and recycling services, the Scottish Executive, SEPA and local authorities also need to provide an environment where greater investment in recycling can flourish.

Specific Comments on the Environment and Rural Development Chapter

Sustainable Waste Management and Compliance with EU law

The Executive has recognised (in Objectives 3 and 4) its responsibility to comply with EU environmental law to ensure a clean and safe environment, mitigating and adapting to climate change and complying with domestic, EU and international standards. It is crucial that this recognition is backed up by the necessary resources.

Significant volumes of biodegradable municipal waste will need to be diverted from landfill to comply with the EU Landfill Directive. The EU Packaging

Directive and Waste Electrical and Electronic Equipment (WEEE) Directive will place additional requirements on the managers of Scotland's waste.

Though significant progress has been made in recent years, it is unlikely that the achievement of the Scottish Executive's recycling and composting target of 30% by 2008 alone will be sufficient to ensure compliance with the EU Landfill Directive diversion target in 2010.

In order to ensure compliance, the Executive should take additional measures, such as exploring the feasibility of direct charging of householders, better enforcement of producer responsibility for specific waste streams and effective targeting of waste producers regarding their duty of care obligations.

Providing Value for Money

SESA's Members already provide a high quality and cost effective service. Scotland spends £106 per household per year on municipal waste management. Higher levels of recycling and recovery require increased expenditure. Scotland still spends less than other comparable EU countries – for instance the Netherlands spends £170 per household per year on municipal waste management.

The Role of Local Authorities

SESA welcomes the Scottish Executive's drive to provide further support to local authorities to increase the proportion of municipal waste which is recycled and composted.

SESA's Members have been instrumental in contributing to Scotland's current 24.4% recycling rate. To further improve recycling performance SESA suggests that local authorities concentrate on procuring contracts that offer the required incentives for SESA's Members to invest in more sustainable waste management and remove institutional barriers to the development of infrastructure that will be needed to comply with EU Law. We believe Scotland will perhaps require 1 million tonnes of new waste processing capacity simply to meet the first landfill diversion target.

Further resources should be directed at creating markets for recyclates and tackling environmental crime. Similarly, investment in environmental education and waste awareness, by both local authorities and SEPA, is essential to the success of increased recycling and SESA would warmly welcome any additional investment in this area. Only by changing public perceptions and habits will Scotland move towards a more resource efficient economy and more sustainable waste management.

The Community Sector

SESA's Members work successfully in partnership with community groups to promote recycling and provide employment, especially in deprived

communities. However, the community sector is unable to offer waste management services of the scale that communities in Scotland need to ensure compliance with landfill diversion targets.

Waste Reduction and Producer Responsibility

It is widely recognised that a reduction in resource use in the economy will help reduce the volume of waste sent to landfill. However it is unlikely that the impact of waste minimisation will be felt in the short term. SESA has long argued that producer responsibility, coupled with the use of economic instruments, should be the driver to ensure the sustainable management of business waste at least cost.

SEPA Funding

SESA is pleased that funding has been allocated to SEPA to support programmes to develop markets for recycle, waste minimisation, waste awareness, and enforcement activity. However it is essential that such funding is allocated and spent on programmes that complement other activities, such as those carried out by WRAP.

Procurement Policy

The development of recycle markets is vital if landfill and recycling targets are to be met. SESA urges the Scottish Executive to lead the way by promoting sustainable procurement, both by itself and within local authorities. Recent figures suggest that public expenditure accounts for 51% of Scottish GDP and there is a huge potential to use this route to stimulate demand for recycled materials, for instance by requiring the use of recycled materials in public contracts.

Environmental Crime

SESA is also pleased at the promised action on environmental crime. In contrast to SESA's highly regulated Members, who work to the highest standards, environmental criminals recklessly risk causing serious damage to the environment and human health. SESA would like to see firmer action, with more prosecutions of unregulated environmental criminals and tougher penalties. Currently £11million of Scottish taxpayers' money is spent on clearing up fly-tipped waste each year.

SUBMISSION FROM THE SCOTTISH SALMON PRODUCERS ORGANISATION

The Scottish Salmon Producers' Organisation (SSPO) is pleased to have the opportunity to contribute to the Committee's consideration of the Scottish Executive's draft budget with specific reference to the Scottish Environment Protection Agency (SEPA).

There are two ways in which SEPA's operations impact on the salmon farming industry. One is the direct costs of the various charging schemes and

the other is the indirect cost to business of complying with SEPA regulatory and reporting requirements.

1. Charging Schemes

The industry has previously raised the issue of above inflation increases in charging at Departmental and Ministerial level and has been advised that increases are designed to bring SEPA up to full cost recovery. Unfortunately, this fails to recognise in any way, the detrimental impact on the competitive position of a business faced with increases in excess of 300% above inflation. In the period October 2001 to October 2004 SEPA charges rose by 32%. A further above inflation rise of 4.7% occurred in 2005.

In order to speed up the approval process, the industry worked with SEPA to develop protocols for submitting pre-modelled applications by approved contractors, at the industry's own cost. This has eased the direct burden to SEPA but does not appear to have been reflected in the charging schemes.

We would contend that, rather than continually increasing charges, SEPA should be tasked with reviewing the extent of its monitoring and reporting requirements and finding innovative ways of utilising the significant volumes of real time information it holds on our industry's activities. In short, achieve the same level of scrutiny within a tighter operational cost base.

2. Indirect Costs to Business

The costs of either developing or varying a salmon farm site/area begin with the provision of information to support the process, such as hydrographic surveys, seabed samples, and environmental statements. These are all costs over and above the application charges and, once operational, the annual monitoring charges. Whilst not all these costs are at SEPA's behest, the majority are. However, the biggest cost is in the time taken, from start to finish, to complete the whole process. Even when SEPA's information requirements are fully understood and complied with, we seem to experience significant delays in processing applications.

We note the corporate efficiency target of 72% of licence applications being processed within statutory time limits and would contend that is totally unacceptable. This is bad for business and bad for competitiveness. It cannot simply be a question of insufficient resources as we have seen SEPA staff numbers and budget increase year after year.

We acknowledge the significant new legislative responsibilities with which SEPA is tasked, but feel that the delivery time must be questioned. We would contend that a well-established business that has provided continuous monitoring data over many years requires a much simpler licence to operate and far less scrutiny than a newer development. SEPA should be encouraged to cut the actual resource applied to aquaculture generally on the basis that no significant environmental risks have been established in the 10 years since SEPA was created.

SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to provide a written briefing to the committee in relation to the Executive's draft budget for 2007/08. As requested, our submission specifically covers our view on the budgetary issues relating to the Scottish Environment Protection Agency (SEPA).

Funding Structure

Scottish Water is fully supportive of the need for a strong, independent and adequately funded environmental regulator.

Scottish Water is one of the largest single charge payers to SEPA. We welcomed SEPA's approach in consulting widely on the new Water Environment (Controlled Activities) Fees and Charges scheme and we are pleased that the transparency is much greater than under previous schemes. We would encourage SEPA to continue this process of consultation and review to ensure that the charging scheme is cost reflective and that each sector is charged appropriately according to the environmental risks arising from these sectors.

In our consultation response to SEPA, we noted our concern that the charges are not linked directly to environmental detriment. We maintain that the charging scheme is not yet fully reflective of the effort required to regulate SEPA's customers and that it could provide more incentives to promote good practice in operating activities.

We note that SEPA's general efficiency target is only to determine 72% of licence applications within statutory time limits. Scottish Water conducts activities under a regulatory contract that requires our business to be conducted as efficiently as possible and at least cost. We submit many licence applications to SEPA and would expect that 100% of these are dealt with during the statutory time limit in order that we can plan and operate accordingly.

We would also make a more general comment that SEPA was instrumental in the agreement of milestones¹ within Scottish Water's Delivery Plan which has been accepted by the Minister for the period 2006-10. We are under a Ministerial Direction to meet these milestones and depend on SEPA working with us in a timeous fashion to deliver the required outputs. It is important to us that SEPA's funding allows it to be properly engaged in the planning and delivery requirements of the whole Quality & Standards process and that this should not be limited by the cost recovery of the Charging scheme.

¹ e.g. dates by which strategic studies on environmental outputs should be delivered.

Conclusion

Scottish Water firmly supports the necessary role performed by the environmental regulator in Scotland and we believe that SEPA should be fully resourced in order to carry out its activities and to deliver quality services to its customers.

As a main customer of SEPA, we believe that there should be a focus on cost reflective charging combined with a firm commitment to service deliverability improvements. Such moves by SEPA will be of benefit to not only those customers directly affected but to all who are influenced by the work of the environmental regulator in Scotland.

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.**

APPENDIX 3

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

In its letter of 19 September to Gerald Byrne, the Committee commented as follows-

“The Committee notes that in terms of Article 14.1 of the EU Directive 2002/49/EC, member states were to implement the Directive by 18 July 2004. The Committee asks the Executive to explain the reasons for the late implementation of the EU Directive.”

The Scottish Executive responds as follows:

Work began to transpose Directive 2002/49/EC in 2002. It was clear from that early stage that this would be a major data gathering and management exercise for the Executive, involving a large number of complex technical issues. Indeed more than half of the Member States failed to meet the deadline and at December 2005, 7 Member States were similarly delayed in transposition.

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. The Committee may be aware that similar Regulations in England, Northern Ireland and Wales are only now being made. This also reflects the degree of close co-operation between the administrations in delivering the objectives of the Directive in a harmonised way across the UK.

The key requirements of the Directive to date have been to bring into force laws necessary to comply with the Directive by 18 July 2004, and to notify the European Commission of various matters by 30 June and 18 July 2005. All necessary notifications have been made to the Commission, and the only delay has been in bringing forward the Regulations.

The critical dates to comply with the principal obligations in the Directive, for example noise mapping, do not commence until 30 June 2007. The Scottish Executive currently expects to meet those targets.

**CORRESPONDENCE FROM THE DEPUTY MINISTER FOR
ENVIRONMENT AND RURAL DEVELOPMENT, 13 OCTOBER 2006**

Thank you for your letter of 05 October 2006 to Ross Finnie, MSP, Minister for Environment and Rural Development, in which you raise a number of points about the Environmental Noise (Scotland) Regulation 2006. I am replying as noise issues form part of my portfolio.

In general terms it is difficult at this early stage in the mapping and action plan work to predict the long term actual effect of the Regulations with respect to environmental noise in Scotland. The mapping exercise is seen as the first stage of a process intended to avoid, prevent or reduce on a prioritised basis the harmful effects, including annoyance, due to exposure to environmental noise. The mapping exercise will provide a base line against which environmental noise policy can be judged. Noise mapping on this scale has never been carried out in Scotland or the UK before and until the results of the mapping exercise are known then the measures required and associated costs to reduce environmental noise are difficult to predict.

The following are answers to the points you have raised.

1. For first round mapping the roads to be mapped are essentially motorways and A roads having more than 6 million passages per year, as well as all roads within the "agglomerations" of Edinburgh and Glasgow. For the second round of mapping in 2012 the roads to be mapped are essentially motorways and A roads having more than 3 million vehicle passages per year as well as all roads within the agglomerations of Glasgow, Edinburgh, Aberdeen, Dundee and Falkirk/Grangemouth. The actual roads and railways to be mapped will be subject to finalisation based on the most up to date data available at the time. For example if the population of Falkirk Grangemouth were to drop by 2012 there would be no requirement for mapping the whole agglomeration. Similarly for rail the first round railways are those having more than 60,000 train passages per year as well as all rail within the agglomerations of Edinburgh and Glasgow. The second round railways are those with more than 30,000 train passages per year as well as all railways within the agglomerations of Glasgow, Edinburgh, Aberdeen, Dundee and Falkirk/Grangemouth.

2. The directive ultimately requires the use of a common method for assessing noise across the EU. Until now there has not been any harmonised approach on the indicators used to assess noise. Further background information on how noise is described and the new indicators is given in Annex G of the Scottish Executive consultation document. <http://www.scotland.gov.uk/consultations/environment/amen-19.asp> and appended to this letter. It is therefore anticipated that the use of the new

indicators will allow the number of people exposed to different environmental noise levels to be aggregated across Europe.

3. It is very difficult to anticipate exactly what an action plan will look like in advance of the production and analysis of the noise maps. Given the timescales however (one year between the production of the strategic maps and the production of Action Plans) it is anticipated that realistically the first round of Action Plans may require further investigation of the noise hotspots, to verify the strategic maps and then to investigate any possible remediation actions. Thereafter the implementation of the plans will take place over a longer timeframe.

The directive requires the Commission to report, by the end of 2009, to the European Parliament and Council on the implementation of the END. The report will include a review of the case for setting quality objectives for environmental noise and propose a strategy to achieve them. Such a strategy would consider the setting of goals for the reduction of the number of people affected by noise from specific sources and any measures that are necessary to reach the goals. However, further EU legislation would be required for setting noise quality objectives and the UK would seek to ensure that the benefits of any future proposals are fully justified by the costs.

4. There will be further cost benefit analysis as part of the Action Plan process. Long term costs are impossible to estimate until we know the extent of the issues needing to be addressed which will come out of the mapping exercise.

5. We are working closely with Local Authorities and other key partners on these issues. There is consensus that the Scottish Executive should be responsible for making the noise maps with the Local Authorities having a role in carrying out reality checks on the outputs prior to publication. For the first round of Action Plans the Executive will take the lead with Local Authorities assisting with their local knowledge and local public involvement. This arrangement will be assessed and evaluated and the model and level of involvement altered as appropriate.

Finally I intend to keep the ERDC informed of developments associated with implementation of the Regulations. In that light once the mapping process is complete, I will forward on the relevant maps to the Committee.

I hope this response clarifies the points that you raised.

SSI DESIGNATION FORM

SSI Title & No:	The Plant Health (Scotland) Amendment Order 2006, (SSI 2006/474)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	The purpose of this instrument is to amend the Plant Health (Scotland) Order 2005 to take into account changes made by Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants and against their spread within the Community.						

Laid Date	22 nd September 2006	20 day date	28 th October 2006
1st SLC Meeting	3 rd October 2006	40 day date	16 th November 2006
Lead Committee Report Due	13 th November 2006	Other Committee Report Due	

SE Contact	Yvonne Hay, 46345
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								