



Environment and Rural Development Committee

35th Meeting, 2006

Wednesday 6 December 2006

The Committee will meet at 11.00 am in Committee Room 4.

1. **Petition:** The Committee will consider petition PE941 from Frank Buckley, on behalf of the Society for the Protection of Salmon and Sea Trout, calling for the Scottish Parliament to urge the Scottish Executive to ensure greater protection for the rivers, streams and lochs of Scotland, such as Loch Broom and the River Gruinard, from fish farms developments.

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

the EC Fertilisers (Scotland) Regulations 2006, (SSI 2006/543);

the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment (No. 3) Regulations 2006, (SSI 2006/548);

the Water Environment (Controlled Activities) (Third Party Representations etc.) (Scotland) Regulations 2006, (SSI 2006/553); and

the Water Environment (Relevant Enactments) Order 2006, (SSI 2006/554).

Not before 11.30 am—

3. **EU issues:** The Committee will take evidence on EU issues, principally the December 2006 meeting of the Agriculture and Fisheries Council and the rural development programme, from—

Ross Finnie MSP, Minister for Environment and Rural Development, Andrew Mackie, Environment Group, Ingrid Clayden, Rural Group, and Frank Strang, Sea Fisheries Conservation Division, Scottish Executive.

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

The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>Note from the Clerk on PE941</p>	<p>ERD/S2/06/35/1a</p>
<p><u>Agenda Item 2</u></p> <p>The EC Fertilisers (Scotland) Regulations 2006 (SSI 2006/543)</p> <p>Extract from the Subordinate Legislation Committee's 43rd Report</p> <p>The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 3) Regulations 2006 (SSI 2006/548)</p> <p>The Water Environment (Controlled Activities) (Third Party Representations etc.) (Scotland) Regulations 2006, (SSI 2006/553)</p> <p>The Water Environment (Relevant Enactments) Order 2006, (SSI 2006/554)</p>	<p>ERD/S2/06/35/2a</p> <p>ERD/S2/06/35/2b</p> <p>ERD/S2/06/35/2c</p> <p>ERD/S2/06/35/2d</p> <p>ERD/S2/06/35/2e</p>
<p><u>Agenda Item 3</u></p> <p>SPICe briefing 06/102</p> <p>Briefing from the Scottish Executive</p> <p>Paper from SPICe <i>[Members only]</i></p>	<p>ERD/S2/06/35/3a</p> <p>ERD/S2/06/35/3b</p> <p>ERD/S2/06/35/3c</p>

Agenda Item 1

**Environment and Rural
Development Committee**

6 December 2006
ERD/S2/06/35/1a

Environment and Rural Development Committee

PE941 – PROTECTION FROM FISH FARM DEVELOPMENTS

Note by the Clerk

1. The Public Petitions Committee (PPC) has referred PE941 to the Committee. The petition, by Frank M Buckley, calls for the Parliament to urge the Scottish Executive to ensure greater protection for the rivers, streams and lochs of Scotland, such as Loch Broom and the River Gruinard, from fish farm developments.

Background

2. The petitioner is concerned about the effect of fish farms on stocks of wild salmon and sea trout. In particular, the petitioner states that problems with sea lice, the escape of farmed fish and the location of fish farms has led to diminishing stocks of wild salmon and sea trout. He states that failure to secure wild fish stocks affects the economy of rural areas principally through the loss of tourism and the consequent loss of employment.

Progress of the petition

3. The petition was lodged with the PPC in February 2006. At its meeting on 22 March, the PPC agreed to write to the Scottish Salmon Producers' Organisation, the Scottish Anglers National Association, the Fisheries Research Services, the Scottish Association for Marine Science, the Institute of Aquaculture, University of Stirling and the Scottish Executive. At its meeting on 15 November 2006, the PPC agreed to refer the petition to the Environment and Rural Development Committee for consideration as part of its scrutiny of the Aquaculture and Fisheries (Scotland) Bill.
4. A copy of the petition and relevant correspondence is attached.

Current developments

5. The main theme of Part 1 of the Aquaculture and Fisheries (Scotland) Bill is the conservation of wild fish stocks through the control of parasites and the prevention of escapes from fish farms. The Bill makes provision for a package of measures to achieve these aims.
6. Many of the issues raised by this petition have been considered by the Committee during its Stage 1 scrutiny of the Bill. The Committee heard from a range of people and organisations involved in the aquaculture industry and

from a number of wild fish interests. The Committee discussed issues relating to escaped farm fish, sea lice, area management agreements, and the location of fish farms.

Conclusion

7. The Committee is invited to consider the petition.

8. If the Committee considers that the issues raised by the petition have been fully explored during Stage 1 consideration of the Aquaculture and Fisheries (Scotland) Bill, the Committee is invited to agree to:

- conclude consideration of the petition on this basis; and
- send a copy of the Committee's Stage 1 report to the petitioner.

LETTER FROM FISHERIES RESEARCH SERVICES

PETITION PE941 FROM MR FRANK BUCKLEY ON BEHALF OF THE SOCIETY FOR THE PROTECTION OF SALMON AND SEA TROUT

Thank you for your letter of 4 April 2006 to Professor Cook. We would make the following comments on issues raised in the petition.

1) Decline

Declines in sea trout and salmon evident over the last few decades are real, based on trapping and catch data. Decline in sea trout catches was already evident before the advent of salmon farming. The main driver of the decline has been a reduction in the proportion of smolts migrating to the sea that return as adults but the cause(s) of increased marine mortality have not been identified. The decline in salmon has affected both west and east coast catchments, areas with and without salmon farms, respectively. Rod catches can be used as a proxy for in-river abundance. For east coast stocks there is an increasing trend whereas for west coast stocks no overall trend is evident. Salmon stocks are critically low in a small number of west coast rivers. Sea trout stocks on the west coast appear to be regionally variable, with some stocks increasing, some stable, and some still in decline.

2) Stocks

Reported catches of wild sea trout and salmon in Loch Maree in 2005 were at or near lowest levels since records began although low salmon catches were also recorded in the 1970s.

3) Extinction

Available information does not make it possible to state objectively if salmon and sea trout stocks in Loch Sguod have become extinct. However, local Trust biologists report recent high trap catches of salmonids. The most comprehensive listing of the status of salmon rivers in Scotland is the NASCO rivers database which does not deal with individual rivers. This indicates that overall rivers are classified as:

Not threatened	363
Lost	2 (both are in the East region)
Maintained*	1 (East region)
Restored	5 (the R Clyde + 4 in the East region)

Threatened with loss 11 (5 in the Clyde Coast region + 6 in the West region)

*salmon stock now only maintained through human intervention.

4) Farm Salmon

The sampling procedures, procedures for identification of farm fish, and the authority of source of the stated figures are undocumented and therefore cannot be commented on directly. Our own survey of maternal feed pigment in salmon fry in the early 1990s showed spawning of farmed females in 14 of 16 rivers (Solway to east Sutherland, but not including the Ewe) with mean incidence of 5% and highest levels of circa 20%.

Studies carried out by research groups in Ireland and Norway indicate that interbreeding of escaped farm fish with wild fish can be expected in many circumstances to have a detrimental impact. However, the extent and nature of the impacts which may have occurred on the west coast of Scotland is unknown because of the difficulty of conducting rigorous studies which can inform on the question.

5) Escapes

The numbers of escaped farm salmon cited are broadly correct. The Registration of Fish Farming and Shellfish Farming Businesses (Scotland) Order 2002 obliges fish farmers to notify the Executive of any escape, or risk of escape, of farmed fish. The Scottish Executive has worked with the fish farming industry to produce a code of practice in relation to containment of farmed fish and it intends to underpin that code of practice by introducing new legislation to ensure fish farm equipment is fit for purpose.

6) Tourism Collapse – no comment

7) Economic Effect a: – no comment

8) Economic Effect b: – no comment

9) Unprecedented

The formal catch record, on which much of our understanding is based, has existed only since 1952; this is a short time-scale in a biological context. Fish populations, including salmonids, show profound variations in productivity over extended time scales. Nitrogen isotope studies in Kodiak Lake, Alaska, inferred large productivity variations on century scales extending back more than 2000 years, in the absence of substantial fisheries.

10) Sea Lice

FRS cannot comment in any detail on the sea lice monitoring carried out in the River Ewe as it has not seen the data. It is not clear whether the lice reported were all mobile stages. Studies in Norway identified potential lethal levels of mobile sea lice on smolts. Studies on sea lice levels on post-smolt salmon leaving sea lochs have not been

published in Scotland. A study of sea trout post-smolts in Scotland in 2002 and 2003 found an average of less than 5 mobile lice per fish (Larval Sea Lice Densities and Sea Lice Levels on Post-Smolt Sea Trout in Western Scotland, 2002-2003. Fisheries Research Services Internal Report No 04/04).

Since 1999, the Scottish Executive has supported a voluntary initiative aimed at ensuring the sustainability of wild and farmed stocks of salmon and trout by seeking management solutions to address health problems common to both farmed and wild fish. The Tripartite Working Group (TWG) Concordat was signed in June 1999. It opened up communication lines between fish farmers and wild fish interests. SEERAD appointed a National Development Officer to promote the formation of Area Management Groups comprised of fish farmers, riparian owners, Fisheries Trusts and District Salmon Fishery Boards and other stakeholders, as appropriate to the local area. Highlands and Islands Enterprise, along with Scottish National Heritage and the Crown Estate, funded regional projects, including Regional Development Officers, until end March 2006. The Executive provided further funding for the next two years. So far, 14 of a possible 20 Area Management Groups have signed Area Management Agreements (AMA). These agreements are unique to the local area but are based on the principles of the TWG Concordat, which include a target of zero ovigerous sea lice, particularly at critical times such as during the wild smolt migration period from February to June and adherence to codes of practice.

Modern veterinary medicines for sea lice have significantly reduced the number of sea lice on Scottish salmon farms in recent years. Furthermore, the control of sea lice has been improved by the strategic use of effective medicines and other management techniques, such as site following. Synchronized sea lice treatments on all farms in adjacent areas appear to have been successful in reducing sea lice levels in Loch Torridon and Loch Shieldaig. This level of co-operation between different fish farm companies became possible with the formation of an Area Management Group.

11) Jobs Crisis – no comment

12) Revenue Loss– no comment

13) Cooperation

The confidentiality agreement within Area Management Groups protects the commercial confidentiality of the companies involved but encourages rapid and free information exchange within the group. Any information can be made public with the agreement of the contributors. The membership of an AMG is not limited and there could be representatives of other interest groups.

14) Regeneration

There is some evidence that stocks of sea trout and salmon have improved in some parts of the west coast of Scotland. There is evidence in the Loch Torridon area that this is associated with changes in farming practices associated with the use of veterinary medicines and synchronization of sea lice treatments but available

information is insufficient to establish whether this is generally the case for the West Coast as a whole. The Norwegian Government does monitor sea lice levels on fish farms, as do the Irish authorities. Recent studies in Norway suggest that synchronized lice treatments on fish farms in a fjord can reduce the numbers of sea lice on the farms and on wild salmon smolts. This also seems to work in Scotland (see point 10).

15) Tourism – no comment

16) Fish Farm Jobs – no comment

17) Economy – no comment

18) Concerns

The potential for relocation of fish farms in sea lochs where migratory salmonids run is being addressed by a Location-Relocation Working Group established by the Scottish Executive following the recommendations of the Strategic Framework for Scottish Aquaculture. This Working Group has representatives from government, aquaculture, local authority, wild fish and conservation interests. It is difficult to provide a scientific measure of the impact which fish farms may be having on wild fish populations and the benefits which may be achieved through relocation (Raynard et al 2006: Options for investigating whether benefits to wild salmon and sea trout populations are derived from the relocation of marine Atlantic salmon aquaculture. Fisheries Research Services Internal Report 02/06. 30 pp). Nevertheless, pilot fish farm relocation projects have been agreed by the Location-Relocation Working Group and the Executive has agreed to provide financial assistance for relocation projects which meet the necessary criteria.

Fish farming and wild fish interests are achieving closer cooperation through the Tripartite Working Group (TWG) which was established in 1999 to address problems common to salmonid farming and wild salmonid fisheries and to seek solutions for ensuring the maintenance of a healthy stock of wild fish whilst at the same time promoting a sustainable aquaculture industry. Further information on the TWG process is provided in the response to paragraph 5.

19) Pollution – no comment

20) Preservation

See comments on the Location-Relocation Working Group in section 18 above.

21) Further Losses

As the causes of the observed downward trend in abundance of salmon and sea trout are not well understood and probably multifactorial, there is no *a priori* reason to suppose that further losses are inevitable. As mentioned by the petitioner in point 14, stocks of sea trout and salmon have started to regenerate spontaneously in some areas. Supporting action may be taken in certain cases to promote or accelerate recovery, for example through appropriate restoration stocking, fishery regulation or

AMAs. The action appropriate for a given river or area should be determined on a case by case basis.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

Dr Trevor Hastings
Programme Director
Aquaculture and Aquatic Animal Health

LETTER FROM THE SCOTTISH EXECUTIVE

I have pleasure in providing the Executive's response to Petition 941.

Our detailed comments on the issues raised by the Petition are contained in the attached Annex. You should also have a separate response from the Chief Executive of Fisheries Research Services, our scientific advisers.

I would want to impress upon the Committee that for some years now the Executive has taken very seriously the interactions between the fish farming industry and our native wild fisheries, particularly salmon and sea trout stocks. Both sectors are vitally important to Scotland and we want to ensure that they can co-exist effectively and in harmony with the environment. To that end we have been working extremely hard with both sectors and other key stakeholders to address the challenges.

I believe we have made a great deal of progress through initiatives such as the Strategic Framework for Scottish Aquaculture (SFSA), the Tripartite Working Group and the Freshwater Fisheries Forum. The industry today is very different to that of five or six years ago when the then Transport and Environment Committee conducted its 'rolling inquiry' into fish farming as a result of public concerns at the time. It is now much better organised and managed and the recent launch of the Code of Good Practice, a product of the SFSA, is another very positive step. I would also add that there is now a very good working relationship between the industry and wild fish interests and this is giving local managers and proprietors the confidence to invest in and improve their fisheries.

We must not, of course, be complacent. There are still challenges. We must continue to build on what we have achieved thus far and we must strive for continuous improvement within the industry. I trust that the information that FRS and the Executive is providing will persuade the Committee of that and we would be happy to provide further information if that would be helpful.

RHONA BRANKIN

Scottish Executive response to Petition 941

Annex A

Background

Fish farming in Scotland started as a small industry some 30 years ago and now produces around 150,000 tonnes annually, worth about £350 million (farm gate value). The industry was initially welcomed by almost all in Scotland, especially those living in the economically fragile and remote rural communities, from which the industry largely draws its workforce. However, as the industry has expanded, public concerns have arisen, a number of which are outlined in the petition.

Most of the issues, we would argue, are either addressed by existing or emerging legislation and/or by current policy initiatives developed in conjunction with stakeholders.

The principal tool for tackling the issues of public concern and delivering a sustainable industry is the Strategic Framework for Scottish Aquaculture (SFSA) which was launched in 2003. The SFSA was developed by the Scottish Executive (SE) with the full participation of the industry, the wild fish sector and other key stakeholders. The SFSA contains an 'action plan' currently with [36] priorities for action. Progress is monitored by the Ministerial Working Group on Aquaculture (MWGA) and reports are published every 18 months; the next such report is due within the next few weeks. Since the launch of the framework very good progress has been achieved.

Another important tool is the Tripartite Working Group (TWG) which involves the Executive, wild fish sector, the fish farming industry and key regulators such as Scottish Natural Heritage (SNH) and SEPA. The aim of the TWG is to facilitate a dialogue between the fish farming industry and wild fish interests and to encourage best practice through the development of Area Management Agreements (AMAs). The TWG participants believe that the process is working well.

In addition to these initiatives the Executive is about to introduce to Parliament, the Aquaculture and Fisheries Bill which contains, inter alia, new proposals for tackling sea lice and fish farm escapes.

The Executive therefore believes that the issues raised in the petition have either been addressed or are in hand.

Regulatory Framework

It might be helpful to the PPC to understand the broad regulatory framework within which fish farming operates.

Currently marine fish farming, the siting and operation of moored cages is controlled through leasing mechanisms under the 'Interim Scheme for the Authorisation of Marine Fish Farms in Scottish Waters' which is administered by The Crown Estate Commission (CEC) for coastal waters along the Scottish mainland, the Western Isles and parts of the Orkney Islands. The Orkney Islands Council control fish farming through a works licence system for 'harbour' areas. Shetland Island Council controls all fish farming activity in its surrounding coastal waters through a work licences system. Land-based facilities are dealt with by the relevant local authorities which will assume statutory planning responsibility for marine fish farming later this year.

The CEC has put in place a process to consider whether a lease or lease modification should be granted, what conditions should be attached, and if any studies, including an Environmental Impact Assessment (EIA) are required. (Both Shetland and Orkney Island Councils under their works licence systems can and

do also require EIA.) The CEC undertakes local consultation and takes advice from statutory consultees including SEERAD, SNH, SEPA and the relevant local authority to allow it to make properly informed decisions.

Pollution

The petitioner raises the issue of pollution and suggests that farmers should be fined for incidents resulting in pollution, including over-stocking and that monitoring and inspection of farms should be far stricter, with unannounced visits. SEPA regularly monitors all fish farms in Scotland to ensure that environmental quality standards are met; some of these visits are pre-arranged, however others are unannounced. SEPA also conducts sampling of water and sediments around fish cages to monitor the impacts of the fish farming activities upon the environment and to detect illegal use of medicines. SEPA does not hesitate to take appropriate enforcement action and refers cases to the Procurator Fiscal where appropriate. SEPA's aim in regulating the industry is to ensure adequate environmental protection proportionate to the risk posed by the industry.

Potentially the main environmental impact stemming from marine fish farms is the downgrading of water quality and impact on the benthos due to deposition. SEPA authorises fish farms in the same way as it does for all domestic and industrial discharges to the aquatic environment. This means, for example, that nutrient inputs to the water column and deposition on the sea bed below cages are all required to meet appropriate environmental quality standards. The ability to meet these standards will depend upon a combination of inputs and the ability of the water environment to dilute, disperse and assimilate pollutants to maintain a healthy ecosystem. This ability of the environment to be able to self clean and continue to function also applies to the benthos and deposition is assessed using a specialist assessment tool, DEPOMOD, to ensure the sea bed continues to function properly. Also, all discharges, including fish farm inputs to the marine environment, have to allow the standards set in EU Directives to be met. SEPA has a statutory duty under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) to advertise proposals for discharge authorisations so that the public is informed about the conditions that are intended to apply to a discharge. Members of the public may raise objections and seek to appeal the conditions set. Each authorisation is monitored and policed through site inspections and the conditions are reviewed periodically. SEPA has a 'Procedures Manual covering Regulation and Monitoring of Marine Cage Fish Farming in Scotland' which provides full details on how appropriate assessment and robust environmental protection is delivered. Fish farms have to meet the same quality standards as all urban and industrial waste water discharges within the receiving water environment.

Where there have been charges of fish farming causing eutrophication, chemical residue build up and harm to important species, the Executive and its agencies have conducted investigations. Appropriate monitoring and assessment studies, which meet international standards, have been applied, some of these studies have been submitted to the OSPAR Commission for its contracting parties (other

States including France, the Netherlands, Germany and Denmark as well as the European Commission). Independent reviews, including those by Swedish and US Scientists, have also been conducted to ensure that any risk of bias or error is addressed. In most cases, studies have been able to refute charges and indeed have pointed towards an over precautionary approach being applied in situations where there has not been enough information available prior to the study programme. This was found to be the case in the Post Authorisation Monitoring Programme (PAMP) which is outlined in greater detail below.

Fisheries Research Services will, in their response, comment on the status of wild stocks, but we welcome this opportunity to respond to some of the other “facts” cited in the petition.

Sea Lice

The petitioner blames sea louse burdens on smolts (young sea trout and salmon migrating to sea) and the impact of escaped farm salmon as causative factors in the decline of wild populations. While there is no substantial evidence that sea lice from fish farms have an adverse affect on wild stocks, it is accepted that fish farms may contribute towards making a bad situation that much worse.

The fish farming industry monitor and control sea lice on their farms to maintain the health and welfare of their stocks. The need for an assessment of sea lice controls was included in the SFSA and relevant protocols are included in the recently launched industry Code of Good Practice for Scottish Finfish Aquaculture (CoGP). As already mentioned, the Executive has included proposals on sea lice in the upcoming Aquaculture and Fisheries Bill which will allow inspectors to undertake counts of lice on fish farms where they judge significant numbers to be present. A farmer may be required to treat his fish, where the sea lice burden is considered a threat to local wild and farmed stocks.

As for other discharges and activities, sea lice treatments for fish farms are authorised by SEPA under CAR 2005. To address concerns that treatment residues were building up in the environment around fish farms, a Post Authorisation Monitoring Project was established jointly with the Veterinary Medicines Directorate, Defra and others to study the ecological effects of sea lice treatments”. The study was undertaken by independent researchers and the findings published in 2005. The results of the project report, which was subject to independent scrutiny, are publicly available at the following website (<http://www.sams.ac.uk/research/coastal%20imapcts/ecol.htm>) The research concluded that adverse impacts of such treatments were not detectable within the wider ecosystem.

The Tripartite Working Group Area Management Agreements (AMAs) also make a major contribution by covering a range of issues including – sea lice monitoring and treatment; the containment of farmed fish and minimisation of escapes, contingency plans to recover escaped fish and single year class production plans to deliver synchronised fallowing to minimise sea lice and fish disease risk. There are currently 14 signed AMAs with another 6 in prospect.

Fish Farm Escapes

The Executive has put a number of initiatives in place to deal with this important issue. Legislation was first introduced in May 2002 which requires the mandatory notification of all escapes of farmed fish. Any suspected escape must also be reported to the Executive. This legislation also allows for recovery action to be considered and the deployment of measures, such as the use of gill nets, to protect local wild stocks from escapes. Fisheries Research Services Inspectors follow up reports of escapes to ensure lessons are learned and appropriate measures taken to prevent a recurrence.

The Executive also requires site specific containment and contingency plans in support of all applications for fish farm sites to prevent escapes.

Out of the SFSA process Containment Guidance for regulators and industry has been drawn up with the help of key stakeholders, and included in the industry CoGP. Other containment issues including fish farm structure and design are currently being reviewed and it is expected that further recommendations may be made to the MWGA.

Through the Aquaculture and Fisheries Bill the Executive foresees the current remit of the Fisheries Research Services Inspectorate being extended to cover the inspection and control of fish farm containment and security measures – with powers to serve a notice on a fish farm operator where improvements are considered to be necessary. This is intended to complement and underpin the industry's Code of Good Practice and deal with any farm which is not signed up to it.

The aim, as specified in the Strategic Framework for Scottish Aquaculture is to minimise escapes. It is difficult to say eliminate because of the environment in which fish farming operates where even the best operated farms may be exposed to occasional severe weather.

Location/relocation of fish farms

The SFSA and associated action plan recognised that some fish farm sites may, with the benefit of hindsight, be poorly located and has taken action to develop a rationale to relocate fish farms, particularly with wild fish impacts in mind.

This is a complex issue. It is difficult to define what constitutes a poorly sited fish farm and as such the stakeholder working group tasked with looking at relocation decided to start by identifying fish farms in close proximity to rivers recognised as important for wild salmon and sea trout. However, there are 2 projects being taken forward which if implemented would help facilitate best practice recognised under TWG and should facilitate the development of effective Area Management Agreements.

Fish farmers and wild fish interests have been asked to consider candidate sites and work up relocation projects which meet the principles of a Strategic Environmental Assessment (SEA), which is currently the subject of public consultation. Any relocation projects will be taken through an adoption process and if they comply with the principles may qualify for financial assistance from a scheme to be set up by the Executive – a point raised in the petition. All relocation projects will be subject to the local authority planning and development process which was a point raised in the petition and may require the publication of an Environmental Statement (ES).

A scoping study into the potential benefits that might flow from fish farm relocation has been undertaken by FRS and is the subject of a peer review process.

Economic impact

The petitioner suggests that the decline seen in wild stocks has had a significant impact upon the rural economy, in particular jobs in the tourism industry. The decline in stocks on the River Ewe/Loch Maree is undeniable but it is not proven that the fish farming industry is to blame. Stock declines started before the fish farming industry was present on the Scottish west coast and as such can only be at most one factor in a very large range of possible contributing factors causing stock decline or inhibiting recovery.

The economic effects that are referred to concentrate on changes (over an unspecified period) in the number of ghillies that it is claimed were employed by the Loch Maree hotel. There is no attempt to put any such changes into any context such as trends elsewhere. It is asserted that the number of fishing enthusiasts staying in the area have decreased but no figures are provided to show this. There is then a claim that between 30-40 jobs have been lost between Kinlochewe and Poolewe (presumably because of the asserted decline in the number of game fish anglers) but again there is no evidence to support the assertions and the same applies to claims that “the loss of revenue to the area is staggering.”

We are not aware that there are, in fact, any estimates that show the changes in numbers of anglers in Wester Ross over time. The work by Alan Radford et al for SEERAD (“The Economic Impact of Game and Coarse Angling in Scotland”) was only able to make a one-off estimate of angler days at the Highland region level. Presumably a survey of riparian owners in Wester Ross would be needed to obtain data on trends in angler days over time but we are not aware that this has been done.

LETTER FROM THE SCOTTISH SALMON PRODUCERS’ ORGANISATION

On behalf of its salmon farmer members from mainland Scotland, Western Isles, Orkney and Shetland, the Scottish Salmon Producers’ Organisation (SSPO) is pleased to have the opportunity to comment on the issues raised in Petition PE941.

Decline in Salmon and Sea Trout Numbers

It is well documented that the decline in salmon and sea trout numbers has many causes. Predators, overfishing, river management problems such as agricultural run-off, as well as parasites are some of the many potential influences on wild salmon numbers. There is also evidence that wild salmon populations are cyclical, being affected by changing offshore currents and the location and size of marine feeding areas. The decline was evident before salmon farming began in Scotland and has occurred in many areas, often where fish farming does not exist.

(see Appendix A for graphs based on Scottish Executive statistics)

Sea Lice Management by Salmon Farmers

Nowadays, salmon farmers use a range of strategic measures such as fallowing and rotation of fish farm sites, fully licensed and authorised medicines prescribed by the farm's vet to address the issue of sea lice. Health and welfare of the salmon is of prime importance. The effectiveness of sea lice control strategies, including medicinal treatments, has continued to improve since the introduction in 1998 of the Scottish Quality Salmon National Treatment Strategy for the control of sea lice which promotes best practice for both fish health and welfare and sound environmentally friendly farming. This significant progress is something welcomed by wild fisheries interests and our members as a means of maintaining high health status for both wild and farmed salmon.

The issue of sea lice remains topical, however, and much scientific work to limit their impact on farmed and wild fish is now coming to fruition. Some critics have suggested that halving the number of salmon kept in pens or increasing fallowing periods would reduce sea lice numbers, but research undertaken at the University of Strathclyde on 106,000 sea lice records has found that this is not so.

Working with Wild Fish Interests – the Tripartite Initiative

Salmon Farmers are extremely sensitive to the concerns of wild fish interests and together with them and the Scottish Executive Environment and Rural Affairs Department (SEERAD) has successfully established a network of Area Management Groups along the west coast of Scotland. In many of the designated areas it was the first time that all interested parties have sat down together to discuss the way forward for their particular loch systems and address specific local issues, but overall the common objective is to promote better and more productive working relationships in the interests of long term sustainable salmon farming and wild salmon fisheries.

There are now 15 Area Management Agreements, many of which have positive results to report about fish returns and co-operation between wild and farmed salmon interests.

Escapes

No fish farmer wants to lose fish and the industry has made significant progress in preventing these sorts of losses over the past 10 years.

The industry has improved the engineering of its pens and introduced site specific environmental management systems to identify and correct potential areas of concern. The new Code of Good Practice for Scottish Finfish Aquaculture will lend further weight to measures to improve the containment of farmed salmon.

While headline statistics relating to lost fish sometimes appear dramatic, it is important to recognise that few fish survive once they have escaped, especially if the cause is storm damage or predator attack. Indeed the number of farmed fish caught by anglers and recorded in 2003 (last available figures) was under 500.

Our members are working at local, national and international level through participation in the Area Management Agreements with wild fish interests and the Scottish Executive and contributing to the work of the North Atlantic Salmon Conservation Organisation (NASCO) with Governments and industry in other EU countries, Canada, Norway, USA and the Faroes.

Relocation of Fish Farms

Any discussions about relocation should be considered based on scientific assessment of sites and within a programme of site optimisation, to allow companies and their investors to commit confidently to Scottish production as well as meet the needs of wild fish interests.

Industry Code of Good Practice

The recently introduced Code of Good Practice fulfils the industry's commitment set out in the *Strategic Framework for Scottish Aquaculture*. The Code covers every aspect of finfish farming management and good husbandry practices, including standards in environmental practice, containment, and animal health.

The Code is a major achievement for Scottish finfish farming, and clearly demonstrates the progress made in Scottish aquaculture over the last 10 years. It also represents the most comprehensive and open exercise of its kind ever undertaken by any food producing industry in the UK.

The Code was been developed by the Scottish Finfish Aquaculture Working Group. All interested stakeholder groups have been consulted including: the Scottish Executive Environment and Rural Affairs Department; Scottish Environment Protection Agency; Scottish Natural Heritage; Veterinary Medicines Directorate; Fisheries Research Services; WWF Scotland; Scottish Environment Link; RSPB Scotland; the **Association for Salmon Fisheries Boards; Rivers and Fisheries Trusts of Scotland; Scottish Anglers National Association; Sea Trout Group**; local authorities and the public.

It sets out comprehensively the standards that farmers must demonstrate and against which they will be independently audited by UKAS-approved Inspection Services. There are more than 300 main specific compliance points in the Code, plus additional sub-points in many cases. These cover all aspects of finfish good practice, notably protecting the environment - including sea lice management and containment standards. The Code also contains detailed annexes giving further technical guidance on good practice, including the National Sea Lice Treatment Strategy, Integrated Sea Lice Management, Containment, and a Veterinary Health Plan.

The salmon farming industry remains committed to high standards of fish health and welfare – for the long-term benefit of both wild and farmed fish. The industry's Code of Good Practice should be considered as the way forward to address any issues relating to sea lice, escapes and other fish health matters.

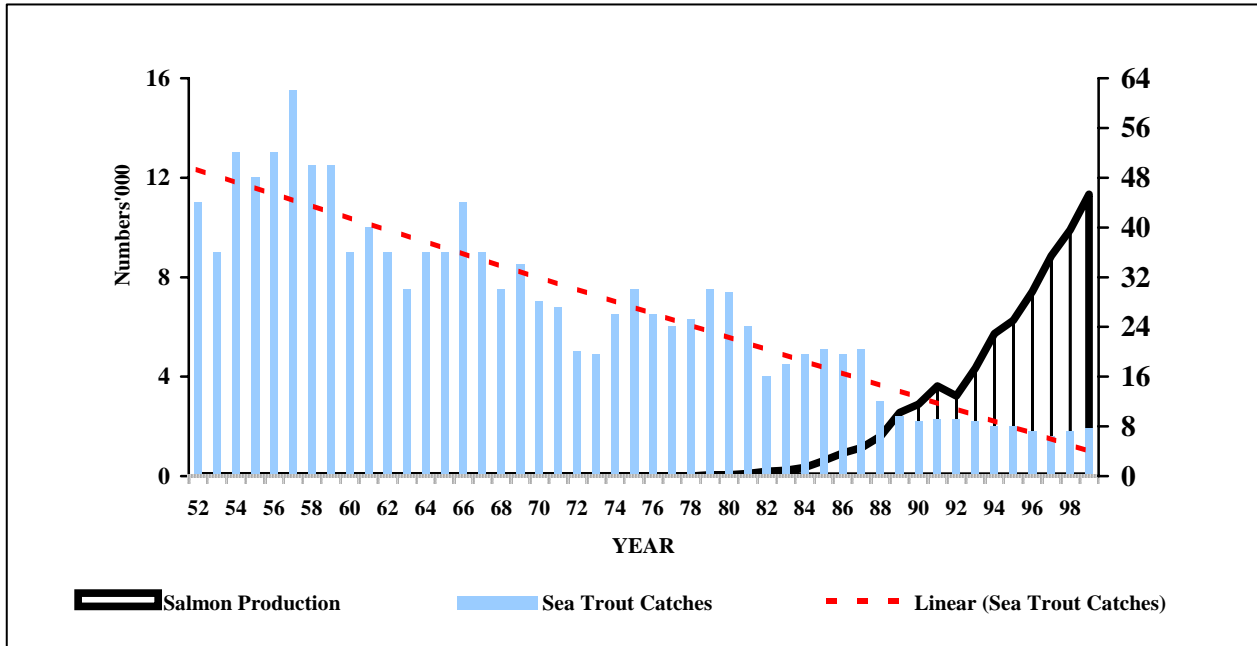
Yours sincerely

SID PATTEN
Chief Executive

APPENDIX A

The graph below demonstrates that wild salmon numbers were in long-term decline for many years before the advent of salmon farming. Indeed, catches seem to have stabilised as farming production has grown.

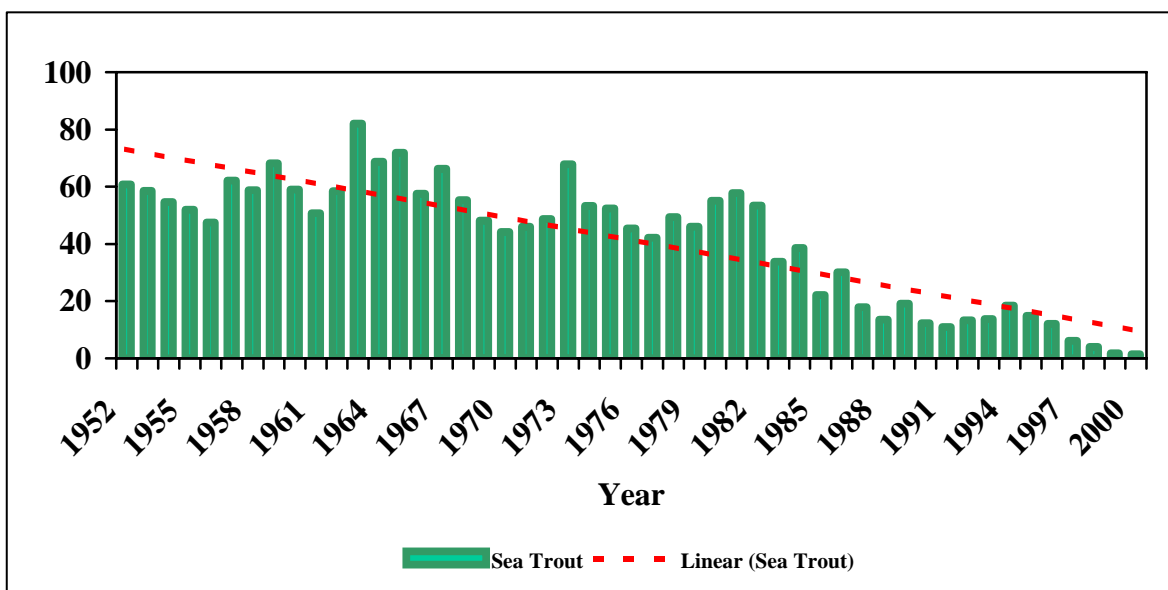
CATCHES OF SEA TROUT BY ALL METHODS IN NW SCOTLAND VS SALMON PRODUCTION



Source: Scottish Executive Statistical Bulletin 2000

If there was a strong relationship between farming and the declining wild population, areas without fish farms should escape this trend. However, as shown below, on the east coast of Scotland – where no farms are present – wild salmon’s decline has followed a similar pattern.

RIVER TWEED SALMON & SEA TROUT CATCHES



Source: SEERAD

LETTER FROM THE SCOTTISH ANGLERS NATIONAL ASSOCIATION

The following is our response to **Mr Frank Buckley's PETITION PE941** which seeks greater protection for Scottish migratory fish stocks from salmon farm developments.

The Scottish Anglers National Association (SANA), with some 30,000 members, is recognised at the Governing Body for the sport of Game Angling in Scotland.

This response will be very brief. We support, in general, the terms of PE941. Before and since devolution, SANA – along with other angling and environmental organisations – has raised or highlighted all the points made by Mr Buckley in his document “The Facts.” ***Many of these cannot be disputed.***

SANA believes that most, if not all, of the problems arising from salmon farm operations would be minimised by the full implementation of the proposals regarding aquaculture contained in the Consultation document on the forthcoming **Aquaculture and Fisheries Bill**.

However, if these proposals are diluted to any extent during the Parliamentary process, then salmon farming operations will continue to be a danger to wild migratory stocks with the consequent environmental and economic damage.

Yours sincerely

Ian Calcott
Chairman, Migratory Fish Committee, SANA.

LETTER FROM THE INSTITUTE OF AQUACULTURE

Consideration of Petition PE941

The Society for the Protection of Salmon and Sea Trout are concerned over the decline in stocks occurring in some area of Scotland and raise, in particular, the issue of possible interactions between wild and farmed fish.

The reasons for the decline in wild stocks are many and varied and it often results from complex interactions of a number of differing factors. The cause of decline in one area may be completely different from that in another. It should be noted that a general decline in catch predated the beginning of salmon farming.

Unfortunately, when stock declines have occurred, persistent angling pressure appears in some cases to have removed a large proportion of surviving broodstock. In fact there is evidence that angling pressure may have actually contributed to declines in some populations of sea trout on the west coast of Scotland such as in L. Maree, where large specimen fish, for which the fishery was

famous, were actually long-lived, slow growing multiple spawners. The removal of such fish by anglers is likely to have had a significant effect on recruitment and thus on the structure and stability of the population. This situation has improved recently with the returning of stock to the river after being caught by anglers.

In some areas, a notable decline has been reversed. An example is the River Tweed, where the purchase of netting rights combined with the clearance of obstructions to allow access to spawning grounds has recently resulted in record catch statistics. Similarly, up and down the west coast, the establishment of Area Management Groups and Area Management Agreements and excellent cooperation between fish farmers and wild fish interests has been highlighted as one of the factors contributing to increased catches of salmon and sea trout.

I find the timing of the petition to be surprising. As you are doubtless aware, the Scottish Executive is currently bringing forward an Aquaculture and Fisheries Bill which addresses most of the issues of concern to the Society for the Protection of Salmon and Sea Trout. The Scottish Salmon Producers Organisation is also currently implementing a new Code of Good Practice which also addresses these concerns. During the development of the Code and through the development of the Bill, extensive consultation has taken place and there has been considerable interaction between wild and farmed fish interests. Indeed, the Society for the Protection of Salmon and Sea Trout submitted their own response to the consultation on the Bill. In recent years, the Tripartite Working Group consisting of representatives from wild fish interests such as the Association of Salmon Fishery Boards, aquaculture and government, has played a leading role in reaching consensus on how the varying interests should cooperate for the benefit of all. The Scottish Executive has also set up a series of working groups with appropriate representatives from the aquaculture industry, wild fish interests and government to address areas of concern. The Location/Relocation Working Group is addressing the question of siting of fish farms and developing methodology for relocation purposes. Meetings of the Aquaculture Health Joint Working Group have reported on issues such as sealice control, the epidemiology and control of viral disease and possible interactions between different fish species.

Industry practice in the control of sealice has been constantly improved with more efficient treatment products, the use of area management agreements to use strategically timed treatments at the time of smolt movements and synchronous treatments at all sites in a loch system when SEPA permission allows this to take place. In addition, synchronous fallowing of sites also occurs to ensure removal of farmed fish hosts for sealice control. Despite these actions by the industry, sealice numbers, especially in sea trout, can remain high as reinfection will always occur from wild fish. There has, in fact, been little direct evidence of the decline of wild salmonid populations being caused by sealice from farmed fish populations despite many years of research. Recent evidence from Norway suggests that such measures are effective in reducing overall lice burden.

The Society highlights the importance of angling to tourism and income generation and I wholeheartedly agree. The importance of aquaculture to wealth and job

creation is rather understated. In many parts of the West Coast and the islands, aquaculture is a major local employer and ensures the success of local communities and their schools, shops etc. Farmed salmon production is also a major source of income in terms of food exports from Scotland and highly significant to the economy.

The Society cites examples of particular population declines. In the case of the decline of sea trout in Loch Maree, the Wester Ross Fisheries Trust Biologist has apparently reported significant competition from minnows (doubtless introduced by anglers) in nursery ground areas for young trout within the loch itself.

Escapes of farmed fish are also referred to. This has certainly occurred, to the cost of the fish farmers concerned. Extreme efforts are made to reduce this to a minimum and this issue is addressed in the Code of Good Practice and in the Aquaculture Bill. In Scotland very few farmed fish escapes are included in angling catch statistics despite, in some cases, the escape of a large number of fish. While the numbers of reported escapes may be high, the number of farmed fish caught in rivers are extremely low, even taking possible under reporting into account, supporting the proposition that the overwhelming majority of farmed fish which escape do not actually survive to interact with wild salmon.

The new Aquaculture Bill will provide official monitoring and control, through FRS , of sealice with an advisory and an enforcement role. Powers will also be provided to investigate escapes, regulate fish movements etc. Siting of fish farms will involve the planning process now in the hands of Local Authority Planning Departments where wild fish interests as well as other stakeholders will have the ability to make representations within the planning process before an aquaculture development will be allowed.

I believe that application of the comprehensive, robust and independently audited Code of Good Practice by the aquaculture industry, the powers contained in the new Aquaculture Bill and the planning process now in place appropriately address all of the concerns expressed by of the Society for the Protection of Salmon and Sea Trout in its petition to the Parliament

Yours sincerely

R H Richards
Director
Institute of Aquaculture
University of Stirling

PE941



The Scottish
Parliament

Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

The Society for the Protection of Salmon and Sea Trout

Text of petition:

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Mr Buckley calling for the Scottish Parliament to urge the Scottish Executive to ensure greater protection for the rivers, streams and lochs of Scotland, such as Loch Broom and the River Gruinard, from fish-farms developments.

Additional information:

Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.

Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Charles Kennedy MP Rhona Brankin MSP John F. Munro MSP
Rose Finnie MSP Highland Council Alasdair Morgan MSP, SNP

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

I DO request to make a brief statement before the Committee Yes.

I DO NOT request to make a brief statement before the Committee

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form

Signature

Date

14/2/06

SALMON, SEA TROUT AND SALMON FARMS

THE FACTS

1) DECLINE

There has been a steady decline in sea trout and salmon due to various factors, including global warming and over-fishing at sea. However, soon after the salmon farms were located on the West Coast, there was a decline in sea trout and salmon stocks. This has continued, year on year, to the present critically low levels.

2) STOCKS

Wild sea trout and salmon in Loch Maree are near their lowest levels since records began.

3) EXTINCTION

We have already seen some areas devoid of salmon and sea trout. To name but one area, Salmon became extinct in Loch Sguod in 1990. Loch Sguod is connected to Loch Ewe.

4) FARM SALMON

Some years in the 1990's indicate that up to 38% of salmon caught in the River Ewe were escaped farm fish. In recent years, farm fish have interbred with wild stocks, ruining the genetic strain of Ewe salmon which has evolved over thousands of years, and thereby affecting their ability to survive in the wild.

5) ESCAPES

According to official figures, 255,000 farm salmon escaped 1999. In 2000 420,541 escaped. In 2001 87,088 escaped. In 2002 367,405 escaped. In 2003 151,437 escaped. In 2004 82,646 escaped. Figures are not yet available for 2005. In the given period ALONE, this is an astonishing total of 1,364,117.

6) TOURISM COLLAPSE

There has been a massive downturn in tourism, due to the increasing lack of sea trout and salmon. For example, fishing enthusiasts and their families staying in affected areas have declined greatly.

7) ECONOMIC EFFECT a:

For example, Loch Maree Hotel used to employ twelve fishing ghillies, plus extra hotel staff. There is now only one part-time ghillie and a consequent reduction in other staff. There were also many more ghillies, employed by other hotels, and self-employed, throughout Wester Ross. These jobs have virtually disappeared but could return if wild stocks were increased.

8) ECONOMIC EFFECT b:

Kinlochewe, Gairloch, Poolewe, Aultbea, Laide, Lochcarron, Dundonnell, Ullapool.

Many of the fishing enthusiasts and their families stayed in the above areas (and others too many too mention) in hotels, self catering units and B&Bs. We have lost this tourism input and the related jobs.

9) UNPRECEDENTED

Allowing for the natural rise and fall of the fish population, with its usual peaks and troughs, there is no evidence whatsoever that such a decline in wild salmon and sea trout stocks has ever happened before.

10) SEA LICE

In 2004, sea-lice monitoring was carried out on the River Ewe by myself and other groups. On average, 70 sea lice were recorded on post-smolt sea trout in the River Ewe.

30 sea lice can kill a sea trout post-smolt. Studies in Norway have shown that salmon post-smolts are killed by less than 15 sea lice. No studies have been published on the numbers of sea lice on post-smolt salmon leaving Scottish sea lochs. There should be an immediate programme of synchronized sea lice treatments on all farms in adjacent areas.

11) JOBS CRISIS

Just between Kinlochewe and Poolewe, a distance of only some 27 miles, the number of jobs lost is conservatively estimated at between thirty and forty with many small businesses also affected (e.g. cafes, shops, post offices, garages etc.) Traditional rural jobs, e.g. shellfish farming, fishing, river keepers, ghillies, etc. have also been affected, having been the backbone of employment in the Highlands for hundreds of years. In addition the number of jobs available for hotel and B & B staff have been reduced.

12) REVENUE LOSS

The loss of revenue to the area is staggering. How many bed nights have been lost in hotels, B&Bs, and self-catering? How much revenue has been lost to all the above businesses and to the Highland Economy overall?

13) COOPERATION

Area Management Agreements have been the main form of cooperation between the fish farms and wild fish interests. However, everyone on an AMA is obliged to sign a confidentiality agreement. Why the need for secrecy?

The decline of salmon and sea trout has an economic impact on all of us in the area. All AMA's should have representation from a much wider spectrum of the community than is currently involved. There should be representatives from the tourism industry, environmentalists, etc.

14) REGENERATION

Where fish farms have been fallowed for long periods of time, or relocated, and where strict sea lice monitoring is in force, stocks of sea trout and salmon have started to regenerate. The Norwegian Government monitor sea lice levels on fish farms (and temporarily close down farms where levels are too high) and have also relocated a number of fish farms away from migratory fish routes. These have proved to be key points in helping to halt the decline.

15) TOURISM

Tourism is Scotland's biggest industry and generates £4.5 billion per year, employing over 180,000 people. It is an activity that dwarfs all of our other industries. Why should poor sea lice management and a poor choice of location of fish farms threaten tourism, which is a sustainable industry that has very minimal environmental effects on Wester Ross?

16) FISH FARM JOBS

The value of these, in my opinion, has been greatly overstated, although they do provide some valuable employment in rural areas. Since the closure of some fish farms due to non-profitability, plus an increase in automation, the number of available jobs have been reduced.

17) ECONOMY

Every wild fish caught is worth approximately £100 for the economy (based on previous studies). A recent study from the Scottish Executive has indicated that wild fisheries, even in their present poor state, are worth £113 million to the Scottish economy.

Additionally, financial grants from various official bodies, given to fish farms are staggering, and a number of fish farms have closed down, losing millions of pounds of public money. In contrast, very little money is available to assist in the preservation of wild salmon and sea trout stocks.

18) CONCERNS

Aquaculture has a good future, but not in its present form. Where fish farms are located in sea lochs where migratory fish run, they should be relocated to sites where they will not affect the wild fisheries. Financial assistance for relocation could be given by the Scottish Executive.

Also, more pressure should be put on fish farms to cooperate with angling associations, fisheries, environmental groups, and tourism to ensure an appropriate balance of the interests of all parties.

19) POLLUTION

Fish farms should be fined for incidents resulting in pollution, including overstocking. To this end, far stricter monitoring should commence as a matter of urgency. These should be spot checks, and not, as at present, prearranged visits.

20) PRESERVATION

Relocating a fish farm to a less sensitive site (either land-based with treatment plants, or moved further out to sea, or in a bay where there are no migratory fish runs), is a small price to pay for the preservation of a precious resource that is a vital component of our tourism industry and an incomparable part of Scotland's heritage. If no action is taken, the result will be;

21) FURTHER LOSSES

Of tourism jobs

Of angling tourism

Of revenue to Scotland

Of sea trout

Of salmon

The Society for the Protection of Salmon and Sea Trout

SSI DESIGNATION FORM

SSI Title & No:	The EC Fertilisers (Scotland) Regulations 2006, (SSI 2006/543)						
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	This instrument implements Regulation (EC) No. 2003/2003 of the European Parliament and of the Council relating to fertilisers which lays down rules on the definition, composition, identification and packaging of fertilisers designated as "EC fertilisers".						

Laid Date	10 th November 2006	20 day date	30 th November 2006
1st SLC Meeting	21 st November 2006	40 day date	19 th December 2006
Lead Committee Report Due	11 th December 2006	Other Committee Report Due	

SE Contact	Malcolm Macpherson, 46358
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 43rd Report, 2006 (Session 2)

Subordinate Legislation

The Committee reports to the Parliament as follows—

The EC Fertilisers (Scotland) Regulations 2006, (SSI 2006/543)

1. The Committee asked the Executive 4 questions on this instrument.

Points 1 and 2

2. The Committee asked the Executive to explain why in regulation 7(c) the requirements of Article 21 of the EC Regulation are expressed as alternatives to the requirements of Article 6(2)(c) rather than as in SI 2006/2486 and the EC Regulation where both requirements must be fulfilled. A similar point arose in regulation 8(c).

3. The Executive has replied that regulations 7(c) and 8(c) have been drafted in this way to comply with what it considers to be the requirements of the EC Regulation.

4. However, the Committee remains unclear as to whether regulations 7(c) and 8(c) properly implement Community obligations and therefore **draws the attention of the lead committee and the Parliament to this instrument on the grounds that the regulations may raise a devolution issue.**

Point 3

5. The Committee asked the Executive to explain the absence of a Transposition Note.

6. In its response, the Executive explains that the current practice is to produce Transposition Notes in relation to Directives rather than EC Regulations so no Transposition Note was therefore produced.

7. While acknowledging the Executive's comments, the Committee considers that the inclusion of a Transposition Note in this case might have been useful. The Committee observed that the English Regulations were accompanied by such a Note.

8. The Committee draws the attention of the lead committee and the Parliament to this instrument on the grounds of an absence of a Transposition Note.

Point 4

9. The Committee asked the Executive to provide further justification for the inclusion of the due diligence defence, given the absence of such a defence from the English and Welsh Regulations.

10. The Executive explains that it considers that a strict liability offence is onerous and, having consulted on and assessed the offences being created, concluded that such offences were not justified in this case.

11. The Committee notes the further information provided by the Executive and draws this to the attention of the lead committee and the Parliament.

APPENDIX 3

The EC Fertilisers (Scotland) Regulations 2006, (SSI 2006/543)

1. On 21 November 2006, the Committee requested an explanation of the following matters-

“(a) To explain why in regulation 7(c) the requirements of Article 21 of the EC Regulation are expressed as alternatives to the requirements of Article 6(2)(c) rather than as in SI 2006/2486 and the EC Regulation where both requirements must be fulfilled.

(b) To explain the similar point which arises in regulation 8(c).

(c) To explain the absence of a Transposition Note.

(d) To provide further justification for the inclusion of the due diligence defence given the absence of such a defence from the English and Welsh Regulations.”

The Scottish Executive responds as follows-

First Question

2. Regulation 7(c) has been drafted in this way to comply with the requirements of the EC Regulation. Regulation 7 is drafted in order to catch a contravention of either requirement alone, which the Executive believes is intended by the EC Regulation. To provide for an offence only where both elements of the EC Regulation are contravened does not appear to meet the EC Regulation.

Second Question

3. In relation to regulation 8(c), the explanation is the same as for regulation 7(c).

Third Question

4. The practice of the Executive at present is to produce transposition notes in relation to Directives. The Regulations provide various supplementary enforcement and other mechanisms in relation to an EC Regulation, the provisions of which are of course directly applicable in national law and largely cross referred to in the Regulations. In the circumstances, no transposition note was produced.

Fourth Question

5. The Executive considers that a strict liability offence is onerous and concluded, having consulted on and having assessed the offences being created, that such offences were not justified in this case. The Executive is of the view that the offences created and the defence meet the requirements of Article 36 of the EC Regulation, which require that penalties be effective, proportionate and dissuasive. The Committee will wish to note the precedent - the Regulations disapply offence provisions in the Agriculture Act 1970 ("the 1970 Act") read with the Fertilisers Regulations 1991, for offences now covered by the Regulations. Section 82 of the 1970 Act provides a defence of due diligence in respect of contraventions of regulations made under section 74A of that Act, e.g. the 1991 Regulations. That due diligence defence was therefore already applicable to EC fertiliser offences under the 1991 Regulations.

23 November 2006

SSI DESIGNATION FORM

SSI Title & No:	The Pesticides (Maximum Residue Level in Crops, Food and Feeding Stuff) (Scotland) Amendment (No. 3) Regulations 2006, (SSI 2006/548)					
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	This instrument amends the Pesticides (Maximum Residue Level in Crops, Food and Feeding Stuff) (Scotland) Regulations 2005. These are amended on a regular basis by an ongoing EC programme which establishes maximum residue levels for pesticides in a wide range of foodstuffs.					

Laid Date	17 th November 2006	20 day date	7 th December 2006
1st SLC Meeting	28 th November 2006	40 day date	11 th January 2007
Lead Committee Report Due	8 th January 2007	Other Committee Report Due	

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

For SLC use:

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

SSI DESIGNATION FORM

SSI Title & No:	The Water Environment (Controlled Activities) (Third Party Representations etc.) (Scotland) Regulations 2006, (SSI 2006/553)					
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	This instrument amends the Water Environment (Controlled Activities)(Scotland) Regulations 2005 to allow third party representations to applications for authorisations, variations or surrenders to be considered by SEPA and Scottish Ministers as appropriate.					

Laid Date	22 nd November 2006	20 day date	12 th December 2006
1st SLC Meeting	28 th November 2006	40 day date	16 th January 2007
Lead Committee Report Due	8 th January 2007	Other Committee Report Due	

SE Contact	Susan Shaw, 44965
Committee Contact	Mark Brough, 85240

For SLC use:

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

SSI DESIGNATION FORM

SSI Title & No:	The Water Environment (Relevant Enactments) Order 2006, (SSI 2006/554)						
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	<p>This instrument identifies the Water Environment (Controlled Activities)(Scotland) Regulations 2005 as a relevant enactment for the purposes of section 2 of the Water Environment and Water Services (Scotland) Act 2003.</p> <p>It is made at the same time as the Water Environment (Controlled Activities) (Third Party Representations etc.) (Scotland) Regulations 2006, (SSI 2006/553).</p>						

Laid Date	22 nd November 2006	20 day date	12 th December 2006
1st SLC Meeting	28 th November 2006	40 day date	16 th January 2007
Lead Committee Report Due	8 th January 2007	Other Committee Report Due	

SE Contact	Susan Shaw, 44965
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								

RURAL DEVELOPMENT 2007-2013

Tom Edwards

This paper provides some background information on the preparation of a rural development plan for Scotland 2007-2013 by the Scottish Executive.

SPICe briefing

29 November 2006

06/102

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CONTENTS

Background.....	2
How will the money be spent?	4
Land management contracts	4
Less favoured areas support scheme.....	5
Leader	5
Budget.....	5
Modulation	6
What happens next?	8
Sources.....	8

KEY POINTS OF THIS BRIEFING

- EU rural development policy is the “second pillar” of the CAP
- The use of EU money for rural development is governed by EU rules which require Member States to produce programmes setting out how they will use this money
- The Scottish Executive is preparing a new rural development programme for the years 2007-13. It will contain 3 main elements:
 - Land Management Contracts – these will have 3 tiers of payments to support farming, and other land-based industries
 - Support for farmers in Less Favoured Areas
 - LEADER – a local, community based approach to supporting rural development
- The programme contains EU money and national funding. The amount of EU money available to Scotland is less than in the last programme, which ran from 2000-06. This is because of EU enlargement and because the rural development budget was cut as part of the overall deal on the EU budget
- It is possible to transfer money from pillar 1 of the CAP to rural development. This is called modulation
- There is currently EU wide compulsory modulation of 5%
- To help the UK administrations fund their rural development programmes, the European Council agreed that this could be voluntarily increased up to 20%
- The EU regulation which would give the European Council agreement a legal basis is being blocked by the European Parliament
- This is delaying the finalisation of Scotland’s rural development programme
- This has led to concern from farmers who feared that their 2007 LFA payments, which are normally made from March each year would be delayed
- The Scottish Executive has agreed to pay £40m in LFA payments out of national funds (in recent years the scheme has had a budget of £61m)

BACKGROUND

Member States draw up multiannual programmes setting out how they intend to use rural development money. A new programme period begins in 2007 and runs until 2013. The Rural Development Regulation (1698/2005) governs rural development spending during this period and contains 42 different options for spending. These options are grouped under 3 axes. Member States must spend a minimum proportion of EU funds on each axis as follows:

- Axis 1 Improving the competitiveness of the agricultural and forestry sector (10%)
- Axis 2 Improving the environment and countryside by supporting land management (25%)
- Axis 3 Improving the quality of life in rural areas and encouraging diversification and growth of economic activity (10%)

There is a further requirement to allocate 5% of total EU funds to local rural development projects administered by local partnerships using the “LEADER” approach (Axis 4). This is a ‘horizontal’ axis that is applied across the other three axes. Within these requirements, Member States are free to decide which of the 42 measures they choose to fund.

Member States can implement the Rural Development Regulation at regional level, and in the UK, separate programmes are being produced by the Scottish, English, Welsh and Northern Irish administrations.

TERMINOLOGY

Agricultural Market Support: Payments made to buy farm goods into storage to constrain supply and support their price. Once the cornerstone of the CAP, they have become less important and now make up a much smaller proportion of CAP spending than that used to pay for Single Farm payments.

Co-financing: The ratio of EU:national funds which must be used to support a rural development measure. All rural development measures are co-financed.

EU15: The 15 Member States which made up the EU until the enlargement to include 10 Central and East European countries in 2005.

EU-25: The 25 Member States of the EU

European Agricultural Fund for Rural Development (EAFRD): Fund from which EU rural development payments are made.

European Council: The Heads of State and of Government of the EU Member States, widely held to be the supreme decision making forum of the EU

Match-funding: Co-financing EU funds pound for pound

Modulation: Modulation is the transfer of funds from farming subsidies (in pillar 1 of the CAP) to rural development schemes (in pillar 2). There are two types: optional “national” or “voluntary” modulation; and compulsory EU wide modulation (introduced from 2005).

“Pillars” of the CAP: the CAP is commonly seen as having 2 pillars. Pillar 1 includes agricultural market support, and subsidies paid direct to farmers (e.g. the Single Farm Payment). Pillar 2 is rural development spending and is administered through Rural Development Programmes. For the EU25, the balance of spending between the 2 pillars is c. 80% pillar 1: 20% pillar 2 (European Council 2005).

Rural Development Regulation: Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) is the main piece of EU law governing rural development spending from 2007-13.

Single Farm Payment: Introduced in the UK in 2005 (and in other Member States between 2005-07) the Single Farm Payment is a combination of previously separate subsidies.

HOW WILL THE MONEY BE SPENT?

The Scottish Executive is currently funding the following measures from the 2000-06 Rural Development Plan:

- Less Favoured Area Support Scheme (LFASS) which gives payments in recognition of the additional costs of farming in Less Favoured Areas
- Organic Aid Scheme – an agri-environment scheme which offers incentives for converting to organic production
- Rural Stewardship Scheme – an agri-environment scheme which offers payments for a range of actions designed to improve habitats on farms e.g. digging ponds or planting hedgerows
- Farm Woodland Premium Scheme (now part of the Scottish Forestry Grant Scheme) which offers grants to farmers for planting trees on agricultural land
- Land Management Contracts Menu Scheme – provides payments for environmental, social and economic measures.

There are also ongoing commitments under previous schemes.

The Scottish Executive (2006a & b) held two public consultations in 2006 on how it would use EU rural development money from 2007-13. The first examined priorities for the Strategic Plan that will guide the 2007-13 Programme. The second considered specific measures for the Programme and how they will be implemented. A [report](#) summarising the responses to the Scottish Executive's consultation is available on the Scottish Executive's website. The Scottish Executive has also published a [response](#) to this report.

The Executive has produced the Strategic Plan and is drawing up the Programme which it will present to the European Commission setting out how it intends to use rural development money. The Programme will have three main components: Land Management Contracts, LFASS and LEADER.

LAND MANAGEMENT CONTRACTS

Land Management Contracts will have 3 tiers:

- Tier 1 is the Single Farm Payment (Pillar 1 of the CAP).
- Tier 2 is a menu of options available to farmers, crofters and other land managers and aims to secure environmental, social and economic benefits across a broad area of rural Scotland. Introduced in 2005, Tier 2 currently offers 17 different options. The Executive has proposed a similar menu for 2007-13 including some additional measures.
- Tier 3 will be available to farmers, crofters and other land managers and, for some measures, other businesses and community groups. It will be a competitive scheme.

The Executive is examining the measures which will make up Tier 3. In the consultation document it listed the following schemes which it was considering incorporating into Tier 3:

- Agricultural Business Development Scheme
- Agriculture Processing and Marketing Grants
- Crofters Cattle Quality Improvement Scheme
- Crofting Counties Agricultural Grant Scheme
- Crofting Counties Development Scheme
- Farm Business Development Scheme

- Organic Aid Scheme
- Rural Stewardship Scheme
- Scottish Forestry Grant Scheme (in part)
- Scottish Forestry Grants Scheme Farmland Premium
- Scottish Natural Heritage Natural Care Scheme (in part)
- Scottish Rural Partnership Fund

Ministers have subsequently decided that the main crofting grant schemes will remain outside Land Management Contracts (Scottish Crofting Foundation 2006a).

LESS FAVOURED AREAS SUPPORT SCHEME

The European Court of Auditors (2003) has questioned whether all areas classified as LFA were equally disadvantaged, and whether the impact of support was being measured.

When the European Commission (2004) made proposals for a new rural development regulation, it undertook a review of LFA payments. No agreement could be reached among EU agriculture ministers on changes to designation criteria for LFAs. The European Commission is reexamining the classification of LFAs, with a view to making proposals in 2008 and their implementation in 2010. The Scottish Executive has proposed (2006b) to implement a simplified LFA scheme for 2007, 2008 and 2009, with farmers being paid on the basis of what they had received in previous years.

At the moment, 18% of payments go to very fragile areas (islands), 25% to fragile areas (areas of disadvantage and high transport costs) and 57% to standard areas (with high transport costs). The Executive proposes a limited redistribution of money, by reducing payments in standard areas, and increasing them in very fragile areas. The Scottish Crofting Foundation (2006b) advocates a more fundamental redistribution. RSPB Scotland (2006) has called for LFA support to be more closely tied to environmental outcomes and suggests that making payments on a historic basis will not achieve this.

LEADER

LEADER is a locally-based approach to economic and community development in rural areas. LEADER is administered by Local Action Groups which comprise local partnerships of government and non-government organisations and individuals. From 2007 onwards, the LEADER component of the rural development programme will continue to be administered by local groups.

A significant change under the new Rural Development Regulation is that LEADER now comes within the remit of Rural Development Programmes. This provides significant flexibility because projects do not have to fit necessarily within a specific measure identified in the Regulation.

At least 5% of the European element of the SRDP budget must be spent using the LEADER approach. The Scottish Executive (2006b) is also considering how other funds currently managed by SEERAD could be delivered through the LEADER approach. Responsibility for LEADER will transfer from the Scottish Executive's Enterprise, Transport and Lifelong Learning Department to the Rural Development portfolio in SEERAD.

BUDGET

There are three main sources of funding for the Scotland Rural Development Programme: EAFRD, Scottish Executive resources and, subject to adoption of the necessary regulation, voluntary modulation. Scotland's allocation from EAFRD has been announced (see below) but

at the moment the level of Scottish Executive funding that will be available (beyond that required to match-fund EAFRD resources) or the level of voluntary modulation are not known.

Uptake by the UK administrations of discretionary rural development spending from the EU has historically been low. It has been the policy of successive UK governments to limit it, as it has knock on effects on the size of the rebate the UK gets back from its contribution to the EU budget.

Rural development money from 2000-06 was shared out largely according to historic spending. This meant that the UK received a small share of EU15 rural money - around 3% of the total for the EU15. This in turn has limited the amount of EU money available for rural development in Scotland.

The accession of 10 Central and Eastern European Countries to the EU in 2004 has increased the call on the rural development budget. Furthermore, in response to the demands of some Member States to constrain the EU budget, the European Council (2005) chose to cut the amount the European Commission had suggested for the rural development budget line, when agreeing the EU budget in December 2005.

The Scottish Executive has produced a set of [FAQ](#) on the rural development budget arrangements. These explain that the Scotland has been allocated £246 million of EU money for the 7 years 2007-13 (19% of the UK total). To this the Scottish Executive must add a minimum of £194 million of co-financing, to give a minimum total spend of £421 million. If the Scottish Executive split this money 10:80:10 between the 3 axes as it has proposed, the minimum amounts would be as shown in the table.

Table 1 – Minimum amounts available for Scottish Rural Development Plan 2007-13, without national modulation (to nearest £m)

	£ million
Axis 1	45
Axis 2	330
Axis 3	45
Total	421

Source: see question 10 of Scottish Executive [FAQ](#). Totals do not sum due to rounding. The Axis 4 money is included in totals for axes 1-3. The figures include Scotland's share of the EAFRD, match funding and amounts resulting from compulsory EU wide modulation.

Axis 2 contains all the agri-environment and LFA payment options. The breakdown above would allow spending of £47 million p.a. for axis 2. This compares to spending of £24m on agri-environment schemes and £61m on LFA support in 2006. Further funds will be required if such levels of spending are to be maintained. A recent Scotsman (2006) article reported that at 5% voluntary modulation there would be £1.3 billion available for the programme, and at 20%, there would be £1.75 billion.

MODULATION

It is possible to increase the amount of money available for rural development by modulation. The possibility to modulate was first introduced in 2000, and was initially optional and at the discretion of Member States. Member States could modulate up to 20% of certain direct payments within pillar 1 of the CAP. UK administrations agreed a modulation rate of 2.5% in 2001, rising progressively to 4.5% in 2006. Since the amount modulated was matched with national funds, this increased the total amount of government support for farming.

As part of the 2003 reform of the CAP, it was agreed to introduce EU wide modulation in 2005 at 3%, rising to 5% in 2007. Farmers who receive €5,000 or less in Single Farm Payments are not modulated. The possibility to supplement this EU-wide modulation rate with additional national modulation remained. In deciding how to implement these reforms in 2004, the Scottish Executive decided to increase national modulation so that the combined rate was 10% from 2007 (Scottish Parliament 2004).

As part of the December 2005 deal on the EU budget for 2007-13, the European Council (2005) agreed that Member States could continue with national modulation rates of up to 20%, crucially without the need for national match funding. The Scottish Executive (2006b) has proposed to introduce stepped increases in voluntary modulation from 2007-13, but a final decision has not been taken.

The European Commission (2006) made a proposal in May 2006 which would transpose the European Council's agreement into EU law. The European Parliament's Agriculture Committee (2006) produced a report which heavily criticised the proposal and called for it to be rejected. On 14 November 2006, the European Parliament's plenary session voted for the rejection of the proposal by 599 votes to 64. Although the European Parliament is simply consulted on the laws which make up the CAP, the Agriculture/Fisheries Council cannot pass this Regulation until the Parliament has delivered its opinion. Agra Facts (2006) reported that in spite of the Parliament's opposition, it would deliver an opinion in February, which would allow the regulation to be passed at the February 2007 Agriculture/Fisheries Council.

The Commission's proposal did not contain a possibility for different rates of modulation to be set for different regions within a Member State. The Scottish Executive is pursuing an amendment to allow this (Scottish Parliament 2006).

Demand for rural development resources is highlighted by the case of awards from agri-environment schemes in 2006. Only 22% of applications to join the Rural Stewardship Scheme in 2006 were successful, as described in an article by the National Farmers Union of Scotland (2006a):

There were 2,361 applications to join the RSS. Funding of £12.45 million was allocated to 524 applicants. The ranking threshold for RSS 2006 was set at 62.5 points. This compares with 52.5 points for the 2005 allocation, which was completed earlier this year. Transferees from expiring Environmentally Sensitive Areas (ESA) and Habitats Schemes agreements amounted to 45 per-cent of awards made (27 percent in the 2005 awards). Awards made competitively, that is, excluding ESA/habitats transferees, were made to only 13.5 percent of applicants, compared to 44 percent in the 2005 awards.

There were wide disparities in the competitive award rate between different SEERAD areas. At one extreme, more than 75 percent of applicants were successful in Shetland. At the other end of the scale, one applicant was successful at the Hamilton office, out of 73 applicants.

The article also stated that of the 314 applications to join the Organic Aid Scheme in 2006, 157 (50%) had been successful.

The fact that many farmers are unsuccessful in applying to such schemes is one of the reasons why modulation is unpopular with many farmers – they see their Single Farm Payments being reduced with no guarantee of being able to access the schemes which the modulation is being used to fund.

WHAT HAPPENS NEXT?

The delay in agreeing the legal text which will allow voluntary modulation has in turn delayed the finalisation of the Scotland Rural Development Programme. Until the question of how much money is available has been resolved, it is not possible to decide how much money to put into each measure, or for example whether certain measures can or cannot be funded. This has led to concerns as to whether the Scottish Rural Development Programme will be finalised and agreed upon in time to allow schemes to open to new applicants in 2007 (Scottish Rural Property and Business Association 2007). However, payments on existing agreements (for example, under the Rural Stewardship Scheme) will continue to be made.

A particular concern has been raised as to whether LFA payments could be made in spring 2007. In 2006, £61m was paid out to c.13,000 farmers, with the first payments being made from March. Of this £61 million, £13m was EU money and £48m came from national funds. Recognising that the Programme would be delayed, the Scottish Executive initially proposed to make payments of £10m from national funds in April 2007, with remaining LFA payments to be made in the autumn. It has now agreed to pay £40m in spring 2007, subject to this being accepted by the European Commission (National Farmers Union of Scotland 2006b).

Once the rules on modulation are agreed, and a decision on the rate has been taken, the Scottish Executive will finalise the Rural Development Programme, and submit it for approval, a process which can take up to 6 months (SRPBA 2006).

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Environment and Rural Development Committee

European Union Issues – evidence

Briefing from the Scottish Executive

Thank you for the invitation to give oral evidence to the Committee on various EU issues on 6 December 2006. In response to your request for briefing, I am writing to provide you with some written information on the areas you highlighted.

Fisheries

It is important to note that for many of the fish stocks of key importance to Scotland decisions will be taken not in the EU Fisheries Council but in negotiations between the EU and third countries in particular Norway. These negotiations began at the end of October and will have been completed before the 6 December ERDC meeting.

For the December Council itself the Scottish Executive will have important objectives in terms of securing an increase in the northern shelf monkfish TAC in line with the clear evidence of increased abundance and ensuring that the increases we achieved last year for North Sea and West of Scotland nephrops are not undermined on account of scientific disputes about issues of methodology. However, the issue of cod recovery will almost certainly dominate once again as the Commission has staked its credibility as a fisheries manager on the recovery of cod. Whilst ICES has for the first time noted some improved prospects for cod in the North Sea, including evidence of improved recruitment, it has advised that the North Sea and west coast cod stocks are over-exploited and that there should be zero catches with minimal by-catches.

The Commission have already indicated that for 2007 they will follow strictly the provisions of the cod recovery plan (meaning cuts of 15% in cod TACs and days at sea across the board) or, in the absence of reliable assessments, go for cuts in both of 25%. In addition the Commission has indicated that it is ready to take action on all fleet segments which catch cod, including the small meshed trawl fishery and the beam trawl fishery.

The Scottish Executive and the UK as a whole are also firmly committed to the principle of cod recovery. To this end we have already undertaken a number of painful measures, including two rounds of decommissioning, in order to bring the fleet more into line with available fishing opportunities. However, we believe that the approach suggested by the Commission is disproportionate and fails to reflect the differing realities of the different fleets. While the UK believes that action should be taken on all fleet segments that catch cod, it is clear that attention now needs to be focused not so much on the whitefish fleet as on other fleets which may catch and discard cod rather than land it. All sides are agreed that the contribution of these other fleets is likely to have been greater than originally envisaged. The reductions already achieved in effort of the whitefish fleets have not resulted in corresponding reductions in cod mortality. The principal difficulty must lie elsewhere. This approach would be consistent with the continuing focus of ICES on catches of cod and not just landings and would build on the start made last year.

This approach will put in the spotlight fleets such as the beam trawl fishery in the southern North Sea where discard information remains elusive. However it will inevitably direct attention towards our own nephrops fishery, where the Commission is concerned about possible cod by-catch. The Executive is prepared to accept that there is some association between the nephrops fleet (in practice mixed nephrops/whitefish) and cod and therefore, the implied need for action. However, the Executive will strongly resist efforts to make nephrops a scape-goat for the failure of the EU to reach its targets on cod mortality.

We do not want the Commission to lose sight of the big picture in terms of cod association, with sole, plaice and whiting at least as implicated as nephrops. In practice this will mean pressing the Commission on what data member states have provided (including on cod association and discards) and on what steps they are taking on those fleets.

The Executive has gathered robust and credible data regarding the total catch (both landings and discards) of cod in the nephrops fleet. Using this information we believe we are able to show in detail the extent of any problem of cod/nephrops association. In order to tackle any issues, the Executive has been trialling a number of gear options to enhance selectivity in the fleet. These gear options have been reviewed positively by STECF and we will be able to present the results to the Commission in time for December Council. Our objective will be not only to safeguard the nephrops fishery from disproportionate effort cuts but also to encourage selectivity which would be of real benefit to both the cod and haddock fisheries.

Achieving our objectives in this area will be particularly challenging. Our approach implies a greater contribution from the Netherlands, Belgium, France and Germany. We shall be strengthened in our negotiations by the strong evidence of much improved compliance in the Scottish fleet. Overall, it may be harder this year than last to shift the focus of effort cuts to the small mesh fisheries. However, if the Commission is serious about achieving a cod recovery programme which realistically balances fishing opportunities and stock conservation then it must be willing to take tough decisions on all fleets which contribute to cod mortality.

The Committee may find it helpful to have the attached Annex on the scientific and economic background to this year's negotiations.

EFF

For the programming period 2007-2013 European funding for fisheries will be delivered through the EFF. Enlargement of the Community means that the UK's, and Scotland's, European Fisheries Fund (EFF) programmes will be significantly smaller than those for the Financial Instrument for Fisheries Guidance (FIFG) that operated during the period 2000-2006.

The Commission has allocated €43.1m to the Convergence areas of the UK, which include the Highlands and Islands, and €94.7m to the remainder of the UK which includes all other parts of Scotland. Officials from the four fisheries administrations have sought to identify an agreed method that could be used to apportion the UK's resources between individual administrations and areas. It has not yet been possible to reach consensus amongst officials.

Prior to the implementation of the EFF a UK Operational Programme (OP) requires to be drafted by each Member State then agreed and adopted by the Commission. This UK OP

will be an amalgam of the regional OPs of Scotland, England, Wales and Northern Ireland. The formal consultation of the UK OP for EFF is planned for mid February 2007. Scotland finds itself ahead of the other fisheries administration in having a substantive draft OP and has begun an informal consultation with stakeholder groups which is due to conclude 8th January 2007.

Conducting a consultation now should provide a Scottish OP more in-line with stakeholder thinking and facilitate smoother time of the formal consultation. It is hoped that this will provide SEERAD with a 'head-start' in the preparation of administrative functionality e.g. scheme documentation and ultimately the roll out of EFF in Scotland, which is planned for early in the second half of 2007.

Allocations under FIG

The original FIG allocation to the UK for the period 2000-2006 was €215.6m. Of this total €90.1m was allocated to six individual programmes for each of the 'Objective 1' areas in the UK, including €27.8m to the Highlands and Islands. The remaining €125.5m was allocated to a single programme covering the remaining parts of the UK, i.e. 'Non Objective 1' areas, of this sum €61.5m was assigned to Scotland.

Strict expenditure targets were introduced for structural funds for the programming period 2000-2006. Automatic de-commitment of FIG occurs if Member States fail to spend resources allocated to year 'n' by the end of the year 'n+2'. De-commitment results in less funding being available to the programme. Two of the seven UK programmes have suffered de-commitment. A total of €27.1m has been de-committed from the UK 'Non-Objective 1' programme, €15.6m, €9.1m and €1.3m respectively from the English, Scottish and Welsh sub-programmes. In addition €2.2m has been de-committed from the Highlands and Islands' 'Objective 1' programme but in this case the total value of the programme was maintained by replacing lost FIG with additional national funding from the Executive.

The scale of the FIG programme needs be viewed in the wider context of public interventions in the fisheries sector which are comparable in magnitude to the entire value of the FIG programme to Scotland (€89.3m/£60m). Major interventions include the 2001 fishing vessel decommissioning scheme (£5.4m FIG and £19.4m national), the 2003 decommissioning scheme (£31.4m national) and the 2003 transitional aid scheme (£9.2m national). Allocating more FIG to the nationally funded scheme would have avoided de-commitment but would have severely limited opportunities for grant support to other parts of the fisheries sector, e.g. aquaculture and processing & marketing.

Outer Hebrides Inshore Fisheries Group/EU Fisheries Regulation

The Outer Hebrides (previously Western Isles) Inshore Fisheries Group (IFG) is presently operating on a shadow basis in advance of its constitution being finalised and the appointment of its Chairman and Co-ordinator. IFGs are a local fisheries management tool focussing, in the main, on 0-6 miles, i.e, an area for which member states have responsibility for fisheries management and in which Scotland had devolved responsibility under the devolution settlement. While any management measures for nephrops which an IFG may be considering will be bound by the fact that nephrops is a quota species, IFGs will have the ability and responsibility to pursue any other fisheries management measures for the areas they cover, provided they do so within the IFG/SIFAG structure and subject to the overarching role of SEERAD. This being the case, there have been no discussions or negotiations at the European level in relation to the Outer Hebrides IFG and nor are any planned.

More generally, it is recognised that any fisheries management measures which IFGs may pursue will have to be consistent with wider nature conservation requirements and obligations, for example under the EC Habitats Directive, and the objectives set for IFGs will take this into account.

Agriculture and Rural Development

Voluntary Modulation

As a consequence of the UK's meagre allocation of rural development funding (EAFRD), which for the next programme amounts to €1.9 billion, or around £1.3 billion, we have no alternative but to augment the rural development budget through additional voluntary modulation. This facility was used in the later years of the current programme and will be used again in the next.

Unfortunately, however, I am not in a position to advise the Committee of my specific proposals for voluntary modulation for the next programme until such time as the European regulation on voluntary modulation is adopted, or at least until we have some certainty about the terms of that regulation, whichever is the sooner. To explain that, I will need to explain the UK's concerns about the existing draft and the amendments that we have proposed, of which there are 3.

As currently drafted, the voluntary modulation regulation allows for only one rate of voluntary modulation per member state. This arrangement is not appropriate when the administrations of the UK are submitting separate rural development programmes, reflecting very different circumstances and objectives. Therefore, the UK is pressing hard for regionalisation of the rate of modulation to continue in the next programme.

Second, the regulation proposes that voluntary modulation receipts should be included in the calculation of minimum spends across the 3 main axes of the rural development programme and LEADER. The impact of this is, broadly, to increase the required spend on business viability and wider rural development to the detriment of spending on the environment. This imposes unwelcome constraints on the flexibility that I, and my colleagues in other administrations, have to determine where spending would be of greatest benefit to our respective rural areas. Therefore we are seeking an amendment that would exclude voluntary modulation receipts from the calculation of minimum spends.

Our final concern is that the draft regulation includes a franchise. This has the effect of exempting from voluntary modulation those holdings that receive a single farm payment of €5,000 or less. While this has relatively little impact overall on the rate of voluntary modulation needed to generate a given level of income in Scotland, it has the potential to redistribute support from larger to smaller holdings. Furthermore, the impact in Northern Ireland is of particular concern where most holdings are small and the franchise would significantly increase the rate of modulation needed for a given level of receipts. For these reasons the UK is seeking the withdrawal of the franchise.

Given these uncertainties, you will understand why I cannot be precise about my proposals for voluntary modulation under the next programme. What I can say, however, is that Scotland's share of the UK allocation of EAFRD monies, including compulsory modulation and a transfer from Structural funds in respect of Leader, has been agreed and that we will receive some €359 million (£246 million) over the programme period. This sum includes around €28 million Convergence funding for the Highlands and Islands.

Excluding the Convergence funding but including Scottish Executive match funding, the rural development budget for Scotland will be £453 million for the programme. Taking into account the overhanging commitments to agri-environment, forestry and Land Management Contracts of £349 million, it will be clear to the Committee that the rural development budget will require a substantial injection of funds, from voluntary modulation and further match funding, to provide for a credible rural development programme for Scotland for 2007-13.

In conclusion, to give the Committee some idea of the timescales we are working within, last week the European Parliament voted in favour of seeking a withdrawal of the voluntary modulation regulation and as a result the European Commission is considering its next steps. We understand that the Commission will not withdraw the regulation, so it will find its way back to the Agriculture Committee of the Parliament who have 2 months to consider their next steps. The likelihood is, therefore, that we will not see the regulation adopted until at least February 2007.

Leader

The Executive is committed to empowering and developing local rural communities. We anticipate that the LEADER approach will make a significant contribution to making a difference in that respect. LEADER should be seen within the context of the overall Scottish Rural Development Programme (SRDP) 2007-13. To that end action under LEADER will complement the focus of the SRPD in delivering five key outcomes:

- (i) improving business viability and competitiveness;
- (ii) supporting biodiversity/landscape;
- (iii) maintaining water quality;
- (iv) tackling climate change; and,
- (v) developing rural communities.

Specifically LEADER will develop local capacity for innovation and sustainable economic enterprises many of which may not have an agricultural focus. I expect that the LEADER approach will result in the pump priming of local development schemes, particularly those that address adverse environmental impacts. Although it will not be the LEADER's prime focus I anticipate that many of these schemes would not attract funding from other sources under existing arrangements. Because of that I look forward to a broadening of the social composition of beneficiaries of rural funding in ways that are more inclusive and finely tuned to needs on the ground. The overall objective of the LEADER approach will be to improve the quality of life and sustainability of rural communities.

The Executive has consulted widely on how LEADER can maximise the benefit to communities and add public value. Officials continue to work in partnership with interested parties to develop the details of how LEADER will be implemented. The precise scheme details depend on size of budget which can not be set until Europe resolves the voluntary modulation issue. In keeping with the Executive's proposals and the responses of consultees, to them the broad character of the delivery mechanism will be inclusive and regional.

LFASS

The Committee sought clarification on the current position in regard to the additional payment proposed in early 2007 under the LFAS Scheme and, in particular, how the

payment will be funded and distributed. The current position is that the Financial Notification submitted to the Commission is under consideration. As soon as Commission clearance is obtained, an SSI will be made. This should allow for payments early in 2007. The payment will be funded from domestic resources, using the 2006/07 budget provision for LFASS. It will be distributed, as a supplementary payment, to those already in receipt of 2006 LFASS payments

Environment

Environmental Liability Directive

The Environmental Liability Directive creates a civil law approach based on the 'polluter pays' principle wherein certain operators whose activities run the greatest risk of causing significant damage to water, land or biodiversity will have a duty to prevent such damage occurring. In the event of significant damage being caused, the operators will have a responsibility to restore the environment to its equivalent state prior to the damage. This EU regime will apply to a threat or to damage significant on a EU scale and not for everyday incidents of national or regional impact. Transposition is being planned to work in concert with relevant EU directives, e.g. on birds, habitats and water.

The first of two Scottish consultation exercises will be undertaken soon. The first consultation document will include policy proposals and an impact assessment. The second of the two public consultations on ELD will of course take account of the responses to the first consultation and will contain draft Scottish legislation.

The ERD Committee have raised the question of whether certain aspects of ELD will relate to issues such as the separation of GM and organic crops. The activities to which strict liability applies under the Directive include contained use and deliberate release of GMOs. However, there would have to be 'significant damage' to water, land or biodiversity and this is highly unlikely given that an environmental risk assessment is undertaken before a GMO is authorised for release.

LIFE + Programme

LIFE+ was proposed to replace LIFE III with something more predictable based upon delegation of budgets to Member States and planning of work by them along agreed EU priorities. Funding for Natura and environmental innovation would be mainstreamed elsewhere and LIFE+ would support specific environmental policy priorities. The European Commission would retain up to 20% of available funds for core costs, work with NGOs, etc. Of the remaining delegated 80% of LIFE+ the Council proposed to create a ring-fenced provision for the nature & biodiversity component of 40% of the delegated figure. Work has begun by Member States on the creation of National Annual Work Plans, including setting priorities for the ring-fenced Natura element.

The European Parliament (EP) has rejected overwhelmingly attempts to devolve at least 80% of the LIFE+ budget to Member State control and supports a minimum 55% allocation of the budget to the Nature & Biodiversity component. LIFE+ will now enter the final stage of co-decision, namely conciliation between the European Parliament and the Council. It is anticipated that this will result in a delay in adoption until Spring 2007. Negotiations between the European Council, European Commission and the Parliament are ongoing.

While LIFE-Nature funding has been of particular importance for the Natura network in Scotland it forms only part of the finance associated with protection, management and

promotion of designated sites. The key domestically funded mechanisms supporting Natura 2000 sites in Scotland are Scottish Natural Heritage (SNH) management agreements and Natural Care schemes. Domestic funding for Natura 2000 is also a component of agri-environment schemes and the Scottish Forestry Grant Scheme. SNH will continue to enter into new contracts under its Natural Care programme until Rural Development Land Management Contracts (LMCs) become operational. They will also continue to make individual management agreements for Natura 2000 sites in circumstances where LMCs are not available. In addition SNH is involved in partnership with other public sector bodies as well as the NGO and private sector to deliver projects which enable the protection of Natura 2000 sites. These projects draw funding from a mix of EU and domestic sources including SNH's core grant, research and promotions programmes.

LIFE-Nature has been particularly important in supporting certain types of action not covered by other sources, and especially in the facilitation and pump-priming of projects. Much has been done over the last decade to tackle the most outstanding needs of the Natura network, and it should be noted that LIFE would not normally be available to maintain the gains made on the targeted sites - this will come from other sources.

Your request for briefing asks about the impact on the Natura 2k network of limiting the nature allocation to 40% and of competitive bidding in a non-delegated regime. If there is a reduction in the success of Scottish project applications there is the potential that certain actions will not be undertaken. However the Scottish Executive is fully committed to the obligations associated with the Habitats and Birds Directives and as such will ensure that actions necessary to maintain the designated site network are supported.

I hope that you find the above information helpful and I look forward to meeting the Committee on 6 December.

Ross Finnie

ANNEX

SEA FISHERIES

Scientific Advice

1. The International Council for the Exploration of the Sea (ICES) has issued its advice on all the stocks covered by these negotiations. Its advice will be considered by the EU's own scientific experts during November.

Cod

2. ICES advises that all cod stocks remain over-exploited and biologically weakened. The advice for North Sea cod remains at 'zero catches' and 'minimal by-catches'. This advice drives the advice for all North Sea demersal fisheries and ACFM have stressed that the current cod recovery plan is inadequate to ensure the recovery of cod stocks. The West of Scotland cod stock remains very weak and shows no sign of recovery. However, some improved prospects have been noted for the North Sea, including - for the first time - an observed decline in fishing mortality rates, evidence of still-below-average but substantially improved recruitment in 2005 and a forecast increase of catches in 2007, arising from greater abundance. ICES strongly suggests that discarded catches of undersized cod in the small mesh fisheries (including Nephrops and beam trawl fisheries) could be an important reason for less than anticipated reductions in fishing mortality and continued uncertainty in the assessment.

Haddock

3. The haddock advice is based on a reliable quantitative assessment. Haddock stocks are within safe biological limits in all areas. Fishing mortality rates have declined by around 70%. In the North Sea, the stock is now being harvested at a rate consistent with the maximum sustainable yield - in accordance with Johannesburg Summit commitments - and the catch forecast following good recruitment in 2005 represents a recommended haddock quota increase of around 7%. In the smaller West of Scotland fishery, the stock is probably still being harvested sustainably, but the assessment uncertainty (and some area misreporting) suggests that there is a risk of its being over-exploited: the precautionary catch forecast represents a recommended quota reduction of around 8%. At Rockall, the haddock stock is being harvested sustainably and the catch forecast represents a substantial quota increase from 597 tonnes to 7,110 tonnes, but a management plan including sharing arrangement with Russia is strongly advised. The advice for haddock in both the North Sea and the West of Scotland is to minimise the associated catches of cod.

Whiting

4. On whiting, ICES offers no assessment and no forecasts because of uncertain and inadequate data. The formal advice is that the stock does appear to be close to its lowest ever observed level. Fishing effort and landings are at historically low levels and ICES recommends that catches are not allowed to exceed average catches from 2003-2005.

Plaice

5. The stock is estimated to be at risk of reduced reproductive capacity, but is being harvested sustainably. Juvenile plaice continues to be heavily discarded in other fisheries (notably for sole). ICES recommends that measures to reduce this discarding be

considered including, an increase in mesh size or an increase in the minimum landing size for sole. This years plaice advice cannot be directly compared to assessments carried out prior to 2004 due to changes in the methodology.

Nephrops

6. All Scottish Langoustine (*Nephrops*) stocks are sustainably harvested and are still generally stable, both West of Scotland and in the North Sea. ICES advises managers to ensure that there is no increase in effort in these fisheries, and that there is mandatory data collection. However, ICES has rejected the TAC-calculation methodology introduced in 2005, leading to recommendations for quota reductions in 2007 of around 22% (North Sea) and 6% (West of Scotland). In addition, the advice for cod, haddock and *Nephrops* refers frequently to catches of undersized, discarded cod and haddock in the *Nephrops* fisheries, and to the need to ensure minimal by-catches of cod and haddock in both areas.

Sandeel

7. Sandeel is at reduced reproductive capacity and is only just above the historic low set in 2004. ICES recommends that the fishery is closed until the stock returns to levels above precautionary limits.

Monkfish

8. It has again not proven possible to present robust quantitative stock assessments for Northern shelf anglerfish (monkfish). The available information is still inadequate to evaluate either the size of the spawning stock or the fishing mortality rate, or for ICES to recommended TAC levels. However, ICES has explicitly noted, and encourages, the development of the Scottish industry-science partnership on data collection. In the situation of serious data deficiencies, including unreliable catch data, ICES advises that managers should allow the current level of fishing effort to continue, but not to increase. ICES recommends the introduction of mandatory scientific programmes to collect catch and effort data in both the direct and the by-catch fisheries, and improved scientific stock surveys. ICES notes that regulation of the fishery by TAC is not enough to regulate fishing mortality on the stock.

Saithe

9. Saithe is reckoned to be being fished at within precautionary limits. Catches and effort for saithe have dropped sharply in recent years. This is thought to be due to the low prices for saithe and rising prices of fuel making it an un-economic fishery for certain boats.

Herring

10. North Sea herring stocks have now experienced four successive years of weak recruitment. The spawning stock biomass is expected to fall below safe biological limits in 2007 unless management action is now taken. The persistent weakness of herring recruitment is not explained in the advice, but it is not a consequence of excessive fishing pressure. Fishing mortality has been around optimal levels in recent years, but has not reduced fast enough to match the current biomass decline and is now believed to be at an unsustainable level. ICES explicitly recommends that managers should be prepared to put aside the 15% TAC variation in the current EU-Norway management arrangement and reduce the TACs by between 47% and 49%, depending on how much herring is set aside as a permitted by-catch in the industrial fisheries.

Blue Whiting

11. The assessment has been very uncertain in recent years but it is believed that the biomass is above precautionary limits, but that it is being harvested unsustainably. Recent recruitments to the stock have been exceptional, which has kept the stock above precautionary limits despite intensive fishing pressure. However, the 2005 year class looks weak and ICES advises that without a reduction in fishing effort the stock is expected to decline sharply.

Mackerel

12. The state of the Atlantic mackerel stock is currently uncertain, but it is likely to be confirmed as being stable and within safe biological limits in 2007, when the next full egg survey is conducted. In 2005, the stock was still at risk of being harvested unsustainably, but fishing pressure has substantially reduced in recent years. ICES has advised that changes to the TAC between a 1% cut and a 10% increase would be consistent with ensuring the maximum sustainable yields.

Deep Sea Stocks

13. For deep-sea species, the size of the stock and the level of fishing effort are difficult to measure. However ICES believes that practically all deep sea stocks are being exploited unsustainably. Most deep sea species are long lived (~80 years), slow growing and mature late (~20 years). Consequently, ICES recommends that as most deep-sea species can only sustain low rates of exploitation for existing fisheries, the fishing pressure should be reduced considerably to low levels. Fisheries on such species should be permitted only when they are accompanied by programmes to collect data and should expand very slowly until reliable assessments indicate that increased harvests are sustainable.