This briefing has been prepared in advance of the Stage 3 debate on the Aquaculture and Fisheries (Scotland) Bill. It provides a summary of the debate on some of the main areas in which amendments were proposed and made to the Bill during Stage 2.

SPICe briefing 12/68 describes the Bill as introduced in more detail.
CONTENTS

EXECUTIVE SUMMARY .................................................................................................................. 3

COMMITTEE CONSIDERATION .................................................................................................... 4

AREAS DEBATED AT STAGE 2 ..................................................................................................... 4
  PART 1 AQUACULTURE ............................................................................................................... 4
  PART 2 SALMON FISHERIES ETC. ............................................................................................ 5
  PART 3 SEA FISHERIES ............................................................................................................. 6

SOURCES ..................................................................................................................................... 7

RELATED BRIEFINGS .................................................................................................................... 10
EXECUTIVE SUMMARY

The Bill was considered at Stage 2 by the Rural Affairs, Climate Change and Environment Committee at two meetings in March 2013.

Of the 90 amendments considered by the Committee, only Government amendments were successful (36 in total, 33 agreed without division and 3 agreed by division). 37 other amendments that were moved were disagreed to by division. Two amendments were moved and withdrawn, one was pre-empted and 14 were not moved. Amendments were proposed by non-Government party members of the Committee that would have required the publication of data on sea lice – a parasite of salmon – at a more detailed geographical level than at present. They were disagreed to by division.

Amendments were proposed to allow regulations on technical requirements for equipment in fish farming to specify training of operators. The Scottish Government said it would come back to this issue at stage 3.

The definition of wellboats, boats used e.g. to move fish in-between fish farms which the Bill would regulate the use of, was debated. The Government is considering the need to change the definition of these.

The requirement for individually numbered tagging of net caught wild salmon was debated. An amendment which would require such a tagging scheme was rejected. The Government intends to consult before introducing regulations on tagging.

An amendment which would have allowed the Government to make regulations giving District Salmon Fishery Boards a right of first refusal to buy salmon netting rights was rejected. This issue will be considered as part of a wide ranging review of wild fisheries management in Scotland which the Scottish Government plans to initiate.

The Government lodged a package of amendments designed to tackle the problem of illegal cockle fishing on the Solway Firth, and improve enforcement of inshore fisheries legislation more generally. These amendments attracted cross party support and were agreed to.
COMMITTEE CONSIDERATION

The Bill was considered at Stage 2 by the Rural, Climate Change and Environment Committee at its meetings of the 20 March 2013 and the 27 March 2013 (Scottish Parliament Rural Affairs and Environment Committee 2013a and 2013b).

A total of 92 amendments were lodged. One amendment was lodged and then withdrawn, and one amendment was lodged and then replaced by a later amendment\(^1\). Of the 90 amendments considered by the Committee, only Government amendments were successful (36 in total, 33 agreed without division and 3 agreed by division). 37 other amendments that were moved were disagreed to by division. Two amendments were moved and withdrawn, one was pre-empted and 14 were not moved (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2013c and 2013d).

AREAS DEBATED AT STAGE 2

PART 1 AQUACULTURE

Sea lice are a parasite of both farmed and wild salmon. The Scottish Salmon Producers Organisation, which 98% of salmon farmers in Scotland are members of, currently publishes data about sea lice numbers on salmon farms in 6 regions, and proposes to publish sea lice data for 30 areas in future. Data on sea lice are collected on individual farms, and can be made available to inspectors on request, but they are not published. One issue which came to the fore during stage 1 consideration of the Bill was whether salmon farmers should be required to publish information about sea lice numbers at a more disaggregated level. The Committee’s stage 1 report came to the following conclusions on the issue:

202. The Committee notes the Scottish Government has not taken this issue forward in the Bill, and notes the Minister’s explanation of the reasons behind this. The Committee also notes the recent announcement by the SSPO to increase the number of areas from which data is collated from 6 to 30 and sees this as a step in the right direction. However, the Committee would like to see this taken a step further and for data to be collated for each Farm Management Agreement, and each Farm Management Statement where an Agreement is not in place and recommends this is considered as a priority by the Ministerial Group on Aquaculture.

203. The Committee is still considering whether sea lice data should be published on a farm-by-farm basis, after taking evidence from the Minister, the aquaculture industry, the wild fisheries sector and other stakeholders. The Committee welcomes the Minister’s commitment to look at this issue as part of the work of the Ministerial Group on Aquaculture if not taken forward in the Bill, and recommends the Group prioritises improving the transparency of data and considers the merits of publishing data on a retrospective basis (such as with a time lag of one or two months). (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2013e).

\(^1\) Government amendment 31, and amendment 63 which was lodged by Tavish Scott MSP, which he then replaced with amendment 86
Alex Fergusson MSP lodged an amendment which would have required publication of sea lice data for individual salmon farms, something which is done in Ireland and in Norway. Chapter 1 of the Bill will create a statutory requirement for salmon farmers to develop farm management agreements and statements, which will cover, among other things, arrangements for managing sea lice. These will cover around seventy areas. Claudia Beamish MSP proposed an amendment which would have required publication of sea lice data for these areas. Both these amendments were disagreed to by division. The Government stated that it prefers to maintain its current approach, with publication of sea lice data remaining voluntary. Responding to the debate on the amendments, the Minister for Environment and Climate Change, Paul Wheelhouse MSP, did say that the Government would keep the matter under review through the Ministerial Group for Aquaculture, and that he would use powers in the Aquaculture and Fisheries (Scotland) Act 2007 to require publication of sea lice data if the voluntary arrangements were shown not to be working.

Section 3 of the Bill would introduce a new power for Ministers to make regulations setting technical requirements for equipment used in salmon farming e.g. nets, cages, pontoons, ropes, moorings etc. Detailed technical requirements have been developed by the fish farm industry through a working group, and the regulations would reflect these. The improvements to these requirements are designed to minimise escapes of farmed salmon as far as possible. Escaped fish represent an economic loss to the industry, and also compete with and interbreed with wild salmon. During Stage 1 the Committee heard evidence that human error is often the cause of escapes rather than defective equipment, and that this could be tackled through training of salmon farm operators. Jim Hume MSP proposed two amendments which would allow Ministers to prescribe training requirements as well as technical requirements, and would require salmon farmers to keep records of training. The amendments were moved, and were both disagreed to by division. In the debate on the amendments the Minister recognised their merits and said that he would come back with further thoughts on this issue at Stage 3.

Wellboats are boats which are used in fish farming to move fish from farm to farm, to harvest fish, to grade fish, and to medicate fish. Section 5 of the Bill would create a power for Ministers to make subordinate legislation to regulate the operation of wellboats. During Stage 1, the Committee heard evidence from the aquaculture industry that the way the Bill defines what is a wellboat may be too wide. Tavish Scott MSP lodged an amendment that would have defined a boat as a wellboat if it was classed as a wellboat in its insurance documentation. The Minister explained that the approach taken in the Bill was to define a boat as a wellboat if it performed one of a set of functions listed in the Bill, which are those which wellboats are used for. The amendment was disagreed to by division. In debate on the amendment the Minister said he would give further consideration to the need for any changes prior to stage 3.

**PART 2 SALMON FISHERIES ETC.**

The right to net wild salmon and sea trout is a heritable property right. Netting of salmon and sea trout is much reduced compared to the past, partly in response to falling stocks; because the growth of the farmed salmon industry has introduced price competition; and in some cases owners of rod and line fisheries have bought out netting rights. In 2011 25,649 salmon and sea trout were netted in Scotland, and four districts the Tweed, South Esk, North Esk and Strathy made up 82.5% of the catch.

There is currently no legal requirement to tag net caught salmon. During Stage 1 the Committee learned how one of the main netting companies, Usan Salmon Fisheries Ltd, operates a voluntary tagging scheme, and the tags were demonstrated to the Committee. The Bill would introduce a power for Ministers to make regulations on the tagging of net caught salmon. There
is currently a ban on the sale of salmon caught by rod and line. Regulating the tagging of net caught salmon is intended to improve enforcement against poaching. The approach taken by the Government in the Bill would be to leave the detail of a tagging scheme to regulations. Alex Fergusson MSP moved an amendment which would have specified on the face of the Bill that regulations on a tagging scheme must require the use of unique identification numbers, and for these numbers to be recorded. Responding, the Minister argued that there should be wide-ranging consultation before introducing any regulations, and the need for numbered tags would be an important point to consult on. He also explained that including such a requirement in the Bill might be subject to the EU technical standards directive, which requires the European Commission to be informed about regulatory measures that might create a barrier to trade, and imposes a standstill period on their coming into force, which could affect the timetable for the Bill. Alex Fergusson MSP sought the Committee’s agreement to withdraw the amendment, as he wished to consider coming back to the issue at Stage 3. The amendment was withdrawn.

Many salmon netting stations have ceased to operate, however, the rights remain. Analysis by the Association of Salmon Fishery Boards has shown that there are at least 129 dormant netting stations of varying sizes, which have the potential to come back into operation. Concerns have been expressed about netting rights being sold and brought back into operation as this could threaten some salmon stocks. Claudia Beamish MSP lodged an amendment which would have created a power for Ministers to make regulations to create a scheme which would allow District Salmon Fishery Boards a right of first refusal to buy netting rights before any proposed sale or lease. In the debate on the amendment the Minister explained that this was something that would be considered in a wide ranging review of wild fisheries management in Scotland which the Government plans to initiate. The amendment was disagreed to by division.

**PART 3 SEA FISHERIES**

The majority of the Government amendments made to the Bill at stage 2 were technical and did not introduce new policy. An exception to this were a package of amendments which are designed to tackle the problem of illegal cockle fishing on the Solway Firth, and to improve the enforcement of inshore fisheries legislation in general. The Government wrote to the Committee shortly after the Bill was introduced to explain that it intended to make amendments to deal with illegal cockling, which enabled the Committee to take evidence and comment on the issue in its Stage 1 report. The Minister described the amendments to the Committee:

Fishing for cockles in the Solway Firth is currently prohibited through an order made under section 1 of the Inshore Fishing (Scotland) Act 1984. The order prohibits fishing for cockles, so it is the act of fishing that enforcement officers must gather sufficient evidence of. Doing that for an act that is rarely, if ever, witnessed by the authorities is very problematic. Health and safety considerations mean that enforcement officers cannot easily venture out on to the sands where illegal cockle fishing takes place. I am sure that all members are aware of the tragic events in Morecambe Bay and know the dangers therein.

Amendment 38 will allow the courts to infer that illegal fishing has taken place, or was just about to take place, from the circumstantial evidence available. Amendment 44 makes similar provision for regulated fishery orders under the Sea Fisheries (Shellfish) Act 1967, which may become relevant should a legal fishery for cockles in the Solway Firth be opened at some point in the future. Those measures are being brought in to improve enforcement action against illegal cockle fishing in the Solway Firth, but they will apply more widely to other orders made under the 1984 act, which prohibits sea fishing in specified areas, as well as to regulated fishery orders made under the 1967 act. They will therefore improve enforcement of other measures in inshore waters around Scotland.
Amendments 39 and 45 have been introduced to complement existing enforcement powers in respect of illegal fishing under the 1984 act and the 1967 act. I have introduced the amendments as part of a package of measures that we are taking to tackle illegal fishing on the Solway Firth. Points of access to the foreshore along the coastline of the Solway Firth are limited. Points of vehicular access to the foreshore from the public road network include private roads over private land. Intelligence that has been gathered by Marine Scotland and its partner agencies suggests that illegal cockle pickers have used private roads or private land to access the foreshore and then go on to the cockle beds. Marine Scotland’s enforcement officers encounter resistance from the landowners when they try to use the same roads to gain access to the foreshore to intercept illegal cockle pickers.

The amendments will give enforcement officers a power of entry to land that will allow them to insist on access where the landowner seeks to prevent it; allow officers to remove any obstacles that have been placed in the road to block their path; and confer a power of arrest on police officers where the landowner willfully obstructs the enforcement officers. The powers of entry will apply to Crown land, which is relevant to the majority of foreshore around Scotland, but they will not apply to Her Majesty’s private estates.

It is extremely challenging for Marine Scotland and its partner agencies to gather primary evidence of illegal cockle fishing. In the past, that has often limited and precluded enforcement action, including prosecution. These amendments will allow enforcers to act where there is only circumstantial evidence of illegal fishing, which will result in demonstrable and visible improvements to the enforcement regime.

Moving away from cockles and turning to fisheries control provisions more generally, I note that amendments 41 and 42 concern section 31 of the Fisheries Act 1981, which creates offences and confers inspection powers for effective enforcement of European Union obligations relating to sea fishing where an order has not been made under section 32 of the 1981 act. At present, the scope of section 31 is limited to the activities of fishing vessels. The amendments will increase the scope of the 1981 act to cover shore-based activities of sellers, buyers and transporters of fisheries products in the absence of an order being placed. They will also mirror provisions that are already in place for England and Wales.

The amendments attracted cross party support and were agreed to.

**SOURCES**

*Aquaculture and Fisheries (Scotland) Bill [as introduced] Session 4 (2013). SP Bill 17.*


RELATED BRIEFINGS

SB 12/68 Aquaculture and Fisheries (Scotland) Bill

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Tom Edwards on extension 85198 or email tom.edwards@scottish.parliament.uk. Members of the public or external organisations may comment on this briefing by emailing us at SPICe@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament’s Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk