Passage of the

Aquaculture and Fisheries (Scotland) Bill 2012

SPPB 187
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
Introduction, followed by publication of the Bill and its accompanying documents;
Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The material in Annexes C and D of the Rural Affairs, Climate Change and Environment Committee’s Stage 1 Report was originally published on the web only, and is now included in full in this volume. Certain information has been redacted from some of the written submissions before publication, in order to comply with requirements in relation to potentially defamatory material and data protection issues.

The Finance Committee did not report to the Rural Affairs, Climate Change and Environment Committee on the Financial Memorandum at Stage 1. Two written submissions received by the Finance Committee in response to its standard questionnaire were forwarded to the Committee, but we not included in the Stage 1 Report. These submissions are included in this volume.
The Scottish Government made a written response to the report of the subordinate Legislation Committee at Stage 1, in addition to the Government’s general response to the Stage 1 Report by the Rural Affairs, Climate Change and Environment Committee. Both responses are included in this volume. At its meeting on 26 February 2013, the Subordinate Legislation Committee considered and noted the response without debate. No extracts from the minutes or the Official Report of that meeting are, therefore, included in this volume.

At its meeting on 7 May 2013, the Subordinate Legislation Committee considered the delegated powers in the Bill as amended at Stage 2 and agreed its report without debate. The report is included in this volume, but no extracts from the minutes or the Official Report of that meeting are included.
Aquaculture and Fisheries (Scotland) Bill
[AS INTRODUCED]

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[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

PART 1
AQUACULTURE
CHAPTER 1
FISH FARM MANAGEMENT

1 Fish farm management agreements and statements

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 4 insert—

4A Fish farm management agreements and statements

(1) A person who carries on a business of fish farming at a fish farm located within a farm management area must—

(a) be party to a farm management agreement, or prepare and maintain a farm management statement, in relation to the fish farm, and

(b) ensure that the fish farm is managed and operated in accordance with the agreement or (as the case may be) statement.

(2) For the purposes of this section, a “farm management agreement” is an agreement—

(a) between two or more persons who carry on a business of fish farming at fish farms located in a farm management area, and

ACCOMPANYING DOCUMENTS
Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 17-EN. A Policy Memorandum is printed separately as SP Bill 17-PM.
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Chapter 1—Fish farm management

(b) which—
   (i) reflects (so far as possible) the recommendations of the Code of
       Practice as to such agreements, and
   (ii) contains provision about the matters specified in subsection (4).

(3) For the purposes of this section, a “farm management statement” is a
    statement—
    (a) prepared and maintained by a person who—
        (i) carries on a business of fish farming at a fish farm located in a
            farm management area, and
        (ii) is not, in relation to that fish farm, party to a farm management
            agreement, and
    (b) which—
        (i) reflects (so far as possible) the recommendations of the Code of
            Practice as to such statements, and
        (ii) contains provision about the matters specified in subsection (4).

(4) The matters referred to in subsections (2)(b)(ii) and (3)(b)(ii) are—
    (a) a description of the farm management area and the fish farm or farms to
        which the agreement or statement applies,
    (b) arrangements for—
        (i) fish health management,
        (ii) management of parasites,
        (iii) the movement of live fish on and off the farms,
        (iv) the harvesting of fish,
        (v) fallowing of the farms after harvesting,
    (c) review of the agreement or statement at least every 2 years,
    (d) in the case of a farm management agreement, arrangements for persons
        to become, or cease to be, parties to the agreement.

(5) In this section—
    the “Code of Practice” means the document called the Code of Good
    Practice for Scottish Finfish Aquaculture as issued and revised from time
    to time by the body known as the Scottish Salmon Producers’ Organisa-
    tion,
    “farm management area” means an area specified as such in the Code of
    Practice.

(6) The Scottish Ministers may by order modify the definition of the Code of
    Practice in subsection (5) so as to—
    (a) substitute a reference to another document for the one for the time being
        referred to in that definition,
    (b) substitute a reference to another body for the one for the time being
        referred to in that definition.
(7) An order under subsection (6) may—
   (a) include incidental, supplemental, consequential, transitional, transitory or
   saving provision,
   (b) modify any enactment, instrument or document.

4B Inspections: farm management agreements and statements

(1) An inspector may carry out an inspection of any fish farm to which section
4A(1) applies for the purpose of ascertaining whether that section is being
complied with.

(2) In particular, an inspection under subsection (1) may include—
   (a) taking samples (including samples of fish or material from fish),
   (b) examining, and taking copies of, documents or records.

(3) An inspector may arrange for the carrying out of such tests as the inspector
considers necessary, using samples taken during an inspection under
subsection (1), for the purpose mentioned in subsection (1)."

(3) In section 6 (enforcement notices), for subsection (1) substitute—

“(1) Where the Scottish Ministers are satisfied that a person who carries on a
business of fish farming—
   (a) does not have satisfactory measures in place for any of the purposes
mentioned in subsection (2), or
   (b) in relation to a fish farm to which section 4A(1) applies, has failed or is
failing to comply with that section,
   the Scottish Ministers may serve a notice (“an enforcement notice”) on the
person.”.

(4) In section 43(3) (orders subject to affirmative procedure), in paragraph (a), after
“section” insert “4A(6) or”.

2 Escapes, and obtaining samples, from fish farms

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this
section.

(2) In section 5 (inspections: containment and escape of fish)—
   (a) in subsection (2), after paragraph (b) insert—
       “(ba) ascertaining the origin of fish known or believed to have escaped from
the fish farm or any other fish farm,”,
   (b) in subsection (3), in paragraph (a), after “equipment” insert “, fish or material
from fish”.

(3) After section 5 insert—
“Sampling

5A Obtaining samples from fish farms

(1) An inspector may take samples of fish, or material from fish, on a fish farm for any of the purposes mentioned in subsection (3).

(2) An inspector may require a person who carries on a business of fish farming to provide the inspector with samples of fish, or material from fish, on the fish farm for a purpose mentioned in subsection (3).

(3) The purposes are—

(a) assisting any investigations into escapes of fish from fish farms that may require to be carried out,

(b) analysing the samples mentioned in subsections (1) and (2) for scientific or other research,

(c) assessing the impact of—

(i) the operations of fish farms on the environment,

(ii) escapes of fish from fish farms on stocks of fish other than those on fish farms,

(d) developing methods of tracing the origins of fish that escape from fish farms,

(e) such other purposes as the Scottish Ministers consider necessary or expedient.

(4) This section is without prejudice to sections 4B and 5.”.

CHAPTER 2

FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment

3 Technical requirements for equipment used in fish farming

(1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by regulations—

(a) prescribe technical requirements for equipment to be used for or in connection with fish farming, and

(b) make provision for ensuring compliance with the requirements.

(2) The purposes are—

(a) the containment of fish,

(b) the prevention of escape of fish,

(c) the prevention, control or reduction of parasites, pathogens or diseases.

(3) Regulations under subsection (1) may, in particular—

(a) prescribe requirements as to the design, construction (including the materials used in construction), manufacture, installation, maintenance or size of equipment,

(b) provide for the appointment or authorisation of persons (“inspectors”) to inspect equipment for the purpose of ensuring compliance with the regulations,
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Chapter 2—Fish farming: equipment and wellboats

(c) for that purpose, confer on inspectors—
   (i) powers of entry, search and seizure,
   (ii) powers to obtain information or evidence,

(d) impose requirements on fish farm operators, or their employees or agents, as to—
   (i) the provision of information to inspectors,
   (ii) allowing access by inspectors, and
   (iii) cooperation with inspectors,

(c) confer powers on inspectors to impose such requirements,

(f) impose requirements on fish farm operators, or their employees or agents, as to—
   (i) the keeping of records in relation to equipment and the making of those records available for inspection,
   (ii) the notification or reporting of failures in equipment,

(g) create criminal offences in relation to failures to comply with the regulations and make other provision for dealing with such offences, including—
   (i) the provision of defences,
   (ii) evidential matters,

(h) provide for other sanctions for dealing with such failures,

(i) provide for procedures (including appeals) for enforcing compliance with the regulations,

(j) make different provision for different types of fish farming and different species of fish.

(4) Regulations under subsection (1) may—
   (a) prescribe requirements—
      (i) by reference to a document published by or on behalf of the Scottish Ministers or such other person, or person of such description, as is specified in the regulations, or
      (ii) by reference to the approval or satisfaction of such person, or person of such description, as is specified in the regulations,
   (b) confer functions on any person in relation to the prescribing of requirements.

(5) Where regulations under subsection (1) create a criminal offence, they must provide for the offence to be—
   (a) triable summarily, and
   (b) punishable by a fine not exceeding level 4 on the standard scale.

(6) Regulations under subsection (1) may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified in the regulations.

(7) Sanctions provided for under subsection (3)(h) may include suspension or revocation of any authorisations required by fish farm operators to operate as such.
(8) In this section, “fish farm operators” means persons carrying on a business of fish farming.

Wellboats

4 Meaning of “wellboat”

5 (1) In this Chapter, “wellboat” means a vessel that contains a tank or well for holding water (including sea water)—

(a) into which live farmed fish may be taken, and
(b) in which the fish may be subsequently kept,

for a purpose mentioned in subsection (2).

(2) The purposes are—

(a) the transportation of farmed fish,
(b) the storage of farmed fish,
(c) the slaughter of farmed fish,
(d) the treatment of farmed fish in connection with health, parasites, pathogens or diseases,
(e) any other purpose connected with fish farming.

(3) For the purposes of this section, it is irrelevant whether or not the farmed fish remain alive in the course of any activity mentioned in subsection (2).

(4) In this section, “farmed fish” means fish produced by fish farming.

5 Control and monitoring of operations of wellboats

(1) The Scottish Ministers may by regulations make provision for or about controlling and monitoring the operations of any wellboat in Scotland.

(2) Regulations under subsection (1) may, in particular, include provision for or about—

(a) the measures to be taken to prevent, reduce, remove or otherwise control the risk of the spread of parasites, pathogens or diseases as a result of wellboat operations,
(b) the installation of such equipment, or types of equipment, as may be specified—

(i) to prevent, reduce, remove or otherwise control such a risk,

(ii) to enable compliance with the regulations to be monitored,
(c) the reporting to the Scottish Ministers of such matters as may be specified.

(3) Regulations under subsection (1) may impose requirements on, and only on—

(a) the master of a wellboat,
(b) an owner of a wellboat,
(c) a charterer of a wellboat.

(4) Regulations under subsection (1) may make different provision for—

(a) different descriptions of wellboat,
(b) different operations,
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(c) different species of fish,
(d) different periods of time.

(5) A person commits an offence if the person—
(a) acts in contravention of regulations under subsection (1),
(b) fails to take any action required of that person by such regulations, or
(c) otherwise fails to comply with any requirement imposed on that person by such regulations.

(6) No proceedings may be taken or continued against a person for an offence under subsection (5) in respect of a matter in relation to which an enforcement notice under section 6 has been served.

(7) It is a defence for a person charged with an offence under subsection (5)(b) or (c) to show that the person had a reasonable excuse for failing to take any action or (as the case may be) to comply with any requirement mentioned in that subsection.

(8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(9) In this section, “specified” means specified in regulations made under subsection (1).

6 Enforcement notices

(1) This section applies where the Scottish Ministers are satisfied that a person has failed or is failing to comply with any requirement imposed on that person by regulations under section 5(1).

(2) The Scottish Ministers may serve a notice (an “enforcement notice”) on the person.

(3) The enforcement notice must specify—
(a) the grounds for the service of the notice,
(b) the action that the person on whom it is served is required to take in order to ensure compliance with the regulations, and
(c) the date by which that action is to be taken, which must be no earlier than 14 days after the day on which the notice is served.

(4) The Scottish Ministers may publicise the serving of an enforcement notice; and they may do so to such extent, in such manner and in such form as they think fit.

(5) A person on whom an enforcement notice has been served may appeal to a sheriff against the notice.

(6) An appeal under subsection (5) must be made before the expiry of the period of 7 days beginning with the day on which the notice is served.

(7) Where an appeal is made under subsection (5), the enforcement notice has no effect until the appeal is withdrawn or finally determined.

(8) In an appeal under subsection (5)—
(a) the sheriff may make such order as the sheriff thinks appropriate, and
(b) the sheriff’s decision is final.
(9) If the appeal is not upheld, the date by which the action specified in the notice is to be taken is such date as the sheriff may specify in the order disposing of the appeal.

(10) A person on whom an enforcement notice has been served commits an offence if the person fails to comply with the requirements of the notice.

(11) It is a defence for a person charged with an offence under subsection (10) to show that the person had a reasonable excuse for failing to comply with such requirements.

(12) A person who commits an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

7 Marine enforcement officers’ functions

(1) For the purpose of enforcing regulations under section 5(1), a marine enforcement officer has—
   (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010,
   (b) the power conferred by section 150 of that Act (power to require information relating to certain substances and objects), and
   (c) the power conferred by subsection (2).

(2) Where the requirements of an enforcement notice under section 6 have not been complied with, a marine enforcement officer may take such action as the officer considers necessary to fulfil the requirements.

(3) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—
   (a) any reference to a power conferred by Part 7 of that Act included a reference to—
      (i) such a power as applied by subsection (1), and
      (ii) the power conferred by subsection (2), and
   (b) any reference to a marine enforcement officer’s functions under that Act included a reference to—
      (i) such functions as applied by subsection (1), and
      (ii) a marine enforcement officer’s function under subsection (2).

(4) The powers which a marine enforcement officer has for the purposes of enforcing regulations under section 5(1) may be exercised in the Scottish marine area and in any other part of Scotland.

(5) A marine enforcement officer may take action as mentioned in subsection (2) whether or not proceedings have been taken for an offence under section 6(10).

(6) The Scottish Ministers may recover any expenses reasonably incurred by a marine enforcement officer in taking action as mentioned in subsection (2) from the person on whom the enforcement notice was served.

(7) In this section, “Scottish marine area” has the same meaning as in section 1 of the Marine (Scotland) Act 2010.
CHAPTER 3

COMMERCIAL DAMAGING SPECIES

Orders relating to commercially damaging species

8 Specification of commercially damaging species

(1) The Scottish Ministers may, for the purposes of this Chapter, by order specify as a commercially damaging species—

(a) a species of fish or shellfish,
(b) any other species of animal,
(c) a species of plant.

(2) The Scottish Ministers may make an order under subsection (1) in relation to a species only if they consider that the species—

(a) if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and
(b) is itself of little or no commercial value.

9 Movement of species, etc.

(1) The Scottish Ministers may by order make provision for or about the prohibition or control of the movement of—

(a) any commercially damaging species that is present, or suspected of being present, in any body of water,
(b) any other species of animal or plant the movement of which may be associated with the movement of such a commercially damaging species,
(c) any equipment or other material used for or in connection with fish farming or shellfish farming, the movement of which may be so associated,
(d) water in which a commercially damaging species, or a species mentioned in paragraph (b), is present or suspected of being present.

(2) An order under subsection (1) may—

(a) designate an area in respect of which any prohibition or control of movement applies,
(b) make provision in relation to the enforcement of the provisions of the order, including provision for the issue of notices imposing requirements and the action that may be taken in cases where such notices are not complied with,
(c) make provision in relation to appeals against such notices or other actions taken in connection with the enforcement of the provisions of the order,
(d) where the movement of—

(i) a species,
(ii) equipment or other material, or
(iii) water in which a species is present or suspected of being present,
is controlled by the order, specify conditions or requirements in respect of such
movement (including conditions that must be satisfied before such movement is
permitted),

(e) make different provision for—

(i) different types of commercially damaging species,

(ii) different types of animal or plant as mentioned in paragraph (b) of
subsection (1),

(iii) different types of equipment or other material as mentioned in paragraph
(c) of that subsection.

(3) A person commits an offence if the person—

(a) acts in contravention of an order under subsection (1),

(b) fails to take any action required of the person by such an order, or

(c) otherwise fails to comply with any requirement imposed on the person by such an
order.

(4) It is a defence for a person charged with an offence under subsection (3)(b) or (c) to
show that the person had a reasonable excuse for failing to take the action or (as the case
may be) to comply with any requirement mentioned in that subsection.

(5) A person who commits an offence under subsection (3) is liable on summary conviction
to a fine not exceeding level 5 on the standard scale.

Orders under section 9(1): samples and surveillance

(1) An order under section 9(1) may include provision for or about—

(a) the taking of samples of any fish from a fish farm, or shellfish from a shellfish
farm, by a person appointed by the Scottish Ministers (an “appointed person”),

(b) the taking of samples of material from any such fish or shellfish by an appointed
person,

(c) the analysis of such fish or shellfish, or such material, by an appointed person for
the purposes of ascertaining whether a commercially damaging species is present
on the fish farm or shellfish farm,

(d) the powers of an appointed person, including powers to—

(i) enter any land, fish farm or shellfish farm,

(ii) enter any premises (other than a dwelling house) associated with the
management or operation of a fish farm or shellfish farm,

(iii) require the operator of a fish farm or shellfish farm to provide the
appointed person with samples such as are mentioned in paragraph (a) or
(b),

(c) the size of any sample such as is mentioned in either of those paragraphs.

(2) Subsection (3) applies to an order under section 9(1) that controls the movement of fish
or shellfish that are produced by fish farming or shellfish farming.

(3) The order may include provision for or about—
(a) requiring a person who carries on a business of fish farming or shellfish farming to carry out a programme of surveillance of—

(i) the fish or shellfish the movement of which is controlled by the order,

(ii) any other animal, or any plant, specified in the order that is present at the place to which the fish or shellfish mentioned in sub-paragraph (i) are to be, or have been, moved,

(iii) such conditions of that place as may be specified in the order,

(b) the carrying out by a person appointed by the Scottish Ministers of such a programme of surveillance,

(c) the powers of a person so appointed, including powers to enter—

(i) any land, fish farm or shellfish farm,

(ii) any premises (other than a dwelling house) associated with the operation or management of a fish farm or shellfish farm,

(d) the matters which such a programme of surveillance is to address, including any risks associated with the movement of the fish or shellfish controlled by the order.

(4) An order under section 9(1) which includes provision conferring a power such as is mentioned in subsection (1)(d)(i) or (ii) or subsection (3)(c) must provide—

(a) for the power to be exercised at a reasonable hour, unless the person exercising it considers the case is one of urgency, and

(b) for any person who proposes to exercise the power to produce, if so required, evidence of the person’s identity and appointment.

11 Offences relating to persons appointed under section 10

(1) A person commits an offence if the person—

(a) fails to comply with a requirement imposed by a person appointed by virtue of subsection (1)(a) or (3)(b) of section 10, or

(b) wilfully obstructs such a person in the exercise of a power conferred by an order under section 9(1).

(2) It is a defence for a person charged with an offence under subsection (1)(a) to show that the person had a reasonable excuse for the failure.

(3) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person who commits an offence under subsection (1)(b) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

12 Notification of presence of commercially damaging species

(1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm must notify the Scottish Ministers as soon as reasonably practicable after the person becomes aware of, or suspects, the presence of a commercially damaging species on the fish farm or shellfish farm.
(2) Subsection (1) applies to any person who is employed, or acts as an agent, in connection with the operation of a fish farm or shellfish farm as it applies to a person mentioned in that subsection; but notification under this subsection need not be given if it has been given under subsection (1).

(3) Notification under subsection (1) or (2) must contain the following—

(a) where the fish farm or shellfish farm is authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), the name and number of the site where the commercially damaging species is present or suspected of being present,

(b) the name and contact details of—

(i) the person providing the notification, and

(ii) the person carrying on the business of fish farming or shellfish farming at the fish farm or shellfish farm,

(c) the grid reference on the ordnance map of the fish farm or shellfish farm, or part of such farm, where the commercially damaging species is present or is suspected of being present,

(d) the type of commercially damaging species (if known),

(e) the date on which the person providing the notification first became aware of, or suspected, the presence of the commercially damaging species,

(f) the age in months of the commercially damaging species (if known), and

(g) the stage of growth of the commercially damaging species (if known).

(4) A person who fails to give a notification in accordance with subsection (1) or (2) commits an offence.

(5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for failing to give the notification.

(6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Control

13 Control agreements

(1) This section applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm.

(2) The Scottish Ministers must form a preliminary view as to whether and, if so, what measures should be taken to—

(a) remove the species from,

(b) reduce the incidence of the species on,

(c) prevent the spread of the species beyond, or

(d) otherwise control the species on,

the fish farm or shellfish farm.
(3) Where the Scottish Ministers form a preliminary view under subsection (2) that measures should be taken, they must—

(a) serve notice on the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm of the preliminary view, and

(b) consult the person in order to secure agreement—

(i) that measures require to be taken,

(ii) as to what measures require to be taken, and within what time limit,

(iii) as to who is to take such measures, and

(iv) as to such other matters as appear to the Scottish Ministers to be necessary for the purposes of such an agreement.

(4) Where agreement is reached on the matters mentioned in subsection (3)(b), the Scottish Ministers must prepare an agreement (a “control agreement”) specifying—

(a) the parties to it,

(b) the measures which are to be taken in relation to the commercially damaging species,

(c) which of those measures are to be taken—

(i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and

(ii) by the Scottish Ministers, and

(d) the time limits within which any measures specified under paragraph (c) are to be taken.

(5) A control agreement may specify different measures to be taken in respect of different fish farms or shellfish farms.

(6) The Scottish Ministers must send a copy of the control agreement to the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm.

(7) The person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm must take such measures as the agreement may require of that person in accordance with its provisions.

(8) The Scottish Ministers must, at least once in every 18 month period, review a control agreement for the purpose of assessing compliance with its provisions.

14 Control schemes

(1) Subsection (2) applies where the Scottish Ministers have served a notice under section 13(3)(a) in relation to a commercially damaging species that is present on a fish farm or shellfish farm, and—

(a) either—

(i) the Scottish Ministers are satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out, or
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(ii) 6 weeks have elapsed since the Scottish Ministers served the notice and no agreement has been reached on the matters mentioned in section 13(3)(b), and

(b) the Scottish Ministers continue to have the view that measures should be taken to—

(i) remove the species from,
(ii) reduce the incidence of the species on,
(iii) prevent the spread of the species beyond, or
(iv) otherwise control the species on,

the fish farm or shellfish farm.

(2) The Scottish Ministers must make a scheme (a “control scheme”) for the purpose of ensuring that any measures mentioned in subsection (1)(b) which they consider should be taken are taken.

(3) The Scottish Ministers must notify the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made.

(4) A control scheme must—

(a) specify the date on which it is to come into effect (which date must be not less than 14 days after the day on which it was made),

(b) identify the fish farm or shellfish farm to which it relates,

(c) specify the measures that are to be taken in relation to the commercially damaging species or otherwise,

(d) specify which of those measures are to be taken—

(i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and

(ii) by the Scottish Ministers, and

(e) prescribe time limits within which any measures specified under paragraph (d) are to be taken.

(5) A control scheme may—

(a) specify different measures to be taken—

(i) by different persons such as are mentioned in subsection (4)(d),

(ii) in respect of different fish farms or shellfish farms,

(b) provide for the extension of any time limit prescribed in the scheme,

(c) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(6) Schedule 1, which makes provision about the making, variation and revocation of control schemes, and appeals against such matters, has effect.

(7) The person who for the time being carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates must take such measures as the scheme may require of that person in accordance with its provisions.
(8) The Scottish Ministers must, at least once in every 12 month period, review a control scheme for the purpose of assessing compliance with its provisions.

(9) Where the Scottish Ministers are of the opinion that a person has failed to comply with subsection (7), they may carry out the requirement if they are satisfied that it is still necessary to do so.

15 Emergency action notices

(1) This section applies where the Scottish Ministers are satisfied—

(a) that a commercially damaging species is present on a fish farm or shellfish farm, and

(b) that unless urgent action is taken, the commercially damaging species will spread quickly to other areas and have an immediate and significant adverse impact on—

(i) other fish or shellfish or the ability of persons to commercially exploit them, or

(ii) the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming.

(2) No notice under subsection (3) of section 13 need be served on a person mentioned in paragraph (a) of that subsection, and no consultation to secure an agreement with such a person need be carried out under paragraph (b) of that subsection.

(3) But the Scottish Ministers must serve on such a person notice (an “emergency action notice”) of their intention to take urgent action in respect of the commercially damaging species.

(4) An emergency action notice must state—

(a) the type of commercially damaging species that is present on the fish farm or shellfish farm,

(b) the nature of the threat that it poses and the impact mentioned in subsection (1)(b) that it will have,

(c) the measures that the Scottish Ministers propose to take for the purpose of—

(i) removing the species from,

(ii) reducing the incidence of the species on,

(iii) preventing the spread of the species beyond, or

(iv) otherwise controlling the species on,

the fish farm or shellfish farm, and

(d) the places where, the times at which and the methods by which the Scottish Ministers intend to carry out such measures.

(5) No earlier than 14 days after the day on which an emergency action notice has been served, the Scottish Ministers may take—

(a) such measures as are specified in the notice,

(b) such steps towards taking such measures as the Scottish Ministers think fit.
16 Appeals in connection with emergency action notices

(1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which an emergency action notice under section 15 relates may appeal to a sheriff against—

(a) the decision of the Scottish Ministers to serve the notice,

(b) the terms of such a notice.

(2) An appeal under subsection (1) must be made within the period of 14 days beginning with the day on which the emergency action notice is served.

(3) In an appeal under subsection (1)—

(a) the sheriff may make such order as the sheriff thinks appropriate, and

(b) the sheriff’s decision is final.

Powers

17 Power to enter fish farms, shellfish farms, etc.

(1) A person authorised by the Scottish Ministers for a purpose mentioned in subsection (2) has the power to enter—

(a) any land, fish farm or shellfish farm,

(b) any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm.

(2) The purposes for which the Scottish Ministers may authorise a person are—

(a) the obtaining of information by them in connection with satisfying themselves as to matters mentioned in subsection (1) of section 15,

(b) the determination of whether any of their functions under any of sections 13 to 15 should be carried out,

(c) the carrying out of any of those functions,

(d) the determination of how far and in what manner any requirement placed on any person under or by virtue of this Chapter has been complied with.

(3) A power of entry under this section must be exercised at a reasonable hour unless the person exercising it—

(a) is doing so for a purpose mentioned in subsection (2)(a),

(b) is doing so for the purpose of determining whether the Scottish Ministers’ functions under section 15 should be carried out, or

(c) otherwise considers the case is one of urgency.

(4) Any person who proposes to exercise any power of entry conferred by this section must, if so required, produce evidence of the person’s identity and authorisation.
18 Offences in relation to control agreements, control schemes, etc.
   
   (1) A person commits an offence if the person refuses or fails to comply with any requirement imposed on the person by a control agreement under section 13 or a control scheme under section 14.
   
   (2) A person commits an offence if the person wilfully obstructs any person authorised under subsection (1) of section 17 carrying out any function under that section.
   
   (3) It is a defence for a person charged with an offence under subsection (1) of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.
   
   (4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
   
   (5) A person who commits an offence under subsection (2) is liable—
       (a) on summary conviction, to a fine not exceeding the statutory maximum,
       (b) on conviction on indictment, to a fine.

19 Interpretation of Chapter 3

In this Chapter, “commercially damaging species” means a species specified in an order under section 8(1).

Part 2

Salmon fisheries, etc.

Governance

20 District salmon fishery boards: openness and accountability

   (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
   
   (2) In section 44 (financial powers and duties of district salmon fishery boards), after subsection (1) insert—
       “(1A) As soon as practicable after the annual meeting held under subsection (1) above, the clerk of the board must—
       (a) arrange for the final report and audited accounts to be published; and
       (b) send a copy of the final report and audited accounts to the Scottish Ministers.
       (1B) In subsection (1A) above, the references to the final report and audited accounts are references to—
       (a) the report and audited accounts as submitted for consideration at the annual meeting held under subsection (1) above; or
       (b) if they are revised following consideration at the meeting, the revised versions of them.”.
(3) After section 46 insert—

“46A Annual report

(1) This section applies in relation to the report to be prepared under section 44(1)(a) of this Act by a district salmon fishery board.

(2) The board must ensure that the report contains, in particular—

(a) a summary of what the board have done in carrying out their functions under this Act, or any other enactment, during the year to which the report relates,

(b) a summary of what the board propose to do in carrying out those functions in the following year,

(c) information about complaints made to the board during the year, including—

(i) the number of complaints, and

(ii) a statement of the nature of each complaint and how it was disposed of, and

(d) a statement as to how the board—

(i) have complied during the year with the good governance requirements, and

(ii) propose to comply with those requirements in the following year.

(3) For the purposes of subsection (2)(d) above, the “good governance requirements” are the requirements under—

(a) this section,

(b) section 44(1) and (1A) of this Act, and

(c) sections 46B to 46E of this Act.

46B Annual public meeting

(1) A district salmon fishery board—

(a) must hold one public meeting in each year, to be known as the “annual public meeting” of the board, and

(b) may hold other public meetings in the course of the year.

(2) Subject to subsection (4) below, the matters to be considered at the annual public meeting are for the board to determine, but must include the final report and statement of accounts required to be prepared under section 44(1).

(3) The reference in subsection (2) above to the final report and audited accounts is to be construed in accordance with section 44(1B) of this Act.

(4) The board must ensure that members of the public, and others who attend or propose to attend the meeting, are given an opportunity—

(a) to propose matters for consideration at the meeting, and

(b) to speak at the meeting.
46C Further provision about meetings

(1) Subsection (2) below applies in relation to—

(a) the annual meeting of qualified proprietors required to be called by the clerk of a district salmon fishery board under section 44(1) of this Act, and

(b) the annual public meeting of a district salmon fishery board.

(2) The clerk of the board must, no later than 21 days before the day on which the meeting is to be held—

(a) prepare a notice—

(i) specifying the date and time of the meeting and the place where it is to be held,

(ii) containing a list of the matters to be considered at the meeting,

(iii) stating that the meeting is open to the public, and

(iv) in the case of the annual public meeting, providing information as to how salmon anglers, tenant netsmen and other members of the public can submit proposals for matters to be considered at the meeting,

(b) arrange for the notice to be published in such manner as the clerk considers appropriate, and

(c) send a copy of the notice to—

(i) salmon anglers and tenant netsmen in the board’s district, and

(ii) the Scottish Ministers.

(3) In relation to any other meeting of a district salmon fishery board, the clerk of the board must—

(a) take such steps as the clerk considers appropriate to publicise the meeting, and

(b) subject to subsection (6) below, ensure that the public are given an opportunity to attend the meeting.

(4) Subsections (5) to (9) below apply in relation to—

(a) the meetings referred to in subsection (1) above, and

(b) any other meeting of a district salmon fishery board.

(5) Subject to subsection (6) below, the board must ensure that the business at the meeting is conducted in public.

(6) In the case of a meeting other than the annual public meeting, the board may, if there is a good reason for doing so, decide to conduct the meeting, or to consider any particular item of business, in private.

(7) As soon as practicable after the meeting, the clerk of the board must—

(a) prepare a minute of the meeting,

(b) arrange for the minute to be published in such manner as the clerk considers appropriate, and
(c) in the case of the minutes of the meetings referred to in subsection (1) above, send a copy of the minutes to the Scottish Ministers.

(8) Subsection (9) below applies where the board decide—
   (a) to conduct the meeting in private, or
   (b) to consider any item of business at the meeting in private.

(9) The board must state reasons for the decision and ensure that the statement of reasons is included in the minute of the meeting.

46D Complaints procedure

(1) A district salmon fishery board must maintain, and keep under review, proper arrangements for dealing with complaints made to the board about the way in which the board have carried out, or propose to carry out, their functions under this Act or any other enactment.

(2) A board’s arrangements under subsection (1) above must, in particular, include provision for dealing with complaints made by—

(a) members of the public,
(b) proprietors of salmon fisheries in the board’s district,
(c) salmon anglers in the board’s district,
(d) tenant netsmen in the board’s district,
(e) members of the board,
(f) other district salmon fishery boards.

(3) The arrangements may make different provision in relation to different categories of complaint or complainant.

(4) As soon as practicable after making or reviewing arrangements under subsection (1) above, a district salmon fishery board must—

(a) take such steps to publicise the arrangements as the board consider appropriate in order to bring them to the attention of persons who may wish to make complaints, and
(b) send to the Scottish Ministers a note of the arrangements.

(5) A district salmon fishery board must keep records of complaints made to the board about the way in which they have carried out, or propose to carry out, their functions, including information about how each complaint was disposed of.

46E Members’ interests

(1) A district salmon fishery board must maintain, and keep under review, proper arrangements for the registration and declaration of relevant financial interests of members of the board.

(2) A board’s arrangements under subsection (1) above must, in particular, include provision for—

(a) further defining what are relevant financial interests,
(b) the clerk to keep a register of members’ relevant financial interests,
(c) members to register their relevant financial interests in the register,
(d) members to declare any relevant financial interests before taking part in the board’s consideration of any business,
(e) members to be excluded from taking part in the board’s consideration of any business in which the member has a relevant financial interest.

(3) A district salmon fishery board must ensure that the register of members’ relevant financial interests is made available for public inspection.

(4) In this section, “relevant financial interests”—
(a) means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member’s view on any matter being considered by the board, and
(b) includes such interests held by a member or by another person with whom the member has a personal or business relationship.

46F Ministerial power to modify the good governance requirements

(1) The Scottish Ministers may by order—
(a) modify any of the good governance requirements,
(b) modify this Act so as to impose such further requirements on district salmon fishery boards as the Scottish Ministers consider necessary for a purpose specified in subsection (2) below.

(2) The purposes are—
(a) ensuring that the boards’ affairs are conducted in an open and accountable manner,
(b) ensuring that the boards’ affairs are conducted to appropriate standards of propriety and good governance.

(3) An order under subsection (1) above may include incidental, supplemental, consequential, transitional, transitory or saving provision.

(4) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.

46G Ministerial power to dissolve the committee constituting a board

(1) This section applies where the Scottish Ministers consider that a district salmon fishery board have persistently—
(a) failed to comply with the good governance requirements, or
(b) otherwise contravened the requirements of this Act.

(2) The Scottish Ministers may by order dissolve the committee constituting the board on a date specified in the order.

(3) The dissolution of the committee by an order under subsection (2) above has the same effect in relation to the committee (and the board) as the expiry of the period of three years mentioned in sections 43(3) and 47(1) of this Act.
(4) Accordingly, the references in section 43(3) and 47(1) of this Act to the expiry of the period of three years are to be read, in relation to a committee dissolved by an order under subsection (2) above, as including a reference to the date of dissolution specified in the order.

(5) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.”.

(4) In section 68 (orders and regulations), in subsection (4), after “Act” insert “, and no order is to be made under section 46F(1) of this Act,”.

21 Duty to consult and report before making certain applications

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In each of the following provisions, for “10” substitute “9B”—
(a) subsection (7) of section 33 (salmon fishing: regulations as to baits and lures),
(b) subsection (3) of section 35 (designation orders),
(c) subsection (4) of section 36 (estuary limits),
(d) subsection (4) of section 37 (annual close times for salmon).

(3) In schedule 1 (procedure for making certain orders and regulations under the Act), before paragraph 10 insert—

“9B (1) This paragraph applies where a person (the “applicant”) proposes to make an application to the Scottish Ministers under paragraph 1, 3, 5 or 7 above.

(2) The applicant must—
(a) give notice in accordance with sub-paragraph (3) below that an application is proposed,
(b) specify in the notice the period within which, and the manner in which, representations or objections with respect to the proposed application may be made,
(c) consult persons who, so far as the applicant can reasonably ascertain, have an interest in, or may be affected by, the proposed application, and
(d) specify the period (being not less than 28 days beginning with the date of consultation) within which, and the manner in which, representations or objections with respect to the proposed application may be made by such persons.

(3) A notice of the proposed application must be published at least once in each of two successive weeks in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application.

(4) The period mentioned in sub-paragraph (2)(b) above is a period of not less than 28 days beginning with—
(a) if notice of the proposed application is published only once in the first of the two successive weeks as mentioned in sub-paragraph (3) above, the date on which it is published in that week,
(b) if such notice is published more than once in the first of those two successive weeks, the date on which it is first published in that week.
(5) In deciding whether or not to make the proposed application, the applicant must take into account any representations and objections made in respect of it.

(6) Where representations or objections are made in respect of a proposed application, the applicant must publish in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application a notice containing details of—

(a) where and how such representations or objections may be viewed, and

(b) how copies of such representations or objections may be obtained.

(7) Having decided whether or not to make the proposed application, the applicant must—

(a) publish in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application a notice containing—

(i) a summary of the reasons for the decision,

(ii) details of where and how a written statement of such reasons may be viewed, and

(iii) details of how copies of such a written statement may be obtained, and

(b) send a copy of such a written statement to any person who made representations or objections to the proposed application under this paragraph.

(8) The costs of complying with sub-paragraphs (2), (6) and (7) above are to be met by the applicant.

9C (1) This paragraph applies where an applicant, having complied with the requirements of paragraph 9B above, decides to make an application mentioned in sub-paragraph (1) of that paragraph.

(2) When making the application, the applicant must include a report—

(a) stating that the requirements of paragraph 9B above have been complied with,

(b) explaining how those requirements were complied with,

(c) providing details of the persons consulted,

(d) explaining the substance of any representations and objections made in relation to the application, and the extent to which they were taken into account in deciding to proceed with the application, and

(e) giving the reasons for proceeding with the application.”.

Management

22 Carcass tagging

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 21 insert—
“21A  Salmon carcass tagging

(1) The Scottish Ministers may by regulations make provision for or in connection with tagging the carcasses of salmon.

(2) Regulations under subsection (1) above may, in particular, make provision—

(a) about—

(i) the nature and form of tags,
(ii) the information which tags are to contain and the nature and form of that information,
(iii) applications for, and the supply, issue and storage of, tags,
(iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons,
(v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed,
(vi) the circumstances in which, and the time at or by which, tags may be removed,
(vii) the steps to be taken in the event of loss of, or damage to, tags,
(b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the regulations apply (including the form and content of such records),
(c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e) below, by such methods as the regulations may specify, and the steps to be taken in the event of loss of, or damage to, the records,
(d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in paragraph (e) below, including provision about the retention of tags after their removal,
(e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the regulations (including the appointment and functions of such persons),
(f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in paragraph (e) above of salmon—

(i) that have not been tagged, or
(ii) from which a tag has been removed otherwise than,

in accordance with the provisions of the regulations,
(g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),
(h) for exemptions and exceptions to the regulations and for matters in respect of which the regulations do not apply.

(3) Regulations under subsection (1) above may make—
(a) different provision for different purposes and areas,
(b) incidental, supplemental, consequential, transitional, transitory or saving provision,
(b) such modifications of Part 5 of this Act as the Scottish Ministers think fit.

(4) A person commits an offence if the person—
(a) sells, offers or exposes for sale, or has in the person’s possession, any salmon—
   (i) that has not been tagged in accordance with regulations under subsection (1) above, or
   (ii) from which a tag has been removed otherwise than in accordance with such regulations,
(b) acts in contravention of such regulations, or
(c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such regulations.

(5) It is a defence for a person charged with an offence under subsection (4)(c) above to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above—
(a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale,
(b) may be convicted on the evidence of one person.”.

(3) In section 30 (exemptions in relation to fish farming)—
(a) in subsection (1), after “under” insert “section 21A or”,
(b) in subsection (5), after “18(1)(b)” insert “, 21A(4)(a) or (b)”.

23 Powers to take fish or samples for analysis, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 64 insert—

“64A Powers in relation to salmon and freshwater fisheries: sampling, etc.

(1) A person authorised by the Scottish Ministers (an “authorised person”) may—
(a) for a purpose mentioned in subsection (2)(a) or (b) below, require a person having rights in a salmon fishery or freshwater fishery—
   (i) to permit the authorised person to take and retain fish from the fishery,
   (ii) to permit the authorised person to take samples of material from fish in the fishery,
   (iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,
(b) for a purpose mentioned in subsection (2)(c) below, affix a tag of such type and in such a way as the Scottish Ministers consider appropriate to any fish taken from a salmon fishery or freshwater fishery,

(c) for a purpose mentioned in subsection (2)(d) below, enter on a salmon fishery or freshwater fishery.

(2) The purposes referred to in subsection (1) above are—

(a) carrying out analysis of the fish or samples by any method that the Scottish Ministers consider appropriate,

(b) ascertaining whether an offence has been committed under section 33A of this Act,

(c) tracking or monitoring the fish,

(d) exercising the powers mentioned in paragraphs (a) and (b) of subsection (1) above, or tracking or monitoring fish tagged under paragraph (b) of that subsection.

(3) An authorised person seeking to exercise a power mentioned in subsection (1) above must, if requested, produce evidence of identity and authorisation.

(4) A person having rights in a salmon fishery or freshwater fishery commits an offence if the person—

(a) fails or wilfully refuses to comply with a requirement under paragraph (a) of subsection (1) above, or

(b) obstructs an authorised person in the exercise of any of the powers under paragraph (b) or (c) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(a) above to show that the person had a reasonable excuse for failing or refusing to comply with a requirement as mentioned in that subsection.

(6) A person who commits an offence—

(a) under subsection (4)(a) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale,

(b) under subsection (4)(b) above is liable on summary conviction—

(i) to a fine not exceeding level 3 on the standard scale,

(ii) to imprisonment for a term not exceeding 3 months, or

(iii) to both such fine and such imprisonment.

(7) In this section, references to a person having rights in a salmon fishery or freshwater fishery are to be construed in accordance with section 64(3) of this Act.”.

24 Power of Scottish Ministers to conduct inquiries and obtain information

(1) Section 64 of the Salmon and Freshwater (Consolidation) (Scotland) Act 2003 (power of the Scottish Ministers to conduct inquiries and to obtain information) is amended in accordance with this section.

(2) In subsection (1)—

(a) before paragraph (a) insert—
“(za) require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably request;”,

(b) in paragraph (a), the words from “, provided” to the end of the paragraph are repealed.

(3) In subsection (2), for the words “Any proprietor or occupier of a fishery” substitute “Any person having rights in a salmon fishery or freshwater fishery”.

(4) After subsection (2) insert—

“(3) In this section, a “person having rights in a salmon fishery or freshwater fishery” means—

(a) a proprietor of a salmon fishery;

(b) an occupier of such a fishery;

(c) an owner of land to which a right of fishing for freshwater fish pertains; or

(d) an occupier of such a right.”.

25 Monitoring and evaluation of the effects of orders, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (6) insert—

“(6A) Regulations under subsection (1) above may impose requirements on district salmon fishery boards in relation to monitoring and evaluation of the effect of the regulations on salmon stocks.

(6B) A district salmon fishery board commits an offence if the board—

(a) acts in contravention of any such requirements; or

(b) fails to take any action required of the board by any such requirements.

(6C) A board which commits an offence under subsection (6B)—

(a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale; and

(b) may be convicted on the evidence of one witness.”.

(3) In section 37 (annual close times for salmon)—

(a) in subsection (2), after “below” insert “and to section 38(5)(c) of this Act”,

(b) in subsection (3), at the beginning insert “Without prejudice to section 38(5)(c) of this Act,”,

(c) after subsection (3) insert—

“(3A) An annual close time order may impose requirements on district salmon fishery boards or proprietors of salmon fisheries in relation to monitoring and evaluation of the effect of the order on salmon stocks.

(3B) A district salmon fishery board or proprietor commits an offence if the board or proprietor—
(a) acts in contravention of any such requirements; or
(b) fails to take any action required of the board or proprietor by any such requirements.

(3C) A board which or proprietor who commits an offence under subsection (3B)—

(a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale; and
(b) may be convicted on the evidence of one witness.

(4) In section 38 (salmon conservation regulations)—

(a) in subsection (4), after “subsection (5)(b)” insert “and (c)”,
(b) in subsection (5), after paragraph (b) insert—

“(c) subject to section 37(1) of this Act, prescribe for any salmon fishery district the dates of the annual close time for salmon and the periods within that time when it is permitted to fish for and take salmon by rod and line.”,
(c) in subsection (6), after paragraph (b) insert—

“(ba) impose on district salmon fishery boards or proprietors of salmon fisheries such requirements as the Scottish Ministers consider necessary or expedient in relation to monitoring and evaluation of the effect of the regulations on salmon stocks;”.

26 Power to vary procedures for orders, etc. relating to certain fisheries

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (7) insert—

“(8) The Scottish Ministers may by order vary the provisions of—

(a) subsections (2) to (5) above;
(b) paragraphs 9B to 15 of schedule 1 to this Act as they apply to the making of regulations under subsection (1) above.”.

(3) In section 35 (designation orders), subsection (4) is repealed.

(4) In section 39 (procedure for making orders and regulations under section 33 and Part 2)—

(a) the existing text becomes subsection (1) of section 39,
(b) after that subsection insert—

“(2) The Scottish Ministers may by order vary the provisions of schedule 1 to this Act.
(3) An order under subsection (2) above may make different provision for different purposes.
(4) Subsection (2) above is without prejudice to section 33(8)(b) of this Act.”.
27 **Offence of fishing for salmon during annual close time**

In section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (fishing for salmon during annual close time), in subsection (2), for the words from “by”, where it second occurs, to the end of the subsection substitute “in the district in which the fishing occurs—

(a) by the regulations or byelaws in force in that district;
(b) by a designation order made in respect of that district;
(c) in accordance with the provisions mentioned in section 37(2)(b) of this Act as they apply in respect of that district;
(d) by an annual close time order made in respect of that district; or
(e) by regulations under section 38 of this Act that make provision as mentioned in subsection (5)(c) of that section in respect of that district.”.

28 **Consents for introduction of fish into inland waters**

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33A (unauthorised introduction of fish into inland waters)—

(a) in subsection (3), for “this section” substitute “subsection (1) or (2) above”,
(b) after subsection (3) insert—

“(3A) The appropriate authority may, in granting consent for the purposes of subsection (3)(b) above, impose conditions or requirements.

(3B) A person shall be guilty of an offence if the person—

(a) acts in contravention of any such condition or requirement; or
(b) fails to take any action required of the person by any such condition or requirement.

(3C) It is a defence for a person charged with an offence under subsection (3B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.”,

(c) after subsection (4) insert—

“(4A) Subsection (4) is subject to provision made in regulations under section 33B of this Act.”.

(3) After section 33A insert—

“33B **Power to modify district salmon fishery boards’ functions under section 33A**

(1) This section applies to the functions of the appropriate authority under section 33A(3)(b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.

(2) The Scottish Ministers may by regulations—

(a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,
(b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances,

(c) in relation to an application referred to the Scottish Ministers by virtue of provision made under paragraph (b) above, provide for the Scottish Ministers—

(i) to determine the application and to carry out the consenting functions in relation to the application, or

(ii) to issue directions to the district salmon fishery board to which the application was made about the determination of the application and the carrying out of the consenting functions in relation to the application.

(3) Regulations under subsection (2) above may—

(a) make different provision for different purposes, including different provision for—

(i) different district salmon fishery districts, or

(ii) different inland waters or parts of such waters,

(b) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(4) In subsection (2) above, “specified” means specified in regulations under that subsection.”.

29 Offences exempted by permission or consent: power to attach conditions etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 27 (exemption from certain offences: salmon)—

(a) after subsection (1) insert—

“(1A) In granting permission under subsection (1) above, a district salmon fishery board or (as the case may be) the Scottish Ministers may impose conditions or requirements.

(1B) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(1C) It is a defence for a person charged with an offence under subsection (1B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(1D) A person who commits an offence under subsection (1B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale;”,

(b) in subsection (3), after “permitted” insert “, any conditions or requirements imposed under subsection (1A) above”.

(3) In section 28 (exemptions: fish other than salmon), after subsection (2) insert—
“(3) In granting permission under subsection (1) above, the Scottish Ministers may impose conditions or requirements.

(4) A person commits an offence if the person—
   (a) acts in contravention of any such condition or requirement; or
   (b) fails to take any action required of the person by any such condition or requirement.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 30 (exemptions in relation to fish farming), after subsection (2) insert—

“(2A) In granting consent under subsection (2) above, the Scottish Ministers may impose conditions or requirements.

(2B) A person commits an offence if the person—
   (a) acts in contravention of any such condition or requirement; or
   (b) fails to take any action required of the person by any such condition or requirement.

(2C) It is a defence for a person charged with an offence under subsection (2B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(2D) A person who commits an offence under subsection (2B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

PART 3

SEA FISHERIES

Enforcement of sea fisheries legislation

30 Powers of British sea-fishery officers to enforce sea fisheries legislation

(1) For the purposes of enforcing the sea fisheries legislation, a British sea-fishery officer has—
   (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010, and
   (b) the powers conferred by sections 31 and 34.

(2) Subject to subsection (3), the powers which a British sea-fishery officer has by virtue of subsection (1) for the purposes of enforcing the sea fisheries legislation may be exercised—
   (a) in the Scottish enforcement area, and
   (b) in relation to any Scottish fishing boat wherever it may be.

(3) Those powers may not be exercised in relation to any British warship (that is, any ship belonging to Her Majesty and forming part of Her Majesty’s armed forces).
(4) The powers which a British sea-fishery officer has by virtue of subsection (1) are
without prejudice to any other powers exercisable by the officer for the purposes of
enforcing the sea fisheries legislation.

(5) However, the officer may exercise any such other power only in a case where the officer
is unable to exercise a power which the officer has by virtue of subsection (1).

(6) So far as necessary for the purposes, or in consequence, of the exercise of the powers
referred to in subsection (1)(a), references in Part 7 of the Marine (Scotland) Act 2010 to
a marine enforcement officer are to be read as including references to a British sea-
fishery officer.

(7) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and
offences in relation to, marine enforcement officers) have effect as if—

(a) any reference to a power conferred by Part 7 of that Act included a reference to—

(i) such a power as applied by subsection (1)(a), and

(ii) the powers conferred by sections 31 and 34, and

(b) any reference to a marine enforcement officer’s functions under that Act included
a reference to the functions of a British sea-fishery officer under—

(i) Part 7 of that Act as applied by subsection (1)(a), and

(ii) sections 31 and 34.

Detention of vessels in connection with court proceedings

31 Power to detain vessels in connection with court proceedings

(1) This section applies where—

(a) a British sea-fishery officer has reasonable grounds for suspecting that an offence
under the sea fisheries legislation has been committed by the master, an owner or
a charterer of a vessel (referred to as “A”), and

(b) the officer reasonably believes that—

(i) if proceedings are taken against A for the offence, there is a real risk that A
will not attend court unless the vessel is detained under this section, or

(ii) if A is convicted of the offence and the court by or before which A is
convicted imposes a fine on A, it is likely that the court will order the
vessel to be detained.

(2) Where this section applies, a British sea-fishery officer may—

(a) take, or arrange for another person to take, the vessel and its crew to the port that
appears to the officer to be the nearest convenient port, or

(b) require any person who is for the time being in charge of the vessel to take it and
its crew to that port.

(3) When the vessel has been taken to a port, the officer may—

(a) detain it there, or

(b) require the person for the time being in charge of it to do so.
(4) A British sea-fishery officer who detains a vessel under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the vessel.

(5) The notice must state—

(a) the reasons for detaining the vessel, and

(b) the circumstances in which the vessel may be released.

32 Release of vessel detained under section 31

(1) This section applies where a vessel is being detained under section 31.

(2) The vessel ceases to be detained under that section if one of the following things occurs—

(a) the notice of detention is withdrawn,

(b) a sheriff orders the release of the vessel under section 33,

(c) any proceedings taken against the master, owner or charterer of the vessel have concluded,

(d) the court referred to in section 31(1)(b)(ii) exercises any power it has to order the vessel to be detained.

(3) A notice of detention is withdrawn by the service by a British sea-fishery officer of a further notice on the person who is for the time being in charge of the vessel, stating that the vessel is released.

(4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.

(5) The grounds of release are—

(a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the vessel in respect of any offence in relation to which the vessel was detained,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,

(d) that there are no grounds for believing that the court referred to in section 31(1)(b)(ii) will order the vessel to be detained.

(6) In this section, “notice of detention” means a notice served under section 31(4).

33 Power of sheriff to order release of vessels

(1) This section applies where a vessel is being detained under section 31.

(2) If, on an application to a sheriff by the master, an owner or a charterer of the vessel, the sheriff is satisfied as to either of the matters mentioned in subsection (3), the sheriff may order that the vessel be released.

(3) Those matters are that—

(a) the continued detention of the vessel under section 31 is not necessary to secure that the master, an owner or a charterer of the vessel will attend court, or
(b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.

**Inspection and seizure of objects used in commercial sea fishing**

### 34 Power to inspect and seize objects

1. A British sea-fishery officer may inspect any object which the officer reasonably believes has been, or is being, used for or in connection with commercial sea fishing.

2. The officer may lift an object out of the sea for the purpose of inspecting it under this section.

3. A British sea-fishery officer who has inspected an object under this section may seize the object.

4. The power conferred by subsection (3) may be exercised only—
   - (a) for the purpose of determining whether an offence under the sea fisheries legislation has been, or is being, committed, or
   - (b) in relation to an object that the officer reasonably believes to be evidence of the commission of such an offence.

5. If, having inspected an object under this section, the officer decides not to seize it under subsection (3), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found.

6. If it is not reasonably practicable to replace the object in accordance with subsection (5), the officer may seize the object until such time as it may be collected by its owner.

7. A power conferred by this section to seize an object includes power to seize—
   - (a) anything that is attached to the object,
   - (b) anything that is contained in the object.

8. A reference in this section to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea.

9. Anything seized under this section is to be delivered to the Scottish Ministers as soon as reasonably practicable.

10. In this section, “commercial sea fishing” means—
    - (a) any activity for which a licence is required by virtue of an order under section 4 (licensing of fishing boats) of the Sea Fish (Conservation) Act 1967,
    - (b) any activity regulated by an order—
      - (i) under section 1 (power to make orders as to fisheries for shellfish) of the Sea Fisheries (Shellfish) Act 1967, and
      - (ii) to which section 2 (right of several fishery) or 3 (right of regulating a fishery) of that Act applies, and
    - (c) any activity regulated by an order under section 1 (general power to prohibit sea fishing in specified areas) of the Inshore Fishing (Scotland) Act 1984.

11. The Scottish Ministers may by order modify the definition of “commercial sea fishing” in subsection (10).
Aquaculture and Fisheries (Scotland) Bill
Part 3—Sea fisheries

35 Reports of inspections under section 34

(1) This section applies where a British sea-fishery officer inspects an object under section 34.

(2) The officer must prepare a report in relation to the inspection.

(3) The report must state—
   (a) the date and time of the inspection,
   (b) the identity of the officer who carried out the inspection, and
   (c) how the officer may be contacted.

(4) In the case of an object seized under section 34(3) or (6), the report must also state—
   (a) what has been seized,
   (b) the reasons for its seizure, and
   (c) any further action that it is proposed will be taken in relation to the object.

(5) Where the object has not been seized under section 34(3) or (6), the officer must, if it is reasonably practicable to do so, attach a copy of the report to the object.

(6) If it is not reasonably practicable to do so, the officer must serve a copy of the report on every person who appears to the officer to be an owner of the object.

(7) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as an owner of the object, the officer must take such steps as the officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it.

(8) Where—
   (a) the object has been seized under section 34(3), and
   (b) one of the conditions in subsection (9) is satisfied,
the Scottish Ministers must serve a copy of the report on every person who appears to them to be an owner of the object.

(9) The conditions are—
   (a) that a procurator fiscal has decided not to take any proceedings in respect of any offence in relation to which the object was seized,
   (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
   (c) that any proceedings taken in respect of such an offence have concluded.

(10) Where the object has been seized under section 34(6), the Scottish Ministers must serve a copy of the report on every person who appears to the Ministers to be an owner of the object at the same time as they serve a notice of collection on that person under section 37.

(11) In a case where the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object—
   (a) the reference in this section to a requirement for the Scottish Ministers to serve a copy of the report on such a person is to be read as a reference to a requirement to take such steps as the Ministers think fit to bring the contents of the report to the attention of persons likely to be interested in it, and
(b) the reference in subsection (10) to serving a notice of collection under section 37 is to be read as a reference to taking the steps referred to in subsection (5) of that section.

36 Retention of objects seized under section 34(3)

5 (1) An object seized by a British sea-fishery officer under section 34(3) may be retained by the Scottish Ministers.

(2) If any of the grounds of release in subsection (3) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the object available for collection.

(3) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the object was seized,

(b) where a fixed penalty notice has been issued in respect of such an offence, the appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the object.

10 (4) Subsection (2) does not apply if the object is liable to forfeiture under section 41.

(5) Any reference in this section to an object seized under subsection (3) of section 34 includes a reference to anything seized by virtue of subsection (7) of that section.

37 Disposal of objects seized under section 34

20 (1) This section applies to—

(a) an object seized under section 34(3) which the Scottish Ministers—

(i) no longer wish to retain for any purpose, or

(ii) are required to make available for collection by virtue of section 36,

(b) an object seized under section 34(6).

25 (2) In this section “notice of collection” means a notice stating that—

(a) the object specified in the notice is available to be collected from the location specified in the notice, and

(b) if the object is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the object.

30 (3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the object.

(4) The Scottish Ministers may take any other steps they think fit to notify every such person that the object is available to be collected.

35 (5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object in order to serve a notice of collection, the Scottish Ministers must take such steps as they think fit to bring the information contained in the notice to the attention of persons likely to be interested in it.
(6) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the object in whatever way they think fit.

(7) Any reference in this section to an object seized under subsection (3) or (6) of section 34 includes a reference to anything seized by virtue of subsection (7) of that section.

Retention and disposal of property seized by BSFOs

38 Retention of property seized by British sea-fishery officers

(1) This section applies to property—

(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, other than an object seized under section 34, and

(b) which was seized—

(i) in the Scottish enforcement area, or

(ii) on board a Scottish fishing boat.

(2) The officer must deliver the property to the Scottish Ministers as soon as reasonably practicable.

(3) Subsection (2) is subject to paragraph 13 of schedule 2.

(4) The Scottish Ministers may retain the property.

(5) If any of the grounds of release in subsection (6) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the property available for collection.

(6) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the property was seized,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

(7) Subsection (5) does not apply if the property is liable to forfeiture under section 41 or 42.

39 Power of Scottish Ministers to sell seized fish in their possession

(1) The Scottish Ministers may sell any fish that are being retained by them under section 38.

(2) Any power which a court has to order the forfeiture of any such fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.

(3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Scottish Ministers until such time as—

(a) a court exercises any power it has to order the forfeiture of the proceeds, or

(b) any of the grounds of release mentioned in subsection (4) applies.

(4) The grounds of release are—
(a) that a procurator fiscal has decided not to take proceedings in respect of any
offence in relation to which the fish were seized,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the
appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without
any order for forfeiture having been made.

(5) If any of the grounds of release mentioned in subsection (4) applies, the Scottish
Ministers must, as soon as is reasonably practicable, release the proceeds of sale to any
person who appears to the Scottish Ministers to have been an owner of the fish at the
time of the seizure of the fish.

(6) If the proceeds of sale are still in the Scottish Ministers’ possession after the end of the
period of 6 months beginning with the date on which the fish were sold, the Scottish
Ministers may retain the proceeds and apply them in any manner they think fit.

(7) The Scottish Ministers may exercise their power under subsection (6) to retain and apply
the proceeds of sale only if it is not practicable at the time when the power is exercised
to dispose of the proceeds by releasing them immediately to the person to whom they
are required to be released.

(8) Subject to subsection (11), any fish sold under this section must be sold at auction.

(9) Before selling the fish, the Scottish Ministers must give the owner of the fish a
reasonable opportunity to make representations as to the manner in which the fish are
sold.

(10) Subsection (11) applies if the owner of the fish requests that the fish be sold—

(a) at a particular auction, or

(b) by a method of sale other than by auction.

(11) The Scottish Ministers must comply with the request unless they consider the request to
be unreasonable.

(12) The Scottish Ministers may deduct from the proceeds of sale any reasonable expenses
incurred by them in selling the fish.

(13) Where there is more than one owner of the fish, subsection (11) applies only if the
request under subsection (10) is made by or on behalf of all the owners.

Disposal of property retained by Scottish Ministers under section 38

(1) This section applies to any property being retained by the Scottish Ministers under
section 38 which they—

(a) no longer wish to retain for any purpose, or

(b) are required to make available for collection by virtue of that section.

(2) In this section a “notice of collection” is a notice stating that—

(a) the property specified in the notice is available to be collected from the location so
specified, and

(b) if the property is not collected before the end of the period of 3 months beginning
with the date specified in the notice, the Scottish Ministers will dispose of the
property.
(3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the property.

(4) The Scottish Ministers may take any other steps they consider appropriate to notify every such person that the property is available to be collected.

(5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property, they must—
   (a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and
   (b) take such steps as they think fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.

(6) For the purposes of subsection (5) each of the following is an “appropriate person”—
   (a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property,
   (b) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,
   (c) in any other case, the person (if any) from whom the property was seized.

(7) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way they think fit.

Forfeiture

41 Forfeiture of prohibited items

(1) This section applies to any item—
   (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
   (b) which was seized—
       (i) in the Scottish enforcement area, or
       (ii) on board a Scottish fishing boat.

(2) The item is liable to forfeiture under this section if the use of the item for sea fishing would in any circumstances constitute an offence under the law of Scotland.

(3) An item forfeited under this section is to be forfeited to the Scottish Ministers who may dispose of it in any manner they think fit.

42 Forfeiture of fish failing to meet size requirements

(1) This section applies to any fish—
   (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
   (b) which were seized—
       (i) in the Scottish enforcement area, or
       (ii) on board a Scottish fishing boat.
(2) The fish are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence under the law of Scotland has been committed in respect of the fish.

(3) Any fish forfeited under this section are to be forfeited to the Scottish Ministers who may dispose of the fish in any manner they think fit.

43 Further provision about forfeiture under section 41 or 42

Schedule 2, which makes further provision about forfeiture under section 41 or 42, has effect.

Enforcement of EU rules

44 Modification of the Fisheries Act 1981: enforcement of EU rules

(1) Section 30 of the Fisheries Act 1981 (enforcement of Community obligations) is amended in accordance with this section.

(2) In subsection (1)—

(a) for paragraph (a) substitute—

“(a) if any fishing boat within the Scottish Zone—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,
the master, the owner and the charterer (if any) are each guilty of an offence;”;

(b) after paragraph (a) insert—

“(aa) if any Scottish fishing boat outside the Scottish Zone—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,
the master, the owner and the charterer (if any) are each guilty of an offence;”;

(c) in paragraph (b), for “such offences” substitute “offences under paragraph (a) or (aa) of this subsection”;,

(d) in subsection (3), after the definition of “the Ministers” insert—

““Scottish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging;

“Scottish Zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act).”.

Supplementary

45 Conclusion of proceedings

(1) This section applies for determining when any proceedings have concluded for the purposes of this Part.
(2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded—
   (a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or
   (b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.

(3) Subsection (2) applies for determining when any proceedings on appeal are concluded for the purposes of paragraph (b) of that subsection as it applies for determining when the original proceedings are concluded.

(4) Any reference in subsection (2) to a decision that terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings.

46 Interpretation of Part 3

(1) In this Part—
   “appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),
   “fish” includes shellfish,
   “fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,
   “the Scottish enforcement area” means—
      (a) Scotland, and
      (b) the Scottish zone,
   “Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging,
   “the Scottish zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act),
   “sea fisheries legislation” means, subject to subsection (2)—
      (a) any enactment relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout, and
      (b) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing.

(2) “Sea fisheries legislation” does not include—
   (a) the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, or
   (b) any Order in Council under section 111 of the Scotland Act 1998 (regulation of Border rivers).
PART 4

SHELLFISH

Protection of shellfish waters

47 Protection and improvement of shellfish waters

(1) The Water Environment and Water Services (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 5 insert—

“5A Shellfish water protected areas

(1) The Scottish Ministers may by order (in this section, a “designation order”) designate an area of coastal water or transitional water as a shellfish water protected area for the purposes of this Part.

(2) An area of coastal water or transitional water may be designated under subsection (1) only if the Scottish Ministers consider it necessary or desirable to do so for the protection or development of economically significant shellfish production.

(3) The Scottish Ministers must review each designation order—

(a) by 22 December 2019, and

(b) by each date falling every 6 years (or such lesser period as the Scottish Ministers may determine) after 22 December 2019.

(4) Subsection (3) applies to a designation order which comes into force after 22 December 2019 as if paragraph (a) were omitted.

(5) A designation order which would, apart from this subsection, fall to be reviewed under subsection (3) by a particular date need not be reviewed by that date if the order came into force less than 6 months before that date; but must otherwise be reviewed in accordance with that subsection.

(6) A designation order may identify the area of coastal water or transitional water by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

(7) The Scottish Ministers must send SEPA a copy of—

(a) a designation order, and

(b) any map prepared in pursuance of subsection (6).”.

(3) In section 7 (register of protected areas), in subsection (3), before paragraph (a) insert—

“(za) any shellfish water protected area,”.

(4) In section 9 (environmental objectives and programmes of measures)—

(a) in subsection (1), in paragraph (a), after “water” insert “, and each shellfish water protected area,”;

(b) in subsection (7)—

(i) after “objectives”’” insert—

“(a) in respect of any body of water,”.

(ii) at the end insert “,” and
(b) in respect of a shellfish water protected area, includes (without prejudice to the definition in paragraph (a)) such objectives as SEPA considers necessary or desirable to improve or protect that area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption.”.

(5) In section 11 (river basin management plans: publicity and consultation), in subsection (6), after paragraph (f) insert—

“(fa) where any part of the river basin district has been designated as a shellfish water protected area, the Food Standards Agency,”.

(6) In section 28 (interpretation of Part 1), in subsection (1), after the definition of “SEPA” insert—

“shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish,

“shellfish water protected area” means an area of coastal water or transitional water designated by order under section 5A(1),”.

Orders as to fisheries for shellfish

48 Power to make orders as to fisheries for shellfish

(1) In section 1 of the Sea Fisheries (Shellfish) Act 1967 (power to make orders as to fisheries for shellfish), in subsection (1), for the words from “shellfish” to “Minister” substitute “shellfish of any kind specified in the order”.

(2) In section 15 of the Sea Fisheries Act 1968 (amendments of Sea Fisheries (Shellfish) Act 1967)—

(a) subsection (2) is repealed,

(b) in subsection (3), for “that section” substitute “section 1 of that Act”.

49 Power to appoint inspectors before making orders as to fisheries for shellfish

(1) In Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 (provisions with respect to making of orders under section 1)—

(a) in paragraph 4(2), for the words from “may” to “be” substitute “may as soon as reasonably practicable”,

(b) in paragraph 6(1), for the words “conveniently may be” substitute “reasonably practicable”.

(2) The amendment made by subsection (1)(a) does not apply in relation to any application made for an order under section 1 of the Sea Fisheries (Shellfish) Act 1967 before the coming into force of this section.
**PART 5**

**MISCELLANEOUS**

**Charging**

50  **Power to charge in connection with fisheries functions**

(1) The Scottish Ministers may by regulations make provision for or about the imposition of charges in connection with the carrying out of such fisheries functions as are specified in the regulations.

(2) In this section, “fisheries functions” means—

   (a) functions of the Scottish Ministers under any legislation relating to—

      (i) fish farming or shellfish farming,

      (ii) salmon or freshwater fisheries,

      (iii) sea fishing, or

   (b) functions of any other person under any such legislation so far as the person is appointed or authorised by the Scottish Ministers for the purposes of enforcing, or otherwise ensuring compliance with, the legislation.

(3) Regulations under subsection (1) may include provision—

   (a) specifying, or for determining, the amount of charges,

   (b) specifying, or for determining, the persons or types of person who are to pay charges,

   (c) specifying, or for determining, the circumstances in which charges are payable,

   (d) for making the carrying out of specified fisheries functions conditional on the payment of charges,

   (e) for the imposition of annual or other recurring charges,

   (f) for the reduction or waiver of, or exemptions from, charges,

   (g) for the recovery and collection of charges,

   (h) for the method and timing of payment of charges,

   (i) for determining disputes as to the amount of, or liability for, charges.

(4) Regulations under subsection (1)—

   (a) may have the effect of requiring a person to pay a charge only if, and so far as, the person is someone in relation to whom a specified fisheries function has been, or is to be, carried out, and

   (b) must not have the effect of imposing a charge in a particular case that exceeds the reasonable costs incurred in the carrying out of a specified fisheries function in that case.

(5) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

(6) Regulations under subsection (1) may make different provision for—

   (a) different fisheries functions,

   (b) different persons or types of person.
(7) Regulations under subsection (1) do not affect any power that the Scottish Ministers have apart from this section to—

(a) impose fees or charges, or recover costs, in connection with the carrying out of any fisheries functions, or

(b) provide for the imposition of such fees or charges or the recovery of such costs.

(8) In this section, “legislation” means any—

(a) enactment, or

(b) EU instrument containing an enforceable EU obligation or an enforceable EU restriction.

Fixed penalty notices

1 Fixed penalty notices

(1) Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 (sea fisheries) is amended in accordance with this section.

(2) In section 25 (issue of fixed penalty notices)—

(a) in subsection (1), for “British sea-fishery” substitute “fixed penalty”,

(b) in subsection (2)—

(i) the words “is an offence” are repealed,

(ii) for paragraphs (a) and (b) substitute—

“(a) is an offence under the Sea Fisheries enactments in respect of which a person mentioned in paragraph (a) of subsection (2A) has functions,

(b) is an offence under the marine protection and nature conservation legislation in respect of which a person mentioned in paragraph (b) of that subsection has functions,

(c) in relation to a person mentioned in any of paragraphs (c) to (f) of that subsection, is an offence in respect of which the person has functions.”,

(c) after subsection (2) insert—

“(2A) The persons referred to in subsection (2) are—

(a) a British sea-fishery officer,

(b) a marine enforcement officer within the meaning of section 157(1) of the Marine (Scotland) Act 2010,

(c) an inspector within the meaning of section 12 of the Aquaculture and Fisheries (Scotland) Act 2007,

(d) an inspector within the meaning of regulation 3(1) of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85),

(e) an inspector within the meaning of regulation 1(2) of the Animals and Animal Products (Import and Export) Regulations 2007 (S.S.I. 2007/194) who is appointed as mentioned in that regulation by the Scottish Ministers for purposes relating to fish farming or shellfish farming,
(f) an authorised officer within the meaning of regulation 2(1) of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 (S.I. 1997/1729) appointed (whether solely or jointly) by the Scottish Ministers to act in matters arising under those Regulations relating to fish farming or shellfish farming or the products of either such type of farming.

(2B) The Scottish Ministers may by order modify—

(a) subsection (2) so as to amend the definition of “relevant offence”,
(b) subsection (2A) so as to—

(i) add or remove a description of a person to or from those for the time being listed in that subsection,
(ii) vary a description of a person for the time being listed in that subsection.

(2C) In subsection (2A)(e) and (f), “fish farming” and “shellfish farming” have the same meanings as in section 12.

(2D) Despite subsection (1), a fixed penalty officer may not issue a notice in respect of a relevant offence that involves—

(a) assault on a person mentioned in subsection (2A),
(b) obstructing such a person in the exercise of the person’s powers,
(c) failure to comply with a requirement imposed, or instruction given, by such a person.”,

(d) in subsection (3)—

(i) after the definition of “British sea-fisheries officer” insert—

““fixed penalty officer” means a person appointed as such an officer by the Scottish Ministers;”,

(ii) after the definition of “Sea Fisheries enactments” insert—

““the marine protection and nature conservation legislation” has the meaning given in section 132(2) of the Marine (Scotland) Act 2010;”.

(3) In section 27 (amount and payment of fixed penalty)—

(a) in subsection (1), for “80 per cent of level 4 on the standard scale” substitute “£10,000”,

(b) in subsection (2), for “British sea-fishery” substitute “fixed penalty”.

(4) In section 31 (withdrawal of fixed penalty notice or expiry of period for paying), in subsection (1), for “British sea-fishery” substitute “fixed penalty”. 

(5) For the title of Part 4 substitute “Fixed penalty notices”.

(6) The cross-heading immediately following that title is repealed.

(7) For the cross-heading immediately preceding section 32, substitute the following Part title—

“PART 4A – MISCELLANEOUS AMENDMENTS OF SEA FISHERIES LEGISLATION”.
Subordinate legislation

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—
   (a) different provision for different purposes or different areas,
   (b) incidental, supplemental, consequential, transitional, transitory or saving provision.

(2) An order under section 54(1) containing provisions which add to, replace, or omit any part of the text of an Act is subject to the affirmative procedure.

(3) All other orders, and any regulations, under this Act are subject to the negative procedure.

(4) This section does not apply to an order under section 56(2).

Interpretation

In this Act, unless the context otherwise requires—

“British sea-fishery officer” means a person who is a British sea-fishery officer by virtue of section 7(1) of the Sea Fisheries Act 1968,

“disease” means a clinical or non-clinical infection with one or more aetiological agents in fish,

“enforceable EU obligation” means an obligation to which section 2(1) of the European Communities Act 1972 applies,

“enforceable EU restriction” means a restriction to which that section applies,

“fish” means fish of any kind but does not, except in Part 3, include shellfish,

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

“fish farming” means the keeping of live fish with a view to their sale or to their transfer to other waters; but only where such activity is required to be authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85),

“marine enforcement officer” has the same meaning as in section 157(1) of the Marine (Scotland) Act 2010,

“parasite” has the meaning given in section 4(1) of the Aquaculture and Fisheries (Scotland) Act 2007,

“pathogen” means an organism that causes or contributes to the development of a disease,

“shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish,

“shellfish farm” means any place used for the purposes of shellfish farming,
“shellfish farming” means the cultivation or propagation of shellfish with a view to their sale or their transfer to other waters or land; but only where such activity is required to be authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85).

54 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment (including this Act), instrument or document.

55 Crown application

(1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) In section 67(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (Crown application)—

(a) after “Ministers,” insert “sections 21A, 27, 28, 30, 33, 33A and 33B,”,

(b) after “and 4” insert “and sections 64 and 64A”.

56 Commencement

(1) This Part (other than section 55(3)), and sections 4, 19 and 46, come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

57 Short title

The short title of this Act is the Aquaculture and Fisheries (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 14(6))

COMMERCIALY DAMAGING SPECIES: CONTROL SCHEMES

Making a control scheme: procedure

1 Where the Scottish Ministers propose to make a control scheme, they must serve on every person who carries on a business of fish farming or shellfish farming on whom the scheme proposes to impose any requirement—
   (a) a draft of the proposed scheme, and
   (b) a notice stating that any such person may, within 14 days of the service of the notice, object to the Scottish Ministers in such manner as may be specified in the notice to the draft control scheme or to any provision contained in it.

2 If no objection is duly made under paragraph 1, or if all objections so made are withdrawn, the Scottish Ministers may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.

3 If any objection duly made under paragraph 1 is not withdrawn, the Scottish Ministers—
   (a) must consider the objection, and
   (b) may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.

4 A control scheme may not be made with any modifications unless—
   (a) every person served with a copy of the draft control scheme under paragraph 1 has been served with a notice of the proposal to make the modification, and
   (b) every such person—
      (i) has either consented to the proposal, or
      (ii) has not, before the expiry of the period of 14 days beginning with the day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Variation or revocation of a control scheme: procedure

5 (1) The Scottish Ministers may—
   (a) make a scheme varying a control scheme, or
   (b) revoke a control scheme.

   (2) The Scottish Ministers may exercise a power under sub-paragraph (1)—
      (a) on the application of a person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement, or
      (b) even if no such application is made.
Before making any variation or revocation such as is mentioned in paragraph 5(1), the Scottish Ministers must serve on every person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement—

(a) a draft of the scheme varying the control scheme or (as the case may be) an intimation of the proposed revocation, and

(b) a notice stating that any such person may, within 14 days of the service of the draft scheme or (as the case may be) the intimation, object to the Scottish Ministers in such manner as may be specified in the notice to the variation or revocation of the control scheme.

If no objection is duly made under paragraph 6, or if all objections so made are withdrawn, the Scottish Ministers may vary or revoke the control scheme (as the case may be).

If any objection duly made under paragraph 6 is not withdrawn, the Scottish Ministers—

(a) must consider the objection, and

(b) may—

(i) make the variation, either in the form of the draft or, subject to paragraph 9, with modifications or,

(ii) revoke the control scheme,

as the case may be.

A variation of a control scheme may not be made with any modification unless—

(a) every person served with a copy of the draft scheme by virtue of paragraph 6 has been served with a notice of the proposal to make the modification, and

(b) every such person—

(i) has either consented to the proposal, or

(ii) has not, before the expiry of the period of 14 days beginning with day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Notwithstanding anything in paragraph 3 or 8, the Scottish Ministers may—

(a) require any person who has made an objection to state in writing the grounds for it, and

(b) disregard the objection for the purposes of this schedule if they are satisfied that the objection is frivolous.

On making a control scheme, or on varying or revoking such a scheme, the Scottish Ministers must serve on every person on whom a notice was required to be served under any of the following provisions—
SCHEDULE 2
(introduced by section 43)

FORFEITURE UNDER SECTION 41 OR 42

Application of schedule

1 This schedule applies where—

(a) property seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation is being retained by the Scottish Ministers,
(b) the Scottish Ministers are satisfied that there are reasonable grounds for believing that the property is liable to forfeiture under section 41 or 42, and

(c) any of the following applies—

(i) a procurator fiscal has decided not to take proceedings against any person in respect of any offence in relation to the property,

(ii) where a fixed penalty notice has been issued in respect of such an offence, the appropriate fixed penalty has been paid, or

(iii) any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

Notice of intended forfeiture

2 (1) The Scottish Ministers must serve notice of the intended forfeiture of the property (“notice of intended forfeiture”) on each of the following—

(a) every person who appears to the Scottish Ministers to have been an owner of the property at the time of its seizure,

(b) in the case of property seized on board a vessel, the master, owner and charterer (if any) of the vessel at that time,

(c) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,

(d) in any other case, the person (if any) from whom the property was seized.

(2) The notice of intended forfeiture must set out—

(a) a description of the property,

(b) the grounds of the intended forfeiture,

(c) information about how a person may give a notice of claim under this schedule, and

(d) the period within which such a notice must be given.

(3) In a case where—

(a) the property was seized following an inspection carried out in exercise of the power conferred by section 34, and

(b) the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property,

the reference in sub-paragraph (1) to a requirement to serve notice of intended forfeiture on such a person is to be read as a reference to a requirement to take such steps as the Scottish Ministers think fit to bring the contents of the notice to the attention of persons likely to be interested in it.

(4) Property may be forfeited or taken as forfeited under this schedule only if—

(a) the requirements of this paragraph have been complied with in respect of the property, or

(b) it was not reasonably practicable for them to be complied with.
Notice of claim

3 (1) A person claiming that the property is not liable to forfeiture under section 41 or 42 must serve notice of the claim (a “notice of claim”) on the Scottish Ministers.

(2) A notice of claim must be served—

(a) within one month of the day of the serving of the notice of intended forfeiture, or

(b) if no such notice has been served, within one month of the date of the seizure of the property.

(3) A notice of claim must specify the name and address of the claimant.

(4) In a case in which notice of intended forfeiture was served on different persons on different days, the reference in this paragraph to the day on which that notice was served is a reference—

(a) in relation to a person on whom the notice of intended forfeiture was served, to the day on which that notice was served on that person, and

(b) in relation to any other person, to the day on which notice of intended forfeiture was served on the last person on whom such a notice was served.

Automatic forfeiture in a case where no claim is made

4 The property is taken to be forfeited if—

(a) by the end of the period for the serving of a notice of claim in respect of the property, no notice of claim has been served on the Scottish Ministers, or

(b) a notice of claim has been served which does not comply with the requirements of paragraph 3.

Decision whether to apply for order forfeiting property

5 (1) Where a notice of claim in respect of the property is duly served in accordance with paragraph 3, the Scottish Ministers must decide whether to make an application to a sheriff for an order forfeiting the property (a “forfeiture application”).

(2) The decision whether to make such an application must be taken as soon as reasonably practicable after receipt of the notice of claim.

Return of property if no application made to the sheriff

6 (1) If, in a case in which a notice of claim has been duly served, the Scottish Ministers decide not to make a forfeiture application in respect of the property, they must return the property to a person appearing to them to be an owner of the property.

(2) The property must be returned as soon as reasonably practicable after the decision not to make a forfeiture application.

Forfeiture applications

7 (1) This paragraph applies if, in a case in which a notice of claim has been duly served, the Scottish Ministers decide to make a forfeiture application in respect of the property.

(2) If the sheriff is satisfied that the property is liable to forfeiture under section 41 or 42, the sheriff may order the forfeiture of the property.
(3) If the sheriff is not so satisfied, the sheriff must order the return of the property to a person appearing to the sheriff to be entitled to it.

Appeal against sheriff’s decision on forfeiture application

8 (1) Either party may appeal against the decision of the sheriff on a forfeiture application to the sheriff principal.

(2) Where an appeal has been made to the sheriff principal, the property is to be retained by the Scottish Ministers pending final determination of the appeal.

Effect of forfeiture

9 Where property is taken to be forfeited under this schedule or the property’s forfeiture is ordered by the sheriff under this schedule, the forfeiture is to be treated as having taken effect as from the time of the seizure of the property.

Disposal of property which is not returned

10 (1) This paragraph applies where any property is required to be returned to a person under this schedule.

(2) If the property is still in the Scottish Ministers’ possession after the end of the period of 3 months beginning with the day after the requirement to return it arose, the Scottish Ministers may dispose of it in any manner they think fit.

(3) The Scottish Ministers may exercise their power under this paragraph to dispose of property only if it is not practicable at the time when the power is exercised to dispose of the property by returning it immediately to the person to whom it is required to be returned.

Provisions as to proof

11 (1) In proceedings on a forfeiture application under this schedule in relation to any property, the fact, form and manner of the seizure of the property are to be taken, without further evidence and unless the contrary is shown, to have been as set out in the application.

(2) In any proceedings, the production of—

(a) the sheriff’s order forfeiting any property under this schedule, or

(b) a certified copy of the order purporting to be signed by the sheriff clerk,

is sufficient evidence of the forfeiture of property by the sheriff under this schedule.

Power to destroy fish before forfeiture

12 (1) The Scottish Ministers may destroy any fish which they consider to be liable to forfeiture under section 42 even if the fish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.

(2) If, in proceedings on a forfeiture application under this schedule, the sheriff is not satisfied that any fish destroyed under this paragraph were liable to forfeiture under section 42, the Scottish Ministers must, if requested to do so, pay to the claimant a sum of money equal to the market value of the fish at the time of their seizure.
(3) A claimant who accepts a sum of money paid under sub-paragraph (2) has no right of action on account of the seizure, detention or destruction of the fish.

(4) For the purposes of sub-paragraph (2), the market value of the fish at the time of their seizure is taken to be the average of the prices at which fish of the same kind were sold in the calendar month preceding the time of seizure at the designated auction nearest to the place where the fish were landed.

(5) In sub-paragraph (4), “designated auction” means a centre for the auction of fish designated by the Scottish Ministers for the purposes of this paragraph.

**Power to return shellfish to the sea before forfeiture**

13 (1) This paragraph applies to any shellfish—

(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and

(b) which the officer considers to be liable to forfeiture under section 42.

(2) If the conditions in sub-paragraph (3) are met, the officer may return the shellfish to the sea even though the shellfish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.

(3) The conditions are that—

(a) the shellfish are alive, and

(b) the officer considers it appropriate to return them to the sea to allow their onward growth to maturity.

(4) Sub-paragraphs (2) to (5) of paragraph 12 apply in a case where shellfish have been returned to the sea under this paragraph as they apply where fish have been destroyed under paragraph 12, but as if—

(a) references to the fish were references to the shellfish,

(b) references to the destruction of the fish under paragraph 12 were references to the return of the shellfish to the sea under this paragraph, and

(c) the reference to the place where the fish were landed were a reference to the place where the shellfish would have been landed had they not been returned to the sea.
Aquaculture and Fisheries (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

Introduced by: Richard Lochhead
On: 3 October 2012
Bill type: Government Bill
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

AQUACULTURE AND FISHERIES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Aquaculture and Fisheries (Scotland) Bill introduced in the Scottish Parliament on 3 October 2012:

   • Explanatory Notes;
   • a Financial Memorandum;
   • a Scottish Government Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 17–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

PART 1 AQUACULTURE

CHAPTER 1 – FISH FARM MANAGEMENT

Section 1 - Fish farm management agreements and statements

4. Section 1 of the Bill makes provision to amend the Aquaculture and Fisheries (Scotland) Act 2007 (the “2007 Act”) with the insertion of provisions for fish farm management agreements and statements.

5. Section 1(2) of the Bill inserts a new section (4A) into the 2007 Act, after section 4. This provision sets out the requirement for fish farm businesses to be party to farm management agreements or to maintain farm management statements. The amendment will enhance the investigative powers currently available to an inspector (within the meaning of section 12 of the 2007 Act) and provide inspectors with additional powers to take samples of fish and examine/take copies of any documents or records from any fish farm in Scotland. It will also enable the Scottish Ministers to modify the definition of the Code of Practice (within the meaning of subsection (5)) by order.

6. Section 1(3) of the Bill replaces section 6(1) (enforcement notices) of the 2007 Act. This amendment will enable Scottish Ministers to serve enforcement notices on those who have failed or are failing to be party to fish farm management agreements or to maintain fish farm management statements and on those who have failed or are failing to ensure fish farms are managed and operated in accordance with such agreements or statements.

7. Section 1(4) of the Bill amends section 43(3) of the 2007 Act so that an order under section 4A(6) of the 2007 Act is subject to the affirmative procedure in the Scottish Parliament.

Section 2 - Escapes, and obtaining samples, from fish farms

8. Section 2 of the Bill makes provision to amend the 2007 Act to enhance the investigation powers currently available to inspectors and to provide inspectors with additional powers to take or require samples of fish from any fish farm in Scotland. The amendments will allow the Scottish Ministers to determine from which farms fish have escaped. The information obtained
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

as a result of the exercise of the new investigation powers will assist to inform fish farmers on best containment practices, prevention of escapes, improving productivity, increasing sustainability and minimising the potential for adverse impact on wild salmonids.

9. Section 2(2)(a) of the Bill inserts a new paragraph (ba) into subsection (2) of section 5 of the 2007 Act (inspections: containment and escape of fish). The provision will enable an inspector (within the meaning of section 12 of the 2007 Act) to carry out an inspection for the purpose of tracing the origin of any fish known or suspected to have escaped from an inspected farm or any other fish farm.

10. Section 2(2)(b) of the Bill amends section 5(3)(a) of the 2007 Act to clarify that the powers available to an inspector under that section include powers to take samples of fish or material from fish.

11. Section 2(3) of the Bill inserts a new section 5A into the 2007 Act. New section 5A(1) enables an inspector to take samples of fish or material from fish, on a fish farm for a purpose mentioned in new section 5A(3). Section 5A(2) enables an inspector to require persons who carry on the business of fish farming to provide them with samples of fish, or material from fish, on the fish farm.

12. Section 5A(3) specifies the purposes for which the samples referred to in section 5A(1) and (2) may be taken, including assessing the impact of a fish farm’s operations on the environment and for research purposes.

CHAPTER 2 – FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment

Section 3 - Technical requirements for equipment used in fish farming

13. Section 3 of the Bill makes provision for regulations to be made by the Scottish Ministers in relation to technical requirements for equipment to be used for or in connection with fish farming. The regulations will assist fish farmers to contain fish, prevent escapes, improve productivity, increase sustainability, and minimise the potential for any significant adverse impact on wild salmonids.

14. Section 3(1) of the Bill enables the Scottish Ministers to make regulations which will prescribe equipment requirements to be complied with by fish farmers in their farming activities, and to provide for the enforcement of those requirements.

15. Section 3(2) of the Bill specifies the purposes for which the regulations may be made, including for the prevention of escapes of fish.

16. Section 3(3) makes provision for the matters which may be included in the regulations, including arrangements for the appointment of inspectors to enforce the provisions of the regulations (section 3(3)(b)) and for criminal offences associated with non-compliance with the regulations (section 3(3)(h)). Section 3(7) provides that the sanctions that may be specified in the
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

regulations may include the suspension or revocation of any authorisations required by fish farm operators to operate as such, for example, an authorisation under the Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85).

17. Section 3(8) provides for definitions relevant to the provisions of this section.

**Wellboats**

*Section 4 - Meaning of “wellboat”*

18. Section 4 of the Bill defines “wellboat” for the purposes of Chapter 2 in Part 1 of the Bill, and “farmed fish” for the purposes of section 4. Section 4(1), as read with section 4(2) and (3), defines “wellboat” as comprising a vessel containing a tank or well for holding water in which live, farmed fish may be taken and subsequently kept for transportation, storage, slaughter or killing or treatment purposes, or for another purpose connected with fish farming. Section 4(4) of the Bill defines “farmed fish” as fish produced by fish farming.

*Section 5 - Control and monitoring of operations of wellboats*

19. Section 5(1) of the Bill enables the Scottish Ministers to make provision, in regulations, for or about controlling and monitoring the operation of any wellboat in Scotland. Section 5(2) contains provisions detailing the matters which may be provided for in regulations under section 5(1), including the measures that require to be taken to control the risk of the spread of parasites, etc as a result of wellboat operations and the specification of types of equipment that require to be installed in wellboats. Section 5(3) enables regulations under section 5(1) to impose requirements on the master, owner or charterer of a wellboat, as the case may be. Section 5(5) makes it an offence, punishable on summary conviction by a fine of up to level 4 on the standard scale (section 5(8)), for a person to contravene any of the provisions of section 5(1) regulations, or fails to take any action required of them under those regulations. In cases where a section 6 enforcement notice has been served upon a person charged with an offence under section 5(5) of the Bill, section 5(6) prevents proceedings being taken against that person. Section 5(7) of the Bill creates a reasonable excuse defence for persons charged with an offence under section 5(5) of the Bill. For example, the master of a wellboat may temporarily be unable to comply with requirements under the regulations on equipment where there has been an unforeseen and unpreventable delay in installation, or where installed equipment intended to reduce the spread of parasites is under repair.

*Section 6 - Enforcement notices*

20. Section 6 of the Bill makes provision for the service of enforcement notices in relation to failure to comply with the requirements of regulations made under section 5(1) of the Bill.

21. Where the Scottish Ministers are satisfied a person has failed or is failing to comply with any requirements imposed upon that person in regulations made under section 5 of the Bill, they may serve an enforcement notice upon that person. That notice must specify the matters referred to in section 6(3), and Ministers may decide to publish its service (section 6(4)). Where an enforcement notice has been served by the Scottish Ministers, the person upon whom it has been served may appeal against the notice to the sheriff within seven days of the service of the notice.
(section 6(5)). Section 6(6) provides that the lodging of a timeous appeal stops the effect of the
notice, until such time as the appeal is withdrawn or determined.

22. Section 6(8) provides that upon hearing an appeal, the sheriff may make such order as he
or she considers appropriate as regards the notice, and the sheriff’s decision in the matter is final.
Where an appeal is not upheld (i.e. is unsuccessful), section 6(9) of the Bill provides that the
sheriff may specify a date by which the action specified in the enforcement notice must be
undertaken. For example, an appeal is made in respect of an enforcement notice which specifies
24 April 2015 as the date by which specified works require to be completed. The appeal is not
upheld, and the sheriff specifies 26 May 2016 as the new completion date. The latter date
prevails, and the specified works will require to be completed by 26 May 2016.

23. It is an offence, punishable upon summary conviction by a fine of up to Level 4 on the
standard scale, for a person upon whom an enforcement notice has been served to fail to comply
with the requirements of a notice - section 6(10) and (12). Section 6(11) makes provision for a
reasonable excuse defence for persons charged with an offence under section 6(10) of the Bill.

Section 7 - Marine enforcement officers’ functions

24. Section 7 of the Bill contains provisions in relation to the enforcement of regulations
made under section 5(1) and enforcement notices served under section 6, of the Bill.

25. Section 7(1) enables marine enforcement officers, as defined by section 53 to exercise the
powers available in Part 7 and section 150 of the Marine (Scotland) Act 2010, for the purpose of
enforcing regulations made under section 5(1) of the Bill. Section 7(2) authorises such officers to
take any action the officer considers necessary in order to fulfil the requirements of an
enforcement notice served by the Scottish Ministers under section 6 of the Bill. Section 7(6)
enables the Scottish Ministers to recover any costs incurred by the marine enforcement officer in
pursuance of the provisions of section 7(2).

26. Section 7(3)(a) of the Bill modifies the effect of sections 151 to 155 of the Marine
(Scotland) Act 2010 such that references in those sections to the powers conferred by Part 7 of
the 2010 Act are to be read as including a reference to those powers as applied by section 7(1) of
the Bill (to enforce section 5 regulations) and as conferred by section 7(2) of the Bill (to take
action to meet the requirements of an enforcement notice under section 6 of the Bill). For
example, in practice this means that, where a marine enforcement officer wishes to exercise
search or examination powers available under Part 7 of the 2010 Act in order to determine
whether a person has complied with regulations under section 5 of the Bill, the officer may be
required by the person to produce evidence of the officer’s authorisation to exercise the power in
question (section 151 of the 2010 Act).

27. Section 7(3)(b) of the Bill makes equivalent provision as regards references to the
functions of a marine enforcement officer. Sections 151 to 155 of the Marine (Scotland) Act
2010 are modified such that references in those sections to the functions under the 2010 Act of
marine enforcement officers are to be read as including a reference to those functions as applied
by section 7(1) of the Bill (to enforce section 5 regulations) and as conferred by section 7(2) of
the Bill (to take action to meet the requirements of an enforcement notice under section 6 of the
Bill). For example, in practice this means that a marine enforcement officer who takes action to
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fulfil the requirements of an enforcement notice issued under section 6 of the Bill is not liable in civil or criminal proceedings for anything the officer did as regards that action (section 154 of the 2010 Act).

28. Section 7(4) of the Bill makes provision in relation to the geographical limits of a marine enforcement officer’s powers, specifying that those powers are exercisable in the Scottish marine area (as defined in section 1 of the 2010 Act) and any other part of Scotland. Section 7(7) contains a definition for the purposes of this section.

CHAPTER 3 – COMMERCIALY DAMAGING SPECIES

Orders relating to commercially damaging species

Section 8 - Specification of commercially damaging species

29. Section 8(1), as read with subsection (2), of the Bill provides for the species which the Scottish Ministers may, by order, specify as a commercially damaging species for the purposes of Chapter 3 of the Bill. Section 8(1) defines a commercially damaging species as a species of fish or shellfish, plant, or any other species of animal. It enables Ministers to make an order in respect of such species where they consider the species, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interest of a person who carries on a business of fish farming, and where the species itself of little or no commercial value. For example, the order-making power may be exercised in relation to Mytilus trossulus. This species of mussel, which is not commercially viable due to its thin shell and low meat yield, has displaced in some places the commercially viable farming of Mytilus edulis.

Section 9 - Movement of species, etc.

30. Section 9(1) of the Bill, as read with section 10 (orders under section 9(1): samples and surveillance), enables the Scottish Ministers to make provision, by order, for or about the prohibition or control of the movement of any commercially damaging species that is present, or suspected of being present in any body of water. The power extends to any other species of animal or plant and any equipment, used in connection with fish farming or shellfish farming, the movement of which may be associated with the movement of the commercially damaging species. It also extends to water in which a commercially damaging species is suspected of being present.

31. Section 9(2) of the Bill details the matters that may be included in an order under section 9(1), including the designation of an area in which movement controls apply. For example, this power may be exercized to prevent the movement of stocks from a site known or suspected of having a commercially damaging species. It is an offence for a person to act in contravention of a section 9(1) order, to fail to take any action required by the order or to otherwise fail to comply with any requirement imposed on the person by such an order (section 9(3)). Offences under section 9(3) are punishable on summary conviction by a fine not exceeding level 5 on the standard scale (section 9(5)).
Section 10 - Orders under section 9(1): samples and surveillance

32. Section 10 of the Bill specifies the matters which may be provided for in an order under section 9(1) of the Bill. An order may contain provision which enables an “appointed person” to take samples of fish, shellfish, or material from any fish or shellfish farm and analyse these for the purpose of ascertaining whether a commercially damaging species is present at a fish or shellfish farm. Section 10(1)(d) describes the powers of an “appointed person”, including powers to enter any land, fish farms, shellfish farms or premises associated with the management or operation of such farms and to require the operator of such farms to provide samples. For example, an appointed person may enter onto a fish farm in order to collect samples of mussels to determine whether they are *Mytilus trossulus* or *Mytilus edulis*.

33. Section 10(3) of the Bill contains further provision on the matters that may be provided for in an order under section 9(1), including requiring persons to undertake surveillance programmes or for appointed persons to undertake such action.

Section 11 - Offences relating to persons appointed under section 10

34. Section 11(1) of the Bill specifies the circumstances in which a person commits an offence as regards an appointed person. It is an offence for a person to fail to comply with a requirement imposed by an appointed person or to wilfully obstruct such a person. For example, where a person wilfully obstructs a person appointed by the Scottish Ministers for the purposes of undertaking a programme of surveillance (section 10(3)(b) of the Bill), the person so obstructing is guilty of an offence.

35. Persons guilty of an offence under section 11(1)(a) of the Bill are liable on summary conviction to a fine not exceeding the statutory maximum (currently £10,000), and persons guilty of an offence under section 11(1)(b) of the Bill are liable on conviction on indictment to a fine (section 11(4) of the Bill).

Section 12 - Notification of presence of commercially damaging species

36. Section 12(1) of the Bill creates an obligation for operators of fish farms and shellfish farms, as soon as reasonably practicable, to notify the Scottish Ministers of the presence of a commercially damaging species on the fish farm or shellfish farm. In terms of section 12(2) of the Bill, the notification obligation also applies to any person who is employed, or acts as an agent as regards the fish farm or shellfish farm.

37. Section 12(3) of the Bill specifies the details that must be included in any notification, including the type of the commercially damaging species, and details of the fish or shellfish farm in question. It is an offence, punishable on summary conviction to a fine not exceeding level 5 on the standard scale, for a person to fail to give a notification (section 12(4) and (6)).

Control

Section 13 - Control agreements

38. Section 13 of the Bill applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm. Section 13(2) of the
Bill requires that Scottish Ministers form a preliminary view as to whether measures should be taken to remove the species, to reduce the incidence of the species, to prevent its spread or to control it, and if so, by what means. For example, where a commercially damaging species is found to be present, Ministers may take a preliminary view that the site may be fallowed to control the presence of a commercially damaging species.

39. Where it is decided that measures should be taken, section 13(3) of the Bill requires the Scottish Ministers to give notice to the person who carries on the business of fish farming or shellfish farming at the farm in question, and to consult that person in order to secure their agreement on the measures to be taken, etc. When agreement under 13(3) is reached, the Scottish Minister must prepare a “control agreement”, and section 13(4) specifies the matters that must be contained in such an agreement. Section 13(6) requires the Scottish Minister to send a copy of the control agreement to the person carrying on the business of fish or shellfish farming at the farm in question and section 13(8) makes provision for the control agreement to be reviewed at least once in every 18 months.

Section 14 - Control schemes

40. Section 14 of the Bill applies where Scottish Ministers have given notice under section 13(3)(a) of the Bill in relation to the presence of a commercially damaging species, and are satisfied either that it is not possible to secure a control agreement, or 6 weeks have elapsed since the notice and no agreement has been reached and Ministers remain of the view that measures should be taken to remove, reduce, prevent or otherwise control the commercially damaging species.

41. Section 14(2) of the Bill requires in certain circumstances the Scottish Ministers to make a “control scheme” in order to ensure that any measures they consider necessary to remove, etc the species in question are taken. Where Ministers make a control scheme, they must notify the person who carries on the business to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made (section 14(3)). Section 14(4) and (5) specify, respectively, the matters which must and may be included in the control scheme, and the date by which any measures to be taken by the person to whom the scheme applies are to be completed. Section 14(6) introduces schedule 1 to the Bill, which makes provision about the making, variation and revocation of control schemes and appeals. Section 14(7) makes provision for the person who carries on a business to which a control scheme relates to take such measures as the scheme may require of them. Section 14(8) of the Bill requires the Scottish Ministers to review a control scheme at least once every 12 months, and section 14(9) enables Ministers to undertake themselves any requirement of a control scheme where they are of the opinion that a person has failed to comply.

Section 15 - Emergency action notices

42. Section 15 applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm and that unless urgent action is taken, the species will spread quickly and have an immediate and significant adverse impact on other fish or shellfish or their commercial exploitability or the commercial or economic interests of fish or shellfish farmers. Where Ministers are so satisfied, section 15(2) provides an exemption to the notice process described in section 13(3) of the Bill, such that no notice or consultation to secure an agreement need be carried out. Instead, section 15(3) of the Bill
requires the Scottish Ministers to give an “emergency action notice” which notes their intention
to take urgent action in respect of the commercially damaging species. Section 15(4) specifies
the matters to be included in an emergency action notice, including the measures proposed to be
taken to remove the species from the farm in question. Section 15(5) of the Bill enables
Ministers, no sooner than 14 days after the giving of the notice, to take the measures specified in
the emergency action notice.

Section 16 - Appeals in connection with emergency action notices

43. Section 16 creates a statutory right for persons upon whom an emergency action notice
has been served to appeal against the notice to a sheriff against the decision to give the notice or
its terms. An appeal must be lodged within 14 days of the emergency action notice being given
(section 16(2)). Section 16(3) states the actions the sheriff may take on an appeal, and section
16(4) provides that the decision of the sheriff on appeal is final, except on a point of law.

Powers

Section 17 - Power to enter fish farms, shellfish farms, etc

44. Section 17 of the Bill enables persons authorised in writing by the Scottish Ministers, and
for a purpose stated in section 17(2), to enter any fish farm or shellfish farm and any premises
associated with the management or operation of a fish farm or shellfish farm. Section 17(2) sets
out the purposes for which the Scottish Ministers may authorise a person to enter such premises,
including in order to obtain information that will enable them to determine whether a
commercially damaging species is present on a fish or shellfish farm. Section 17(3) states that
the power of entry must be exercised at a reasonable hour, except in the circumstances described
in section 17(3)(a), (b) or (c). Section 17(4) provides that where a person proposes to exercise
powers of entry, they must if so required, produce evidence of their identity and authorisation.

Offences

Section 18 - Offences in relation to control agreements, control schemes, etc.

45. Section 18 of the Bill makes provision in relation to offences. Section 18(1) of the Bill
makes it an offence, without reasonable excuse, for a person to refuse or fail to comply with any
requirement imposed on the person by a control agreement (section 13) or a control scheme
(section 14). Section 18(2) of the Bill makes it an offence for a person to wilfully obstruct a
person authorised under section 17(1) from carrying out any of their functions under section 17.

46. Section 18(4) provides that a person who commits an offence under section 18(1) is liable
on summary conviction to a fine not exceeding level 5 on the standard scale, and section 18(5)
provides that a person who commits an offence under section 18(2) is liable on summary
conviction, to a fine not exceeding the statutory maximum (currently £10,000), and on
conviction on indictment, to a fine.

Interpretation

Section 19 - Interpretation of Chapter 3

47. Section 19 provides for definitions used in Chapter 3 of the Bill.
PART 2

SALMON FISHERIES, ETC

Governance

Section 20 - District salmon fishery boards: openness and accountability

48. Section 20 of the Bill amends sections 44 and 68 of, and inserts new sections 46A to 46G into, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ("the 2003 Act") to introduce good governance obligations on district salmon fishery boards ("DSFBs"). The Scottish Government intends to issue administrative guidance to DSFBs on these obligations to aid and guide compliance.

49. Section 20(2) inserts a new subsection (1A) into section 44 of the 2003 Act. Section 44(1A) places duties on the clerk of a DSFB in relation to the board’s agreed report and audited accounts, and requires the clerk to publish these documents and to send copies of them to the Scottish Ministers.

50. Section 20(3) of the Bill inserts new sections 46A – 46G into the 2003 Act. Section 46A places obligations on DSFBs in relation to the content of the annual report required to be prepared under section 44(1)(a) of the 2003 Act. New section 46A(2)(d) of the 2003 Act requires the report to contain a statement on how the board complied in the previous year and how it proposes to comply in the coming year with the good governance requirements, and section 46A(3) provides a definition of "good governance requirements" for that purpose and for the purposes of the provisions mentioned in section 46A(3)(a)-(c).

51. Section 46B of the 2003 Act introduces an obligation on DSFBs to hold an annual public meeting and prescribes matters which must be considered at that meeting (section 46B(2)). Section 46B(3) places obligations on DSFBs regarding participation of members of the public and others who attend or propose to attend the annual meeting.

52. Section 46C(2) of the 2003 Act makes further provision about the annual public meeting held by the board under section 46B(1)(a) and the annual meeting of qualified proprietors held under section 44(1) of the 2003 Act. The provisions place duties on the clerk of the DSFB to give advance notice to the public of these meetings and prescribes the manner, timing and circulation of that notice (section 46C(2)). Section 46C(2)(a)(iv) underpins the new section 46B(4) duty on boards by requiring the clerk to notify the public of how they may propose matters for consideration at the annual public meeting. The public will not have an automatic right to speak at the annual meeting of qualified proprietors, unless a DSFB decides to afford such an opportunity.

53. Section 46C(3)-(9) of the 2003 Act makes further provision about meetings of DSFBs, including the annual public meeting, the meeting of qualified proprietors and any other meetings the board may decide to hold. In particular, the clerk is required to prepare and publish minutes of the DSFB meetings.
54. Section 46D of the 2003 Act requires a DSFB to compile, maintain and keep under review a procedure for dealing with complaints, and to publicise its terms. DSFBs must keep records of any complaints received and how they were disposed of (section 46D(5)).

55. Section 46E of the 2003 Act requires a DSFB to maintain and review arrangements for registering and declaring the relevant financial interests of board members. “Relevant financial interests” are defined in subsection (4).

56. Section 46F(1) of the 2003 Act enables the Scottish Ministers to modify, by order, the good governance requirements (as defined in section 46A(3)) of the 2003 Act and to place further requirements on DSFBs for specific purposes. The purposes are specified in subsection (2), and seek to achieve that the order-making power is exercisable so as to ensure the boards’ affairs are conducted in an open and accountable manner and to appropriate standards of propriety and good governance. The order-making power is not exercisable in such a way as would allow Ministers to provide for structural change to DSFBs.

57. Section 46G(3) of the 2003 Act provides that, where Ministers exercise the section 46G(2) reserve power to dissolve, by order, the committee constituting the board, its effect is to prompt the calling of a meeting of qualified proprietors for the purpose of electing a new committee.

58. Section 20(4) of the Bill is a technical amendment in consequence of section 46F(1) of the 2003 Act, as inserted by section 20(3) of the Bill.

**Section 21 - Duty to consult and report before making certain applications**

59. Section 21 amends the 2003 Act to create an obligation to undertake consultation on proposals to submit specified applications under the 2003 Act. Subsection (2) of section 21 amends sections 33(7), 35(3), 36(4) and 37(4) of the 2003 Act to substitute reference to paragraph 9B of schedule 1 (procedure for making certain orders and regulations under the Act) to the 2003 Act for references to paragraph 10 of that schedule where it occurs in those provisions.

60. Subsection (3) of section 21 amends the 2003 Act to introduce new paragraphs 9B and 9C into schedule 1. Paragraph 9B(1) specifies the applications in respect of which the provisions of paragraph 9B apply, that is: applications under paragraph 1, 3, 5 or 7 of schedule 1 (respectively, applications for designation orders under section 35 of the 2003 Act, estuary limits orders under section 36, annual close time orders under section 37 and salmon conservation regulations under section 38). Paragraphs 9B to 15 of schedule 1 to the 2003 Act also apply to regulations under section 33(1) of the 2003 Act (baits and lures) by virtue of section 33(7) of that Act. Paragraph 9B(2) of schedule 1 provides that where an applicant proposes to make an application for such an order or regulations, the applicant must give notice of the proposed application, specify in that notice the period in which representations or objections may be made on that proposal, undertake consultation with persons who may have an interest in or be likely to be affected by the proposal and give such persons notice of the period in which they may make representations or objections on the proposal.
Paragraph 9B(3) of schedule 1 requires the applicant to give notice of the proposed application in each of two successive weeks in a newspaper circulating in the district concerned, and paragraph 9B(4) of schedule 1 clarifies the length of the period for the purposes of paragraph 9B(2)(b) of schedule 1.

An applicant is required to take into account any timeous representation or objections made on the proposal (paragraph 9B(5)). Paragraph 9B(6) provides that where representations or objections have been made in relation to the proposal, the applicant must publish a notice advising where such representations or objections can be viewed and how to obtain copies of them. The applicant must publish a notice containing a summary of reasons for proceeding with the proposed application or not, as the case may be, together with details of where their reasons for this decision may be viewed and how a copy of the reasons may be obtained (paragraph 9B(7)). Paragraph 9B(8) confirms that the costs for compliance with paragraph 9B(2), (6) and (7) are to be paid by the applicant.

Paragraph 9C of schedule 1 to the 2003 Act applies where an applicant determines to proceed with a proposed application. At the time the applicant makes the application, the applicant must submit together with the application a report which confirms: whether the requirements of paragraph 9B have been met and how; explains who was consulted; the content of any representations or objections received; and the reasons for making the application.

**Management**

*Section 22 - Carcass tagging*

Section 22(2) of the Bill amends the 2003 Act by inserting a new section 21A to enable the Scottish Ministers to make regulations for or in connection with tagging salmon carcasses.

Section 21A(2) specifies the matters which may be provided for in regulations made under section 21A(1) of the 2003 Act, including the nature and form of tags and the keeping of records in connection with fishing for, taking and tagging of salmon. Section 21A(3) provides that regulations made under section 21A(1) may make different provision for different purposes and different areas, and may modify Part 5 (enforcement) of the 2003 Act.

Section 21A(4) makes provision in relation to offences. Subsection (4)(a) of section 21A makes it an offence for a person to sell, offer or expose for sale, or to possess a salmon which has not been tagged in accordance with regulations made under section 21A(1) of the 2003 Act, or which has had a tag removed otherwise than in accordance with the regulations. Subsection (4)(c) makes it an offence for a person to fail to take action required of that person, or to comply with any requirement imposed on that person, by such regulations.

Subsection (5) creates a reasonable excuse defence for a person charged with an offence under section 21A(4)(c) of the 2003 Act. A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale and may be convicted on the evidence of only one witness (subsection (6)).
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

68. Subsection (3)(a) and (b) of section 22 makes technical amendments to section 30 of the 2003 Act (exemptions in relation to fish farming) in consequence of new section 21A.

Section 23 - Powers to take fish or samples for analysis, etc.

69. Section 23 of the Bill amends the 2003 Act to insert a new section 64A, which provides the Scottish Ministers with powers to take fish and samples of fish for analysis etc, and to undertake tracking and monitoring of fish.

70. Subsection (1)(a) of section 64A provides that an “authorised person” may require a person having rights in a salmon or freshwater fishery to permit them to take and retain fish, and to take samples of material from the fish in the fishery or to have such fish or samples provided to them.

71. Subsection (1)(b) allows an authorised person to affix a tag in order to track or monitor fish (subsection 64A(2)(c)).

72. Subsection (1)(c) provides that an authorised person may enter a salmon fishery or freshwater fishery in order to exercise the powers mentioned in subsection (1)(a) or (1)(b) or in order to track or monitor fish which have been tagged further to the provisions of subsection (1)(b).

73. Subsection (2) (a)-(d) specifies the purposes for which an authorised person may take and retain fish, take samples or require that fish or samples of material from fish are provided to them. These purposes are: analysis of fish or fish samples; ascertaining whether an offence has been committed under section 33A of the 2003 Act (unauthorised introduction of fish into inland waters); tracking or monitoring of fish; and exercising the powers mentioned in subsections (1)(a) or (1)(b).

74. Subsection (4)(a) provides that it is an offence for a person having rights in a salmon fishery or freshwater fishery to fail or wilfully refuse to comply with a requirement made by an authorised officer under subsection (1)(a). Subsection (5) makes provision for a reasonable excuse defence for a person charged with this offence. A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale (subsection (6)).

75. Subsection (4)(b) provides that it is an offence for a person having rights in a salmon fishery or freshwater fishery to obstruct an authorised person in the exercise of their powers under subsection (1)(b) or (c). A person who commits an offence under subsection (4)(b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months, or to both.

76. Subsection (7) defines “a person having rights in a salmon fishery or freshwater fishery” with reference to section 64(3) of the 2003 Act, i.e. as meaning (a) a proprietor of a salmon fishery; (b) an occupier of such a fishery; (c) an owner of land to which a right of fishing for freshwater fish pertains; (d) an occupier of such a right.
Section 24 - Power of the Scottish Ministers to conduct inquiries and obtain information

77. Section 24(2)(a) of the Bill amends section 64 of the 2003 Act (power of the Scottish Ministers to conduct inquiries and obtain information) to insert a new subsection (1)(za), which requires persons having rights in a salmon fishery or freshwater fishery to provide information relating to the fishery to the Scottish Ministers.

78. Section 24(2)(b) amends section 64(1)(a) of the 2003 Act to enable Ministers to exercise their powers under that provision without expressly having to ensure no damage is done to the fishery or no interference is caused to the rights of the owner or occupier of the fishery. It is inevitable that the exercise of the section 64(1)(a) powers will give rise to interference with property rights. But the powers in the 2003 Act (which derive from the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26)), have and will continue to be exercised proportionately and in the vast majority of cases with the full co-operation of the owner, proprietor or occupier of such rights, for the wider public interest of protecting and developing salmon and trout stocks. Accordingly, the amendments secure removal of text no longer considered to be significant as regards exercise of the power.

79. Section 24(3) amends section 64(2) of the 2003 Act to clarify that the provisions of section 64 of the 2003 Act apply to persons “having rights in a salmon fishery or freshwater fishery”. Section 24(4) of the Bill inserts a new subsection (3) into section 64 of the 2003 Act to define that term.

Section 25 - Monitoring and evaluation of the effects of orders, etc.

80. Section 25 of the Bill amends sections 33, 37 and 38 of the 2003 Act to enable the Scottish Ministers to impose requirements to monitor and evaluate the effect of orders and regulations under those sections. The provisions give Ministers powers to ensure that, where measures are granted, appropriate monitoring and evaluation of the effects of such measures on salmon stocks can take place in a consistent manner across Scotland.

81. Section 25(2) of the Bill amends section 33 of the 2003 Act, which enables the Scottish Ministers to make regulations (“baits and lures regulations”) prohibiting the use of specified baits and lures upon application by one or more DSFBs New subsection (6A) enables Ministers, in granting an application for baits and lures regulations, to impose requirements on DSFBs to carry out monitoring and evaluation of the effect of the regulations on salmon stocks. For example, where regulations under section 33 of the 2003 Act prohibit fishing with barbed hooks, a DSFB may be required to monitor and record any incidents of fish mortality resulting from fish that were not effectively released after capture. Subsection (6B) makes it an offence for a DSFB to act in contravention of any requirements imposed under baits and lures regulations or to fail to take any action required of the DSFB under such regulations. Subsection (6C) provides that a DSFB charged with an offence under section 33(6B) is liable on summary conviction to a fine of up to Level 4 on the standard scale and may be convicted on the evidence of one witness. Section 143 of the Criminal Procedure (Scotland) Act 1995 makes provision for the summary prosecution of organisations such as DSFBs.

82. Section 25(3) of the Bill amends section 37 of the 2003 Act which provides for the annual close time for salmon fishery districts in Scotland. Section 25(3)(a) of the Bill makes a
technical amendment to section 37(2) of the 2003 Act to include a reference to section 38(5)(c) of the 2003 Act (which is inserted by section 25(4)(b) of the Bill). This provision enables Ministers to specify in salmon conservation regulations both the annual close time for salmon for a salmon fishery district and a period during that close time in which it is permitted to fish for salmon by rod and line. As a result of these new powers, the qualification to the annual close times specified in section 37(2) of the 2003 Act is amended to include a reference to any period in which it is permitted to fish for salmon by rod and line specified in regulations made by Ministers in reliance of the new powers in section 38(5)(c) of the 2003 Act. A technical amendment is also made to section 37(3) of the 2003 Act in this respect by section 25(3)(b) of the Bill.

83. Subsection 25(3)(c) of the Bill amends section 37 of the 2003 Act to introduce new subsections (3A), (3B) and (3C). Subsection (3A) enables Ministers, in granting an application for a close time order, to impose requirements on DSFBs or proprietors to carry out monitoring and evaluation of the effect of the order on salmon stocks. For example, a DSFB or proprietors may be required to monitor the impact of a season extension (i.e. a period during the annual close time when it is permitted to fish for or to take salmon by rod and line). The programme of monitoring could include: scale sampling; redd counts; and rod catch analysis. Subsection (3B) makes it an offence for a DSFB or a proprietor to act in contravention of any requirements relating to monitoring and evaluation imposed under a close time order, or to fail to take any action required of the DSFB or proprietor by such requirements. Subsection (3C) provides that a DSFB or proprietor charged with an offence under section 37(3B) is liable on summary conviction to a fine of up to Level 4 on the standard scale and may be convicted on the evidence of one witness.

84. Section 25(4) of the Bill amends section 38 of the 2003 Act, which enables the Scottish Ministers to make salmon conservation regulations. Section 25(4)(b) introduces a new subsection (5)(c) into section 38 which gives Ministers powers to prescribe for any salmon fishery district the dates of the annual close time for salmon and the period(s) during which it is permitted to fish for or take salmon by rod and line during the annual close time. This is in line with the powers in section 37 of the 2003 Act and gives Scottish Ministers greater flexibility as regards potential options to best manage salmon stocks. Section 25(4)(c) of the Bill introduces a new subsection (6)(ba) into section 38 which enables Ministers, in granting an application for salmon conservation regulations, to impose on a DSFB or proprietors requirements on monitoring and evaluating the effect of the regulations on salmon stocks as Ministers consider necessary or expedient. For example, Ministers may impose a requirement for a DSFB to assess the effect of catch and release measures on reported rod catches during the period any restrictions apply.

85. Section 38(7) of the 2003 Act makes it an offence, publishable on summary conviction by a fine of up to Level 4 on the standard scale, for a DSFB or a proprietor to act in contravention of salmon conservation regulations or to fail to take any action required of them under, or to fail to comply with any requirement of, such regulations. Section 38(8) provides that a DSFB or proprietor charged with an offence under section 38(7) may be convicted on the evidence of one witness.
Section 26 - Power to vary procedures for orders, etc. relating to certain fisheries

86. Section 26 amends the 2003 Act to clarify the scope of the Scottish Ministers’ powers to vary by order the procedural requirements for applications for designation, estuary limits and close time orders, and conservation and baits and lures regulations set out in schedule 1 to the 2003 Act. Separate provision is made in relation to the variation of the procedures as regards regulations made under section 33 of the 2003 Act.

87. Section 26(2) adds a new subsection (8) to section 33 of the 2003 Act (baits and lures regulations). New subsection (8)(a) enables the Scottish Ministers to vary section 33(2) to (5) of the 2003 Act, which subsections contain provision in relation to who may make an application for regulations and what an application must comprise. New subsection (8)(b) makes similar provision for Ministers to vary the provisions of paragraphs 9B to 15 of schedule 1 to the 2003 Act, which also make provision for applications for regulations under section 33 of the 2003 Act.

88. Section 26(3) repeals section 35(4) of the 2003 Act. That provision provided Ministers with a power to vary, by order, certain paragraphs of schedule 1 to the 2003 Act. The effect of the amendments under section 26 is to clarify that Ministers’ section 35(4) power was intended to extend to the procedural provisions in schedule 1 to the 2003 Act as regards all orders and regulations that could be made under sections 33 and 35-38 of the 2003 Act. Accordingly, section 35(4) is repealed and clarifying provision is made to amend the 2003 Act in section 26(2) and (4).

89. Section 26(4) amends section 39 of the 2003 Act to add new subsections (2) to (4). Subsection (2) provides that Ministers may by order vary the provisions of schedule 1 to the 2003 Act. The power will enable the Scottish Ministers to vary, for example, prescribed methods of advertisement or consultation to take account of developments in information technology.

Section 27 - Offence of fishing for salmon during annual close time

90. Section 27 is a technical amendment to section 14 of the 2003 Act, which makes it an offence to fish for or to take salmon during the annual close time, and also provides for the circumstances in which the offence does not apply.

91. Section 14(1) of the 2003 Act makes it an offence, punishable on summary conviction by a fine of up to Level 4 on the standard scale, to fish for or take salmon by means of rod and line during the annual close time. Annual close time is defined in section 37 of the 2003 Act. Section 14(2) of the 2003 Act, as substituted by section 27 of the Bill, clarifies the circumstances in which the section 14(1) offence does not apply, including where a person fishes for or takes salmon by rod and line during a period within the annual close time when such fishing is permitted by regulations in force in the salmon fishery district in question.

92. Section 25(4)(b) of the Bill amends section 38 of the 2003 Act to enable the Scottish Ministers to specify in regulations under section 38, periods during the annual close time in which it is permitted to fish for or to take salmon by rod and line. In considering the effect of that amendment, doubt arose whether the reference to “regulations” in section 14(2) of the 2003 Act included a reference to regulations under section 38. The amendment in section 27 is intended to put the matter beyond doubt, and the section amends section 14(2) of the 2003 Act to clarify that...
the offence in section 14(1) of the 2003 Act does not apply where fishing for or taking salmon by rod and line during the close time is permitted under the measures specified in section 14(2)(a) to (e).

Section 28 - Consents for introduction of fish into inland waters

93. Section 28 of the Bill amends section 33A of the 2003 Act to ensure that, where introductions of fish or fish spawn take place, they are in line with prevailing good practice and that requirements as to record keeping and monitoring can be imposed. Section 28 of the Bill also introduces new section 33B into the 2003 Act to enable the Scottish Ministers to modify, by regulation, DSFBs’ functions with respect to consenting to the introduction of salmon and salmon spawn.

94. Section 28(2)(b) of the Bill amends section 33A of the 2003 Act to introduce new subsections (3A), (3B) and (3C). Subsection (3A) enables Ministers when granting consent to introduce fish or fish spawn to inland waters, and DSFBs when granting consent to introduce salmon or salmon spawn to inland waters within their district, to impose conditions and requirements on the consent. For example, conditions and requirements could include: record keeping; monitoring the impact of the species following its introduction; and bio-security measures. Subsection (3B) makes it an offence, punishable on summary conviction to a fine not exceeding Level 3 on the standard scale (section 33A(5) of the 2003 Act) for a person to act in contravention of any conditions or requirements imposed on a section 33A consent or to fail to take any action required under such condition or requirement. Subsection (3C) makes provision for a reasonable excuse defence for a person charged with an offence under section 33A(3B) of the 2003 Act.

95. Section 28(2)(c) of the Bill amends section 33A of the 2003 Act to insert a new subsection (4A) which provides that the provisions of section 33A(4) apply subject to the provisions of any regulations made under section 33B of the 2003 Act, which is inserted by section 28(3) of the Bill.

96. Section 28(3) of the Bill inserts a new section 33B into the 2003 Act which gives powers to the Scottish Ministers to make regulations in relation to the functions of DSFBs under section 33A(3)(b) and (3A) of the 2003 Act. Section 33B(1), as read with section 33B(2), enables the Scottish Ministers to provide, in regulations, that they instead of a DSFB will exercise the consenting function under section 33A of the 2003 Act with respect to the introduction or possession of salmon and salmon spawn; for applications to be submitted to Ministers instead of a DSFB; and for circumstances in which an application referred to them will be determined by Ministers.

97. Section 33B(3) of the 2003 Act provides flexibility for the Scottish Ministers to, for example, restrict the application of regulations made under section 33B(2) to individual salmon fishery districts or specified inland waters. For example, it might be desirable for applications submitted to a DSFB under section 33A of the 2003 Act for a district which lies in a Special Area of Conservation to be referred to the Scottish Ministers for determination.
Section 29 - Offences exempted by permission or consent: power to attach conditions etc.

98. Section 29 of the Bill amends sections 27, 28 and 30 of the 2003 Act to enable Ministers to attach conditions and requirements to permissions and consents granted under those sections.

99. Section 29(2) amends section 27 of the 2003 Act to introduce new subsections (1A) to (1D). Section 27 of the 2003 Act provides for the circumstances in which a person is exempt from any offence in relation to salmon or salmon roe, where the act or omission otherwise leading to the commission of an offence is for scientific purposes; for protecting, improving and developing stocks of fish; or for the conservation of living creatures, and the person in question has the permission of a DSFB or the Scottish Ministers for the activity in question.

100. Section 27(1A) of the 2003 Act enables the Scottish Ministers, in granting permission for the purposes of section 27(1) of the 2003 Act, to impose conditions and requirements. Section 27(1B) makes it an offence for the holder of such a permission to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 27(1C) makes provision for a reasonable excuse defence for persons charged with a section 27(1B) offence, and section 27(1D) provides that a person guilty of an offence under section 27(1B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

101. Section 29(2)(b) is a technical amendment in consequence of section 28(2)(a) of the Bill.

102. Section 29(3) of the Bill amends section 28 of the 2003 Act to introduce new subsections (3) to (6). Section 28 of the 2003 Act provides for the circumstances in which a person is exempt from an offence in relation to contraventions of the provision mentioned in section 28(2) of the 2003 Act, insofar as fish other than salmon is concerned. Persons will not be guilty of an offence if the act leading to the contravention is for scientific purposes or for protecting, improving or developing stocks of fish and the person in question has the permission of the Scottish Ministers for the activity in question.

103. Section 28(3) of the 2003 Act enables Ministers, in granting permission for the purposes of section 28(1), to impose conditions and requirements. Section 28(4) makes it an offence for the holder of such a permission to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 28(5) makes provision for a reasonable excuse defence for persons charged with a section 28(1) offence, and section 28(6) provides that a person guilty of an offence under section 28(4) is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

104. Section 29(4) of the Bill amends section 30 of the 2003 Act to introduce new subsections (2A) to (2D). Section 30 of the 2003 Act provides for certain exemptions from the offences mentioned in section 30(1) of the 2003 Act if the act or omission concerned takes places within or in the course of the operation of a fish farm, and the Scottish Ministers have consented to the activity in question under section 30(2) of the 2003 Act.

105. Section 30(2A) enables Ministers, in granting consent under section 30(2) of the 2003 Act, to impose conditions and requirements. Section 30(2B) makes it an offence for the holder of
such consent to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 30(2C) makes provision for a reasonable excuse defence for persons charged with a section 30(2B) offence, and section 30(2D) provides that a person guilty of an offence under section 30(2B) is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

PART 3 – SEA FISHERIES

Enforcement of sea fisheries legislation

Section 30 – Powers of British sea-fishery officers to enforce sea fisheries legislation

106. Section 30 of the Bill seeks to modernise and provide a comprehensive set of powers for British sea-fishery officers (“BSFOs”) for the purposes of enforcing sea fisheries legislation in the Scottish enforcement area and in relation to Scottish fishing boats anywhere in the world.

107. Section 30(1) makes provision for BSFOs to have access to the common enforcement powers within Part 7 of the Marine (Scotland) Act 2010 and the powers conferred by section 31 (power to detain vessels in connection with court proceedings) and section 34 (power to inspect objects used in commercial sea fishing). In addition BSFOs also have access by virtue of section 30(4) to any other enforcement powers they may have under sea fisheries legislation but constrained by section 30(5) to circumstances where they are unable to exercise a power available to them either as part of the suite of enforcement powers set out in the 2010 Act or the powers contained in sections 31 or 34 of the Bill.

108. Section 30(7) modifies sections 151 to 155 of the 2010 Act with the effect that any reference to a power in Part 7 of the 2010 Act is to be construed as a reference to a power conferred by section 30(1) of the Bill. This will confer a statutory obligation on BSFOs to provide evidence on their authority (section 151 of the 2010 Act), state their name and purpose, etc (section 152 of the 2010 Act). BSFOs would not be liable in any civil or criminal proceedings by virtue of section 154 of the 2010 Act providing certain conditions are met. Section 155 of the 2010 Act creates a number of offences in relation to BSFOs: these include where a person fails to comply with requirements made of them, provides false information, obstructs, assaults a BSFO or pretends to be one.

Detention of vessels in connection with court proceedings

Section 31 – Power to detain vessels in connection with court proceedings

109. Section 31(1) of the Bill makes provision for BSFOs to detain a vessel either to ensure the attendance of the alleged offenders in court where the BSFO believes that the offender will not attend court unless the vessel is detained or believes a court will order the vessel to be detained following a conviction and a fine. This power may be used where a BSFO has reasonable grounds to suspect that an offence has been committed by the owner, master or charterer of a fishing vessel and there is a real risk that the alleged offenders will not attend court unless the vessel is detained in port.

110. Section 31(2) of the Bill provides that a BSFO may take, or may arrange for others to take, a vessel and its crew to the nearest convenient port for the purposes of detaining it. It
allows a BSFO to give instructions to anyone who appears to be in charge of the vessel to take it and its crew, to port.

111. Section 31(4)-(5) of the Bill requires a BSFO to serve a notice of detention on the person who appears to be in charge of the vessel, which must include the reasons for detaining it and the circumstances under which it may be released. A notice of detention under section 31(4) must be withdrawn if any ground of release specified in section 32(5) of the Bill applies.

Section 32 – Release of vessel detained under section 31

112. Section 32(2) of the Bill sets out the circumstances under which a vessel detained under section 31 is no longer to be treated as detained under that section. This includes where a notice of detention is withdrawn by a BSFO, where a sheriff orders the release of the vessel under section 33, proceedings taken against the master, owner, or charterer have concluded, or the court has exercised any power it has to order the vessel to be detained.

Section 33 – Power of sheriff to order release of vessels

113. Section 33 provides a process allowing the owners of a vessel detained under section 31 to apply to a sheriff for an order releasing the vessel from detention. An owner or charterer of a vessel may apply under section 33(2) of the Bill to a sheriff seeking the release of the vessel from detention. A sheriff may order the release of the vessel if satisfied that any of the grounds given in section 33(3) of the Bill apply. These are that the continued detention of the vessel is no longer necessary to secure the attendance of the master, owner, or charterer at court, or that there are no grounds for believing that the court would order the vessel to be detained at any court proceedings as envisaged under section 31(1)(b)(ii).

Inspection and seizure of objects used in commercial sea fishing

Section 34 – Power to inspect and seize objects

114. Section 34(1) of the Bill confers inspection powers on BSFOs to allow them to examine objects which they have reasonable grounds to suspect may be being used in connection with commercial sea fishing. This could include objects discovered in the sea, or on land on the foreshore, or in the vicinity of ports and harbours. Section 34(2) provides a power to lift an object out of the sea for the purposes of inspecting it. Having inspected the object, the officer may decide to seize it by virtue of the power conferred by section 34(3) of the Bill. By virtue of Section 34(7), this can include any contents or anything attached to the object. If the officer decides not to seize the object then section 34(5) requires the officer to replace the object where it was found or, in circumstances where it is not possible to replace the object, section 34(6) provides for the seizure of the object until the owner can collect it.

Section 35 – Powers of inspection under section 34

115. Section 35 of the Bill requires a report about the inspection to be completed by the officer who has inspected the object using the powers set out in section 34. Section 35(3) sets out the contents of the report, and where the object is seized the additional information set out in section 35(4) must also be included in the report. Section 35(5) of the Bill requires a copy of the report to be attached to an object that has not been seized and if the officer cannot attach a copy of the report to the object, section 35(6) requires the officer to make an attempt to provide this report to
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

whoever appears to be the owner of the object. Section 35(8)-(10) sets out the circumstances where the owner of the object should be served a copy of the report. Where the owner of the object cannot readily be identified, section 35(11) of the Bill substitutes the requirement to serve a copy of the report on the owner of the object with a requirement to take reasonable steps to bring the report to the attention of anyone likely to have an interest in it.

Section 36 – Retention of objects seized under section 34(3)

116. Section 36(1) of the Bill provides that an object seized under section 34(3) may be retained by the Scottish Ministers. However, if either of the grounds set out in section 36(3) apply, the Scottish Ministers must make the object available for collection. These grounds are that either the procurator fiscal has decided that no proceedings will be taken, or that a relevant fixed penalty notice has been paid, or that court proceedings have concluded without an order of forfeiture being made. The Scottish Ministers are not obliged, however, to make the object available for collection if it is liable for forfeiture as a prohibited item under section 41 of the Bill.

Section 37 – Disposal of objects seized under section 34

117. Section 37 of the Bill sets out the process which the Scottish Ministers are required to follow when seeking to either return or dispose of an object. Section 37(2)-(5) defines a notice of collection and requires the Scottish Ministers to serve a copy on every person who appears to be an owner of the object or, in the case that an owner cannot be identified, on persons likely to have an interest in the object. Having served a notice of collection under section 37, the Scottish Ministers may dispose of the object as they see fit at the end of a three-month period.

Retention and disposal of property seized by BSFOs

Section 38 – Retention of property seized by British sea-fishery officers

118. Section 38 of the Bill provides the Scottish Ministers with the power to retain property seized in the Scottish enforcement area or on board a Scottish fishing vessel, by British sea-fishery officers (BSFOs) using powers other than those contained within section 34 of the Bill.

119. Section 38(2) requires BSFOs to deliver seized property to the Scottish Ministers as soon as is reasonably practical. Section 38(4) allows Scottish Ministers to retain said property. In accordance with paragraph 13 of schedule 2 of the Bill, in circumstances where the property is live shellfish, BSFOs may, however, return such animals to the sea to mature, without first delivering them to Scottish Ministers.

120. Section 38(5) requires Scottish Ministers, in certain circumstances, to release seized property and make it available for collection as soon as is practicable. Release of property is required when a procurator fiscal takes no proceedings in respect of an offence where the property was seized, where a fixed penalty notice has been paid in respect of the offence, and for proceedings which have been concluded without the property being subject to any order for forfeiture.

121. The grounds for release of property under sections 38(5) and 38(6) do not apply to property if the use of the property for sea fishing would constitute an offence under the law of
Scotland (section 41) or if it relates to fish that are below the minimum size and in respect of which an offence has, as a result, been committed (section 42).

Section 39 – Power of Scottish Ministers to sell seized fish in their possession

122. Section 39 of the Bill gives the Scottish Ministers the power to sell any fish that has been seized by BSFOs and retained by them under section 38 of the Bill. Section 39(3) permits Scottish Ministers to retain the proceeds. These proceeds are to be retained by Ministers until the courts orders forfeiture of the proceeds and, in the absence of the courts making such an order, the Scottish Ministers are required under section 39(5) to return proceeds to owners as soon as is practicable. Return of the funds held is also necessary under section 39(4) if no court proceedings are taken or any fixed penalty notice issued is paid.

123. If the Scottish Ministers have retained the proceeds of any sale for a period of six months (because they have been unable to return the funds to the original owner(s) of the fish) then section 39(6) allows such funds to be retained by Scottish Ministers and used as they see fit. However, the Scottish Ministers can only dispose of such funds in this way where it was not practicable at the time they exercised the power of disposal to immediately return the funds to the original owner.

124. Section 39(8) requires that fish sold by the Scottish Ministers must be sold at auction and under section 38(9) the owner’s views must be taken into account on the manner in which the fish should be sold. Owners may ask for fish to be sold at a particular auction or by a method of sale other than auction. The Scottish Ministers are required by virtue of section 39(11) to take such views into account unless they deem them to be unreasonable.

125. Section 39(12) permits the deduction by the Scottish Ministers of reasonable selling expenses from the proceeds of the sale.

Section 40 – Disposal of property retained by Scottish Ministers under section 38

126. Section 40 of the Bill sets out the process to be followed for the disposal of property retained by the Scottish Ministers under section 38. Section 40(2) defines a notice of collection and section 40(3) requires the Scottish Ministers to serve a copy on every person who appears to be an owner of the object or, in the case that an owner cannot be identified, then the Scottish Ministers should seek to serve a notice of collection on an appropriate person as defined in section 40(6), or on any person likely to be interested in the object. Having complied with the requirements on a notice of collection, the Scottish Ministers may dispose of the object as they see fit at the end of a three-month period from the date of service of the notice if it is not claimed.

Forfeiture

Section 41 – Forfeiture of prohibited items

127. Section 41 of the Bill allows the Scottish Ministers to seek the forfeit of any item which has been seized where it would be illegal under Scots law to use that item for sea fishing. This power is available by virtue of section 41(1) to items lawfully seized by BSFOs under sea fisheries legislation either within the Scottish enforcement area or from on board a Scottish
fishing boat wherever it is. Section 41(3) allows the Scottish Ministers to dispose of items forfeited under section 41 in any manner they see fit.

Section 42 – Forfeiture of fish failing to meet size requirements

128. Section 42 of the Bill allows the Scottish Ministers to seek the forfeiture of fish and shellfish which fails to meet minimum size requirements for that species. This power is available by virtue of section 42(1) to items lawfully seized by BSFOs under sea fisheries legislation either within the Scottish enforcement area or from on board a Scottish fishing boat wherever it is. Section 42(3) allows the Scottish Ministers to dispose of items forfeited under section 42 in any manner they see fit.

Section 43 – Further provision about forfeiture under section 41 or 42

129. Section 43 of and schedule 2 to the Bill set out the process to be followed where the Scottish Ministers wish to seek the forfeiture of property under sections 41 and 42 of the Bill, and provide for an appeal process which allows an application regarding forfeiture to be made to a sheriff. Where a sheriff makes a decision on a forfeiture application, that ruling may be appealed to the sheriff principal.

Enforcement of EU rules

Section 44 – Modification of the Fisheries Act 1981: enforcement of EU rules

130. Section 44 makes a technical amendment to section 30(1) of the Fisheries Act 1981 to extend its geographic scope to, and to allow enforcement of EU obligations and restrictions on, Scottish fishing boats outside of the Scottish zone.

131. This amendment will allow for new EU regulations to be fully and properly enforced at the point that they come into effect, not only in respect of all vessels within the Scottish Zone as at present, but also in respect of Scottish fishing vessels wherever they are and whose activities are still subject to EU rules. The proposed changes will simply alter the legislative basis on which a contravention of EU law would be enforced. In other words EU regulations that would otherwise be enforced through a statutory instrument will be directly enforceable under the 1981 Act through the amendment proposed in the Bill.

PART 4 - SHELLFISH

Protection of shellfish waters

Section 47 - Protection and improvement of shellfish waters

132. Section 47 of the Bill amends the Water Environment and Water Services (Scotland) Act 2003 (the “WEWS Act”) to make provision for the continued protection of shellfish waters following the repeal of the Shellfish Waters Directive (Directive 2006/113/EC).

133. Subsection (2) inserts a new section 5A into the WEWS Act. New section 5A enables the Scottish Ministers, by order, to designate areas of coastal or transitional water as “shellfish water protected areas” where they consider it necessary or desirable to do so for the protection or development of economically significant shellfish production. The Scottish Ministers are
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

required to review any such designations by the dates specified in subsection (3) of new section 5A. These dates are intended to allow the Scottish Ministers to coordinate the process of designating and monitoring shellfish water protected areas with the process of characterising river basin districts under section 5 of the WEWS Act. The new section 5A allows for the Scottish Ministers to identify the coastal water or transitional water to be designated by reference to a map laid before the Scottish Parliament. It also provides that the Scottish Ministers must send copies of any designation order and maps made in pursuance of new section 5A to SEPA.

134. Subsection (3) of section 47 amends section 7 (register of protected areas) of the WEWS Act so that any shellfish water protected area that Ministers have designated is a “protected area” for the purposes of that section and therefore subject to the requirement to be included on the register of protected areas for each river basin district.

135. Subsection (4) amends section 9 of the WEWS Act so that the process of setting environmental objectives for bodies of water in each river basin district, and programmes of measures to achieve those objectives, also applies to shellfish water protected areas. It also clarifies that such objectives for shellfish water protected areas be both necessary or desirable to protect or improve the area to support shellfish life and growth as well as contributing to a high quality of shellfish products fit for human consumption.

136. Paragraph (5) amends section 11 of the WEWS Act to add a requirement for SEPA, where the river basin district contains shellfish water protected area, to consult the Food Standards Agency in relation to the statement, summary, and draft river basin management plan that SEPA is required to prepare under that section.

137. Paragraph (6) amends section 28 of the WEWS Act to add definitions of “shellfish” and “shellfish water protected area” for the purposes of interpreting Part 1 of the WEWS Act.

**Orders as to fisheries for shellfish**

**Section 48 - Power to make orders as to fisheries for shellfish**

138. For the purpose of establishing or improving, and of maintaining and regulating, shellfisheries the Scottish Ministers may make several and regulating orders under the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”). The 1967 Act allows for orders to be made in the name of a person or body of persons (a grantee) to restrict the right of fishing in a defined area of sea to that person or body. Orders are made in respect of the species of shellfish as are described in the order and remain in force for a set period.

139. Section 48 of the Bill amends section 1(1) of the 1967 Act to allow for orders to be made for all types of shellfish including those not already listed in subsection (1) of that section and removes the present requirement for regulations to be made each time the Scottish Ministers wish to add a new type of shellfish to the list. The amendment brings the legislation into line in Scotland with that already in place in England and Wales.

140. As a consequence of amending section 1(1), section 15(2) of the Sea Fisheries Act 1968 is repealed.
Section 49 - Power to appoint inspectors before making orders as to fisheries for shellfish

141. Section 49 of the Bill amends paragraph 4(2) of Schedule 1 to the 1967 Act to clarify the Scottish Ministers’ discretionary power in making decisions on the appointment of an inspector and calling public inquiries by removing the requirement to appoint an inspector in cases where an objection raising a material concern is received. The amendment brings the legislation into line with that in England and Wales.

142. This section also replaces “as soon as conveniently may be” in paragraph 4(2) of Schedule 1 with “as soon as reasonably practicable” and in paragraph 6(1) of Schedule 1 replaces “conveniently may be” with “reasonably practicable”. These amendments modify the language in each case and make no change to the substance of the provisions.

PART FIVE - MISCELLANEOUS

Charging

Section 50 - Power to charge in connection with fisheries functions

143. Section 50(1) of the Bill confers a power on Scottish Ministers enabling them to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions specified by them in those regulations.

144. Section 50(2) as read with subsection (1), defines the functions in relation to which the Scottish Ministers may impose a charge. These are functions under legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing. Section 50(8) provides that the term "legislation", means any enactment or EU instrument which contains an enforceable EU obligation or restriction.

145. The “fisheries functions” also includes functions of any person appointed by the Scottish Ministers under that legislation to ensure compliance with that legislation (such as an inspector or British sea fishery officer).

146. Section 50(3) of the Bill lists examples of provisions that may be made in any regulations with respect to the payment of charges. These include: provision about the determination of the amount of charge payable, including circumstances where the charge is reduced, waived or need not be paid; the circumstances in which a charge is payable including making the carrying out of specified fisheries functions conditional on payment of a charge, and provision for the recovery and collection of charges; the timing of payment of charges, including provision for annual and recurring charges; and provision setting out by whom a charge is payable. The regulations may also contain provisions about how disputes about the amount or liability for a charge may be determined.

147. Section 50(6) of the Bill also clarifies that regulations under subsection (1) may make different provision for different purposes, which include for different types of fisheries function, different types of person or persons (by whom charges are paid) and with respect to different areas.
148. Section 50(4) of the Bill clarifies the nature of the charges which may be set out in the regulations. There are two parts to this provision. Firstly such regulations may only require persons to pay a charge if and only so far as that person is someone in relation to whom a specified fisheries function has been carried out. Secondly the charge set out in regulations must not in any particular case exceed the cost incurred in the carrying out of that function, in that case. The charges are therefore limited to being a form of cost recovery for the performance of specified statutory functions.

149. Section 50(5) requires Scottish Ministers to consult those people they consider appropriate before making (or amending) regulations under subsection (1).

150. Section 50(7) clarifies that existing powers to charge remain available to the Scottish Ministers and will not be affected by the introduction of the new provisions by the Bill.

**Fixed Penalty Notices**

*Section 51 - Fixed penalty notices*

151. A fixed penalty notice is a form of sanction that may be offered in certain circumstances as an alternative to seeking a criminal conviction in court. Where a fixed penalty is accepted and paid within a deadline the matter is concluded. The issuing or payment of a fixed penalty is not recorded as a criminal conviction nor can it be treated as such.

152. An alleged offender has the choice of not accepting the fixed penalty by simply not paying the penalty by the deadline set. In these circumstances the matter is thereafter reported to the procurator fiscal and is dealt with in the criminal courts. Marine Scotland currently offers fixed penalty notices for sea fisheries related offences under the provisions of section 25 of the 2007 Act.

153. Section 51(2) of the Bill amends section 25(2) of the 2007 Act to change the reference to British sea-fishery officer to fixed penalty officer. Fixed penalty officers are persons appointed by the Scottish Ministers and are defined in section 25(3) of the 2007 Act through an amendment introduced through section 51(2)(d) of the Bill.

154. Section 51(2) of the Bill makes a series of changes to the section 25(2) of the 2007 Act to expand the current definition of what offences are eligible for fixed penalty notices. The offences covered by fixed penalty regime is expanded to include those offences in marine and nature conservation legislation in respect of which enforcement officers specified in section 25(2A) of the 2007 Act have compliance monitoring and enforcement functions. Section 25(2A) of the 2007 Act is introduced through section 51(2)(c) of the Bill.

155. Section 51(2)(c) inserts section 25(2B) is inserted in the 2007 Act to allow the Scottish Ministers to amend the definition of a relevant offence or the specification of different enforcement officers by order.

156. Section 51(3) of the Bill amends section 27 of the 2007 Act to replace the current cap on the maximum fixed penalty notice with one of £10,000.
157. Section 51(4) of the Bill amends section 31 of the 2007 Act to change the reference to British sea-fishery officer to fixed penalty officer. Again this reflects the fact that it will be fixed penalty officers who will issue fixed penalty notices in future rather than British sea-fishery officers as at present.

158. Section 51(4) of the Bill replaces the heading at Part 4 of the 2007 Act with “Fixed penalty notices” to reflect the fact that the fixed penalty provisions in Part 4 will cover areas other than sea fisheries.

PART SIX – GENERAL

Section 52 - Subordinate legislation

159. Section 52 of the Bill sets out the arrangements for subordinate legislation under the Bill.

Section 53 - Interpretation

160. Section 53 of the Bill defines terms that are used frequently in the Bill.

Section 54 - Ancillary provision

161. Section 54 of the Bill provides ancillary order making powers for Scottish Ministers to make consequential, supplemental, incidental, transitional, transitory or saving provisions for the purpose of giving full effect to the Act.

Section 55 - Crown application

162. Section 55 of the Bill deals with the application of the Bill to the Crown.

Section 56 - Commencement

163. Section 56 of the Bill deals with commencement. The majority of the Bill’s provisions would come into force in accordance with orders made by the Scottish Ministers under subsection (2), with some (non-substantive) provisions coming into effect the day after the Bill receives Royal Assent.

Section 57 - Short title

164. Section 57 of the Bill deals with the short title.

Schedule 1 – Commercially damaging species: control schemes

165. Schedule 1(paragraphs 1-13) is introduced by section 14(6) of the Bill and makes further provision in respect of control schemes.

Making a control scheme: procedure

166. Paragraphs 1 to 4 of schedule 1 concern the procedure to be followed by the Scottish Ministers when making a control scheme. It includes procedures to be used when an objection is made and when modifications to a control scheme are required.
Variation or revocation of a control scheme: procedure

167. Paragraphs 5 to 9 of schedule 1 specify the process for Scottish varying or revoking a control scheme, with or without the application of a person who carries on a business of fish farming or shellfish farming, and on whom the control scheme has imposed any requirement. Paragraph 6 makes provision for the documents that the Scottish Ministers must serve on every person on whom the control scheme has imposed any requirement. Paragraphs 7 and 8 makes provision in relation to objections made/ or not made further to paragraph 6. Paragraph 9 provides the steps that must be taken before a variation of a control scheme can be made. This includes serving every person who has been served a copy of the draft scheme under paragraph 6 a notice of the proposal to make the modification and each person consenting to the proposal.

Objections

168. Paragraph 10 of schedule 1 enables the Scottish Ministers to require that an objection must state in writing the grounds for it and enables them to disregard the objection for the purposes of the schedule if they are satisfied that the objections is frivolous.

Making, varying or revoking a control scheme: notices

169. Paragraph 11 of schedule 1 makes provision for Scottish Ministers to serve on every person, on whom a notice was required to be served, a notice stating that the scheme has been made, or that a variation or revocation for the schemes has been made.

170. Paragraph 12 of schedule 1 provides that, apart from in appeals under paragraph 13, the validity of control schemes may not be questioned in legal proceedings. This is not intended to exclude judicial review.

Appeals

171. Paragraph 13 of schedule 1 provides for a right of appeal to the sheriff by a person carrying out a business of fish farming to which a control scheme relates, including a provision that an appeal must be lodged not later than 28 days after the date on which the person making the appeal received a notice.

Schedule 2 – Forfeiture under section 41 or 42

Application of the Schedule

172. Paragraph 1 of schedule 2 defines the circumstances under which the provisions of schedule 2 are to apply. These are that property is being retained by the Scottish Ministers having been previously lawfully seized by a British sea-fishery officer, and that the property is liable for forfeiture under section 41 or section 42 of the Bill. In addition it also requires that either no proceedings are being taken against anyone in relation to the property, that any fixed penalty notice issued in respect of any relevant offence has been paid, or that relevant court proceedings have concluded without the property in question being forfeited.
Notice of intended forfeiture

173. Paragraph 2 of schedule 2 describes those to whom the Scottish Ministers must give a notice of intended forfeiture and, prescribes what such a notice must contain. Where property has been seized following an inspection conducted under section 34 of the Bill, and the Scottish Ministers have taken reasonable steps to identify the owner, the requirement to give notice is modified to one of taking steps to bring the contents of the notice to the attention of persons who are likely to be interested in it.

174. Paragraph 2(4) of schedule 2 limits the ability to forfeit property under schedule 2 to circumstances where the requirement to give notice of intended forfeiture have been complied with or it was not reasonably practical for this to be complied with.

Notice of claim

175. Paragraph 3 of schedule 2 requires anyone who wishes to dispute that their property should be forfeited to serve a notice on the Scottish Ministers. It places a time constraint of such a notice being within one month from when either the Scottish Ministers gave notice of their intention to forfeit property or, where no notice is given, within one month of the seizure of the property.

Automatic forfeiture in a case where no claim is made

176. Paragraph 4 of schedule 2 provides that where no notice of claim is given to the Scottish Ministers within one month of notice of forfeiture having been given, or where the name or address of the claimant is not specified in the notice of claim, then the property is automatically forfeited.

Decision whether to apply for order forfeiting property

177. Paragraph 5 of schedule 2 makes provision that where a notice of claim is given to the Scottish Ministers, they must decide whether they wish to make a forfeiture application to a sheriff to pursue the forfeiture of the property.

Return of property if no application made to the sheriff

178. Under paragraph 6 of schedule 2, where a notice of claim has been given to the Scottish Ministers and they decide not to make an application for forfeiture to a sheriff, they must return the property to whomever they believe to be the owner.

Forfeiture applications

179. Paragraph 7 of schedule 2 provides that where the Scottish Ministers have made an application for forfeiture to a sheriff and the sheriff is satisfied that the property is liable for forfeiture under sections 41 or 42, the sheriff must order the forfeiture of the property, or its return to the owner where the sheriff is not so satisfied.
 Appeal against sheriff’s decision on forfeiture application

180. Paragraph 8 of schedule 2 makes provision for either the Scottish Ministers or the property owner to appeal the sheriff’s decision under paragraph 7 of schedule 2 by applying to the sheriff principal. The Scottish Ministers are required to keep any property during the time required for any appeal.

Effect of forfeiture

181. Paragraph 9 of schedule 2 specifies that the effective timing of any decision under the schedule to forfeit property is to be construed as the time the property was seized.

Disposal of property which is not returned

182. Paragraph 10 of schedule 2 provides that the Scottish Ministers may dispose of property that ought to be returned to its owner after a 3 month period has elapsed and they have not been successful in their attempt to return the property. The Scottish Ministers may dispose of the property in any manner they see fit providing it is not practicable to dispose of it by simply returning it immediately to the owner. This would apply if, for example, the owner of the property was untraceable or did not respond to enquiries.

Provisions as to proof

183. Paragraph 11 of schedule 2 provides that the matters regarding the seizure of property set out in the application for forfeiture under paragraph 7 of schedule 2 are to taken as fact unless they are disputed and that where a sheriff grants an order of forfeiture, the production of that order or a certified copy are to be considered sufficient evidence of the forfeiture decision.

Power to destroy fish before forfeiture

184. Paragraph 12 of schedule 2 allows the Scottish Ministers to destroy fish before they are formally forfeited under section 42 of the Bill. This is essentially a practical consideration where officers encounter fish which are below minimum reference sizes for their retention, landing, storage, or offering for sale. Such under-sized fish cannot be sold and, as they will almost certainly be dead, cannot simply be returned to the sea. Paragraph 12 (2) of schedule 2 makes provision for a sheriff to order the Scottish Ministers to pay compensation where the sheriff decides in response to an application for forfeiture under paragraph 7 of schedule 2 that the fish should not be forfeited. This may be, for example, where the sheriff was not satisfied that the fish in question were below the legal minimum reference size set. The value of any compensation is to be determined by the likely value such fish would have fetched had they been sold at the nearest fish auction market to the place where they were seized.

Power to return shellfish to the sea before forfeiture

185. Paragraph 15 of schedule 2 provides that shellfish which may be liable for forfeiture under section 42 may be returned to the sea to continue to grow and mature even when such shellfish have not yet been forfeited under schedule 2 or ordered forfeit by a sheriff in response to an application made under paragraph 7 of schedule 2. This allows for the likely contingency that shellfish found below any minimum reference sizes may still be alive and could continue to grow and continue to contribute to the biomass of the species if they were returned immediately.
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

to the sea. Paragraph 12(2)-(5) of schedule 2, which makes provision for a sheriff to order the Scottish Ministers to pay compensation, also applies to shellfish.

FINANCIAL MEMORANDUM

INTRODUCTION

186. This document relates to the Aquaculture and Fisheries (Scotland) Bill introduced in the Scottish Parliament on 3 October 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

187. The purpose of this Financial Memorandum is to set out the anticipated costs associated with the measures detailed within the Bill.

BACKGROUND

188. The primary purpose of the Bill is to ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment.

189. The Scottish Government is committed to ensuring that there are modern and effective management structures in place, supported by an effective and proportionate regulatory framework. It is persuaded that appropriate regulation and management will help to ensure that aquaculture products remain of the highest quality and are produced within environmental limits. The provisions in the Bill will work to secure sustainability of aquaculture growth, principally as regards the farming of Atlantic salmon, and that salmon and freshwater fisheries can be effectively managed, in an open and transparent manner.

190. This Financial Memorandum sets out the costs associated with the Bill under the following key headings:

- Aquaculture
- Salmon fisheries, etc
- Sea fisheries
- Shellfish
- Miscellaneous.
PART 1 - AQUACULTURE

CHAPTER 1 – FISH FARM MANAGEMENT

Fish farm management agreements and statements

191. The measures provided in this section are concerned with proposals on the operation of a fish farm management agreements (or a fish farm management statement) within an appropriate management area; and related enforcement provisions.

192. The marine finfish farming industry in Scotland currently operates 277 active sites, 261 of which farm Atlantic salmon, within 91 farm management areas as depicted by the industry in The Code of Good Practice for Scottish Finfish Aquaculture (CoGP). The vast majority of operators are signed-up to either a farm management agreement (FMA), or statement (FMS), that require operators to conform to a certain standard that optimises fish health management, reduces impacts on the environment and improves economic performance. The Scottish Government recognises the Atlantic salmon farming industry as an important sector of the Scottish economy with excellent prospects and ambitious plans for growth. Future sustainable growth can only be realised, however, if the industry adheres to the latest and highest environmental and husbandry standards. Recent experience, both domestically and overseas, has demonstrated how failures in the regulatory framework or the absence of adequate controls to prevent and anticipate environmental problems, or the development of transmittable fish diseases, can have a huge impact.

193. At present, FMAs are in place between most operators, on a voluntary basis. The policy aim is to require that agreements are developed according to the needs and circumstances of the particular farms (although there will be generic criteria which each management area must cover as a minimum). This should ensure that operators in each area work in unison with respect to treatments, fallowing and the harvesting of fish and stocking levels on the farm, building on the best practice already in place.

194. The Bill makes provision for all operators of authorised aquaculture production businesses to be party to, and ensure that marine fish farms are managed and operated in accordance with, an FMA, or to maintain an FMS. The Bill also requires the definition of area boundaries.

195. The FMA or FMS is required to include arrangements for fish health management, management of parasites, the movement of live fish, the harvesting of fish and fallowing, with these agreements or statements reflecting ‘so far as possible’ the CoGP. The Bill makes provision for FMA and FMS review every two years with Scottish Ministers able to modify the definition of the CoGP by order.

196. The Bill also provides powers for Scottish Ministers to authorise any person to act as an inspector to enforce the legislation relating to FMAs and FMSs, and giving that person the ability to issue an enforcement notice and/or take court proceedings where a particular farm is not adhering to the terms of the agreement.
197. The estimated cost and savings are based on the Scottish Government’s assessment of the anticipated financial impacts and reflect comments from industry (notably the Scottish Salmon Producers’ Organisation - SSPO) on the original consultation proposals, including the partial Business and Regulatory Impact Assessment (BRIA).

Costs on the Scottish Government

198. We anticipate that the requirements falling on the Scottish Government from these arrangements would be met from within existing resources. It is estimated that about 100 marine fish farms will be inspected per year as part of the monitoring programme to ensure compliance. It is anticipated that these inspections will become part of the routine health inspections that are already required. Therefore, there will be limited additional costs. Any additional costs will be in terms of time on site. We estimate that the total costs for the additional work for all 100 farms would be around £1070 per annum (based on an annual staff salary of £36,639 and a requirement of about 50-hours additional staff time per year). The Fish Health Inspectors will require to satisfy themselves that fish farm operators have in place appropriate fish farm management agreement/statement arrangements as part of their existing role of ensuring, amongst other things, that there are appropriate measures in place for the prevention, control and reduction of parasites.

199. Similarly, were Scottish Government to identify evidence about the ineffectiveness of management arrangements put in place by fish farm operators, and to require different or additional measures to be put in place, we would expect the necessary evidence-gathering and consideration to be necessary in around 10% of cases (based on current level of enhanced inspections). We estimate the additional costs to comprise 5 hours per site with total costs in the region of £1070, which would be met from existing resources.

200. We anticipate that a fixed penalty notice (FPN) will be offered as an alternative to prosecution for any offences under this section. We estimate the cost of producing a FPN, based on experience elsewhere in Marine Scotland, to be around £150. However, should the FPN be declined, then the case will proceed to summary prosecution. It is estimated that the cost to the Scottish Government of court proceedings will amount to around £2,400 per case. This comprises:

(i) £1,200 per case in court costs associated with prosecuting a criminal case;
(ii) £600 per case in prosecution costs associated with proceeding with a criminal case;
(iii) £600 per day per case for Marine Scotland or other Crown witnesses attending court.

Although we have no previous history to evidence the potential number of cases which might be considered, we anticipate that at most 10-20% (1-2 cases) of those farms which would require enhanced inspections would then progress further, be it to the issue of a FPN and/or prosecution.

Costs on local authorities

201. The provisions are not expected to result in any new costs to local authorities.

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1 http://www.scotland.gov.uk/Publications/2012/02/8291
2 Based on average staff costs of a B2 member of staff/240 days of the year
Costs on other bodies, individuals and businesses

202. The key impacts of these measures would fall on marine finfish farming businesses. Advice from the SSPO suggests that most operators, covering the vast majority of marine finfish production, are signed up to the CoGP/farm management arrangements. There is a small number of low volume producers that have not adopted the CoGP or are otherwise not complying with the requirements related to fish farm management agreements / areas. By implication, there should be no additional costs to the majority of fish farm operators in the introduction of statutory requirements relating to fish farm management agreements.

203. For any operators who do not already comply with these requirements, any substantive costs would seem most likely to arise from the implications for operations and production of either the need to implement and adhere to fish farm management agreement / statement arrangements. This could impact on production activity. The worst case scenario would be that an operator would be unable to fulfil requirements and/or the operation of a farm could become unviable.

204. In its consultation response, the SSPO suggested that the average value to the Scottish economy of a site is £25m per year. The basis for this assessment is not clear, and we have been unable to substantiate the claim but the implication is of a potential loss to the Scottish economy of up to £25m per site affected by the proposed measures. That assessment appears to be based on the assumption that the company would at some point conclude that a site is no longer viable, and therefore would comprise a number of elements including its closure, loss of production and associated implications for equipment and staff. The SSPO’s response suggested that this cost would apply to any aquaculture site in Scotland, and not only to the estimated 2% of production not currently signed-up to the CoGP.

205. We suggest any costs which may arise from the statutory requirement for FMAs / FMSs and the minimum standard therein need to be seen against the potential impacts on industry of fish health and welfare benefits from good and consistent aquaculture practices.

206. Appropriate farm management agreements / statements may also have financial benefits for industry – including reducing costs related, for example, to sea lice treatments (understood to cost the industry around £30m per annum).

Escapes, and obtaining samples, from fish farms

207. The provisions of the Bill in this section will provide powers for Scottish Ministers to amend the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”) to enable inspectors to take or require samples of fish from any fish farm in Scotland for the purpose of developing and implementing methods for tracing the origin of any known or suspected escape of fish and examining potential impacts associated with escapees or for any other purpose.

208. Statutory reporting of fish farm escapes requires fish farmers to notify Ministers of an escape of fish or suspected escape. Reported escapes are investigated by Marine Scotland Fish
Health Inspectorate (FHI). Alongside ‘reported’ escapes, there remain concerns about ongoing “drip” escapes, associated with the use of inappropriately sized mesh on nets or screens, or undetected damage to equipment, for example, small tears in nets. These losses can remain undetected until ‘farmed fish’ are caught in catchments, or at harvest when a farmer counts stock in their pens and discovers an obvious shortfall.

209. The unexplained presence of farmed fish in a catchment may also be due to a failure to report an escape incident. There have been occasions when farmers have disputed the origin of escaped fish.

210. The 2007 Act allows for inspectors to take samples from farms for the purposes of ascertaining whether fish have escaped from a particular farm. Experience has shown that these powers do not permit inspectors to take samples of fish from any farm other than one that is known to have reported an escape incident, nor are they wide enough to provide for future investigations and tracing, for example:

- to take fish from a farm suspected to be the origin of an escape if that site has not reported an escape;
- to take fish from a farm which either supplied the ‘escaped’ stock under investigation or a site to which the remainder of the stock was moved for growing-on; or
- to take fish from a site operating in the vicinity of a suspected escape and which may be the origin of the escape.

211. This measure will allow Marine Scotland to determine which farms in a catchment are losing fish and to notify the company accordingly to mitigate against further losses. The power will be wide enough to allow the taking of whole fish as well as fish material and will also allow inspectors to be able to take or insist on samples from farms for other purposes, for example, to develop and test methods to allow tracing of fish back to a farm. Powers will be used on a targeted basis when other methods of tracing have proved unsuccessful.

Costs on the Scottish Government

212. The costs associated with collecting samples should be limited as this will be on a targeted basis and is expected to come mainly from existing FHI resource during escapes investigation. This power increases the scope of sites from which inspectors may take samples to test. It is not the intention to undertake universal sampling or to create a national database of genetic samples, as this would be impractical, unaffordable and unnecessary.

213. The costs of carrying out an investigation to trace the origin of escapes by use of genetic methods similar to those used in Norway are estimated to be £20,000. These powers would be used on a targeted basis when other methods of tracing have proved unsuccessful, and are not expected to be used more than two or three times a year.

214. We anticipate that a fixed penalty notice (FPN) will be offered as an alternative to prosecution for any offences under this section, at a cost of £150. However, should the FPN be declined, then the case will proceed to summary prosecution. It is estimated that the cost to the Scottish Government of court proceedings will amount to around £2,400 per case. The number
of reported escapes has been decreasing and, based on these figures, we do not anticipate more than one or two cases a year under this provision.

Costs on local authorities
215. The provisions are not expected to result in any new costs to local authorities.

Costs on other bodies, individuals and businesses
216. There should be no significant costs to industry. There will be a degree of interference with both the operation of the business and potential small financial losses as a result of the loss of stock. However, we consider interference is proportionate and in the public interest of protecting and maintaining wild salmon and trout stocks, and also alerting businesses to escapes of which they may have been unaware. It will also bring industry savings through reduced stock loss and improved productivity through increased operational efficiency.

CHAPTER 2 - FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment
217. The policy objective, in keeping with the thinking of the Ministerial Group on Aquaculture’s Improved Containment Working Group, is to introduce a technical standard for finfish (not shellfish) farm equipment which will apply to all Scottish marine and freshwater finfish farms (including hatcheries), covering nets, pens and mooring systems. It will be flexible to be site specific and have an appropriate lead in time to replace existing equipment. The technical standard will address the risks associated with businesses using inappropriate equipment. This includes not replacing old equipment which may become unstable, moving equipment to another site which is no longer suited to different site conditions and using inappropriate screen or net mesh sizes, which can result in fish escapes.

218. The standard will be proportionate for industry operating in Scotland given it is being informed and developed by an expert group comprising finfish farmers and trade associations, fish farm equipment suppliers and manufacturers (nets, pens and moorings), insurers and regulators. There will also be transitional arrangements put in place to allow for an agreed reasonable time frame for replacing existing equipment.

219. There has been wide engagement with the salmon and trout finfish farming industry, net, pen and mooring suppliers/manufacturers, insurers, research institutes and engineers since September 2009 through the Improved Containment Working Group including a specific Scottish Technical Standard (STS) steering group and a Scottish Aquaculture Research Forum (SARF) project to develop a Scottish Technical Standard. This included workshops in Inverness, Shetland and Oban in June 2011 to which all finfish production businesses and trade associations operating in Scotland as well as fish farm equipment manufacturers and suppliers were invited. An initial draft Scottish Technical Standard, including recommendations for further information required to develop the standard, was published by SARF in February 2012.

4 http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/18692/escapeStatistics
Costs on the Scottish Government

220. The Scottish Government is working in co-ordination with the industry to develop the technical requirements. Part of those discussions will involve determining the appropriate introduction date, the accompanying lead-in period and associated costs based on demand. At this stage it is anticipated that the requirements falling on Scottish Government from these provisions will continue to be met from within existing resources. It would require revision of FHI’s role on ensuring compliance with containment aspects of the CoGP as part of the containment inspection/enhanced inspection regimes.

221. There may be additional costs associated with FHI co-opting engineering expertise to assist with inspections. However, there are opportunities to reduce costs associated with ‘in situ’ inspection through industry submission of paperwork/documents to FHI and by looking to reduce duplication and make use of information already provided through existing industry inspection and audit regimes. The Scottish Government will work with industry on developing an appropriate inspection/audit regime.

222. The initial SARF project to develop an STS was funded by Scottish Government at a cost of £85,000. The project also highlighted a number of outstanding knowledge gaps/areas of additional work required to complete the standard. The STS steering group is considering the recommendations and will look to address these through a combination of industry in-house expertise and potentially commissioning additional research including through SARF.

223. We anticipate that a fixed penalty notice (FPN) will be offered as an alternative to prosecution for any offences under this section, at a cost of £150. However, should the FPN be declined, then the case will proceed to summary prosecution. It is estimated that the cost to the Scottish Government of court proceedings will amount to around £2,400 per case. Based on the reported incidences of escapes⁵, we do not anticipate more than one or two cases a year under this provision.

Costs on local authorities

224. The provisions are not expected to result in any new costs to local authorities.

Costs on other bodies, individuals and businesses

225. The main impacts of these measures will fall on the aquaculture industry. However, industry is directly involved in developing the standards and is aware of the potential financial implications. The content and the cost of meeting the standard is expected to be proportionate for the industry operating in Scotland, given it is being developed by an expert group comprising finfish farmers and trade associations, fish farm equipment suppliers and manufacturers (nets, pens and moorings), insurers and regulators. Members of the group have already given considerable time in attending meetings, workshops and developing the standard and have expressed willingness to continue to do so. It is also acknowledged that industry has invested significant money in new equipment in recent years. Although there will be costs associated with new equipment, there will be agreed transitional arrangements put in place to allow for a reasonable period to replace existing equipment and spread costs over time.

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⁵ http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/18692/escapeStatistics
226. Whilst the new technical standard has not yet been completed, it is expected that aquaculture businesses overall will incur some limited cost when implementing the STS. For many larger businesses, the additional costs will likely be neutral given the standards they already operate to, or are planning to implement as they replace equipment. For small and medium sized businesses, we will work through the Improved Containment Working Group to ensure that they do not incur disproportionate costs when moving to the new standard. We will also look to engage with these businesses to assist them with implementation, for example by allowing changes to be phased in as necessary and/or taking opportunities to prioritise European funding to assist in equipment replacement. In context, all businesses will benefit from the new standard as it will bring savings through reduced stock loss and insurance costs, increased operational efficiency and increased confidence for investors and planners.

227. It is also important to note that all finfish farming operators are already required to operate with ‘fit for purpose’ equipment to prevent escapes including upgrading and replacing equipment due to age/wear and tear as appropriate. This measure will define ‘fit for purpose’ and provide greater certainty to operators and suppliers as they upgrade or replace equipment.

228. The risk of escapes in times of economic downturns when businesses are less able to finance replacement equipment or during significant weather events will also be reduced. For example, the January storms of 2005 led to the escape of nearly 900,000 fish and loss of several million pounds worth of equipment. More recently, severe weather in late December 2011 led to the loss of over 370,000 fish, millions of pounds worth of equipment and a significant recovery exercise. Anecdotal experience suggests that a technical standard for finfish farm equipment and infrastructure would have significantly reduced the risk of these incidents.

Wellboats

229. Wellboats are a key component in aquaculture, mainly the marine farming of Atlantic salmon. They are used for the transportation of live and dead (dead haul) farmed finfish, and are often used to conduct bath treatments for sea lice control.

230. The estimated costs and savings are based on Scottish Government’s assessment of the anticipated financial impacts and reflect comments from industry (notably the SSPO) on Bill consultation documents, including the partial BRIA.

231. Wellboats cross fish farm management areas and international boundaries as part of their operations and they, therefore, comprise a significant potential vector for parasite and disease transfer over large areas. This has been recognised, for example, in the 2000 report of the Joint Government/Industry Working Group following the Infectious Salmon Anaemia (ISA) outbreak in Scotland in 1998/99. The Working Group made a range of recommendations, including for managing and mitigating risks related to wellboat use and operations. These were subsequently reflected in the industry Code of Good Practice (CoGP) for Scottish Finfish Aquaculture which is a voluntary code drawn up by, and followed by the majority of, the finfish farming industry operating in Scotland - 98% of production is signed up to the CoGP.

232. It is recognised that existing legislation and the CoGP already provide some safeguards and controls, but there is a range of ‘standard’ wellboat operations that are not covered by control arrangements and provisions. This includes, for example, the transportation of live fish between sites, which may be undertaken with ‘open valves’ and the discharge of transported fish and water into farm sites.

233. Such operations evidently carry some associated risk for both farmed and wild fish – including through the potential release and spread of sea lice and/or pathogens in discharged water – and for the wider marine environment. We have had representations from some aquaculture industry interests about alleged impacts (notably sea lice infestations of their sites) from wellboat operations conducted by other operators.

234. The provisions set out in the Bill aim to minimise risks – to farmed and wild fish - from parasites (sea lice) and pathogens, thereby helping to improve fish health and to protect the interests of both the farmed and wild fish sectors. The introduction of additional control requirements on wellboats would enable the Scottish Government to raise standards of bio-security, and improve monitoring of fish movements by wellboat and wellboat/discharging activities within and across national boundaries.

Costs on the Scottish Government

235. There are a limited number of wellboats (approximately 20) that operate in Scottish waters and once an initial inspection has been made of a vessel it is not expected that significant numbers of further inspections would be required. Marine enforcement officers stationed throughout Scotland could be used to inspect the vessels. Estimating that there is a maximum of 20 wellboats routinely operating in Scotland and an inspection taking ½ a day then total inspection time in the first year would be 10-days. We estimate the total costs to be around £1,530 per annum (based on an annual staff salary of £36,639\(^8\) at a daily costs of £100). Government Inspectors would need to satisfy themselves that wellboats have in place the appropriate filtration and monitoring equipment for the prevention, control and reduction of parasites (sea lice) and diseases and to ensure compliance with discharge requirements.

236. We anticipate that a Fixed Penalty Notice (FPN) will be offered as an alternative to prosecution for any offences under this section, at a cost of £150. However, should the FPN be declined, then the case will proceed to summary prosecution. It is estimated that the cost to the Scottish Government of court proceedings will amount to around £2,400 per case. There are around 150 marine licences issued by Marine Scotland per year permitting discharges of medicines/chemicals from wellboats adjacent to the cages on site and we estimate that 10% of the licensed sites would be inspected per year. Given those figures, we do not anticipate more than one or two cases a year under this provision.

Costs on local authorities

237. The provisions are not expected to result in any new costs to local authorities.

\(^8\) Based on average staff costs of a B2 member of staff/240 days of the year
Costs on other bodies, individuals and businesses

238. There are currently around 20 wellboats routinely operating in Scottish waters. Given their international ownership and operating environment, and with stricter technical standards anticipated both here and in Norway, wellboat operators/owners are already looking to purchase wellboats with built-in filtration systems and tracking equipment as standard, as part of their boat replacement programmes. There are also options around retro-fitting tracking equipment and filters, currently estimated to be in the region of £400k per boat, should this prove necessary to bring the fleet up to a minimum standard in a reasonable timeframe. The scale of costs associated with these provisions should be considered in the context of overall wellboat purchase costs thought to be around £15m, and the environmental and economic risk to the aquaculture industry associated with wellboats operating without adequate filtration systems.

239. In order that the position of wellboats can be monitored by Marine Scotland, the costs to the operator of equipment would be about £2,500 per boat to fit and the airtime contract for a year would be about £400 per boat. The total cost for a fleet of 20 wellboats would be £50,000 plus annual running costs of £8,000. Similarly, to fit the equipment to enable Marine Scotland to monitor discharges, the costs for ten wellboats could total about £0.75 million based on costs of about £75,000 per boat. These costs would be incurred by the operators.

240. In its consultation response, the SSPO suggested that the cost of retro-fitting filtration equipment to wellboats is not considered to be relevant as this is neither practicable nor necessary as, over time, when new wellboats come into use, they will be fitted with the appropriate filters. This may be true if there is to be a long lead in time. However, it may not account for any issues associated with the use of wellboats for dead-haul.

241. Any costs which may arise need to be seen against the potential impacts on industry of disease outbreak as a consequence of inadequate management practices relating to wellboats and the lack of filtration. By way of illustration, the 1998/99 ISA outbreak is estimated to have cost the industry £20m in direct costs at the time.

242. In its financial analysis, the SSPO has costed that each operating site has a value on average of £25m per annum. In discussions with the SSPO, we have been unable to substantiate that figure, although we are of the view that it significantly overestimates the true value. We consider a clear measure of the cost to business from complete closure of a site is the ‘forgone profits’ which we consider would be around £550k-£1.1m per site per year (based on an expected margin of operating profit of 10-20% and an average gross revenue per site in the order of £4.4m-£5.4m).

243. By way of comparison, to use the SSPO’s estimates of an average value of £25m per site per annum, the loss of production from 101 sites between 1999 and 2000 would have cost the

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9 Movement restrictions were placed on 329 sites between May 1998 and January 2001 as a result of the ISA outbreak (Note – not all of these sites would have been producing).


10 This figure is based on the reported number of producing sites in the annual production survey where the number of producing sites fell from 264 to 163 between the years 1999 and 2000.
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

economy about £2.5 billion in the year 2000. Applying the Scottish Government’s figures, the total is around £110m.

244. Improved management practices in relation to wellboats and the use of filters may have other financial benefits for the industry – including reduced costs related, for example, to sea lice treatments (understood to cost the industry around £30m per annum).

CHAPTER 3 - COMMERCIALLY DAMAGING SPECIES

245. The measures provided in this Chapter are concerned with species which may prejudice the commercial production of traditionally farmed species. The estimated costs and savings are based on information from the establishment and subsequent control work of a commercially damaging species (*Mytilus trossulus*

246. *M. trossulus* has poor meat yields and thin shells, which means it is not commercially viable. Managing its spread is, therefore, important to the long term sustainability of commercial mussel production in Scotland.

247. Before the introduction/spread of *M. trossulus* into Loch Etive, the loch produced at its peak (2001) approximately 786 tonnes of mussels. Estimated annual profits are estimated at £300 per tonne (revenues £1000 per tonne (2010 Shellfish Production Survey) and costs £700 per tonne

248. It is not expected that there will be many instances of commercially damaging species. It is very difficult to be precise about what costs might be without knowing the extent of the problem, the numbers of businesses affected or the commercially damaging species in question. At present we are only aware of *M. trossulus* but it is possible that other commercially damaging native species may emerge in future. We estimate that there may be one instance every 10 years.

Costs on the Scottish Government

249. The provisions in the Bill aim to prevent the spread, and ensure the effective control of, commercially damaging species, such as *M. trossulus*. The development of an order for *M. trossulus* will result in marginal administrative costs to the Scottish Government as a consequence of required site visits, meetings and drawing up and issuing relevant documents. A laboratory testing method (validated assay) has already been developed for *M. trossulus*, so costs may be lower than when compared to a new commercially damaging species. It is estimated that a site visit (two days) and possible lab work (three days) will initially be required to identify the species as well as laboratory staff time associated with species identification (three days), data analysis and reporting (two days) and laboratory consumable costs. We estimate that the total costs would be around £2,830 per annum based on an annual staff salary of £36,639

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13 Based on average staff costs of a B2 member of staff/240 days of the year
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

requirement of 10 days additional work, travel and subsistence costs (£300), and laboratory consumable costs of DNA detection (£1000).

250. Where an operator seeks to move stock, there may be a requirement for molecular testing to ensure the commercially damaging species is not present. In addition, a risk assessment may need to be undertaken of the stock movement and a potential surveillance programme of the area to which the stock will be moved, to inform that risk assessment. It is anticipated that operators will finance or part-finance the surveillance programme for their site. There may also be further visits required to test after restocking to check the problem has not recurred.

251. Given that few instances of commercially damaging species are expected to occur, and that associated similar work on *M. trossulus* is already taking place, we expect the administration and site visits outlined above to be covered from within existing resources.

252. If the specified commercially damaging native species is a new species then a new testing method (assay validation) may require to be developed. This will require increased staff time in terms of site visits and lab work, comprising an extra cost in terms of staff time of £5,250\(^{14}\) (extra 35 days), increased travel and subsistence £450 and laboratory consumable costs of assay validation of £2000.

253. A new commercially damaging species will, therefore, have increased costs to Government of £7,700 compared to the *M. trossulus* example provided above.

254. The new control provisions will enable control schemes to be implemented where a voluntary control agreement has been refused or has not been complied with, where it is not possible to ascertain who the occupier or owner is, and where the situation is an emergency. If a control agreement or scheme is progressed, there will be additional administrative costs on the Scottish Government (estimated two days staff time). There may be additional costs if the Scottish Government contributes to the cost of control work (total control costs estimated in paragraph 261 as £284,700 – so may be part funding up to this amount).

255. We anticipate that a fixed penalty notice (FPN) will be offered as an alternative to prosecution for any offences under this section, at a cost of £150. However, should the FPN be declined, then the case will proceed to summary prosecution. It is estimated that the cost to Scottish Government of court proceedings will amount to around £2,400 per case. On the basis that the example used of *M. trossulus* is only prominent in around 5 locations in Scotland, the instances where non-compliance may occur are minimal.

Costs on local authorities

256. The provisions are not expected to result in any new costs to local authorities.

Costs on other bodies, individuals and businesses

257. Any movement restrictions may result in costs to aquaculture businesses, for example preventing the business from undertaking business operations such as movement for growing on

\(^{14}\) Based on average staff costs of a B2 member of staff/240 days of the year
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

stock. Movement restrictions have a range of costs, from no impact on business operations to preventing the product being harvested. For example, in the Loch Etive case, prevention of harvest cost £235,800 at 2001 prices. There may be additional costs if there is a requirement to undertake molecular testing or surveillance programme.

258. The cost of surveillance programmes will depend on the number of sites, samples and difficulty of collection. Using the example of a Scottish surveillance programme for an oyster virus, which costs approx £45,000 and requires molecular testing of samples from 13 locations, a surveillance programme at one site can be estimated to cost £3462. It is expected that this will be borne by the operator although costs may in some cases be shared with government.

259. Notification provisions will not result in any additional costs to aquaculture businesses.

260. There will be additional costs for aquaculture businesses if control work is undertaken either under a control agreement or a control scheme. Whenever possible, voluntary control agreements will be sought. Costs will depend on the number of animals or plants involved, the habitat from which they need to be removed, and the degree of establishment. An example of control estimates is provided below.

Working example

261. Work on *M. trossulus*\(^{15}\) in Loch Etive is estimated to have cost £284,700. This was provided by European Fisheries Fund grant aid for the shellfish farming facilities in Loch Etive to be synchronously cleared of stocks. This work was possible because farmers in the Loch agreed to the control programme. If they had not, it would not be possible without the provisions in the Bill, to compel them to.

262. If the commercially damaging species could be removed at harvest or at grading (where those operations are already occurring) then there would be negligible cost.

263. If we assume that there is one instance of a commercially damaging species occurring every 10 years, and we take an average of the control costs, total costs to aquaculture businesses are estimated to be:

- Movement restrictions = ranging from £0 to £235,800
- Surveillance programme = £3,462
- Control costs = £284,700
- Total (every 10 years) = ranging from £284,700 to £525,962 (additional possible costs arising from the potential restriction on movement).

264. This should be considered alongside the predicted benefit. For example, in Loch Etive production fell from 786 tonnes of mussels to nil, with an estimated loss of £235,800 a year.

\(^{15}\) [http://en.wikipedia.org/wiki/Mytilus_trossulus](http://en.wikipedia.org/wiki/Mytilus_trossulus)
PART 2 - SALMON FISHERIES, ETC

Governance

265. The measures in this section are concerned with the promotion of good governance by district salmon fishery boards (DSFBs) to improve openness, transparency and accountability. The Bill provides statutory underpinning of best practice which has already been adopted by many DSFBs, seeking to drive improvement throughout the sector. The good governance obligations will ensure DSFBs, created under statute and with, in effect, public law functions, act in a manner consistent with modern expectations of public bodies.

266. The good governance obligations require DSFBs to publish their annual report and accounts; hold meetings in public and make available minutes of meetings; hold a register of members’ interests; have in place a complaints procedure; and hold an annual public meeting. DSFBs are also required to consult with local interests prior to submitting applications to the Scottish Ministers for statutory management measures.

267. The Bill provides considerable flexibility for DSFBs in how they choose to comply with the obligations, recognising the varied landscape in terms of DSFB size, structure and resource. Given that the obligations are based on existing best practice, the costs of delivery are considered to be negligible.

Costs on the Scottish Government

268. The Scottish Government does not intend to become more involved in monitoring or administering DSFBs, seeking rather to promote improved community participation in their activities and local accountability to members. It is considered that applications for statutory measures which have been developed in consultation with local stakeholders are likely to be more robust and more thoroughly evidenced, potentially reducing the time spent by the Scottish Government in its assessment. Overall, the Scottish Government envisages no additional costs – and potentially marginal savings in terms of staff time - for these provisions.

Costs on local authorities

269. The Scottish Government does not anticipate that the provisions will impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

270. The good governance obligations fall on DSFBs, who are committees of proprietors of salmon fisheries. DSFBs are financed through their power to raise a levy on salmon fisheries under section 44 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, known as the fishery assessment. As noted, many DSFBs already voluntarily undertake activities in line with the good governance principles and will not incur additional expense as a result of the Bill proposals. For those DSFBs who do not, the expense associated with making changes to their working practices is considered negligible. By way of illustration, the Association of District Salmon Fishery Boards is providing support to those DSFBs who do not currently have websites in place and these provide a platform for publication of minutes, reports, accounts, proposals for measures and notices of meetings. In financial terms, the costs associated with
holding an annual public meeting are limited to hire of a local hall or other community space; those of undertaking consultation on statutory measures extend to placing notifications in a local newspaper. DSFBs will have to spend greater time administering their activities, but this is considered reasonable to drive forward improvements in openness, transparency and accountability. Further, the opportunities for greater public involvement in their activities may deliver stronger local community engagement and assistance.

Management

Carcass tagging

271. The Bill introduces an enabling power for Scottish Ministers to make a carcass tagging scheme by regulations. There are a number of options for the operation of a carcass tagging scheme, including how it might be administered and by whom. The scheme could be limited to net-caught salmon and sea trout, or also cover rod and line-caught fish.

272. For example, a voluntary scheme is currently in operation to tag wild salmon caught for the commercial market. It is administered by the net fishermen themselves (through the Salmon Net Fishermans’ Association of Scotland), with assessed costs of 11 pence per tagged salmon, borne by participating fishermen. If this scheme were made statutory there would be minimal additional costs to the sector as the voluntary scheme covers 90% of the net caught salmon offered for sale. The 10% of fish not currently within the scheme amount to 1,976 fish (based on 2011 provisional catch statistics), representing an estimated additional cost of £217 (annual, recurring) to be borne among non-participating net fisherman. There would be no administration costs for the Scottish Government or DSFBs as the scheme would continue to be administered by the captor.

273. The introduction of a scheme modelled on that in England and Wales would have higher costs on fishermen due to record-keeping requirements. It would also introduce new costs on the Scottish Government or DSFBs for scheme administration, data collection and monitoring. A scheme modelled on the Irish system would also involve new costs on the Scottish Government through central administration of tag allocation and monitoring.

Costs on the Scottish Government

274. It is the policy intention to introduce a scheme which delivers benefit without imposing a disproportionate financial burden and this will be considered as part of scheme development. A financial assessment, including costs to the Scottish Government (including the judicial system) will be detailed in the BRIA accompanying the supporting regulations, enabling Parliamentary scrutiny, however reflecting the low numbers of commercial fishers we do expect to incur costs exceeding £5000 per annum. The cost to process a summary case through the sheriff courts is estimated to be £2,400 but we do not anticipate more than one or two cases per year.

Costs on local authorities

275. The Scottish Government does not anticipate that the provisions will impose any additional costs on local authorities.
Costs on other bodies, individuals and businesses

276. It is the policy intention to introduce a Scottish scheme which delivers benefit without imposing a disproportionate financial burden and this will be considered as part of scheme development. A financial assessment, including costs on other bodies, individuals and businesses, will be detailed in the BRIA accompanying the regulations, enabling Parliamentary scrutiny.

Sampling and information

277. The Bill enhances the ability of Scottish Ministers to undertake scientific research and investigation for the purposes of protecting and developing stocks, facilitating the taking of fish and fish samples for analysis and securing information from fishery owners and proprietors where an agreement to co-operate has not been reached.

278. The Scottish Government works with fishery proprietors to access fish and samples of fish for scientific purposes. In many cases, tissue samples can be removed with no reduction in market value of the carcasses, minimal disturbance to the fishery and no financial costs. When damage to carcasses is inevitable market rates are offered by Government for the purchase of the fish. In those cases where live salmon are required for tagging work, the fishery is recompensed for associated damage to the business, negotiated on a case by case basis.

279. Occupiers and proprietors are currently required to provide statistical information on salmon caught under section 64 of the 2003 Act.

Costs on the Scottish Government

280. There are no additional costs on the Scottish Government associated with taking a power to require access to fish or fish samples, nor in exercise of it. The existence of the reserve power will facilitate scientific work where it is considered necessary, but will not of itself be a driver for additional work.

281. There are potentially indirect, minimal additional costs on the Scottish Government associated with broadening the power to require statistical data to include information. For example, Scottish Government may incur costs through development of databases to accept, query or interrogate additional information received.

282. However, offences under this section will proceed to summary prosecution. The cost to process a summary case through the sheriff courts is estimated to be £2,400 but we do not anticipate more than one or two cases per year.

Costs on local authorities

283. The Scottish Government does not anticipate that the provisions will impose any additional costs on local authorities as a sector. However, the small number of local authorities which hold fishing rights will be impacted in their role as fishery proprietors.
Costs on other bodies, individuals and businesses

284. Removal of the requirement not to cause damage or interference to a fishery in the course of conducting inquiries or investigations may potentially lead to additional costs on fisheries. These may be through diversion of staff time or inability to permit fishing during investigations. However, the broader benefits in terms of advancing knowledge of fisheries management and the protection and maintenance of fishery stocks – both of which are in the national interest – outweigh the cost of any damage or interference to the fishery which, in any event, would be proportionate and minimal.

285. It is anticipated that there may be additional costs on fishery owners and proprietors in fulfilling the requirement to provide information. However, these are expected to be minimal as requests must be reasonable and the information requested should be of a type held by owners and proprietors in the course of efficient management of their fishery.

Annual close time and conservation measures

286. The Bill gives Scottish Ministers the power to make changes to the annual close time, and the ability to require monitoring of any statutory fishery management measures put in place by virtue of the 2003 Act.

Costs on the Scottish Government

287. There are no additional costs on the Scottish Government from these provisions. However, offences under this section will proceed to summary prosecution. The cost to process a summary case through the sheriff courts is estimated to be £2,400 but we do not anticipate more than one or two cases per year.

Costs of local authorities

288. The Scottish Government does not anticipate that the provisions will impose any additional costs on local authorities as a sector. However, the small number of individual local authorities which hold fishing rights will be impacted in their role as fishery proprietors.

Costs on other bodies, individuals and businesses

289. The Ministerial power to require monitoring and evaluation of statutory measures granted under the 2003 Act may lead to additional costs for DSFBs and individual proprietors. Many DSFBs already undertake voluntary monitoring of measures as part of good fishery management planning, for example, the Dee DSFB is undertaking voluntary monitoring of the impact of its recent statutory season extension with an annual programme of scale sampling, redd counts and rod catch analysis to understand the impact of the extension on salmon stocks. Redds are gravel depressions in the river bed where female salmon lay their eggs.

290. Any costs are expected to be minimal and proportionate to the specific measures granted. The costs of driving forward an evidence-based approach to management are considered proportionate to the benefits this will deliver to individual DSFBs and proprietors and to the sector as a whole. These activities are of a type which would be routinely expected of fishery managers.
Introductions

291. The Bill introduces an enabling power for Scottish Ministers to modify DSFBs’ functions with respect to consenting to salmon and salmon spawn introductions. It also empowers DSFBs and Ministers to place monitoring requirements on consents granted.

292. These powers give Scottish Ministers flexibility to set out a national policy approach to the consenting of and monitoring of fish introductions, enabling a more flexible, responsive approach which aids risk management. The regulations will set out circumstances in which Scottish Ministers consider it more appropriate for the consenting function to be exercised by them, enable the issue of direction to DSFBs where appropriate, and the attaching of conditions to consents. Greater partnership working between the Scottish Government and DSFBs on the issue of introductions is expected, promoting the sharing and information and experience.

293. The development of policy on introductions is ongoing and there are a number of options which might be pursued through regulations. For example, Ministers may wish to have sight of and determine all applications for introduction of salmon and salmon spawn into waters which are designated as a Special Area of Conservation (SAC). There are 17 SACs for Atlantic salmon in Scotland. It may also be considered desirable, in the interest of openness and propriety, for Ministers to determine consents where the applicant itself is a DSFB.

Costs on the Scottish Government

294. There are potential costs on the Scottish Government if Scottish Ministers wish to determine additional consents to introduce salmon and salmon spawn. Marine Scotland Science (MSS) currently determines applications to introduce fish into inland waters for all species with the exception of salmon and salmon spawn in districts where there is a DSFB. The current annual staff cost of this work is estimated to be around £50,000. The number of salmon and salmon spawn consents considered by each DSFB annually is unknown as there is no requirement to notify figures to the Scottish Government. However, based on the number of cases considered by MSS in districts without a DSFB, it is estimated that additional staff costs of £12,500 could be expected. A financial assessment, including costs to the Scottish Government (including the judicial system) will be detailed in the BRIA for accompanying the regulations, enabling Parliamentary scrutiny. The cost to process a summary case through the sheriff courts is estimated to be £2,400 but we do not anticipate more than one or two cases per year.

Costs on local authorities

295. The Scottish Government does not anticipate that the provisions will impose any additional costs on local authorities as a sector. However, the small number of individual local authorities which hold fishing rights will be impacted in their role as fishery proprietors.

Costs on other bodies, individuals and businesses

296. Should Scottish Ministers wish to determine some consents that are currently handled by DSFBs, this will reduce the burden on the latter, realising savings. Potentially, DSFBs and proprietors may incur additional costs through requirements to monitor the impact of introductions. These are likely to be minor costs and the type of monitoring requested will be that consistent with routine good fisheries management practice. A financial assessment,
including costs on other bodies, individuals and businesses, will be detailed in the BRIA accompanying the regulations, enabling Parliamentary scrutiny.

**PART 3 - SEA FISHERIES**

**Enforcement of EU rules**

297. Section 30(1) of the Fisheries Act 1981 creates offences and gives powers to inspectors for the enforcement of contraventions of EU restrictions and obligations on fishing. It will provide for effective enforcement on contraventions of EU obligations on sea fishing where a Scottish statutory instrument (SSI) has not been made under section 30(2) of the 1981 Act. We propose to amend section 30(1) insofar as it relates to Scottish vessels to create offences and provide enforcement powers for the enforcement of EU fishing restrictions and obligations beyond the 200 miles fisheries limit.

**Costs on the Scottish Government**

298. The application of section 30(1) in its extended form as proposed in the Bill could mean that fewer statutory instruments may be required to transpose EU regulations on sea fisheries which, in turn, will result in savings in staff time.

**Costs on local authorities**

299. The provision is not expected to result in any new costs to local authorities.

**Costs on other bodies, individuals and businesses**

300. The proposed changes will not give rise to any additional costs on individuals or businesses directly. The proposed changes will simply alter the legislative basis on which a contravention of EU law would be enforced. In other words EU regulations that would otherwise be enforced through a statutory instrument will be directly enforceable under the 1981 Act through the amendment proposed in the Bill and in that respect the proposals are cost neutral.

**Detention of vessels in connection with court proceedings**

301. Marine Scotland is seeking powers to detain vessels in port until the conclusion of court proceedings. There is a particular risk with foreign vessels, or vessels with masters who reside outwith the UK, which are taken to port pending a court hearing. There is a risk in these circumstances that the vessel and the accused person(s) on the vessel may abscond abroad avoiding court proceedings and proper justice. There are possible costs if these measures are not introduced, which may include costs to deploy a Marine Protection Vessel (which costs approximately £10,000 a day to operate) to pursue the vessel at sea or detain the vessel at a future date and reinstate court proceedings. England and Wales already have the power to detain vessels until court proceedings are concluded.

**Costs on the Scottish Government**

302. The proposal is cost neutral as it only alters the legal basis on which vessels are detained in port. However, in the absence of such powers, it may be necessary to deploy additional
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

resources to mount a guard over the vessel until such time as proceedings in court have concluded. This could cost tens of thousands of pounds on each occasion.

Costs on local authorities

303. Generally, the provision is not expected to result in any new costs to local authorities. However, there is a risk when poorly maintained vessels are taken to port – some ports are owned by local authorities - in respect of a fisheries infringement that they are deemed too unsafe by the relevant competent authorities to sail again until repairs carried out or deficiencies in safety equipment addressed. There have been historic examples where vessels are effectively in limbo with no assistance forthcoming from their foreign owners and they lack the means to address matters themselves. In extreme cases these vessels can become a socio-economic burden to the ports where they are located especially where the crew of the vessel (who may be unable to go ashore for immigration related reasons) run out of provisions.

Costs on other bodies, individuals and businesses

304. The detained vessel will be unable to participate in fishing operations and the associated loss of fishing time may run into several thousand pounds in potential lost revenue.

Retention and disposal of property seized by BSFOs

305. As a generality, British sea-fishery officers have powers to seize evidence including nets, other fishing equipment and fish. They do not, however, have any authority to dispose of such items unless they are forfeited by the courts at the end of proceedings or, if no proceedings are taken, they may have to return property which would be illegal to use in commercial sea fisheries.

Costs on the Scottish Government

306. The costs for the Scottish Government will vary depending on the number of cases taken annually where items, such as fishing gear and fish, are seized as evidence. Historically, enforcement officers seized primarily fishing nets as best evidence of an infringement. However that practice has recently been amended to require enforcement officers only to seize nets and other fishing equipment where its use is inherently illegal and it is incapable of being amended or altered to conform with the relevant regulatory provisions. This will reduce the number of instances where nets are required to be seized as evidence. It costs the Scottish Government on average around £300 to return each seized net or other item which is no longer required at the conclusion of enforcement action. Under the Bill, proposals the Scottish Ministers will be able to retain and dispose of items that have been seized. This will realise a small saving in transport costs each time the new power is used.

307. Under the Bill proposals, powers will be available to dispose of sea fish which have been seized. The current practice, when dealing with illegal catches of fish, is to seize a small number of individual fish as evidence. The new provisions will allow the disposal of illegal catch. The proposals will also give officers additional powers permitting the return of living undersized shellfish to the sea, thus allowing them to grow to maturity. The Scottish Government may have to defend claims for compensation from owners of fish which have been destroyed, or released into the sea. An example would be a quantity of fish landed on to a fish-market that were
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

measured by enforcement officers and found to be under the minimum landing size. These fish would be seized and subsequently destroyed. It is possible in these circumstances that the owners of the fish may seek compensation. It is anticipated that the risk of compensation claims will be very low, because small samples of the illegal fish will be retained to demonstrate, if necessary, that the fish disposed of were indeed illegal and that the decision to dispose of the fish was sound. The cost of any compensation claim for the disposal of undersized fish is expected to be relatively low and, based on enforcement activity over the last two years, is likely to be no more than £500.

308. There will be an internal administrative process required to serve necessary notices etc on the owners of the seized property. This will be no more onerous than the existing requirement to liaise with property owners on the returning seized objects to them and is likely, therefore, to be cost neutral in that respect.

309. Should property owners make application to the courts regarding the disposal of seized items or fish there will be costs to the Scottish Government associated with preparing and making representations to the courts regarding any appeal against the decision on forfeiture. The cost for defences being lodged by the defender will be approximately £80. The cost of any appeal will very much depend on how individual cases progress. However, an appeal that goes as far as the sheriff principal is likely to cost in the region of £10,000 per appeal.

310. All items requiring disposal in any given year will, in most circumstances, fit in one skip. Disposal costs of any property are therefore likely to comprise of the cost of one skip hire at an annual cost of around £200-£300.

Costs on local authorities

311. The provision is not expected to result in any new costs to local authorities.

Costs on other bodies, individuals and businesses

312. Individuals and businesses will be required to replace seized items. These will need, of course, to be replaced with items that are legal to use and conform with relevant provisions. An example would be replacing a net that had a mesh size below the minimum size (holes in the net too small to allow the release of juvenile fish) with a comparable net that has a larger mesh size which complies with the rules in force. These costs are difficult to quantify but, for example, in the case of a trawl net that requires a section of netting or a panel replaced, that might cost a few hundred pounds. However, that situation is no different from at present. What will be different in future under the Bill proposals is that individuals and businesses will not be able to continue their illegal activity using the illegal gear that has been seized from them because the gear will not be returned to them.

313. Where the power contained in the Bill to forfeit items or fish is used, owners may seek to appeal that through the making of a summary application to the courts. The costs of doing so will include:-

- Court fees, including initial writ lodged by pursuer, fee for fixing a proof and for each day or part day of proof, debate or hearing in summary will cost approximately £220 per application;
• The cost for taking a case to appeal will very much depend on the time the matter takes to resolve and ultimately the time a solicitor spends on the matter. We believe that any appeal that is defended and goes to the sheriff principal should last no more than one day in court and will cost approximately £10,000;

• The potential costs or savings to the legal aid budget are very difficult to quantify given that it is not possible to anticipate the level of likely offending and the likely financial standing or means of those offenders. It follows that we cannot easily estimate who may need to apply for legal aid. What we can say is that in a historic context, legal aid has not been a feature of sea fisheries cases pursued through the courts. Accused persons have tended to be vessel owners/masters who do not need or meet the requirements for legal aid. Unless there are changes to this offender profile there is likely to be little impact on the legal aid budget. Although the proposal is to expand fixed penalty notices to cover other regulatory areas, the primary focus is still business regulation and as such legal aid is still not anticipated to be much of a feature.

**Inspection and seizure of objects used in commercial sea fishing**

314. The proposal provides legal cover for the inspection of objects associated with commercial sea fishing which are not directly associated with a vessel, a vehicle or premises.

**Costs on the Scottish Government**

315. The proposal in the Bill will provide legal cover for the inspection of objects that enforcement officers may from time to time encounter as they go about their normal duties. These are objects that they believe are connected with commercial sea fishing but at present have no express powers to inspect. The ability to inspect these objects raises the possibility that non-compliance with regulatory obligations may be detected and the normal operational costs of enforcement therefore triggered. It is difficult to quantify what additionally this might represent but it should be no more than a few thousand pounds per annum as most infringements are detected in relation to existing inspection powers in relation to vessel, vehicles, or premises. The Bill proposals will add to existing inspection processes to add a statutory requirement to prepare a report on the inspection of any object. The costs associated with this should represent no more than a few minutes of the inspecting officer’s time to complete a short pro-forma and send that to any relevant party.

**Costs on local authorities**

316. The provision is not expected to result in any new costs to local authorities.

**Costs on other bodies, individuals and businesses**

317. Any additional costs to businesses are likely to arise as a result of infringements being detected and will be no different to existing costs.
PART 4 – SHELLFISH

Protection of shellfish waters

318. The measures provided in this Part of the Bill are concerned with proposals for the continued protection of water quality from the effects of pollution in designated shellfish waters around Scotland. These proposals fit with Ministers’ and industry’s aims to support the sustainable expansion of the shellfish industry over the coming years.

319. The measures seek alignment with the wider framework for protecting Scotland’s water environment through river basin management plans (RBMP) by creating a legislative framework that enables the continued designation of shellfish water protected areas following the repeal of the Shellfish Waters Directive in 2013.

320. The estimated costs are based on Scottish Government’s assessment of current levels of costs, information from relevant stakeholders and relevant consultation documents, including the partial BRIA.

Costs on the Scottish Government

321. We anticipate that in the longer term there will be relatively small cost savings (less than 0.1 FTE) to the Scottish Government from these requirements.

322. The Scottish Government currently carries out designation and de-designation reviews of shellfish protected areas every two-three years. The proposed alignment to the RBMP timetable will coordinate the process of designation reviews with the process of characterisation of river basin districts which occurs as a minimum every six years. In order to establish more informed decision-making regarding designation and de-designation reviews, we are establishing a working group to take forward a range of supporting actions, resulting in increased staff costs (within the existing resource available) until the new approach is well-established. Therefore in the short-medium term this process is expected to be cost-neutral, whilst in the longer term there will be relatively small cost savings.

Costs on local authorities

323. The provisions are not expected to result in any new costs to local authorities.

Costs on other bodies, individuals and businesses

Costs on the Scottish Environment Protection Agency (SEPA) and the Food Standard Agency in Scotland (FSA)

324. Monitoring and sampling. There are currently 80 shellfish protected waters in Scotland. Whilst it unlikely that the number will alter significantly following a designation and de-designation review, SEPA and the FSA may witness some additional costs in respect of monitoring and sampling should the figure increase. The FSA estimates that sampling and
analysis of an individual shellfish harvesting sites costs in the region of £4-5k per annum and, therefore, any increased costs are considered likely to be reasonable.\footnote{16}

- **Costs on Scottish Water**

325. To date any major costs associated with designating shellfish protected waters and adhering to set environmental standards and objectives have fallen on Scottish Water and its customers. As part of its Quality and Standards (Q&S) investment process (the planning process by which Scottish Water improvements are set) Scottish Water invested around £38.5m and £8.6m in projects to improve shellfish waters under the Shellfish Water Directive in the 2002-06 and 2006-10 periods. In the current period (2010-15) the projected spend is £16m. This results in a total of £63m investment by Scottish Water in recent years under the current arrangements.\footnote{17}

326. One of the key aims of this Bill is to ensure a more proportionate approach to balancing costs and benefits across sectors. As a result of the provisions of the Bill and its secondary legislation, Ministers will, when assigning future designation status and environmental objectives for a shellfish protected area, take into account the costs of remediation, in particular any capital costs which might fall on Scottish Water. This approach, on a case by case basis, will ensure a proportionate balance between the benefits of environmental improvements against any additional costs on Scottish Water. It is difficult to estimate future costs, but it is anticipated that they will be significantly less than in previous investment periods. Scottish Water is funded by its customers, and this new approach will place a lesser burden on them than would continuing the current arrangements.

- **Costs on agricultural businesses**

327. Diffuse sources of pollution such as run-off from agricultural land may affect water quality at some shellfish protected areas. However, the wider RBMP process should address these issues (such as implementation of the rural diffuse pollution plan for Scotland) and, therefore, these provisions are not expected to result in any new costs to agricultural businesses.

**PART 5 - MISCELLANEOUS**

**Charging**

328. The principle of charging for goods and services where there are direct or indirect benefits is not new. There are a number of examples where charging regimes have been introduced, including the FSA, Quality Meat Scotland and SEPA. For many of these bodies, charging has enabled them to progress projects and meet ongoing requirements through cost sharing and cost recovery.

329. Marine Scotland currently provides a number of services free of charge – for example, scientific advice – or, at best, at less than full resource cost. That is no longer a sustainable

\footnote{16 Figures provided by the FSA as part of the Scottish Governments ‘Delivering Scotland’s River Basin Management Plans: An integrated approach to the protection of shellfish growing waters’ consultation October 2011.}

\footnote{17 Figures provided by Scottish Water as part of the Scottish Governments ‘Delivering Scotland’s River Basin Management Plans: An integrated approach to the protection of shellfish growing waters’ consultation October 2011.}
position, as the pressure on public sector budgets increases at the same time as we seek to meet the demands of growing marine industry sectors.

330. To begin to address this position, the Bill includes a provision for Scottish Ministers to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions to be specified in the regulations. It is recognised that the rationale and detailed arrangements for charges will need to be considered on a case by case basis, taking into consideration the ability of the user to pay, and ensuring that they do not impact disproportionately on competitiveness.

331. There is a number of existing activities where it is possible to demonstrate a clear link between the activity and the benefit to an individual stakeholder or group of stakeholders. For example, the FHI helps to prevent the introduction and spread of serious finfish and shellfish diseases in Scotland by providing an advice and diagnostic service to finfish and shellfish farmers, DSFBs, fisheries trusts and other stakeholders.

332. Fish health inspectors also carry out inspection and testing of finfish and shellfish farms to maintain the status of the United Kingdom as an approved zone for various diseases of finfish and shellfish, fulfil the monitoring required in support of the additional guarantees afforded by the European Commission for the importation of live aquaculture animals or products to prevent the introduction of Gyrodactylus salaries and other parasites and diseases, and continue surveillance for Infectious Salmon Anaemia.

333. Following consultation on the case for enabling provisions for Scottish Ministers to provide, through secondary legislation, for charges, further work will be undertaken with stakeholders on the development of a comprehensive charging regime, with the aim of establishing a scheme which is not only simple and straightforward, but will introduce a range of factors that would help apportion costs as fairly as practicable amongst the different sectors.

**Costs on the Scottish Government**
334. Given the costs recovery basis there will be no additional costs to the Scottish Government.

**Costs on local authorities**
335. It is not anticipated that there will be any additional costs on local authorities.

**Costs on other bodies, individuals and businesses**
336. There will clearly be an impact on those bodies who current receive the services free of charge. Any charging scheme that is introduced will need to take account of the potential impact on industry and allow sufficient time for them to prepare for its introduction. Costs will need to be proportionate.

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18 [http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/FHI](http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/FHI)
Fixed penalty notices

337. The measures provided in this section are concerned with proposals to apply fixed penalty notice (FPN) arrangements, as an alternative to prosecution, to a wider range of offences, including aquaculture offences. The measures also provide for an increase in the maximum allowable penalty up to two times the level 5 penalty on the standard scale (in effect, an increase from £2,000 to £10,000) for the most serious offences.

338. The estimated costs and savings are based on the Scottish Government’s assessment of the anticipated financial impacts on aquaculture businesses and the Scottish Government and reflect comments from industry (notably the SSPO) on Bill consultation documents, including the partial BRIA.

Costs on the Scottish Government

339. It is estimated that the savings to the Scottish Government from the application of an FPN, as opposed to court proceedings, will amount to around £2,250 per case. This is calculated as the difference between the cost of having a case prosecuted through the courts (£2,400 per case) with the cost of disposing of the case by way of a fixed penalty notice (£150 per case). The cost of disposing of a case by way of a fixed penalty notice is calculated from the staff time required to produce and issue the associated correspondence, and then track relevant payments through corporate business systems:

- £150 per case through the cost of producing an FPN rather than a prosecution report;
- £1,200 per case in court costs associated with prosecuting a criminal case;
- £600 per case in prosecution costs associated with proceeding with a criminal case;
- £600 per day per case for Marine Scotland or other Crown witnesses attending court.

340. During the calendar year 2011, Marine Scotland submitted 10 prosecution reports to the procurator fiscal. If the proposals in the Bill allow 50% of cases currently submitted to the fiscal to be disposed of through fixed penalty notices (and the number of cases remains unchanged) then the potential annual savings could be in the order of £11k.

Costs on local authorities

341. The provisions are not expected to result in any new costs to local authorities.

Costs on other bodies, individuals and businesses

342. Savings to the industry/operators from the application of an FPN as opposed to criminal proceedings are estimated at £1,000 per case, reflecting savings in estimated average costs in legal fees for defence in prosecution cases.

343. The SSPO has suggested that the introduction of FPNs (with an increased maximum fine) will lead either to a raft of legal actions by aquaculture companies seeking to defend their reputations; or the imposition of numerous FPNs for minor non-compliance. It suggests the provisions will be “hugely damaging to the ‘Scottish Farmed Salmon’ Brand and the Scottish
industry” – to the extent, it is claimed, that there could be a loss of premium on market prices, at a potential cost to the aquaculture industry of £25m per annum.

344. We do not believe that the extension of FPN arrangements, as proposed, will have any such effect. The existence of such arrangements on their own ought, we believe, not to have any detrimental impact on farmed salmon prices: nor should the availability of an FPN as a (voluntary) alternative to prosecution. Any negative perceptions of the aquaculture industry could only come from the identification of offences that are dealt with by way of criminal prosecutions and that receive adverse publicity in relation to court proceedings. There would be no court activity, convictions or associated publicity with any infringement that is dealt with as a FPN. No additional costs will arise for a compliant aquaculture industry. The proposed potential remedy of an FPN as a voluntary alternative to criminal proceedings offers potential savings for any industry operators subject to enforcement proceedings, compared to current criminal prosecution arrangements.
## Annex A

### SUMMARY TABLE OF FINANCIAL IMPLICATIONS OF THE AQUACULTURE AND FISHERIES (SCOTLAND) BILL

**Summary of costs to the Scottish Government**

### PART 1: AQUACULTURE

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fish Farm Management Area (para 191-206)</td>
<td>Estimated to be around £2140 per year based on an annual staff salary of £36,639 and a requirement of about 50-hours additional staff time per year. Additional cost for court proceedings around £4,800 based on anticipated maximum two cases per year.</td>
<td>n/a</td>
</tr>
<tr>
<td>Escapees and taking samples from fish farms (para 207-216)</td>
<td>Estimated investigation costs to be around £60,000 per year based on a cost of £20,000 per case and expected application of no more than three times per year. Additional cost for court proceedings around £4,800 based on anticipated maximum two cases per year.</td>
<td>n/a</td>
</tr>
<tr>
<td>Fish Farming – Equipment (para 217-228)</td>
<td>Additional cost for court proceedings around £4,800 based on anticipated maximum two cases per year.</td>
<td>£85,000 one off project costs to develop a Scottish technical Standard. Potential additional costs associated with any need for engineering expertise to assist with inspections</td>
</tr>
<tr>
<td>Fish Farming - Wellboats (para 229-244)</td>
<td>Estimated to be around £1,530 per year based on an annual staff salary of £36,639 and additional inspection requirement of</td>
<td>n/a</td>
</tr>
</tbody>
</table>

19 Based on average staff costs of a B2 member of staff/240 days of the year
20 Based on average staff costs of a B2 member of staff/240 days of the year
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance (paragraph 265-270)</td>
<td>No costs (potential marginal savings in terms of staff time).</td>
<td>n/a</td>
</tr>
<tr>
<td>Management - carcass tagging (para 271-276)</td>
<td>No costs identified at this stage but policy intent is to deliver a scheme which delivers benefit without imposing a disproportionate financial burden.</td>
<td>n/a</td>
</tr>
<tr>
<td>Sampling and Information (para 277-285)</td>
<td>Additional cost for court proceedings around £2,400 per case.</td>
<td>n/a</td>
</tr>
<tr>
<td>Annual Close Time and Conservation Measures (para 286-290)</td>
<td>Additional cost for court proceedings around £2,400 per case.</td>
<td>n/a</td>
</tr>
<tr>
<td>Introductions (para 291-296)</td>
<td>Potential additional costs of around £12,500.</td>
<td>n/a</td>
</tr>
</tbody>
</table>

PART 2: SALMON AND FRESHWATER FISHERIES

- Commercially damaging species (para 245-264)
  - Estimated to be around £2,830 per annum based on existing commercially damaging species or £7,700 for new commercially damaging species.
  - n/a
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

**PART 3: SEA FISHERIES**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended section 30(1) of the Fisheries Act 1981 – (para 297-300)</td>
<td>No costs</td>
<td>n/a</td>
</tr>
<tr>
<td>Detention of vessels in connection with court proceedings (para 301-304)</td>
<td>No costs</td>
<td>n/a</td>
</tr>
<tr>
<td>Retention and disposal of property seized by BSFO’S (para 305-313)</td>
<td>Will vary but would include: disposal costs of around £200-300 per year/compensation claims.</td>
<td>n/a</td>
</tr>
<tr>
<td>Inspection and seizure of objects used in commercial sea fishing (para 314-317)</td>
<td>Minor additional staff costs to deal with admin.</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**PART 4: SHELLFISH**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of shellfish waters (para 318-327)</td>
<td>No costs</td>
<td>n/as</td>
</tr>
</tbody>
</table>

**PART 5: MISCELLANEOUS**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charging (para 328-336)</td>
<td>No costs</td>
<td>n/a</td>
</tr>
<tr>
<td>Fixed penalty notices (para 337-344)</td>
<td>No costs</td>
<td>n/a</td>
</tr>
</tbody>
</table>
Annex B

Summary of costs on local authorities

Beyond the provisions detailed below, the other provisions within the Bill are not expected to result in any new costs to local authorities.

PART 2: SALMON AND FRESHWATER FISHERIES

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductions (para 291-296)</td>
<td>No additional costs although a small number of individual local authorities which hold fishing rights may be impacted in their role as fishery proprietors.</td>
<td>n/a</td>
</tr>
</tbody>
</table>

PART 3: SEA FISHERIES

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention of vessels in connection with court proceedings (para 301-304)</td>
<td>Potential risk of costs associated with poorly maintained vessels are taken to port where no assistance is forthcoming.</td>
<td>n/a</td>
</tr>
</tbody>
</table>
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

Annex C

Summary of Costs/Savings for other bodies, individuals and businesses

### PART 1: AQUACULTURE

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fish Farm Management Area (para 191-206)</td>
<td>Limited as many operators are already signed up to the proposal.</td>
<td>n/a</td>
</tr>
<tr>
<td>Escapees and taking samples from fish farms (para 207-216)</td>
<td>Industry are working with the Scottish Government and manufacturers to ensure that any additional costs are proportionate.</td>
<td>n/a</td>
</tr>
<tr>
<td>Fish Farming – Equipment (para 217-228)</td>
<td>Any additional costs will be proportionate.</td>
<td>n/a</td>
</tr>
<tr>
<td>Fish Farming - Wellboats (para 229-244)</td>
<td>The cost to monitor the position of 20 wellboats would be around £8k per year.</td>
<td>The cost of monitoring equipment for 20 wellboats at costs of £50,000. The cost to install discharge monitoring on a boat would be in the region of £75,000 The option to retro-fit a wellboat with an appropriate filtration system would be in the region of £400k per boat.</td>
</tr>
<tr>
<td>Commercially damaging species (para 245-264)</td>
<td>Costs every 10 years approximately £284,700 to £525,962 (encompassing potential movement restrictions, potential surveillance programme and control costs.)</td>
<td>n./a.</td>
</tr>
</tbody>
</table>
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

**PART 2: SALMON AND FRESHWATER FISHERIES**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance (paragraph 265-270)</td>
<td>No costs.</td>
<td>n/a</td>
</tr>
<tr>
<td>Management - carcass tagging (para 271-276)</td>
<td>No costs identified at this stage but policy intent is to deliver a scheme which delivers benefit without imposing a disproportionate financial burden.</td>
<td>n/a</td>
</tr>
<tr>
<td>Sampling and Information (para 277-285)</td>
<td>Potential costs but expected to be minimal.</td>
<td>n/a</td>
</tr>
<tr>
<td>Annual Close Time and Conservation Measures (para 286-290)</td>
<td>Any costs are expected to be minimal and proportionate to the specific measures granted.</td>
<td>n/a</td>
</tr>
<tr>
<td>Introductions (para 291-296)</td>
<td>Potential costs associated with monitoring expected to be minor.</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**PART 3: SEA FISHERIES**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended section 30(1) of the Fisheries Act 1981 – (para 297-300)</td>
<td>No costs.</td>
<td>n/a</td>
</tr>
<tr>
<td>Detention of vessels in connection with court proceedings (para 301-304)</td>
<td>Inactivity of detailed vessel would result in potential lost revenue.</td>
<td>n/a</td>
</tr>
<tr>
<td>Retention and disposal of property seized by BSFO’S (para 305-313)</td>
<td>Court Fees/Solicitor costs.</td>
<td>n/a</td>
</tr>
<tr>
<td>Inspection and seizure of objects used in commercial sea fishing (para 314-317)</td>
<td>Minor additional staff costs to deal with admin.</td>
<td>n/a</td>
</tr>
</tbody>
</table>
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

**PART 4: SHELLFISH**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of shellfish waters (para 318-327)</td>
<td>Costs on SEPA/FSA Scotland in the region of £4-5k per annum per new shellfish harvesting site.</td>
<td>n/as</td>
</tr>
</tbody>
</table>

**PART 5: MISCELLANEOUS**

<table>
<thead>
<tr>
<th>Proposals/Costs</th>
<th>Recurring</th>
<th>Non-recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charging (para 328-336)</td>
<td>Subject to final policy development.</td>
<td>n/a</td>
</tr>
<tr>
<td>Fixed penalty notices (para 337-344)</td>
<td>Savings of around £1,000 per case</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

345. On 3 October 2012, the Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Aquaculture and Fisheries (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

**PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

346. On 2 October 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Aquaculture and Fisheries (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Aquaculture and Fisheries (Scotland) Bill introduced in the Scottish Parliament on 3 October 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 17–EN.

POLICY OBJECTIVES

OVERVIEW

2. The primary purpose of this Bill is to ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment. It also aims to amend the Fisheries Act 1981 and modernise existing enforcement provisions to ensure that sufficient powers are in place to enable British Sea Fishery Officers to enforce sea fisheries regulations; introduce legislative provisions to safeguard shellfish water protected areas; make provision for charges for a number of fishery functions; and to extend the scope of offences that could be subject to a fixed penalty notice.

3. The Scottish Government is committed to ensuring that there are modern and effective management structures in place, supported by an effective and proportionate regulatory framework. It is persuaded that appropriate regulation and management will help to ensure that aquaculture products remain of the highest quality and are produced within environmental limits. The provisions in the Bill will work to secure the sustainability of aquaculture growth, principally as regards salmon farming, and ensure that salmon and freshwater fisheries can be effectively managed in an open and transparent manner.

Background

4. Scotland is home to important and prosperous aquaculture and iconic freshwater fisheries, both of which have enviable international reputations. Those reputations have been built on Scotland’s unique natural environment and high standards of best practice and management.
5. Over the last decade, aquaculture (the breeding and harvesting of plants and animals in water) has gained significant momentum as a viable method to produce seafood. Over the period from 2005 to 2010 (latest published figures) the value of aquaculture almost doubled with an estimated farm gate value\(^1\) of £563 million in Scotland. Almost 87% of that figure is the value of salmon aquaculture with the rest comprising trout farmed for the table and restocking trades, brown trout, halibut, blue mussels and other shellfish. The combined value of aquaculture production, salmon and freshwater fisheries to the Scottish economy is estimated to be over £650 million (in 2010). This is based on industry price estimates and official production statistics.

6. Farmed salmon exports have grown as the demand for high quality Scottish farmed salmon has increased. Industry figures indicate that seven of the top ten markets have grown in volume in 2011 with farmed Scottish salmon reaching nearly 60 countries worldwide. The value of overseas exports increased by over 25% in real terms in 2011, with opportunities increasingly being identified in Asia, most particularly Japan, where salmon exports have more than doubled over the period 2009-2011. Based on HMRC trade data, there has also been a huge increase in exports to the United States – from £86 million in 2009 to c. £178 million in 2011 (2011 prices).

7. In Scotland there are currently around 254 active marine finfish sites producing Atlantic salmon and 228 freshwater sites producing salmon, brown trout and rainbow trout (2011 figures). Additionally there are around 325 active shellfish sites.

8. The Scottish Government is committed to the support and protection of the country’s famous and valuable salmon and freshwater fisheries. We promote modern evidence-based management of fisheries, enabling their economic and social potential to be realised for the benefit of local communities, particularly those in rural areas.

9. Provisional 2011 statistics\(^2\) reveal that rod catch levels for Scottish wild salmon were the sixth highest on record. 86,655 salmon were caught in 2011, 97% of the five year average. Catch and effort for both fixed engine and net and coble fisheries remain at historically low levels. Fishing effort in the net fisheries was the fourth lowest since records began in 1952. Catch in the fixed engine and net and coble fisheries were 5% and 2% of the maximum recorded in the respective time series. For sea trout, following a long period of decline, catch levels were 8% up on the five year average, to 24,049.

10. The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003\(^3\) (“the 2003 Act”) provides the framework for management of salmon and freshwater fisheries in Scotland. It should be noted that, in law, the term ‘salmon’ means fish of the species Salmo salar (known as salmon) and migratory fish of the species Salmo trutta (known as sea trout). The 2003 Act does not apply to the River Tweed (provision for which is made in The Scotland Act 1998 (River

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\(^1\) The price of the product at which it is sold by the farm (the \textbf{farm gate price}).

\(^2\) Further information on the provisional statistics is available at \url{http://www.scotland.gov.uk/Topics/marine/science/Publications/stats/SalmonSeaTroutCatches}. Final statistics for 2011 were published on 21 September 2012.

\(^3\) \url{http://www.legislation.gov.uk/asp/2003/15/contents}
11. Uniquely, Scottish salmon netting and rod and line fishing rights are private, heritable titles registered separately from land. Management of salmon fisheries takes place at a local level through district salmon fishery boards (DSFBs) within a framework of national regulation via prescribed methods of fishing and weekly and annual close times. DSFBs are committees of proprietors of salmon fisheries, created voluntarily under statute for the purpose of the protection or improvement of fisheries within their district. Their functions and duties are set out in the 2003 Act.

12. The Scottish Government actively promotes local, consensual management of salmon fisheries by DSFBs through implementation of locally-agreed voluntary measures. Where voluntary measures fail, or DSFBs consider the scope of a problem requires national government’s intervention, boards can apply for statutory measures to be made. The Scottish Government considers all applications for statutory measures within the context of its broader strategic objectives and responsibilities. Under the 2003 Act, Scottish Ministers also have the power to make certain – but not all types – of management measures at their own hand; these back-stop powers provide a partial contingency plan to enable the Scottish Government to act in cases of local failure, or overriding national interest or challenges.

13. The Bill represents the first step in the Scottish Government’s commitment to modernising and improving arrangements for management of Scotland’s salmon and freshwater fisheries. Further work to consider the most appropriate governance structures and responsibilities will be undertaken during this Session of the Parliament. In the meantime, the Bill takes forward policy objectives to secure good governance by DSFBs and enhanced management of salmon and freshwater fisheries.

**Aspirations for the future – sustainable growth**

14. The Government Economic Strategy focuses actions on six strategic priorities which will drive sustainable economic growth and develop a more resilient and adaptable economy. Key actions include promoting Scottish exports to capitalise on the significant opportunities in growth markets – with an ambitious target to deliver a 50% increase in exports by 2017. In addition, the Scottish Government identified the food and drink sector as a key economic area for development – to increase the value of the food and drink sector from £11 billion (2010) to £12.5 billion by 2017.

15. The Strategy recognises that Scottish farmed salmon is now Scotland’s largest food export, making a significant contribution to the Scottish economy and providing vital employment for rural communities.

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16. There remain significant opportunities for further sustainable development of the Scottish aquaculture industry within an ever increasing and demanding consumer market, especially at a time when other industries have been more dramatically affected by poorly performing economic markets. Aquaculture is seen by many as having a significant role to play in feeding a growing world population, especially as the pressure for available land and resource to grow crops and animal protein intensifies, as the world’s population continues to grow and the implications of climate change become more evident.

17. The Scottish Government supports the aquaculture sector’s targets for sustainable growth by 2020 (based on the 2009 baseline of 145,000 tonnes per annum\(^6\)), as outlined in Scotland’s pre-consultation draft National Marine Plan. The Scottish Government is committed to working with the industry and other stakeholders to deliver these aspirations for growth. These targets include:

- Marine finfish at an average rate of 4% per annum to achieve 50% increase;
- Shellfish, especially mussels, by 100%.

18. The most recently available figures for farmed finfish (2010)\(^7\) show production growth of almost 7% whilst the shellfish sector (based on 2011 figures) reports steady production after a recent period of significant growth.

**Investment**

19. The Scottish Government has committed significant investment under the European Fisheries Fund to help develop Scotland’s aquaculture industry. In excess of £23 million grant assistance has been provided to date in direct and indirect support, including capital investment in aquaculture sites, funding to improve fisheries science and innovation (such as modelling of sea lice dispersal) and for the development of a natural control for sea lice on farmed salmon. Support has also been provided throughout the supply chain, including funding to processors to increase aquaculture processing capacity and towards the consolidation in existing, and the development of new, premium markets. Significant additional work is now being undertaken to ensure future programmes, such as the European Maritime and Fisheries Fund, prioritise a robust package of support measures for the Scottish aquaculture sector going forward.

20. The Scottish Government has promoted the development of local fishery management plans across Scotland, through investment over the last five years including £1.2 million over three years in partnership with the Rivers and Fisheries Trusts of Scotland (RAFTS). In conjunction with other public agencies, considerable support is also being provided to the National Fisheries Management Demonstration Project on the River South Esk (estimated at £0.2 million per annum for three years). The Scottish Environment Protection Agency (SEPA) has also made available over £1 million towards improved water quality, which also benefits fish habitat.

21. In addition, the Scottish Government is working on a number of projects to support the aquaculture industry to enable it to grow and achieve its potential in an environmentally

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\(^6\) [http://www.publications.parliament.uk/pa/cm201012/cmselect/cmscotaf/1117/1117we15.htm](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmscotaf/1117/1117we15.htm)

\(^7\) 2011 figures to be available later in the year
sustainable manner. This includes support through the Contract Research Fund (CRF) to enhance the Autodepomod modelling tool. This tool, owned by SEPA, is used by fish farm site operators in support of their applications to SEPA for licences to discharge wastes to the inshore marine environment. The project will enhance the existing modelling tool, increase confidence in terms of managing and monitoring the discharge from existing sites and improve it further to enable the introduction of large scale fish farms, typically further offshore.  

22. The Scottish Government recognises that providing policy certainty for the aquaculture industry will provide it with greater confidence to invest and plan for the longer term, and believes that this can be achieved by providing a clear regulatory framework which takes account of the wider marine environment. Recent and planned examples of significant investment by those in the Scottish aquaculture industry suggest they are confident that we are doing just that.

**Employment**

23. Employment in farmed salmon production in 2010 was 1,064 full and part time with a further 289 jobs in ova and smolt production. Some 3,099 full-time and part-time jobs were provided through shellfish cultivation and 172 full-time and part-time jobs in the cultivation of trout and other finfish species. Many communities now depend to a significant extent on the employment, investment and revenue that these areas provide. While it is difficult to provide a comparative figure, a report from 2004 estimated that freshwater angling supported 2,786 full-time equivalent jobs in Scotland.

**Consultation**

24. In December 2011 the Scottish Government commenced a consultation on a number of proposals primarily, but not exclusively, aimed at supporting the sustainable development of the aquaculture industry and salmon and freshwater fisheries while also recognising the impacts to the wider marine environment.

25. The consultation made clear that the Scottish Government wanted to build on best practice and voluntary arrangements where appropriate, providing statutory underpinning and a legislative backstop, where necessary, to protect the environment and the interests of those who have invested in the highest standards of management and husbandry. The Government was clear that it wanted to promote openness and transparency, including in the collection and publication of information. At the same time, it recognised the need to strike the right balance, respecting and consulting on the interests and perspectives of the range of stakeholders, and avoiding unnecessary or disproportionate new regulatory burdens.

26. A number of the aquaculture proposals within the consultation paper were developed in partnership with a number of working groups, major stakeholders in the sectors and scientific research in relation to the aquaculture sector. These included the Ministerial Group on Aquaculture and its related working groups, which developed and implemented *A Fresh Start* –

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8. The project is expected to start summer 2012 and complete in 2015.
This document relates to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

the Renewed Strategic Framework for Aquaculture. The Code of Good Practice for Scottish Finfish Aquaculture originated from the previous version of the Strategic Framework.

27. In relation to the wild salmon and freshwater fisheries sector, there is the Strategic Framework for Freshwater Fisheries, fishery management plans (developed by fisheries trusts) covering most of Scotland, and recommendations for legislative change from the Mixed Stock Salmon Fisheries Working Group Report of March 2010.

28. A total of 1,342 responses were received to the consultation. Of these, some 1,193 were in the form of interest group responses received from individuals associated with the aquaculture industry and voluntary sector, consisting of letters providing general comments on the paper but not addressing the questions asked in the consultation, and questionnaire proformas endorsing the responses of the respective industry organisations that have provided comment on the ‘Bill’ (that is on the proposals, some of which have progressed to the Bill). A further 149 were detailed responses, in terms of the length and detail of comments on the consultation questions in many of these responses. Most of the detailed responses focused on the consultation questions, but many commented on the proposed Bill and the wider industry itself, either in addition or in preference to directly answering the consultation questions.

29. The consultation responses confirmed some fundamental differences in opinion between the aquaculture industry, freshwater fisheries and other environmental stakeholders. With a small number of exceptions, the aquaculture industry was largely unsupportive of many of the proposals in the consultation, with most industry respondents aligning themselves with the response provided by the Scottish Salmon Producers’ Organisation (SSPO). Their opposition focussed on concerns about over-regulation of the industry, and adding unnecessary red tape. There was also some misunderstanding about how the proposals aligned with the aspirations for growth and concerns about reputation and commercial damage. They considered that there was a fundamental contradiction in the consultation, with aspirations for industry growth being undermined by proposals for further legislation.

30. What was evident from many of the responses was a presumption that most of the proposals detailed in the consultation comprised the constituent parts of the Bill. In fact, many of the questions explored the effective use of existing enabling powers and the extent to which some of the aims could be achieved without further legislation or by consensus. The consultation was therefore around a package of proposals designed to complement aspirations for sustainable growth with due regard to any wider implications for the marine environment.

31. The non-confidential responses to the consultation were published on 5 April 2012. The analysis of the consultation responses was published on 10 August 2012. This report focused on the 149 detailed responses containing comments addressing at least some of the consultation questions. However, policy development was also informed by the significant number of letter and questionnaire proformas. All views, whether from individuals or organisations, were proportionately taken into account.

11 http://www.scotland.gov.uk/Publications/2012/04/5057
12 http://www.scotland.gov.uk/Publications/2012/08/4768
32. The Scottish Government used the summer period to continue to discuss the proposals with stakeholders. The Ministerial Group on Aquaculture met twice during this period and the Bill is now a standing item on the agenda. A Stakeholder Reference Group was established on 23 July 2012 with a remit to inform the development of the Bill. Separate meetings took place with interested groups and a number of engagements within the Ministerial Summer tour programmes were used to discuss policy thinking and to discuss issues of concern.

33. While many of the consultation proposals have been taken forward as provisions within the Bill, it was always likely that some would be progressed through alternative means such as secondary legislation or voluntary schemes, while others would require further consideration. The Scottish Government’s response to the consultation sets out in more detail how it intends to deal with the individual proposals outlined in the consultation document.

Environment

34. Through *A Fresh Start - the Strategic Framework for Scottish Aquaculture* (published 2009) and in partnership with industry, the Scottish Government is ensuring that Scotland farms fish to the highest standards. Through Marine Scotland all fish farming businesses are authorised under the Aquatic Animal Health (Scotland) Regulations 2009 and subject to inspection for disease control, sea lice management and containment measures under the Aquaculture and Fisheries (Scotland) Act 2007.

35. Fish farms are also licensed, controlled and monitored by SEPA with the aim of ensuring that the environmental impacts from the industry are assessed and managed within acceptable bounds. In addition to these regulatory regimes, the accredited industry Code of Good Practice for Finfish Aquaculture aims to ensure adherence by industry to the standards set down within the code.

36. Key work has been taken forward under the auspices of the Ministerial Group on Aquaculture and related working groups, including development of a renewed Strategic Framework for Aquaculture and the Code of Good Practice.

37. Atlantic salmon (which in terms of the 2003 Act includes salmon and sea trout) are afforded special protection (in fresh water only) along with their habitats under the EU Habitats Directive (Directive 92/43/EEC). The Scottish Government has other conservation obligations also, for example to the international community as signatories to the Convention for the Conservation of Salmon in the North Atlantic. We pursue policies that conserve salmon stocks at a level that supports their continuing biological sustainability, basing our approach on the best available scientific advice at a scale which data can support. In pursuing this approach the Scottish Government seeks to give priority to the weakest stocks.

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13 [http://www.scotland.gov.uk/Publications/2009/05/14160104/0](http://www.scotland.gov.uk/Publications/2009/05/14160104/0)

BILL CONTENTS

38. The Bill is divided into 6 parts. Part 1 has a number of aquaculture themes designed to strengthen the regulatory framework for the industry to continue delivering sustainable growth going forward - the creation of a legal requirement for marine finfish farm operators to operate under the terms of a farm management agreement (or statement), within an appropriate management area; an amendment to the Aquaculture and Fisheries (Scotland) Act 2007 to make provision for the taking of samples of, or from, fish on fish farms; powers to prescribe technical requirements for equipment used in fish farming; provision for regulations controlling and monitoring the operations of wellboats and related intervention and enforcement provisions; and provisions for orders to prevent the spread and ensure the effective control of commercially damaging native species.

39. Part 2 has two themes. First, the introduction of ‘good governance’ obligations on DSFBs to improve openness, transparency and accountability to their constituency; a requirement for DSFBs to consult prior to submitting applications to Scottish Ministers for measures under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”); and the power to end the operation of a DSFB committee which is persistently failing to meet its obligations. Second, a series of amendments to the 2003 Act on enhancing management of salmon fisheries. These amendments comprise: powers to create a statutory carcass tagging scheme, to take fish and fish samples and require information from fisheries; power to recall or restrict DSFB powers to consent to the introduction of salmon or salmon spawn; and powers for Ministers to make changes to the annual close time at their own hand, and require monitoring and evaluation of measures granted. These amendments acknowledge the current arrangements for local management of fisheries but highlight the need for effective contingency arrangements in the event of failure by boards or overriding national interests or challenges.

40. Part 3 relates to enforcement of sea fisheries legislation, in particular the powers of British sea-fishery officers to enforce the legislation, powers to detain vessels in connection with court proceedings and inspection and associated powers not currently provided where there are no vessels, vehicles or relevant premises involved – for example on a beach. There are also provisions relating to the retention, disposal and forfeiture of objects and fish seized.

41. Part 4 of the Bill amends the Water Environment and Water Services (Scotland) Act 2003 to provide for the protection of shellfish waters once the Shellfish Waters Directive is repealed in 2013. The Bill also amends the Sea Fisheries (Shellfish) Act 1967 to make clear that the Scottish Ministers’ order-making powers under section 1(1) of that Act can extend to all types of shellfish (molluscs and crustaceans) and are not restricted to specified shellfish; and makes clearer the extent of Ministers’ powers in relation to the appointment of an inspector to conduct an inquiry into the proposed making of several and regulating orders.

42. Part 5 of the Bill gives Scottish Ministers powers to impose charges in connection with the carrying out of functions relating to fish, shellfish farming, salmon and freshwater fisheries, or sea fisheries. There are also provisions relating to the extension of the system of fixed penalty notices (“FPNs”) which was introduced for sea fisheries under Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007. The Bill widens the scope of offences that could be subject to a
FPN which in practice provides a way for operators to deal with their regulatory non-compliance outwith the criminal court system.

43. **Part 6** of the Bill contains the usual general and commencement provisions and the short title.

**PART 1: AQUACULTURE**

**Chapter 1: Fish farm management**

**Fish farm management agreements and statements**

44. The marine finfish farming industry in Scotland currently operate 277 active sites, 261 of which farm Atlantic salmon, within 91 farm management areas as depicted by industry in The Code of Good Practice for Scottish Finfish Aquaculture (CoGP). The vast majority of operators are signed-up to either a farm management agreement (FMA), or statement (FMS), that require operators to conform to a certain standard that optimises fish health management, reduces impacts on the environment, and improves economic performance. The Scottish Government recognises the Atlantic salmon farming industry as an important sector of the Scottish economy with excellent prospects and ambitious plans for growth. Future sustainable growth can only be realised, however, if the industry adheres to the latest and highest environmental and husbandry standards. Recent experience, both domestically and overseas, has demonstrated how failures in the regulatory framework or the absence of adequate controls to prevent and anticipate environmental problems or the development of transmittable fish diseases, can have a huge impact.

45. At present, FMAs are in place on a voluntary basis between most operators. The policy aim is to require that agreements are developed according to the needs and circumstances of the particular farms, although there will be generic criteria which each management area must cover as a minimum. This should ensure that operators in each area work in unison with respect to treatments, falling and the harvesting of fish and stocking levels on the farm, building on the best practice already in place.

46. The Bill makes provision for all operators of authorised aquaculture production operations to be party to, and ensure that marine fish farms are managed and operated in accordance with, an FMA, or to maintain an FMS. The Bill also requires a description of the farm management area and the fish farms to which the agreement or statement applies.

47. The FMA or FMS is required to include arrangements for fish health management, management of parasites, the movement of live fish, the harvesting of fish and falling with these agreements or statements reflecting 'so far as possible' the CoGP. The Bill makes provision for FMAs and FMSs to be reviewed every 2 years, and for Scottish Ministers to be able to modify the definition of the CoGP by order.

48. The Bill, by virtue of amending the Aquaculture and Fisheries (Scotland) Act 2007, enables Scottish Ministers to authorise any person to act as an inspector to enforce the legislation.
relating to FMAs and FMSs, and to issue an enforcement notice and/or take court proceedings where a particular farm is not adhering to the terms of the agreement.

Consultation
49. The Scottish Government consulted on a proposal to place a legal obligation to participate in an appropriate farm management agreement. Responses in the analysis report appeared to be in general support. The support focussed around the need for good husbandry and management of fish farms to be practised consistently across the sector. The industry was generally supportive of the concept of agreements but was opposed to making it a legal requirement to participate in an agreement.

Alternative approaches
50. One alternative would be to leave things as they are, whereby industry works to the voluntary CoGP. This option has no direct additional cost to either the private or public sectors, but it would mean no improvements in management arrangements and practices and existing issues and risk from opting out would continue. A further option would be the statutory adoption of specific sections of the Code. However, this could have significant cost implications for government and industry for no additional benefit beyond what is proposed.

Escapes and obtaining samples from fish farms
51. Under the Aquatic Animal Health (Scotland) Regulations 2009, there is a statutory requirement for fish farmers to notify Ministers in writing of an escape of fish or a suspected escape. Under powers available in the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”), Marine Scotland’s fish health inspectors can inspect a fish farm site following a reported escape to assess measures in place to contain fish, prevent escapes and recover escaped fish. The 2007 Act provides a power for inspectors to take samples from a farm for the purposes of ascertaining whether fish have escaped from that farm.

52. Alongside reported escapes there are also concerns about ongoing ‘drip’ or ‘trickle’ escapes, which have been associated with inappropriate mesh sizes on nets or screens, undetected ‘below the waterline’ damage to nets or when fish simply jump over the level of the net. Drip escapes can remain undetected until ‘farmed fish’ are caught in neighbouring catchments or at harvest when a farmer counts stock and discovers a shortfall.

53. Most years, angling and wild fish interests contact DSFBs, fisheries trusts or Marine Scotland with reports of catching or sightings of suspected farmed fish escapes. Some will have originated from known reported escape events but others may be explained by drip escapes or due to farmers failing to report escape incidents. This is further complicated when there is a number of operators within a catchment. There have been occasions when farmers have disputed the origin of escaped fish. There are other potential introductions of fish not associated with aquaculture escapes, for example, put and take fisheries or restocking.

54. The provisions of the Bill amend the 2007 Act to enable inspectors to take or require samples of fish from any fish farm in Scotland for certain purposes, including developing and implementing methods for tracing the origin of any known or suspected escape of fish and
examining potential impacts associated with escapees or for any other purpose. The power will allow the taking of whole fish as well as samples.

55. Marine Scotland Science is developing a methodology on the use of forensic tracing of escaped farm salmon in Scotland. A scoping study considered the feasibility of adopting Norwegian fish farm escapee traceability methods and is based on the development of molecular genetic methods for the discrimination of farmed and wild salmon, and for the determination of whether wild caught salmon originate from local farms or have an alternative wild or non-wild origin. The methodology now requires robust field-testing.

56. If the method is proved in a Scottish context, in the absence of other evidence, Marine Scotland may use it to determine which farms are losing fish so that companies can be notified accordingly to mitigate against further losses. This is likely to result in an investigation at a site where escapes are suspected, but have not been reported. Existing provisions do not permit inspectors to take samples of fish from neighbouring farms upon which future investigations and tracing could be based. The powers proposed will allow for inspectors to take fish from:
   - a farm suspected to be the origin of an escape, although that site has not reported an escape;
   - a farm which either supplied the ‘escaped’ stock under investigation or a site to which the remainder of the stock was moved for growing-on; or
   - a site operating in the vicinity of a suspected escape and which may be the origin of the escape.

57. It is not the intention to undertake universal sampling or to create a national database of genetic samples, as this would be impractical, unaffordable and unnecessary. Powers would be used on a targeted basis when other methods of tracing have proved unsuccessful. Methods employed will not be restricted to genetic testing but may also include taking samples for testing using chemical methods.

Consultation

58. The Scottish Government consulted on a proposal that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes. There was overall support amongst respondents for the proposal, though the aquaculture industry and other commercial industry respondents were strongly opposed. Several respondents also suggested that the ability to carry out genetic identification should be established before introducing these powers.

Alternative approaches

59. The alternative approach would be to leave the powers as they are with all the shortcomings detailed above. This would restrict the ability to collect samples necessary to develop and test robust detection methods or to take samples to determine the origin of escaped fish. There would be no increased understanding of the level of non-attributable escapees or of how such losses are occurring. There is evidence that escapes are generally declining through increased awareness, significant investment of new equipment by industry and the roll-out of
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best practice training on containment. This, coupled with the development of a Scottish technical standard, should lead to continued decline in escapes.

Chapter 2: Fish farming: equipment and wellboats

Equipment

Technical requirements for fish farming equipment

60. A general trend of reducing fish farm escapes has been recorded since 2005 due to a combination of increased awareness and significant industry investment in new equipment, a programme of industry best practice workshops and work on accredited training for fish-farm workers in minimising escapes. A Memorandum of Understanding signed by Scottish and Norwegian aquaculture Ministers in 2009 included an agreement to develop best practice on engineering design standards and collaboration on research.

61. Whilst recent industry progress on reducing fish farm escapes has been steady and broadly welcomed, concerns remain. In particular this relates to risks associated with operators using older equipment or using equipment inappropriate for site conditions. There are also concerns about ongoing ‘drip escapes’ which are generally associated with use of inappropriate mesh sizes on nets or screens. A technical standard for finfish farm equipment and infrastructure means that all routine maintenance and equipment replacement programmes will be developed using the latest specifications.

62. All fin fish farms operating in Scotland should have equipment (nets, pens mooring etc) appropriate for the environmental conditions in which they operate and which effectively contain fish and prevent escapes. The current system relies on recommendations in the Code of Good Practice for Scottish Finfish Aquaculture (CoGP) that ‘Installations, facilities, moorings, pens and nets etc should be fit for purpose for the site conditions and installed by an appropriately qualified person’. All SSPO farms are independently audited for compliance with the CoGP. Trout farmers follow relevant sections of, and trout farms are audited for compliance with, relevant aspects of the CoGP.

63. Under existing powers in the 2007 Act, Marine Scotland inspects fish farm sites to ensure that measures are in place to contain fish and prevent escapes. Inspections are based on the recommendations set out in the CoGP. There is currently no statutory definition of “fit for purpose”. Inspectors check records for attestations from manufacturers that the equipment is fit for purpose, but cannot identify below-water-line failure or whether equipment is appropriately installed or set up. A technical standard would, in effect, define “fit for purpose”.

64. The Bill includes an enabling power for Scottish Ministers to make subordinate legislation which will provide technical specifications for fish farm equipment. The purposes of the technical standards regulations will be the containment of fish, prevention of escape of fish, and the prevention, control or reduction of parasites, pathogens or diseases. Escaped farmed fish can interact with wild stocks through interbreeding, competition for food and space and have potential to transmit disease and parasites. In addition, the loss of fish and equipment (for example through storm damage) can be a significant financial loss to fish farmers. The regulations will achieve this through setting standards for the design, construction, materials,
manufacture, installation, maintenance and size of equipment and be flexible to take into account environmental conditions of different site locations.

65. The standard will cover site surveys (measurements and monitoring of current, wave height and speed over time and pertinent geographical features). This will take account of historical weather and tidal conditions and allow for predictions of wind, wave and current conditions that might be expected at that site over the lifetime of the equipment. Consideration of current, particularly tidal and wind generated, is crucial given it usually generates the greatest forces on equipment. The standard also covers mooring systems in terms of holding the equipment together, maintaining the structure of the fish farm and fastening it to the seabed. This includes the type of seabed (rock, mud etc), type, size and weight of anchor and fitness to withstand the expected loads and forces to which the structure will be subjected. The standard also includes pen design and construction both in terms of connecting together but also material type and strength. It also covers net design and construction again in terms of material but also breaking strength and mesh size (to prevent fish escaping through the net).

66. For example, for any given site, the operator will have to be able to demonstrate that: the relevant site survey and calculations have been done and that the equipment is suitable for the expected tides, currents, wave height and speed every year but also include a safety factor to account for severe weather events (e.g. 1 in 50 year storms); the structure was installed correctly and by an approved body/person. After installation, the regulations may specify that the site must be inspected at a specified appropriate interval. The regulations will also impose requirements on fish farm operators, employees and agents to keep records, for example of net testing, equipment replacement and also report equipment failures, for example where a particular piece of mooring has failed or where nets have degraded or damaged easily. The standard will also take account of scenarios whereby operators move equipment to other sites. The operator will need to demonstrate that the nets are still of appropriate size to contain the new stock of fish and strong enough to withstand damage. If the site is more exposed, the farmer will need to demonstrate the equipment is still able to withstand the higher tidal, currents and wave induced forces it will endure. Likewise, if a site has a different sea bed substrate as anchoring requirements for a hard rock bottom are dramatically different than for a bed of deep silt.

Consultation

67. The Scottish Government consulted on a proposal that Scottish Ministers should have powers to require all finfish farms operating in Scotland to use equipment that confirms to a Scottish technical standard. Analysis of the consultation responses showed strong support for the introduction of a technical standard (across all stakeholder groups), including the finfish farming sector. Several respondents acknowledge the work of the Improved Containment Working Group in developing the standards, as well as suggesting transitional procedures are in place for its introduction.

68. In advance of publishing the consultation document, industry itself indicated “Introducing a Scottish technical standard is key in the reduction of escapes from salmon and trout farms. Staff training is also important but making sure the right equipment is installed on farms to the specification required to deal with the worst weather conditions is essential for secure containment of fish stocks. In doing this we will have fit for purpose equipment on fish
69. The Marine Alliance for Science & Technology Scotland observed “There is a sound and pressing practical and economic rationale for developing binding engineering and operational standards for marine cage fish farming in Scotland and beyond. Preventing the loss of valuable stock is important for the industry not only in terms of potential economic loss, but also in demonstrating that it is taking all reasonable steps to prevent escapes. Such standards will become increasingly important if the industry is to expand and is to do so in ever more challenging environments”.16

70. There has been wide engagement, including with the salmon and trout finfish farming industry, net, pen and mooring suppliers/manufacturers, insurers, engineers and research institutes, through a Scottish Aquaculture Research Forum (SARF) project to develop a Scottish technical standard, likely timeframes for implementation and on subsequent inspection and audit regime. This included workshops in Inverness, Shetland and Oban in June 2011 to which all finfish production operators and trade associations operating in Scotland as well as fish farm equipment manufacturers and suppliers were invited. The detail of the proposed technical standard is being developed by an expert group including fish farmers and equipment providers. An initial draft Scottish technical standard including recommendations for further information required to develop the standard was published by SARF in February 201217.

**Alternative approaches**

71. The Scottish Government has previously considered four options for a technical standard through the Improved Containment Working Group of the Ministerial Group on Aquaculture. Other than no change, options considered were: a standard adopted by industry as part of a revised CoGP and subject to existing inspection/audit regimes; a standard adopted by industry as part of a revised CoGP and revised Marine Scotland role in ensuring compliance with containment aspects of the CoGP; and a Government standard to be adopted by industry with an inspectorate established to ensure compliance. We also considered an option to develop a technical standard with associated certification and inspection regimes similar to the NYTEK18 system in Norway but rejected this at an early stage due to cost both in terms of establishment and implementation of a new regime and duplication of existing industry audit and inspection regimes. The Group, after close dialogue with Atlantic salmon and rainbow trout farmers; trade associations; pen, net and mooring manufacturers; and engineers, recommended the approach outlined in the Bill. This will ensure that the standard developed is appropriate and will be fit for purpose in Scotland.

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15 Steve Bracken, business support manager, Marine Harvest Scotland and chair of MGA Improved Containment Working Group – November 2011.
16 Dr Mark James, Operations Director, MASTS – November 2011.
Wellboats

72. A wellboat is defined within the Bill as a vessel that contains a tank or well for holding water (including sea water) into which live farmed fish are taken and subsequently kept for transportation, storage or treatment.

73. Guidance within the industry CoGP advises how risks in wellboat operations, such as cross-infection and hazards to bio-security measures between farms, can be minimised. There is, however, no statutory requirement that wellboat operators or farmers record wellboat movements or what they are moving. This means that cross-contamination of pathogens and parasites continue to be a major concern. The introduction of additional control requirements on wellboats will enable standards of bio-security to be raised, and improve monitoring of fish movements by wellboat within and across national boundaries.

74. The provisions contained in the Bill will help to minimise the risks of sea lice and disease spread from wellboats, thereby improving fish health and protecting the interests of both the farmed and wild fish sectors. The Bill makes provision for Scottish Ministers to control and monitor the operations of any wellboats in Scotland. The provisions will also enable requirements to fit equipment such as filters, which would be of a sufficient mesh size to prevent the spread of sea lice through discharges, with powers for enforcement where compliance failure is determined.

75. For the purpose of enforcing regulations in the Bill, a marine enforcement officer will have a common enforcement powers conferred by part 7 of the Marine (Scotland) Act 2010. Scottish Ministers may recover any expense reasonably incurred by a marine enforcement officer taking such action from the person on whom an enforcement notice was served.

Consultation

76. The consultation document asked if consultees agreed that enabling legislation should be made to give Scottish Ministers power to place additional control requirement on wellboats. There was strong cross-sectoral support, with the exception of some parties within the aquaculture industry, for the introduction of enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats. The industry suggested an alternative Wellboat Working Group to consider the issues. Scottish Government will work with the industry to develop this appropriately. It is understood that Norway is moving towards technical standards for wellboats. As wellboats are a shared resource between the industry in Scotland and Norway, officials from Scottish Government will seek to work with counterparts in Norway to ensure standards are consistent.

Alternative approaches

77. The only viable alternative would be the status quo, which would in effect mean that there would be no improvements in fish health management and the issues surrounding cross-contamination of pathogens by wellboats would remain.
Chapter 3: Commercially damaging species

78. Currently there is no clear definition of a commercially damaging species and an absence of any ability to prevent and/or limit their movements. Commercially damaging species are defined within the Bill as those that, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a fish or shellfish farmer and which is itself of little or no commercial value. There is existing legislation, contained primarily in the Wildlife and Countryside Act 1981 (as amended), which covers invasive alien species. While there may be some overlap with the 1981 Act in relation to species which are outwith their native range and may be both an invasive species and a commercially damaging species, it is anticipated that the provisions in this Bill will be used in respect of native species.

79. The provisions contained in the Bill are designed to assist in protecting the wider aquaculture industry from commercially damaging species. The provisions will provide the powers to limit the potential impacts of commercially damaging species on both a local and a national level. Such species may make a particular remote and rural area a no-go zone for commercial aquaculture, leading to the loss of jobs, decreased production and reduced economic performance. The provisions allow for action to be taken before there is any significant impact, maximising the potential for new developments and restarting existing operations.

80. The provisions have been informed by the experience of dealing with a commercially damaging species, *Mytilus trossulus*¹⁹, in Loch Etive. Loch Etive was one of the three highest mussel producing lochs in the country until *Mytilus trossulus* became dominant on mussel farms in the area. As a result of the low market value of this species (due to lower meat yields, thin shells and poor shelf life) mussel farming in the loch became unviable.

81. Control work that has been undertaken by voluntary agreement in Loch Etive has demonstrated how important it is to obtain agreement and cooperation between operators. Successful control work is important to reduce future impact on new areas. The new control provisions will enable control schemes to be implemented where a voluntary control agreement has been refused or has not been complied with. It will also enable emergency work to be undertaken where there is thought to be an immediate and significant adverse impact likely on aquaculture interests.

82. European Fisheries Fund grant aid provided for the shellfish farming facilities in Loch Etive to be synchronously cleared of stocks, which should allow for the commercially viable culture of blue mussels, *Mytilus edulis*, to restart.

83. The Bill provides powers for Scottish Ministers to control the movement of commercially damaging species by order. This provides powers to take samples from a site to determine whether a commercially damaging species is present, to carry out a programme of surveillance and to prohibit or otherwise control movement from the site. The purpose of these provisions is to prevent the further spread of a commercially damaging species to other areas where it could have adverse impacts on other aquaculture sites and operators.

This document relates to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

84. The Bill provides for the notification of commercially damaging species. This will ensure that species that are listed as commercially damaging species, and are therefore considered a risk to the aquaculture industry, are reported to Scottish Ministers, can be investigated at an early stage, and control measures can be implemented as considered necessary.

Consultation

85. The consultation set out a proposal that additional powers should be provided for Scottish Ministers in relation to commercially damaging species. There was majority support for the proposal but further information and assurances were sought in relation to particular issues.

86. A Scottish Aquaculture Research Forum project sought to develop national and regional scale controls (using Loch Etive as a case study) to identify the appropriate management actions to prevent the species increasing in abundance where it is present and to avoid transfer of the species to areas where it is not already present. Following initial consultation with industry to identify their concerns, a draft code was prepared. This was informed by a literature review of existing legislation and existing codes of practice and guidance on invasive species. The provisions in the Bill will provide legislative backing to the measures outlined in the draft code of practice including vigilance in detection (including sampling measures), control actions and the avoidance of movement to help prevent spread.

87. The Scottish Government facilitated Shellfish Forum, which meets quarterly, has provided the opportunity for industry and government to discuss the issue of commercially damaging species and specifically the issue of *Mytilus trossulus*. Some responses to the Consultation noted support of the use of powers for identified problems such as *Mytilus trossulus*.

Alternative approaches

88. The alternative that was considered was providing powers to control movements, and notify and control *Mytilus trossulus* alone, not for other commercially damaging species. The potential impact of *Mytilus trossulus* was relatively unknown in Scotland until it caused the problems on Loch Etive; it is possible that, in time, there may be other commercially damaging species. It will be important to prevent adverse impacts on the fish and shellfish sectors to support these sectors and enable them to achieve challenging sustainable growth targets. Introducing powers that can be used for other commercially damaging species will also ensure there is more likelihood of successful control work to prevent spread and does not rely on voluntary cooperation to achieve success.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

89. None of the provisions in Part 1 will have a differential or discriminatory impact on equality groups.
Human rights

90. The provisions in Part 1 are compatible with the European Convention on Human Rights.

Island communities

91. Aquaculture is a key food production sector for Scotland and operates in many remote rural and island communities, many of which depend on it to provide employment. The provisions in Part 1 will improve fish health and biosecurity bringing industry savings through reduced stock loss and improved productivity by increased operational efficiency and increased confidence for investors.

92. Where a commercially damaging species is identified and specified, provisions such as movement restrictions could be introduced that could impact on individual aquaculture operators. As these provisions aim to deliver protection to the wider aquaculture industry from commercially damaging species, they should safeguard jobs in those island communities more generally.

Impact on local government

93. The provisions have no impact on local authorities.

Impact on sustainable development

94. The provisions in Part 1 are expected to have a largely positive effect on sustainable development. Aquaculture is a key food production sector for Scotland and provides secure and high quality jobs in remote rural and coastal communities.

95. Wellboats are used extensively by the Atlantic salmon farming sector within and between management areas. Their activity increases the risk of pathogen and parasite spread between sites and areas that could lead to disease outbreaks. Through the provisions in the Bill, the potential impact can be reduced, for example, through filtration, parasites would be removed from the water and the opportunities for re-attachment eliminated. This has the added benefit of helping to reduce the emergence of parasite resistance to treatments and reduce reliance on medicine use. Such a measure will help to minimise environmental impacts.

96. As regards commercially damaging species, the provisions are expected to have a largely positive effect on sustainable development, as they deliver protection from commercially damaging species to the wider aquaculture industry, enabling it to grow.

PART 2: SALMON AND FRESHWATER FISHERIES

Good governance

97. The Strategic Framework for Scottish Freshwater Fisheries\(^{20}\) set out a shared vision of sustainably managed freshwater fish and fisheries resources that provide significant economic

\(^{20}\) [http://www.scotland.gov.uk/Publications/2008/06/26110733/0](http://www.scotland.gov.uk/Publications/2008/06/26110733/0)
and social benefits for Scotland and its people. While the rights to fish for salmon and sea trout are private and heritable, the fish are a natural public resource.

98. The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”) provides the framework for governance of salmon fisheries in Scotland by proprietor-led District Salmon Fishery Boards (DSFBs). The 2003 Act sets out the purpose of DSFBs and their statutory duties; however, it does not specifically provide for wider stakeholder and public involvement in their activities, the promotion of more open and consultative management, or a sanction to deal with non-compliance with the duties and obligations placed upon them.

99. The policy objective is to ensure that DSFBs, as bodies created under statute and having, in effect, public law functions, act in an open, fair and transparent way with greater accountability to their constituency. The Bill introduces a suite of good governance obligations on DSFBs, requiring them to act in a manner consistent with other public bodies. This includes the publication of the DSFB’s annual report, accounts and minutes of meetings; holding of an annual public meeting; the presumption of meetings open to the public; a register of members’ interests; and a requirement to have a complaints procedure in place. Many DSFBs are already operating in this way and the Bill seeks to underpin this good practice to drive improvement across the sector and encourage greater local participation and interest in DSFB activities. The Bill also includes the power for Ministers to modify, by order, the good governance requirements to ensure they remain up to date and in line with equivalents in the public sector. This power is narrow in scope and would not, for example, allow for change to DSFBs as local management structures.

100. The Scottish Government wishes to see DSFBs engage more with local interests, for example anglers, and also the general public, taking account of community and interest groups’ views. This is particularly relevant where DSFBs are considering an application to Ministers for statutory management measures. Public consultation on the general effect of proposals for orders or regulations made under the 2003 Act is provided for under paragraph 11 of schedule 1. This is undertaken at a stage where Scottish Ministers have considered detailed proposals from a DSFB and taken advice on them from appropriate persons, for example SNH, SEPA or Marine Scotland, and are minded to proceed with the statutory process provided for in schedule 1 to the 2003 Act. This consultation process is similar to that routinely undertaken prior to the introduction of any secondary legislation.

101. It is considered desirable that additional, earlier consultation with interested parties take place prior to proposals being submitted to the Scottish Ministers. This would promote local participation in, and a greater, local understanding of, the development of management measures which may impact on a number of interested parties. It would enable a wide range of opinion to contribute to the process and generate informed debate on river and fisheries management. It can be anticipated that proposals developed in co-operation and discussion with local communities will be evidenced more thoroughly and developed in a more holistic manner than can currently be the case, aiding their consideration by Ministers. The Bill responds to this policy objective by introducing a duty on DSFBs to advertise and consult on any applications they intend to make to Scottish Ministers for statutory measures under the 2003 Act. DSFBs will be required to consult with those with a direct interest in or who are likely to be affected by the proposals and the Bill prescribes a procedure that should be followed. This new pre-application consultation duty fits with the themes of openness, transparency, fairness and accountability.
102. Scottish Ministers do not intend to become more involved in administering or monitoring DSFBs. The clear preference is for accountable, effective management at a local level and for DSFBs to be held to account by their local constituency. However, the absence of a sanction against non-compliance with statutory obligations is a risk to effective management of fisheries and the Bill therefore provides a power for Scottish Ministers, exercisable in extremis, to dissolve by order the incumbent committee forming the DSFB. The effect of this will be to trigger the election of a new committee by proprietors.

103. The power to dissolve a committee will only be used in cases of persistent failure to comply with the good governance or other statutory obligations placed on DSFBs. It is intended to be used only in circumstances where all reasonable attempts to address persistent failure have been exhausted. The Scottish Government recognises the differing nature of DSFBs and that each is a product of local circumstances. Ministers intend to consider individually each case of non-compliance brought to their attention and do not intend to state a standard behaviour threshold. It is anticipated that non-statutory guidance on the good governance principles will be issued by the Scottish Government to aid compliance. It is also considered that DSFBs themselves, for example through the Association of Salmon Fishery Boards (ASFB), will work together to drive and enshrine good governance within the sector.

104. There is no policy intention within the Bill to change fundamentally the existing local, voluntary arrangements for management of wild salmon fisheries. However, the Bill represents the first step in taking forward the Scottish Government’s commitment to modernise management structures: delivering immediate improvements to the existing governance functions pending a more comprehensive consideration of management options.

Consultation

105. There is public expectation that managers of public resources should act in an open, transparent manner and be accountable for their decisions and actions. While the 2003 Act provides the statutory framework for management of salmon and freshwater fisheries it consolidates historic legislation and has not kept pace with modern expectations and practices. The existing good practice by DSFBs on good governance was recognised by the Scottish Mixed Stock Salmon Fisheries Working Group but the need to strengthen and support greater openness, transparency and information sharing was also noted.

106. There was overall support among consultees for measures to ensure DSFBs act openly and transparently and are more accountable. Consultees discussed the suitability of various mechanisms to deliver this policy objective, including how the requirement could best be enforced. Some commented on the diversity of Scotland’s DSFBs and the need for new statutory provisions to acknowledge local circumstances. While supportive of a Code of Practice for DSFBs there was overall opposition to making this a statutory requirement. Some consultees pointed to the existing Code of Good Practice prepared by the ASFB which offers guidance and support to DSFBs from their representative body. Some consultees argued for greater access to DSFB business and decision-making, stating that those with a direct interest and potentially affected by management proposals should be made aware of how the proposals were developed, their effect and the views of others.
Alternative approaches

107. The alternative approaches would be to pursue a statutory Code of Practice or to continue to rely on voluntary adoption of good governance principles across all DSFBs. It is accepted that many Boards have made improvements in this area and the Bill proposals are based on statutory underpinning of existing good practice. However, there is a recognised need for further improvement and a clear case for requiring DSFBs to act in a way which is consistent with bodies with public law functions. This supports the case for additional obligations to be placed on DSFBs.

108. There was little support for a statutory Code of Practice. The ASFB’s existing Code is sector led, developed and monitored and this provides an appropriate guidance and support tool for DSFBs in understanding and fulfilling their functions. It is therefore anticipated that the ASFB’s Code will continue to exist and be further developed and updated to reflect new statutory responsibilities and working practices.

109. The alternative to a power of dissolution for Ministers would be to continue with no sanction for non-compliance or to introduce specific criminal sanctions. The former is not compatible with policy objectives for effective management of salmon and freshwater fisheries and there is an obvious gap in accountability which needs to be addressed. The latter is considered undesirable as a matter of policy. The 2003 Act envisages local management of salmon and freshwater fisheries by a locally accountable, elected committee of proprietors comprising the DSFB for that district. The Scottish Government would seek to intervene or interfere with the functions of a DSFB in circumstances only where it persistently fails to achieve its statutory objectives or exercise its functions. In such a case, the Scottish Government’s primary objective is to ensure the DSFB gets back on track, dissolving the offending committee to assist the appointment of a new committee in order to achieve the DSFB’s statutory functions and to ensure the district’s fisheries management needs are adequately addressed and met. Criminalising proprietors will not assist to deliver this objective, whereas locally driven change in DSFB management will.

Enhancing management of salmon fisheries

110. The majority of the following proposals stem from the legislative recommendations of the Scottish Mixed Stock Salmon Fisheries Working Group21 (SMSSFWG), published in 2010. The SMSSFWG report recommended a Bill be brought to the Parliament to take these forward.

111. Salmon fisheries are managed on a voluntary, local basis by a committee of proprietors through DSFBs with a presumption in favour of locally-agreed voluntary management solutions. This structure sits within a national legislative framework which regulates effort and practice in pursuit of sustainable salmon and freshwater fisheries objectives. The Scottish Government has obligations to the EU and internationally on salmon conservation and hence responsibility for ensuring that domestic arrangements reflect these obligations and best practice.

112. Information on the status of salmon fisheries is acquired, compiled and disseminated through publication of annual catch statistics by Marine Scotland in reliance of powers in section

21 [http://www.scotland.gov.uk/Publications/2010/03/31154416/0](http://www.scotland.gov.uk/Publications/2010/03/31154416/0)
64 of the 2003 Act. Interpretation of such data within a wider framework of stock conservation, protection and enhancement is facilitated by a targeted research and monitoring programme. This work is conducted primarily by Marine Scotland and supplemented with specific time-limited projects commissioned by Marine Scotland through the university and private sector routes.

113. Scottish Government policy is to promote an evidence-based approach to fishery management, supporting entitlements to fish in accordance with the law where stocks can support the effort. The differing aims and interests of wild fisheries groups should be acknowledged. Angling proprietors seek to manage fisheries for abundance of angling while netsmen exercise their right to harvest fish for commercial purposes. The need for occasional management measures to reduce exploitation for conservation reasons is recognised by all stakeholders and there are many examples of these in place across the country. In cases where local agreement on voluntary measures cannot be reached or where they have not adequately addressed the issue DSFBs can apply to Scottish Ministers for statutory measures. In seeking action or resolution through national government, DSFBs as local managers should acknowledge that Scottish Ministers will have regard to the advice of statutory advisors, national strategic objectives and priorities when determining applications.

114. Scottish Ministers have powers to make some fisheries management measures at their own hand; however, certain options can only be pursued at the request of DSFBs. There is no intention in the Bill to introduce a parallel management system. However this piecemeal approach presents risks in terms of contingency planning and addressing national challenges such as development of a co-ordinated response to climate change.

**Carcass tagging**

115. The SMSSFWG recommended the introduction of a carcass tagging scheme for all wild, net-caught salmon offered for sale, whether privately or on the open market. The Group cited policy drivers of enhanced traceability, additional support for tackling the illegal sale of rod caught salmon, improved data gathering and marketing of a premium Scottish product. An application for protected food name for Scottish wild salmon is currently being considered by the European Commission.

116. A voluntary carcass tagging scheme for salmon (though not sea trout) is already in place in Scotland and applies to 90% of the net caught fish offered for sale. This pilot scheme was developed with financial support from the Scottish Government. It is operated through the Salmon Net Fishermens’ Association of Scotland and has been in place since 2010. The scheme involves attachment of a gill tag bearing the name, address and contact details of the fishery on one side and the ‘Scottish wild salmon’ brand logo on the other. The tags are not numbered and no logbook is kept. A statutory scheme of carcass tagging has been in place in England and Wales since 2009. It is administered by the Environment Agency (EA) and linked to the licensing arrangements for salmon fishing. Tags are numbered and logbooks kept and returned to the EA annually.

117. The Bill provides an enabling power for Scottish Ministers to make regulations requiring salmon caught and retained by any legal method to be tagged. The purpose, scope and requirements of the scheme are to be defined in the regulations. Once the regulations delivering
the scheme are in force, it will be a criminal offence to sell, offer for sale, or have possession of any salmon that has not been tagged in accordance with the regulations, or to remove a tag otherwise than in accordance with them. Contravention of the regulations or failure to take any action or to comply with a requirement of the regulations will also be a criminal offence.

118. There is a number of options for how the scheme could operate in practice and for its administration. Stakeholder views on these vary. Some favour placing the current voluntary scheme on a statutory footing, seeing considerable advantage in the continuation of proven, light-touch administrative arrangements and technology. Others wish to see a scheme administered by the Scottish Government or DSFBs with numbered tags and record-keeping requirements. Consultation with stakeholders is currently being undertaken with a view to introducing a scheme which delivers policy intention without imposing a disproportionate financial burden on small businesses.

Consultation

119. The proposal for a carcass tagging scheme came from the SMSSFWG with both the angling and netting sectors in support. There was strong support among consultees for powers to introduce a carcass tagging scheme in Scotland with respondents recognising numerous potential benefits from the proposal. Some felt a scheme would bring Scotland into line with England and Wales while others felt it was an extension of the existing voluntary scheme. Opposition to the proposal was based on the potential administrative and financial burdens for local fisheries and questioning of benefits in relation to costs. A number of respondents emphasised the importance of additional consultation with stakeholders on the design and the detail of the scheme.

Alternative approaches

120. The alternative approach is continued reliance on the voluntary scheme. While this covers around 90% of the net caught fish going to market it is not universal, potentially undermining the benefits that can be realised from a statutory scheme. It is notable that although opinion differs between angling and netting interests on the purpose and design of the scheme, the power to create a statutory scheme has support from both sectors.

121. The use of an enabling power to create a statutory scheme is in line with recognised practice in framing legislation. An alternative would be to outline the scheme in primary legislation. This is not considered an appropriate approach given the technical detail and operational nature of the scheme and the need for flexibility in the light of operational experience.

Sampling and information

122. The policy objective is for effective, science-based management, protection and conservation of salmon. For these purposes, the Scottish Government requires access to fish for investigation and sampling. This can include sampling for genetic material to aid understanding of stocks within rivers, and whole fish for acoustic tagging and tracking to identify spawning sites and identify the factors that suppress population size. This work, undertaken by Marine Scotland, informs development of national policy across a range of marine policy areas, notably regulation of exploitation and options for mitigating against potential impacts of renewable energy installations and other developments.
This document relates to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

123. Access to information on activities undertaken by proprietors and others with respect to management of salmon fisheries is also required. For example, information on local management plans including how information is obtained on numbers of fish, structures of stocks and defining of stock levels (such as conservation levels) below which exploitation might be curtailed or suspended in order to conserve populations. Quantification of impacts of factors affecting fish stocks and fisheries, along with options for mitigating against these factors if appropriate and practicable, is also needed. It is considered that local managers and proprietors should work together with the Scottish Government to co-ordinate approaches, share expertise and develop best practice.

124. Scottish Ministers have powers under section 64 of the 2003 Act to conduct inquiries and investigations into questions of practical or scientific importance to salmon and freshwater fisheries. They also have powers to collect statistics on salmon caught in salmon fisheries. Non-compliance with a request under section 64 is a criminal offence. These powers are exercisable for the purpose of protecting and developing stocks.

125. The 2003 Act does not specifically provide powers for access to fish or fish samples. To date, fisheries have willingly given access to Scottish Government researchers and scientists. However, co-operation is voluntary and relies on goodwill. It is considered desirable to have a reserve power which can be relied upon in cases where there is public interest in investigating a fishery but the co-operation of the owner or occupier is not secured. The Bill provides the Scottish Ministers with powers to take fish and samples of fish for analysis and to undertake tracking and monitoring of fish. This work, undertaken in the national interest, will inform conservation and fisheries management decisions at national and local level. Failure or wilful refusal to permit the taking of fish, taking of samples or to provide fish or samples of fish from a fishery will be a criminal offence.

126. In recognition that Scottish Ministers undertake inquiries and investigations of fisheries in the national interest, the Bill removes the caveat in section 64 of the 2003 Act that the operation of Ministerial powers shall not cause damage or interference to the rights of the owner or occupier of the fishery. It is considered that, on balance, any interference in an individual fishery caused where officials undertake scientific investigations is necessary in the public interest and proportionate in the context of wider national objectives of protection of salmon stocks.

127. The Bill responds to the need for additional information on fish and fisheries by broadening the requirement on occupiers and proprietors to provide statistics to include provision of information. The purpose remains for the protection and development of stocks and the request for information must be reasonable. It is intended that this be a backstop power to be used only where the collection of information is in the national interest but an agreement to co-operate in the provision of information cannot be reached. This power complements the good governance themes of openness and transparency and responds to the SMSSFWG’s call for greater information sharing by all parties in the public and private sectors.

128. In partnership with stakeholders, the Scottish Government intends to consider the need for a national data collection workstream to consider the most effective collection and use of information and statistics on fish and fisheries. This might include exploration of the various
This document relates to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

material collected and held by bodies with an interest in fisheries, including the Scottish Government, DSFBs, River and Fisheries Trusts, SEPA and SNH and how it can be shared and used.

Consultation

129. The proposal to create reserve powers to ensure fish and fish samples are provided from any salmon fishery originated from the SMSSFWG in support of evidence-based management of fisheries. There was strong support among freshwater fisheries consultees for Ministerial powers to take fish and fish samples. The aquaculture and other commercial sector respondents were opposed, however. Some consultees commented that the extent of existing Ministerial and DSFB powers in this area is not clear.

130. The majority of consultees supported the principle of providing information to the Scottish Government on fish and fisheries. A small number had reservations. Consultees mentioned the areas of fish introductions, stocking and hatchery operations as key areas where sharing of information was needed, based on perceptions of lack of transparency about activities and impacts. An integrated national data collection strategy was suggested by some, and it was felt that additional consultation with stakeholders was required with the goal of reaching agreement on collection of additional information with proprietors, Boards and regulatory authorities. Some consultees highlighted the cost implications for Boards and Fishery Trusts of providing information.

Alternative approaches

131. The alternative to introducing powers to require fish and fish samples, and information on fisheries, is to continue reliance on voluntary arrangements. While assistance from proprietors and others has been forthcoming in the past there is no guarantee that this will remain the case. It is considered that a backstop power is reasonable and justifiable to enable the pursuit of work undertaken in the national interest.

Annual close time and conservation measures

132. The annual close time is a cornerstone of salmon management and conservation. It provides a continuous period of time where fishing by all methods is prohibited except by rod and line and under express statutory provisions, offering a measure of protection for fish during the reproduction season. The annual close time for each salmon fishery district is prescribed in statute. Under the 2003 Act, DSFBs or - where there is no DSFB - proprietors, may apply to Scottish Ministers for variations to the dates of the annual close time and periods within it where fishing for salmon by rod and line may be permitted. Scottish Ministers currently have no powers to change either the close time dates or the permitted fishing periods at their own initiative, nor can they require DSFBs to monitor and evaluate the impact of variations on salmon stocks in cases where fishing by rod and line during the annual close time has been permitted.

133. The 2003 Act also provides for regulation of salmon fishing through prohibiting the use of specified baits and lures and by general conservation measures, for example catch and release. These options can be pursued by DSFBs at their initiative, or by Scottish Ministers. However,
Scottish Ministers cannot require monitoring and evaluation of the effect of measures on salmon stocks.

134. The policy objective is for a flexible, responsive suite of management options to be available to DSFBs and Scottish Ministers to ensure that salmon are adequately protected while the economic benefits of fisheries are realised. The primary role of DSFBs as local managers is acknowledged but there is a need for Ministers to be able to act to address issues in the national interest. Where locally-applied management measures are in place, these should be robustly monitored and evaluated to assess their impact.

135. The Bill contributes to the policy objectives by enabling Scottish Ministers to initiate a wide range of management and conservations measures by amending section 38 of the 2003 Act to include annual close time orders as a conservation measure available to Ministers. This fulfils recommendations 4 and 5 of the report of the SMSSFWG22. The Bill will enable Ministers to promote a wider, more flexible package of management measures where advice from statutory advisors suggests there is need, ensuring they have a full range of options to address problems which pose a significant risk to stocks. A Ministerial power to make annual close time orders will support risk management in terms of potential infraction proceedings or reputational damage from inability to fulfil obligations to the EU; in circumstances where there is no DSFB in place or where a DSFB does not intend to promote measures in their own behalf; or where there are cross-DSFB dimensions.

136. Further, it provides that Scottish Ministers can impose requirements on DSFBs and proprietors in relation to the monitoring and evaluation of the effect of annual close time orders and salmon conservation regulations; and on DSFBs for baits and lures regulations. This will ensure management measures are monitored robustly and consistently with a view to assessing their continued effectiveness. Contravention of monitoring and evaluation requirements will be a criminal offence.

137. The Bill introduces two further amendments to the 2003 Act in relation to statutory measures. These reflect Scottish Government policy to promote clarity on the legal exercise of fishing rights and ensure the framework for applications for statutory measures can be readily updated to reflect future changes in working practices.

138. The Bill provides Scottish Ministers with the power to amend, by order, the procedures by which applications for designation, estuary limits and close times orders, and conservation and baits and lures regulations are made and considered. This takes account of possible developments in information technology or accepted practices in carrying out consultations or placing adverts.

139. A technical, consequential amendment is also made to the 2003 Act regarding the offence of fishing during the annual close time. Its purpose is to provide clarity on the circumstances in which it is legal to fish by rod and line during the annual close time. The defence of fishing for salmon by rod and line during periods exempted by regulations, byelaws, designation orders,

22 http://www.scotland.gov.uk/Publications/2010/03/31154416/0
annual close time orders and conservation regulations is set out in the amended version of section 14(2) of the 2003 Act.

Consultation

140. There was strong support across all stakeholder groups for Ministerial powers to make annual close time orders at their own hand and to attach conditions. However, there were varied views on the circumstances in which it was appropriate for Ministers to exercise the power and to promote combined measures; DSFBs and Trusts largely felt that it was the responsibility of DSFBs to promote measures and the power should only be used where there was no DSFB. Others felt it should be a reserve power for when DSFBs were not fulfilling their obligations and some considered that it should be used only where Ministers had significant concern about stocks. Many recommended a partnership approach to developing conditions.

Alternative approaches

141. The two alternative approaches are for the power to initiate applications for all management measures to rest solely with Ministers, or to continue with the existing piecemeal approach. The former is not proportionate or desirable and does not align with broader policy on local management of salmon fisheries. The latter is discounted on the basis of the need for Scottish Ministers to ensure effective contingency and risk management systems are in place and overwhelming support among consultees for legislative change.

Introductions

142. Proposals to introduce fish or spawn of fish into inland waters or to possess live fish or spawn is subject to a consent process under section 33A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Marine Scotland Science is the consenting authority on behalf of Scottish Ministers for all species with the exception of salmon fishery districts with a DSFB, where the DSFB is the consenting authority for the proposed introduction or possession of salmon and salmon spawn. Introduction of live fish or spawn, or possession of live fish or spawn with an intention to introduce, without consent is a criminal offence.

143. Scottish Government policy is for rivers and fisheries to be sustainably managed based on the best available science. The practice and potential impacts of fish stocking are subject to considerable debate among stakeholders; the debate is characterised by concerns about lack of transparency on activities and impacts. Due to the division of responsibilities for consenting to introductions there is no national picture of stocking practices and no mechanism to ensure it is undertaken in line with good practice and monitored effectively. DSFBs may consent to their own introductions of salmon, a situation which presents potential risks in terms of impartiality and transparency. They may also licence introductions where the inland waters are, or may affect, a designated site for salmon or other protected species under the Habitats Directive. This presents risks in terms of the Scottish Government’s obligations under European law as DFSBs are not subject to any statutory obligation to consult on their introduction plans.

144. The policy objective is that, where stocking does take place, it is done in line with good practice guidelines and that appropriate record keeping and monitoring take place. There is a range of guidance material and literature on this issue produced by a variety of bodies. The Scottish Government intends to review this body of work in partnership with key stakeholders.
and develop a national policy position. This will include consideration of whether, in certain circumstances, it is more appropriate for Scottish Ministers, in the national interest, to take responsibility for consenting to introductions of salmon and salmon spawn, even where a DSFB is otherwise the consenting body. It is anticipated that potential circumstances might include where the waters are situated within a Special Area of Conservation (SAC), where self-authorisation is proposed, or where there is evidence of poor restocking practice which has not been addressed through local management.

145. The Bill supports policy objectives by introducing an enabling power for Scottish Ministers, to modify, by regulation, DSFBs functions under the 2003 Act with respect to consenting to introductions. The regulations may specify circumstances or cases where the consenting function is to be exercised by Ministers or when applications for consent should be referred to them; and in cases of referral to determine the application or to issue direction to DSFBs on determination. This represents a proportionate approach to managing risk, providing the ability for Ministers to act in support of their national objectives and obligations whilst acknowledging the role of DSFBs as local managers.

146. The Bill also provides for a more robust and accountable consenting regime for introductions by giving the Scottish Ministers and DSFBs powers to attach conditions and requirements to consents for introductions of all freshwater species, including salmon and salmon spawn. Breach of the requirements or conditions will be a criminal offence. As a parallel and complementary measure, the Bill also introduces certain additional amendments to strengthen existing provisions in the 2003 Act which makes provision for consenting regimes for activities such as taking of broodstock; electrofishing; methods of fishing during the close time; and netting, trapping and disturbing redds - for all freshwater species – to enable the consenting authorities to attach conditions and requirements to statutory consents and permissions. Breach of these conditions will again be a criminal offence.

Consultation

147. The need to undertake further work on stocking and, more broadly, fish introductions, as a fisheries management tool was identified in the Strategic Framework for Scottish Freshwater Fisheries. There was strong support among consultees for Ministerial powers to restrict or exclude the jurisdiction of DSFBs with respect to consenting to introductions. A need for more information on fish introductions, stocking and hatchery operations was shared by respondents based on a view that there is a lack of transparency about stocking activities and their impacts. Others felt a reserve power would provide a helpful safety net where DSFBs were not fulfilling their duties. Many respondents highlighted the variety of good practice guides on introductions, including that of the DSFBs.

Alternative approaches

148. The alternative approach to delivery of the policy objective is to remove DSFB jurisdiction over introduction of salmon and salmon spawn and vest it exclusively with Scottish Ministers. This would bring together all freshwater fish introduction consents with one body: Scottish Ministers. In the absence of a full assessment of the operation of the current consent regime under the 2003 Act, this option is not considered to be justified and does not align with broader policy on local management of salmon fisheries.
EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

149. None of the provisions in Part 2 will have a differential or discriminatory impact on equality groups.

Human rights

150. The provisions in Part 2 are compatible with the European Convention on Human Rights.

Island communities

151. The provisions in Part 2 support the shared vision of sustainably managed freshwater fish and fisheries resources that provide significant economic and social benefits for Scotland’s people, including island communities.

Local government

152. The provisions in Part 2 have no impact on local authorities.

Sustainable development

153. The provisions in Part 2 support the shared vision of sustainably managed freshwater fish and fisheries resources that provide significant economic and social benefits for Scotland’s people.

PART 3: SEA FISHERIES

154. Experience has shown that some additional enforcement powers are required for sea fisheries enforcement officers in Scotland. These include the power to detain vessels in port to ensure the attendance of suspects at court proceedings, the power to dispose of property and forfeit illegal equipment, and the power to inspect objects associated with commercial fishing activity. Similar powers already exist in the rest of the UK.

Detention of vessels in connection with court proceedings

155. The Bill provides powers for enforcement officers to detain vessels in port for the purposes of ensuring that alleged offenders attend relevant court proceedings. Enforcement officers have powers to take vessels to port to facilitate investigations where offences are suspected. Where the procurator fiscal instigates criminal proceedings, the accused person is normally cited to appear in court on a given date. Where foreign vessels or individuals who live abroad are involved in the commission of offences, a different approach is required to ensure accused persons turn up in court. There is ambiguity regarding the scope of existing statutory provisions to detain vessels beyond the point where a report has been submitted to the procurator fiscal. The Bill seeks, therefore, to provide express powers to detain vessels in connection with court proceedings.
Inspection and seizure of objects used in commercial sea fishing

156. Enforcement powers currently available to sea fisheries enforcement officers are generally predicated around the inspection of a vessel, vehicle, or certain premises. There is a potential gap in enforcement powers when an inspection does not involve one of these situations. Officers may encounter objects in the sea, or in harbours, or on the foreshore which appear to relate to commercial sea fishing but they are not at that time immediately associated with a vessel, vehicle, or relevant premises. The Bill, therefore, seeks to provide inspection powers to inspect objects which are being used in connection with commercial sea fishing.

Forfeiture

157. Sea fisheries enforcement officers have powers to seize material as evidence. They do not, however, have any authority to interfere with the property rights of seized material and dispose of such items unless they are forfeited by the courts at proceedings for any relevant offences. If items are not forfeited by the courts, or if no proceedings are instigated, then any seized items fall to be returned to their owner. The return of property in certain circumstances, however, may run contrary to the public interest. This might include situations where enforcement officers find persons with live immature shellfish in their possession for the purposes of offering them for sale where the ‘common sense’ approach would be to take the live shellfish and return it to the sea where it can continue to grow. There may also be occasions where the use of seized items in connection with sea fisheries would be illegal. It would, therefore, seem counterintuitive that enforcement action would be taken by the authorities because they had detected illegal activity, only to facilitate the continuation of that same activity through the return of the means to carry out the relevant offence. The Bill, therefore, seeks to provide the Scottish Ministers with powers to dispose of property and the power to forfeit prohibited items which have been seized by enforcement officers.

Enforcement of EU rules

158. Section 30(1) of the Fisheries Act 1981 creates offences and confers inspection powers for effective enforcement of EU obligations relating to sea fishing where an order has not been made under section 30(2) of the 1981 Act. At present the scope of section 30(1) is limited to the sea area inside the 200 nm fishery limit around Scotland. The Bill seeks to amend section 30(1) to include the activity of Scottish vessels wherever they are.

Consultation

159. In general there was broad support among respondents for the additional sea fisheries enforcement powers contained within the Bill. Areas of concern were around the need for consistency and safeguards in the application of enforcement powers.

Alternative approaches

160. The alternative to the creation of the additional enforcement powers proposed in the Bill would be to rest on existing statutory provisions. This would, however, leave several potential gaps in the powers available to monitor compliance with regulatory obligations and take appropriate enforcement action where required.
EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

161. None of the provisions in Part 3 will have a differential or discriminatory impact on equality groups.

Human rights

162. The provisions in Part 3 are compatible with the European Convention on Human Rights.

Island communities

163. Sea fisheries are an important part of the economy of many remote rural and island communities. There is a risk that, where poorly maintained vessels are taken to port in respect of a fisheries infringement, they are deemed too unsafe to leave the port by the relevant competent authorities until repairs carried out or deficiencies in safety equipment addressed. In extreme cases these vessels can become a socio-economic burden to the ports where they are located especially where the crew of the vessel (who may be unable to go ashore for immigration related reasons) run out of provisions.

Impact on local government

164. For the reasons set out above, vessels can become a socio-economic burden to the ports (some of which are owned by local authorities) where they are located especially where the crew of the vessel (who may be unable to go ashore for immigration related reasons) run out of provisions.

Impact on sustainable development

165. On the whole, the provisions in Part 3 are expected to have a largely positive effect on sustainable development as they deliver added protection to the sustainable sea fisheries sector.

PART 4: SHELLFISH

Protection of shellfish waters

166. The policy objective is to ensure the continued sustainability of the Scottish shellfish industry following the repeal of the Shellfish Waters Directive (SWD) in 2013 by creating new legislative provisions to safeguard shellfish waters protected areas. The broad principles of the SWD will be incorporated into the river basin management planning process introduced by the Water Framework Directive (WFD).

167. Shellfish waters will continue to be designated as protected areas within the River Basin Management Plans (RBMPs). Ministers will develop a framework of environmental objectives for designated shellfish waters. An environmental objective will be assigned to each designated water and this objective will become the focus of any environmental improvement programmes.
Delivery of these objectives will be aligned with other RBMP processes. SEPA and the FSA will continue to monitor shellfish and their waters.

168. This policy objective will ensure continued support is provided to the shellfish industry, safeguarding jobs in local communities as well as protecting human health and the water environment from the effects of pollution. However, in providing this continued protection to the shellfish industry, consideration needs to be given to ensuring that any additional costs falling on other sectors and public bodies are not disproportionate.

Consultation

169. The Scottish Government carried out a consultation in October 2011 “Delivering Scotland’s River Basin Management Plans: An integrated approach to the protection of shellfish growing water,”23 which set out a range of proposals to address the need to continue to offer protection to shellfish growing waters. The Scottish Government received 21 responses from organisations and one individual response. Overall the respondents were supportive of the proposals.24 They welcomed the recognition of the shellfish industry for its economic importance and the continued support of Scottish Government to the protection of shellfish waters.

170. During the consultation and policy development process numerous discussions have taken place with stakeholders including:

- SEPA;
- FSA in Scotland;
- Association of Scottish Shellfish Growers.

Alternative approaches

171. The alternative approach would be to do nothing following the repeal of SWD. There would be no faecal indicator organisms standard (within the WFD) and no legal obligation for those discharging to the water environment to protect growing shellfish. This would result in deterioration to Scotland’s waters quality which would not support a sustainable future for the shellfish farming industry and could impact human health.

Orders as to fisheries for shellfish

172. The Bill also amends the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”) to make the operation of section 1(1) of the 1967 Act more straightforward. Sections 1(1) of the 1967 Act enables the Scottish Ministers to make several orders and regulating orders for the establishment, improvement, maintenance and regulation of shellfish fisheries. (Several orders give the grantee of the order exclusive rights to manage a fishery for shellfish; regulating orders give the grantee a right to manage (regulate) activities within the area of the order, including the imposition of restrictions on where shellfish may be taken.) At present, Ministers’ powers are restricted to making such orders in respect of the types of shellfish specified in section 1(1). Ministers have a regulation-making power, however, to add to the list of shellfish, listed in section 1(1) and have

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23 [http://www.scotland.gov.uk/Publications/2011/10/03120828/0](http://www.scotland.gov.uk/Publications/2011/10/03120828/0)

24 [http://www.scotland.gov.uk/Publications/2012/05/8479](http://www.scotland.gov.uk/Publications/2012/05/8479)
done so under the Shellfish (Specification of Molluscs and Crustaceans) (Scotland) Regulations 1999 (SSI 1999/139).

173. The Bill amends section 1(1) of the 1967 Act to extend the Scottish Ministers’ order-making power under section 1(1) of the 2003 Act in order to remove the need for regulations to be made each time a non-specified type of shellfish is proposed to become the subject of a regulating or several order. This will simplify the process for making new regulating and several orders, and brings the law on the application for several and regulating orders in Scotland in line with the regime in England and Wales.

174. The Bill also contains provision to amend paragraph 4 of schedule 1 to the 1967 Act, which concerns the powers of Ministers to appoint an inspector to conduct an inquiry into an application for an order under section 1(1) of the 1967 Act. The policy intention is to make clearer Ministers’ discretionary power to appoint an inspector.

Consultation

175. There was limited response to the consultation on these provisions. Of those who did respond on them, most were in favour of the proposals. There were some concerns, however, amongst sea fisheries respondents and some individuals and political representatives.

Alternative approaches

176. Not applicable. The measures are technical amendments to existing statutory functions. There is no alternative other than to retain the current provisions which are over-complicated and lack clarity.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

177. None of the provisions in Part 4 will have a differential or discriminatory impact on equality groups.

Human rights

178. The provisions in Part 4 are compatible with the European Convention on Human Rights.

Island communities

179. The provisions in Part 4 support continued sustainability of the Scottish shellfish industry that provide significant economic and social benefits for its people, including island communities.

Local government

180. The provisions in Part 4 have no impact on local authorities.
Sustainable development

181. The provisions in Part 4 support continued sustainability of the Scottish shellfish industry that provides significant economic and social benefits for its people.

PART 5: MISCELLANEOUS

182. The measures contained within this part of the Bill make provision for charges in connection with a number of fishery functions (fin- and shellfish farming, salmon and freshwater fisheries and sea fishing) and for fixed monetary penalties for a wider range of marine related regulatory offences.

Charging

183. The principle of charging for goods and services where there are direct or indirect benefits is not new. There is a number of examples where charging regimes have been introduced, including the FSA, Quality Meat Scotland and SEPA. For many of these bodies charging has enabled them to progress projects and meet ongoing regulatory requirements through cost sharing and recovery.

184. Marine Scotland currently provides a number of services free of charges (for example aspects of the functions undertaken by Marine Scotland Fish Health Inspectorate) or at best at less than full resource cost. That is no longer a sustainable position as the pressures on public sector budgets increase at the same time as we seek to meet the demands of growing marine industry sectors.

185. To begin to address this position the Bill includes a provision for Scottish Ministers to enable them to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions which will be specified in the regulations. It is recognised that the rationale and detailed arrangements for charges will need to be considered on a case by case basis and ensuring that they did not impact disproportionately on competitiveness.

186. There is a number of existing activities where the introduction of a charging regime could be appropriate but only if it is possible to demonstrate a clear link between the activity and the benefit to an individual stakeholder or group of stakeholders. For example, the Marine Scotland Fish Health Inspectorate helps to prevent the introduction and spread of serious fish and shellfish diseases in Scotland by providing advice and diagnostic service to fish and shellfish farmers, district salmon fishery boards, fishery trusts and other stakeholders.

187. Fish health inspectors also carry out inspection and testing of fish and shellfish farms to maintain the status of the United Kingdom as an approved zone for various diseases of fish and shellfish; fulfil the monitoring required in support of the additional guarantees afforded by the European Commission for the importation of live aquaculture animals or products to prevent the introduction of *Gyrodactylus salaris* and other parasites and diseases; and continue surveillance for infectious salmon anaemia.
188. It is proposed that a similar model to that currently used at section 24 of the Certification of Death (Scotland) Act 2011(asp 11) be applied\textsuperscript{25} where it is explicit that, when determining the amount to be charged it must not be in excess of the reasonable costs of the exercise of the functions in respect of which the fee is to be charged and can only be imposed on persons with respect to whom the function is carried out. Any new scheme would need to balance a number of competing demands, and would need to be transparent, open to scrutiny and as simple as possible but with a range of factors that would help apportion costs fairly across a range of sectors. For example, that might include the premise that activities that pose the greatest risk attract the highest charge.

\textit{Consultation}

189. While there was general support from consultees, there were some concerns about how this might be progressed, and the need for a proportionate approach. There was a general desire for further consultation, which would be undertaken as part of any order making process.

\textit{Alternative approaches}

190. The alternative option to the non-introduction of a charging regime would be to retain the status quo. That approach would place considerable pressure on current funding arrangements designed to support sustainable growth with the wider marine environment.

\textbf{Widening the scope of fixed penalties and increasing the maximum fine level}

191. Section 25 of the 2007 Act makes provision for enforcement officers to issue fixed penalty notices (“FPNs”) in certain circumstances as an alternative to prosecution in the criminal courts. At present an FPN may only be offered as an alternative to prosecution for offences under sea fisheries legislation only. Measures in this section of the Bill will therefore widen the scope of offences for which FPNs can be used to include all marine and freshwater fisheries-related related offences which fall within the responsibility of Marine Scotland. This will mean that enforcement officers have access to a common set of options to deal with non-compliance on marine matters, including in relation to aquaculture and marine planning/licensing.

192. The current level of fixed penalty that can be offered is constrained by the definition given in section 27(1) of the Aquaculture and Fisheries (Scotland) Act 2007. Increasing the level of maximum penalty would allow a greater number of offences to be disposed of through the payment of a fixed penalty rather than prosecution through the criminal courts. In addition, the current maximum fixed penalty available may not be appropriate or provide a sufficient deterrent in the case, for example, of larger businesses where the benefits of non-compliance may significantly outweigh the potential penalty. The Bill will, therefore, increase the maximum level of penalty that can be offered to £10,000.

193. The expansion of the fixed penalty notice system to include other regulatory offences would not only be beneficial to the conservation of the marine environment but also to Marine Scotland, the Crown Office and Procurator Fiscal Service (COPFS), the fishing industry, other industries that work in the marine environment and recreational users of the sea. It would

\textsuperscript{25} \url{http://www.legislation.gov.uk/asp/2011/11/section/24}
provide certainty to operators about the consequences of regulatory non-compliance through a transparent and equitable process.

194. By widening the scope of the fixed penalty notice regime, many more offences could be, and would be, concluded outwith the criminal justice system with reductions in resource and opportunity costs for commercial operators, and the criminal courts. Commercial operators may be able to reduce or avoid expenditure on legal fees, and the time taken up with court appearances. They would also be able to avoid a criminal conviction which may have unexpected and un-helpful consequences for businesses in their wider commercial enterprises. This would also mean that only the most serious of regulatory non-compliance will be dealt with by the criminal courts.

195. The proposed increase in the maximum penalty that can be offered through a fixed penalty notice would mirror, in respect of sea fisheries offences, the maximum level of fixed penalty that can be offered in England under the Sea Fishing (Penalty Notices) (England) Order 2011.

Consultation

196. There were mixed views in the responses to this proposal, in particular strong opposition from the aquaculture industry. However, it was clear, from subsequent engagement with the industry, that they had conflated this issue with the separate issue of strict liability, and officials invested considerable time and effort in explaining the policy intentions to key stakeholders.

Alternative approaches

197. Alternative policy approaches were considered. One, take no legislative action and instead rely on existing mechanisms to achieve the same outcomes and two, enhance the compliance monitoring and regulatory regime by introducing strict liability for certain aquaculture related offences; extending the scope of the fixed penalty notice scheme, and enhancing the powers of enforcement officers where their existing powers are insufficient.

198. Experience has shown that, in relation to some aspects of regulatory non-compliance in the aquaculture sector, it is not always possible to determine who was directly responsible and ought to be held liable for apparent illegal activity. A potentially simpler and more effective model is one where strict liability for any non-compliance rests with persons in a particular position or capacity. Investigators would need only to pursue one avenue of enquiry to gather sufficient evidence to establish what happened, as there would be no requirement to demonstrate intent on the part of the accused. Where evidence proves that an offence has been committed, certain persons are guilty of that offence by virtue of the capacity/office they hold at the time of the offence.

199. An alternative to the use of strict liability would be the use of vicarious liability. Vicarious liability would mean that an employer could be held liable for the actions of an employee. However it would still be necessary for any investigation to establish the actions of the employee before vicarious liability could be successfully used to pursue his/her employer.
200. A number of reforms to the criminal justice process in Scotland in recent years have extended the range of alternatives to prosecution that can be offered. The general approach is that there should be less reliance on the criminal courts as the default means of punishing business non-compliance with regulatory obligations.

201. The alternative to widening the scope of the fixed penalty notice regime is to continue to rely on the criminal justice system, which runs contrary to justice reforms and the recommendations of a number of key reviews that, where possible, business regulatory non-compliance should be handled outwith the criminal justice system.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

202. None of the provisions in Part 5 will have a differential or discriminatory impact on equality groups.

Human rights

203. The provisions in Part 5 are compatible with the European Convention on Human Rights.

Island communities

204. The provisions in Part 5 will have no negative implications for island communities.

Impact on local government

205. The provisions in Part 5 have no impact on local authorities.

Impact on sustainable development

206. The provisions in Part 5 work in support of sustainable development.
AQUACULTURE AND FISHERIES (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Aquaculture and Fisheries (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The primary purpose of the Bill is to ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment.

3. The Scottish Government is committed to ensuring that there are modern and effective management structures in place, supported by an effective and proportionate regulatory framework. It is persuaded that appropriate regulation and management will help to ensure that aquaculture products remain of the highest quality and are produced within environmental limits. The provisions in the Bill will work to secure the sustainability of aquaculture growth, principally as regards the farming of Atlantic salmon, and that salmon and freshwater fisheries can be effectively managed, in an open and transparent manner.

Rationale for subordinate legislation

4. In deciding whether provisions should be specified on the face of the Bill or alternatively left to subordinate legislation, the Scottish Government has carefully considered the substance of each issue and the need to provide flexibility to respond to changing circumstances, without the need for primary legislation.

Delegated powers

5. The delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.
This document relates to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

Section 1 - power to modify the definition of the Code of Practice.

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

6. Section 1(2) of the Bill inserts a new section 4A into the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”). Subsection (4) of the new section 4A creates a power for the Scottish Ministers to modify, by order, the definition of the “Code of Practice” in subsection (5) of the new section, to substitute a reference to another document and / or body for the current one.

Reason for taking power

7. The new section 4A inserted into the 2007 Act by section 1 of the Bill makes provision about fish farm management agreements and statements. It refers to the existing voluntary Code of Good Practice for Scottish Finfish Aquaculture as issued and revised from time to time by the Scottish Salmon Producers’ Organisation, which is the industry producer organisation for Scottish salmon farming. As both organisations and documents can change over time, this provision enables Ministers to amend the definition of “Code of Practice” to reflect such changes as and when they occur.

8. It is appropriate that provision be made by subordinate legislation as the power enables Ministers to respond to such changes more readily and flexibly than if the changes were required to be made in primary legislation.

Choice of procedure

9. Orders under inserted section 4A(6) will be subject to affirmative procedure by virtue of section 43(3) of the 2007 Act, as amended by section 1(4) of the Bill. This procedure is considered appropriate as any order will textually amend provisions in new section 4A of the 2007 Act and has the potential to result in the recommendations of a body on best practice, other than an industry producer organisation, being adopted.

Section 3 - power to prescribe technical requirements for equipment used in fish farming.

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

10. Section 3(1) of the Bill creates a power for the Scottish Ministers to make regulations prescribing technical requirements for equipment used for and in connection with fish farming; and which make provision to ensure such requirements are complied with.
Reason for taking power

11. Section 3 of the Bill makes provision about the matters which may be provided for in regulations which will require the fish farming industry in Scotland to adopt specified standards and types of equipment in its operations in relation to the containment of fish. The aim of the regulations is to ensure the installation and deployment of condition and site appropriate fish farming equipment so as to better contain fish, prevent escapes of fish, improve productivity, increase sustainability and minimise the potential for any significant adverse impact on wild salmonids, including as a result of parasites and diseases.

12. Whilst the fish farming industry has made improvements in containment practices and in reducing fish farm escapes, there remain concerns associated with fish farming businesses which use equipment unsuitable for the authorised farming activity or location, or which fail to replace equipment as it degrades over time. The power in section 3(1) of the Bill will enable Ministers to make regulations specifying minimum standards of acceptable infrastructure with regard to farming activities and their location, and will allow Ministers to respond to technological developments in equipment, novel farming approaches or climatic changes which impact upon the prescribed standards. In order to ensure the efficacy of the regulations, section 3(3) enables Ministers to make provision regarding enforcement of the regulations.

13. It is appropriate that provision be made by subordinate legislation as the requirements to be prescribed under the regulations as regards equipment are likely to change as a result of technological advances and the evolution of best practice within the industry. A regulation-making power enables Ministers to respond to these issues more readily and flexibly than if the relevant standards were to be prescribed in primary legislation. In addition, it is considered that in prescribing certain pieces of equipment, the provisions of Directive 98/34/EC of the European Commission and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services will be engaged (the “Technical Standards Directive”, OJ L 204, 21.7.1998, p37). The Technical Standards Directive requires any measures containing technical standards to be notified to the European Commission in draft, and the unpredictable impact of delay associated with this process in relation to the progress of primary legislation through the Scottish Parliament makes it undesirable for the equipment specifications to be prescribed in primary legislation.

Choice of procedure

14. Regulations under section 3(1) will be subject to negative procedure. This procedure is considered appropriate as the regulations will in the main prescribe technical specifications which have been agreed in discussion with industry and technical experts and which, in the case of notifiable provisions, will have been considered in draft by Member States and the European Commission under the Technical Standards Directive. Negative procedure therefore provides for the appropriate degree of scrutiny. Further, where the regulations make provision in relation to the keeping of information and records, it is considered that provisions of this kind are administrative in nature and negative procedure is therefore appropriate.
Section 5 – Power to make regulations to control and monitor the operation of wellboats

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

15. Section 5(1) of the Bill provides a power for the Scottish Ministers to make provision, in regulations, for or about controlling and monitoring the operations of wellboats in Scotland. Section 5(2) specifies the matters which the regulations may, in particular, make provision for or about, and section 5(3) describes the persons upon whom requirements under the regulations may be imposed. It is an offence to contravene the regulations or to fail to take action required under or to comply with the requirements of the regulations (section 5(5)).

Reason for taking power

16. “Wellboat” is defined in section 4(1) of the Bill as a vessel that contains a tank or well for holding water (including sea water) into which live farmed fish are taken and subsequently kept for transportation, storage and treatment. The spread of the serious notifiable disease infectious salmon anaemia (ISA) in 1998 and 1999 was linked to movements of wellboats. The 1998/99 ISA outbreak is estimated to have cost the industry between £25 and £30m in direct costs at the time. It has also been reported that wellboats may act as a vector for the spread of pancreas disease (non-notifiable disease that is known to affect Atlantic salmon) and the spread of sea lice following treatments in wellboats. It is considered that the power to control and monitor wellboat operations will contribute significantly to the control of disease spread.

17. The power in section 5(1) of the Bill will enable Ministers to make regulations specifying minimum, acceptable standards of wellboat operation and control, including specification of the equipment to be deployed, with a view to minimising the impact of such operations as regards the potential for the spread of parasites, pathogens or diseases. The regulation-making power will allow Ministers to respond to technological developments in equipment available to be deployed on board such vessels, and section 5(2)(b)(ii) will enable Ministers to monitor the efficacy of the regulations.

18. It is appropriate that provision be made by subordinate legislation as the requirements to be prescribed under the regulations as regards equipment are likely to change as a result of technological advances and the evolution of best practice within the industry. A regulation-making power enables Ministers to respond to these issues more readily and flexibly than if the relevant standards were to be prescribed in primary legislation.

Choice of procedure

19. Regulations under section 5(1) of the Bill will be subject to negative procedure. This procedure is considered appropriate as the regulations will in the main prescribe technical, operational specifications and requirements agreed in discussion with industry and technical experts. One way of doing this would be through a working group on the same lines as the

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1 Movement restrictions were placed on 329 sites between May 1998 and January 2001 as a result of the ISA outbreak (Note – not all of these sites would have been producing).
existing Improved Containment Working Group. Negative procedure therefore provides for the appropriate degree of scrutiny. In addition, it is considered that where the regulations prescribe the use of certain pieces of equipment, the provisions of Directive 98/34/EC of the European Commission and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services will be engaged (“the Technical Standards Directive”, OJ L 204, 21.7.1998, p37). The Technical Standards Directive requires any measures to be notified in draft and the unpredictable impact of delay associated with this process in relation to the progress of primary legislation through the Scottish Parliament, makes it undesirable for the equipment specifications to be prescribed in primary legislation.

Section 8- power to specify a commercially damaging species

Power conferred on:  the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure:  Negative procedure

Provision

20. Section 8(1) makes provision for the Scottish Ministers to specify, by order, fish, shellfish, animals, or plants as commercially damaging species.

21. Section 8(2) qualifies the making of an order such that an order may only be made in relation to species which, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a fish or shellfish farmer and which is itself of little or no commercial value.

Reason for taking power

22. Chapter 3 of the Bill establishes a new regulatory regime for the management, control and removal of commercially damaging species. Currently there is no statutory definition of what constitutes a commercially damaging species. Section 8(1), as read with subsection (2), of the Bill enables Ministers to specify what comprises a commercially damaging species. Other provisions in the Chapter go on to enable the Scottish Ministers to take measures in relation to the wider aquaculture industry in relation to these species. It is necessary to take a power to enable the Scottish Ministers to specify what comprises a commercially damaging species, rather than to specify such species in the face of the Bill, as this will allow Ministers to respond flexibly to the emergence of new or unknown species or threats.

Choice of procedure

23. An order under section 8(1) of the Bill is subject to negative procedure. Negative procedure is considered appropriate as if the Parliament agrees to give Ministers the powers, the specification of a commercially damaging species is viewed largely as a technical matter and negative procedure thus provides for the appropriate degree of scrutiny.
Section 9 - movement of species, etc

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

24. Section 9(1) of the Bill enables the Scottish Ministers, by order, to make provision to prohibit or control the movement of any commercially damaging species present or suspected of being present in any body of water. The power also enables Ministers to prohibit or control the movement of any other species of animal or plant and any equipment or other material used in fish or shellfish farming which may be associated with moving commercially damaging species, and water in which a commercially damaging or other species may be present.

25. Section 9(2) of the Bill provides for the matters that may be contained or provided for in an order under section 9, and section 10 of the Bill further explains the provisions in relation to sampling and surveillance programmes that may be provided for in such an order.

Reason for taking power

26. If commercially damaging species or fish farming equipment are moved to other areas, the movement could have adverse impacts on other aquaculture sites and businesses and on the wider aquatic environment. Regulating movements where commercially damaging species are known to be present is considered likely to help to prevent further spread. Powers to take samples will enable a determination to be made about whether a commercially damaging species is present and so inform decisions as to required movement restrictions and surveillance. An order-making power is considered desirable as it will enable Ministers to respond flexibly to the individual circumstances of an occurrence of a specific commercially damaging species, enabling tailored solutions to particular circumstances to be available in a way that provisions on the face of the Bill are believed could not so easily provide for.

Choice of procedure

27. An order under section 9(1) of the Bill is subject to negative procedure. Negative procedure is considered appropriate as if the Parliament agrees to give Ministers the powers, the specification of what is required as regards movement controls is viewed largely as a technical matter and negative procedure thus provides for the appropriate degree of scrutiny.

Section 20 – Ministerial power to modify the good governance requirements

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure
Provision

28. Section 20(3) of the Bill inserts new sections 46A to 46G into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). Inserted section 46F confers a power enabling the Scottish Ministers to modify, by order, the good governance requirements placed on District Salmon Fishery Boards (DSFBs) and to impose additional requirements for specified purposes (section 46F(1)). “Good governance requirements” is defined in section 46F(4) of the 2003 Act, with reference to the meaning in new section 46A(3) of the 2003 Act, which is introduced by section 20(3) of the Bill.

Reason for taking power

29. The power in new section 46F(1) of the 2003 Act enables the Scottish Ministers to modify the good governance requirements as they consider necessary to achieve policy objectives on openness, transparency and accountability. This includes the option of placing obligations or functions on DSFBs in addition to those specified in sections 44 and 46A to 46E of the 2003 Act, to secure or underpin principles of good governance in light of operational experience of the enhanced governance functions. The power is not exercisable such as would allow Ministers to, for example, alter the structure of the DSFB administrative and management regime under Part 3 of the 2003 Act, but rather can be exercised only for the purposes specified in section 46F(2) of the 2003 Act. The order making power will give Ministers the ability to respond to current thinking as regards good governance requirements for DSFBs, ensuring that governance principles are up to date and in line with those in the public sector, and reflect the needs of the public.

Choice of procedure

30. Affirmative procedure is considered the appropriate level of parliamentary scrutiny as an order under section 46F(1) will textually amend the 2003 Act and may, potentially, affect the way in which DSFBs are managed and the nature of their relationship with their members or the general public.

Section 20 - Ministerial power to dissolve the committee constituting a board

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

31. Section 20(3) of the Bill inserts new sections 46A to 46G into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). New section 46G confers a power to enable the Scottish Ministers, in the circumstances specified in section 46G(1) of the 2003 Act, to dissolve the incumbent committee of proprietors constituting the District Salmon Fishery Board (DSFB).
Reason for taking power

32. The Scottish Government considers section 46G(1) of the 2003 Act to comprise a reserve power. DSFBs are bodies created under statute but they are not accountable to the Scottish Government nor to the Scottish Parliament. There is no current sanction which can be applied by Ministers in cases of persistent DSFB non-compliance with their obligations under the 2003 Act. This oversight requires addressing to ensure DSFBs comply with their existing and new obligations, achieving the policy aim of more open, transparent and accountable management of salmon fisheries.

33. A reserve power for Scottish Ministers to dissolve the committee constituting the DSFB is considered a desirable and appropriate sanction. The power is only exercisable where Ministers consider that failure to comply with good governance requirements is persistent, or in circumstances where a DSFB has otherwise and persistently contravened the requirements of the 2003 Act. The circumstances of each case will be considered on an individual basis, with emphasis on working with DSFBs in the first instance to understand the circumstances leading to non-compliance and where possible to address that with the DSFB without resorting to the power in section 46G(1) of the 2003 Act.

Choice of procedure

34. The making of an order under section 46G(1) of the 2003 Act is a power intended to be exercised in extremis, after having worked with the DSFB in question and in circumstances where all reasonable attempts to address a DSFB’s persistent failures cannot be remedied. Exercise of the power does not annul the status of a DSFB, but rather will remove the incumbent committee of proprietors, and allow for the appointment, if appropriate, of a fresh committee, which it is hoped will be prepared to embrace its functions under statute. Negative resolution is considered the appropriate procedure as it provides a proportionate and appropriate level of parliamentary scrutiny for the administrative action required to dissolve the committee, at a stage when it is considered that no further action can reasonably be taken in cooperation with the DSFB in question.

Section 22 – salmon carcass tagging

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

35. Section 22 of the Bill inserts a new section 21A into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). Section 21A(1) enables the Scottish Ministers to make provision, by regulations, for or in connection with tagging the carcasses of wild salmon, and new section 21A(2) provides examples of the matters that may be provided for under such regulations.
Reason for taking power

36. The regulation-making power in section 21A(1) of the 2003 Act will enable the Scottish Ministers to put in place a statutory scheme for carcass tagging of wild salmon. A carcass tagging scheme is considered to be a helpful vehicle to implement policy on, for example, enhanced traceability of wild salmon, promotion and identification of a Scottish quality brand and reinforcement of existing statutory measures banning the sale of rod caught salmon (the Conservation of Salmon (Prohibition of Sale) (Scotland) Regulations 2002 (SSI 2002/418)).

37. A regulation-making power is believed to comprise a more flexible delivery mechanism to provide for the technical aspects of the proposed tagging scheme, which is being developed in consultation with relevant stakeholders, and will facilitate any necessary amendments to the scheme in light of operational experience. In addition, it is likely that the specification of requirements as to the tags that have to be affixed to carcasses will engage the provisions of Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services (“the Technical Standards Directive”, OJ L 204, 21.7.1998, p37). The Technical Standards Directive requires any measures containing technical standards to be notified to the European Commission in draft and the unpredictable impact of delay associated with this process in relation to the progress of primary legislation through the Scottish Parliament makes it undesirable for certain specifications as regards the carcass tagging scheme to be prescribed in primary legislation.

Choice of procedure

38. Regulations under section 21A(1) of the 2003 Act will be subject to negative procedure by virtue of section 68(2) of the 2003 Act (as read with paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). Negative procedure is considered appropriate as it provides a proportionate and appropriate level of parliamentary scrutiny of the technical detail of the scheme. In addition, certain provisions of the regulations will have been considered by the European Commission and Member States. Should the regulations make provision in relation to record keeping, etc. (section 21A(2)(b)), such provision is considered to comprise administrative matters and therefore negative procedure provides the appropriate degree of scrutiny.

Section 25 – Amendment of certain powers in the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations or orders made by Scottish statutory instrument
Parliamentary procedure: Negative procedure, laid before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Provision

39. Section 25 of the Bill contains provision to amend sections 33, 37 and 38 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”).
40. Section 25(2) of the Bill amends section 33 of the 2003 Act (salmon fishing, regulations as to baits and lures) to insert a new subsection (6A). Section 33(6A) expands the Scottish Ministers’ current regulation-making power in section 33(1) of the 2003 Act to enable Ministers to impose, in such regulations, monitoring and evaluation requirements on district salmon fishery boards (DSFBs).

41. Section 25(3)(c) of the Bill amends section 37 of the 2003 Act (annual close times for salmon) to insert a new subsection (3A). Section 37(3A) expands the Scottish Ministers’ current order-making power in section 37(3) of the 2003 Act to enable Ministers to impose, in such an order, monitoring and evaluation requirements on DSFBs and proprietors of salmon fisheries.

42. Section 25(4)(c) of the Bill amends section 38 of the 2003 Act (salmon conservation regulations) to insert a new subsection (6)(ba). Section 38(6)(ba) expands the Scottish Ministers’ current regulation-making power in section 38(1) of the 2003 Act to enable Ministers to impose, in such regulations, monitoring and evaluation requirements on DSFBs and proprietors of salmon fisheries.

Reason for taking power

43. The expansion of Ministers’ legislation-making powers under sections 33(1), 37(3) and 38(1) of the 2003 Act will enable Ministers to require monitoring of the efficacy of salmon conservation, etc. measures made in reliance of those provisions. Currently, there is no power for Ministers to require DSFBs or proprietors to undertake investigations into or monitoring of the success or otherwise, of the objectives of measures granted under the said provisions. The ability to impose requirements on DSFBs and proprietors to evaluate the effect of the making of the measures in question will promote evidence-based management of fisheries, allow Ministers to form a view on the continuance of the measures in question, or to consider whether it may be desirable to introduce similar measures in other DSFB areas. It will also promote sharing of information and development of a knowledge base.

Choice of procedure

44. Regulations under section 33(1) of the 2003 Act are not currently subject to any formal parliamentary scrutiny (section 68(3) of the 2003 Act, as read with section 30(3) and (4) of the Interpretation and Legislative Reform (Scotland) Act 2010). Whilst the provisions of section 25(2) of the Bill expand the scope of the current regulation-making power, that expansion is considered to be in line with the current power, and will provide for more effective monitoring of the outcomes of any regulations made. On this basis, we do not consider there to be a need to review the processes by which the regulations are made, and intend to continue the practice of laying before the Scottish Parliament, on an informal basis, any regulations made in reliance of section 33(1) of the 2003 Act.

45. Orders under section 37(3) of the 2003 Act are currently subject to a formal laying requirement (section 68(3)(f) of the 2003 Act, as read with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010). Whilst the provisions of section 25(3)(c) of the Bill expand the scope of the current order-making power, that expansion is considered generally in line with the current power, and will provide for more effective monitoring of the outcomes of any orders made. On this basis, we do not consider there to be a need to review the parliamentary
procedures to which such orders are subject, and believe the formal laying requirement for such orders to afford a suitable degree of parliamentary scrutiny for orders made in reliance of section 37 of the 2003 Act.

46. Regulations under section 38(1) of the 2003 Act are currently subject to negative parliamentary procedure by virtue of section 68(2) of the 2003 Act, as read with section 28 of and paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010. Whilst the provisions of section 25(4)(c) of the Bill expand the scope of the current regulation-making power, that expansion is considered generally in line with the current regulation-making power, and will provide for more effective monitoring of the outcomes of any regulations made. On this basis, we consider that regulations under section 38(1) of the 2003 Act should appropriately continue to be subject to negative procedure.

Section 26 – Power to vary procedures for orders etc. relating to certain fisheries

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

47. Section 26 of the Bill enables the Scottish Ministers to amend, by order, the procedures by which applications for certain statutory salmon fishery management measures are made. Procedures for these applications are set out in schedule 1 to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”) and in section 33(2) to (5) of that Act.

Reason for taking power

48. Section 35(4) of the 2003 Act (designation orders) currently provides the Scottish Ministers with a power to vary the provisions of paragraphs 1, 2 and 10 to 15 of schedule 1 to the 2003 Act. The Scottish Government considers that the effect of this provision could be clearer. Section 26 of the Bill seeks to clarify the effect and scope of that provision such that it is clear that the power to vary, by order, the provisions of paragraphs 1, 2 and 9B to 15 of schedule 1 to the 2003 Act is exercisable as regards the procedural requirements for baits and lures regulations under section 33, designation orders under section 35, estuary limits orders under section 36, annual close time orders under section 37 and salmon conservation regulations under section 38 of the 2003 Act. (Paragraph 9B of schedule 1 to the 2003 Act is introduced by section 21 of the Bill).

49. Section 26(2) of the Bill amends section 33 of the 2003 Act to enable Ministers, by order, to vary the procedural requirements for baits and lures regulations which have been specified in section 33(2) to (5) and paragraphs 9B to 15 of schedule 1 to the 2003 Act. Section 26(4) of the Bill amends section 39 of the 2003 Act (procedures for making orders and regulations under section 33 and Part 2) to enable the Scottish Ministers, by order, to vary the provisions of schedule 1 to the 2003 Act. The new variation power in section 39(2) is without prejudice to the power in section 33(8)(b) of the 2003 Act.
50. The powers in section 26, which are considered to comprise reserve powers only, will enable the Scottish Ministers to improve, enhance or update the processes by which applications for such statutory management measures are made, as considered necessary. For example, the prescribed methods of public advertising or consultation could be amended to reflect developments in information technology or expectations for more effective community engagement and participation. For example, it may in future be considered desirable to amend schedule 1 to allow for applications to be submitted electronically (paragraph 8 of schedule 1) or to require publication of application proposals on a named website as opposed to a newspaper (paragraph 11(2) of schedule 1).

Choice of procedure

51. An order under section 33(8) or 39(2) of the 2003 Act is subject to negative procedure by virtue of section 68(2) of the 2003 Act (as read with paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)). An order under the current variation power in section 35(4) of the 2003 Act is similarly subject to negative procedure. Given that section 26 of the Bill restates what was the intended effect of section 35(4) of the 2003 Act without innovation, and comprises a clarification of the scope of the existing law, it is considered appropriate to continue the level of scrutiny offered by negative procedure, which is appropriate given the administrative nature of such an order.

Section 28 – Consents for introduction of fish into inland waters

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

52. Section 28(3) of the Bill inserts a new section 33B into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). This provision enables the Scottish Ministers to make provision by regulations to recall or restrict District Salmon Fishery Boards’ (DSFB) functions when consenting to the introduction of salmon or salmon spawn into inland waters under section 33A of the 2003 Act.

Reason for taking power

53. Whilst many DSFBs discharge their introductions functions under section 33A(4) of the 2003 Act competently, there may be situations where the exercise of a DSFBs power to consent under section 33A of the 2003 Act may lead to a conflict of interest, for example where the inland water in which a proposed introduction is to take place comprises a Special Area of Conservation (SAC), where introduction of other freshwater species is proposed or where a DSFB proposes itself to introduce salmon into waters in its district. Regulations under section 33B(2) of the 2003 Act will enable the Scottish Ministers to take a national policy approach to introductions to ensure wider objectives are considered, where necessary. The regulation-making power also offers flexibility to provide for district-specific requirements reflecting particular sensitivities in any DSFB area (section 33B(3)), for example, where a DSFB has a SAC in its area, and also to ensure appropriate record keeping and monitoring is undertaken.
Choice of procedure

54. Regulations under section 33B(2) of the 2003 Act will be subject to negative procedure by virtue of section 68(2) of the 2003 Act (as read with paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)). Negative resolution is considered the appropriate procedure as it provides a proportionate level of parliamentary scrutiny of the technical, administrative requirements of the consenting regime for applications to DSFBs under section 33A of the 2003 Act for the introduction of salmon and salmon spawn.

Section 34 (11) - power to allow amendment of the definition of commercial sea fishing

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

55. Section 34(11) of the Bill creates a power for the Scottish Ministers to modify by order the definition of “commercial sea fishing” contained in section 34(10).

Reason for taking power

56. Section 34 of the Bill makes provision for fisheries enforcement officers to inspect and seize objects which an officer reasonably believes have been or are being used for or in connection with commercial sea fishing. Section 34(10) of the Bill defines commercial sea fishing by reference to a number of enactments which deal with the regulation of sea fisheries and enforcement of sea fisheries rules. The section gives fisheries enforcement officers new enforcement powers with respect to objects used in connection with (sea fishing) activities regulated under a number of existing statutory provisions. These activities are defined as commercial sea fishing. To ensure effective enforcement, it is necessary to ensure that the definition of commercial sea fishing is up to date.

57. Section 34(11) of the Bill creates a power for the Scottish Ministers to modify, by order, the definition of commercial sea fishing. This will ensure that the enforcement powers conferred by this section will be available with respect to objects used in connection with activities regulated by any new legislation which may be introduced in the future. This will ensure that there are no enforcement power gaps when new statutory provisions are introduced.

Choice of procedure

58. An order under section 34(11) will be subject to negative procedure. This procedure is considered appropriate as it provides a proportionate and appropriate level of parliamentary scrutiny of proper powers to be granted on fisheries enforcement officers when new statutory provisions in relation to sea fisheries are introduced in the future.
Provision

59. Section 47 inserts a new section 5A into the Water Environment and Water Services (Scotland) Act 2003 (‘the 2003 Act’).

60. New section 5A of the 2003 Act enables the Scottish Ministers, by order, to designate an area of coastal or transitional water as a shellfish water protected area. They may do so if they consider it necessary or desirable for the protection or development of economically significant shellfish production. The effect of designation is that the Scottish Environment Protection Agency (SEPA) is obliged, under section 9 of the 2003 Act (as amended by the Bill), to set environmental objectives for that area and prepare a programme of measures to achieve those objectives.

Reason for taking power

61. Shellfish waters are currently protected under the Shellfish Waters Directive (Directive 2006/113/EC). However, that Directive will be repealed in December 2013 and has no directly equivalent replacement. The Scottish Ministers wish to ensure a continued high level of protection for shellfish waters in Scotland. It is accordingly necessary to make provision for a new regime for the protection of shellfish waters. Existing provision in the 2003 Act for the monitoring of, and setting environmental objectives for, water bodies will be adapted for this purpose, but it is necessary to give Ministers the power to designate the areas of water to which the provisions are to apply.

62. The areas of water that Ministers consider it necessary or desirable to designate for the protection or development of economically significant shellfish production are liable to change over time, so it is appropriate for Ministers to have the power to designate such areas by order.

Choice of procedure

63. The order designating shellfish water protected areas will be subject to negative procedure by virtue of existing section 36(4) of the 2003 Act. The Bill does not alter that position. The list of protected areas may need to increase from time to time if the sector is to expand sustainably. If the Scottish Parliament approves the principle of designating areas of water as shellfish water protected areas, negative procedure is thought to offer an appropriate level of parliamentary scrutiny of the designation of individual areas of water.

Section 48 – power to make orders under section 1 of the Sea Fisheries (Shellfish) Act 1967

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

64. Section 48(1) of the Bill contains provision to amend section 1 of the Sea Fisheries (Shellfish) Act 1967 to enable the Scottish Ministers to make orders relating to shellfish under that section for the establishment or improvement, and for the maintenance and regulation, of a fishery for shellfish of any kind specified in the Order. Section 48(1) therefore amends an existing power rather than creates a new one.
Reason for taking power

65. At present, Ministers may make orders under section 1 of the 1967 Act in relation to the species of shellfish mentioned therein (oysters, mussels, cockles, clams and lobsters) and any other molluscs or crustaceans that have been specified in regulations. In this regard, the Shellfish (Specification of Molluscs and Crustaceans) (Scotland) Regulations 1999 (SSI 1991/139) specifies crabs, whelks and razor shells as species in respect of which orders under section 1 of the 1967 Act may be made.

66. The amendments in section 48(1) of the Bill would enable Ministers to make orders in relation to any species of shellfish, without the need to make regulations under section 1 of the 1967 Act where a species not mentioned in or specified for the purposes of section 1 is involved. It will allow Ministers to legislate more flexibly, and to react more quickly where orders relating to shellfish under section 1 of the 1967 Act are sought. The amendment brings section 1 of the 1967 Act in line with the position in England and Wales, where similar amending provision was made under the Marine and Coastal Access Act 2009.

Choice of procedure

67. Orders under section 1 of the 1967 Act are currently subject to negative procedure by virtue of section 20(2) of the 1967 Act, as read with paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010. Whilst the provisions of section 48(1) of the Bill expand the scope of the current order-making power, that expansion is considered to be in line with the current power, and will provide for more effective and flexible response to applications for several and regulating orders in Scottish inshore waters. On this basis, we do not consider there to be a need to review the process by which orders are made.

Section 50 – power to make regulations to impose charges for the carrying out of certain fishery functions.

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

68. Section 50(1) of the Bill confers a power on the Scottish Ministers which will enable them to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions; which will also be specified in the regulations.

69. Section 50(2) of the Bill, as read with subsection (1), defines the functions in relation to which the Scottish Ministers may impose a charge. These are functions under certain legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing.

70. The regulations will set out the details of the provision made for the amount of charge to be payable, by whom it is payable and when, including setting down the circumstances in which charges may be reduced or waived and exemptions provided for.
71. Subsection (4) provides that the charges payable under regulations made using this power may only require a person to pay a charge if and so far as the person is someone in relation to whom a fisheries function has been carried out. In addition the charge may not exceed the reasonable cost incurred in the carrying out of the function. The charge therefore must relate to the function in respect of which it is charged, and may not generate a surplus.

Reason for taking power

72. The Scottish Ministers are seeking to progress one of the key principles of the Scottish Government’s accounting procedure and practice which requires that charges should be set for all statutory and commercial services. This new power would enable the Scottish Ministers to impose charges in connection with certain specific fishery functions. The power would also acknowledge how these functions contribute to the Scottish Government purpose of sustainable economic growth by ensuring that SG resources are used effectively, with appropriate costs being recovered wherever possible.

Choice of procedure

73. Section 50(5) of the Bill requires the Scottish Ministers to consult before making regulations under 50(1). It is therefore considered that negative procedure is appropriate as it provides a proportionate level of parliamentary scrutiny of the application of a power.

74. It is anticipated that a wide ranging consultation would be undertaken on those areas where charging would be considered appropriate and reflective of the parameters detailed within the Bill.

Section 51(2) – power to modify definition of “relevant offence” and descriptions of persons.

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative procedure

Provision

75. Section 51 of the Bill contains provision which amends section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 on fixed penalty notices. In particular, section 51(2) inserts new subsections (2A) to (2D) into section 25 of the 2007 Act. New section 25(2B) of the 2007 Act contains an order-making power that enables the Scottish Ministers to make an order to modify section 25 such that the definition of “relevant offence” in section 25(2) may be amended and to modify section 25(2A) as regards the descriptions of persons listed in that provision or to add to such list.

Reason for taking power

76. Fixed penalty notices are a form of sanction that may be offered in certain circumstances as an alternative to seeking a criminal conviction in court. The Bill extends the scope of regulatory non-compliance that can be dealt with through the offer of a fixed penalty notice and in doing so seeks to reflect current compliance monitoring and enforcement functions that fall to Marine Scotland to deliver. It may be that future changes to either the remit of Marine Scotland
(for example, when Marine Scotland inherited additional compliance functions in the Scottish offshore zone following implementation of the European Habitats and Wild Birds Directives) or the designation of relevant enforcement officers will need to be taken account of readily and flexibly and it is therefore appropriate for Ministers to make any necessary modifications by subordinate legislation rather than primary legislation.

Choice of procedure

77. The Scottish Ministers currently have an order-making power in section 25(2) of the 2007 Act, which is subject to negative procedure by virtue of section 43(2) of that Act, as read with paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010. The power in section 25(2B) of the 2007 Act, as introduced by section 51(2) of the Bill, is required in light of the amendments to section 25 introduced by section 51 and is in line with that currently in place in section 25(2) of the 2007 Act. For that reason, we see no reason to review the process by which an order under section 25(2B) of the 2007 Act may be made.

Section 54 – Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative procedure (if it textually amends legislation): otherwise negative procedure

Provision

78. Section 54 of the Bill provides for an order-making power for the Scottish Ministers to make such incidental, supplemental, consequential, transitional, transitory or saving provisions as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to the provisions of the Bill.

Reason for taking this power

79. Any body of new law may give rise to the need for a range of ancillary provisions. For example, whilst we have included a number of substantive and consequential modifications within the Bill, it may be that the need arises post-commencement for further changes in order to fully and properly implement the Bill’s provisions. We consider the order-making power to be necessary to allow for this flexibility, especially in light of operational experience.

80. We consider the power to make such provision should properly extend to the Bill in its entirety, and such other enactments, instruments or documents Ministers consider necessary or expedient. Without this power, it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the Bill. We believe that this would not be an effective use of resources by the Parliament or the Scottish Government. The power, whilst potentially wide on the face of it, is limited to the extent that it can be used only if the Scottish Ministers consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, the Bill.
Choice of procedure

81. Any order made under section 54 which textually amends an enactment will be subject to affirmative procedure by virtue of section 52(2) of the Bill. We consider this provides the appropriate level of parliamentary scrutiny for the power, particularly given the ability to amend primary legislation. Where an order under section 54 does not seek to textually amend an enactment, it is considered that negative procedure provides for the appropriate degree of scrutiny.

Section 56(2) – Power to commence provisions of the Bill

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<th>Power conferred on:</th>
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<td>Power exercisable by:</td>
<td>Order made by Scottish statutory instrument</td>
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Provision

82. Section 56(2) of the Bill provides that the Scottish Ministers may, by order, bring the provisions of the Bill into force on a day or days appointed by the order. Section 56(3) provides that the commencement order may make transitional, transitory or saving provision. It is not unusual to allow for such provision in conjunction with a power to make a commencement order.

Reason for taking this power

83. It is appropriate for the substantive provisions of the Bill to be commenced at such a time as the Scottish Ministers consider suitable. It is usual practice for such commencement provisions to be dealt with by subordinate legislation.

Choice of procedure

84. As is now usual for commencement orders, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies, and we see no reason to depart from this position in relation to the order-making power in this case.

Other-

Section 14 – Power to make control schemes

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<th>Power conferred on:</th>
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<tr>
<td>Parliamentary procedure:</td>
<td>None</td>
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Provision

85. Section 14 provides a power for Scottish Ministers to make control schemes for the control of commercially damaging species on fish and shellfish farms. The orders are not statutory instruments and are not subject to parliamentary controls. They are instead subject to procedures set out in sections 14 and schedule 1.

86. These can be made in various situations, broadly where a voluntary control agreement is refused (and 6 weeks have elapsed since the date of the offer), or has failed. They set out the...
measures that must or must not be carried out in order to remove the species from, reduce the incidence of the species on, prevent the spread of the species beyond, or otherwise control the commercially damaging species on the fish farm or shellfish farm.

Reason for taking power

87. The new power will provide a legal mechanism to ensure work can be progressed if a voluntary control agreement cannot be reached; this will reduce the threat to the wider aquaculture industry from commercially damaging species.

Choice of procedure

88. This regime will be used to progress problems where voluntary agreement has failed. This process will therefore be directed to specific farm sites where a commercially damaging species is present. As such it is not considered necessary for this order to take the form of an SSI, and instead that it is suitable for it to be delegated and administered on a local basis.
Rural Affairs, Climate Change and Environment Committee

1st Report, 2013 (Session 4)

Stage 1 Report on the Aquaculture and Fisheries (Scotland) Bill

Published by the Scottish Parliament on 4 February 2013
Rural Affairs, Climate Change and Environment Committee

1st Report, 2013 (Session 4)

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Rural Affairs, Climate Change and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs & the Environment.

Membership:

Jayne Baxter (from 12 December 2012)
Claudia Beamish
Graeme Dey (Deputy Convener)
Nigel Don
Alex Fergusson
Rob Gibson (Convener)
Jim Hume
Richard Lyle
Angus MacDonald
Margaret McDougall (until 12 December 2012)

Committee Clerking Team:

Clerk to the Committee
Lynn Tullis

Senior Assistant Clerk
Nick Hawthorne

Assistant Clerk
Alison Wilson

Committee Assistant
Ross Fairbairn
The Committee reports to the Parliament as follows—

SUMMARY

1. In scrutinising this important piece of legislation at Stage 1, and examining whether the general principles of the Bill are fit for purpose, the Committee took a great deal of evidence from as wide a group of people as possible, representing all sides of the many debates involved. Through fact-finding visits to salmon rivers, wild fisheries hatcheries, coastal netting stations, fish farms in both fresh and sea water, scientific stations, and processing plants, and through extensive written and oral evidence, the Committee built up a detailed picture and understanding of both the aquaculture and wild fisheries sectors.

2. However, the Committee’s work was hindered by some of the more adversarial, “tit-for-tat” engagement of sections of both the aquaculture and wild fisheries sectors, which resulted in the Committee receiving an excessive number of communications from both sectors making claims and counter-claims. This made it difficult at times for the Committee to assess the best way forward. As important as this legislation is, perhaps of equal significance for Scotland in the long-term, is improving the current relationship between the wild and farmed fishing sectors, with a view to establishing closer, productive, cooperative working relationships for the overall benefit of the people of Scotland and the environment.

3. It is clear to the Committee that both the aquaculture and the wild fisheries sectors are of considerable importance to Scotland, in terms of economic, environmental and social contributions and impacts. Both sectors need legislation which enables them to develop sustainably and to co-exist as harmoniously as possible. The Committee wants this legislation to set the framework, in the short, medium and long-term for both a sustainable aquaculture industry, and a sustainable wild fisheries sector.

4. The Committee agrees with the view expressed by Steve Bracken, of Marine Harvest, who said—
“[…] salmon farming and wild fisheries are both vital industries for the coast and inland parts of Scotland. I am absolutely sure that we can go on and become bigger and better in both areas.”¹

5. The Committee regrets that this legislation has been necessary so soon after the last piece of primary legislation in this area, in 2007, and at least as far as the aquaculture provisions are concerned, wants to ensure this Bill is fit for purpose for many years to come. The Committee notes the wild fisheries part of the Bill is seen by the Scottish Government as being the “first step”² in a wider review of wild fisheries management in Scotland which will run beyond the consideration of this Bill. The Committee calls on all involved in that review, and the implementation of any resulting outcomes, to ensure it establishes a coherent wild fisheries management structure for Scotland that is fit for purpose for the 21st century.

6. The Committee is of the view that the broad balance between sustainable (both economically and environmentally), accountable and transparent aquaculture and wild fisheries sectors as outlined in the Bill is appropriate. The Committee therefore recommends the Scottish Parliament supports the general principles of the Bill.

7. However, the Committee is also of the view that the current draft of the Bill is very much the starting point, and should the Bill reach Stage 2 it will require amendment in order to make it more robust and to take account of evidence received by the Committee throughout its Stage 1 scrutiny. The Committee is pleased to note that the Scottish Government has already indicated areas it intends to amend at Stage 2, should the Bill reach that Stage, and recommends that the Scottish Government continues to consult with stakeholders on ways to further improve the Bill.

8. The Committee has made a number of specific recommendations relating to each part of the Bill, and has also considered relevant issues not included in the Bill which it believes will contribute towards ensuring the Bill is as robust and fit for purpose as possible. These are outlined in the main body of the report which it draws to the attention to the Scottish Government.

INTRODUCTION

9. To assist readers of this report, a Glossary of acronyms used most frequently has been provided at Annexe A.

Parliamentary scrutiny

10. The Aquaculture and Fisheries (Scotland) Bill³ was introduced in the Scottish Parliament on 3 October 2012. The Bill was accompanied by Explanatory Notes,⁴

³ Aquaculture and Fisheries (Scotland) Bill, as introduced (SP Bill 17, Session 4 (2012)). Available at: http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17s4-introd.pdf.
which include a Financial Memorandum, and by a Policy Memorandum, as required by the Parliament’s Standing Orders.

11. Under Rule 9.6 of Standing Orders, on 23 October 2012 the Parliamentary Bureau referred the Bill to the RACCE Committee to consider and report on the general principles.

12. No secondary committee was appointed to scrutinise the Bill. However, the Finance Committee did seek views on the Financial Memorandum to the Bill, and subsequently wrote to the Committee, appending the two responses it received. The Committee notes and comments on the responses to the Finance Committee later in this report. The Subordinate Legislation Committee (SLC) considered the Delegated Powers Memorandum and reported to the RACCE Committee. The Committee notes and comments on the report made by the SLC later in this report. A link to the SLC’s report can be found at Annexe C.

13. The Committee agreed its approach to consideration of the Bill at Stage 1 at its meeting on 24 October 2012. A call for views on the general principles of the proposed Bill was subsequently issued and closed on Monday 26 November 2012.

14. In addition, the Minister for Environment and Climate Change, Paul Wheelhouse MSP, wrote to the Committee on 26 November 2012 to—

- provide early sight of possible amendments that the Scottish Government would be proposing to the Bill at Stage 2, should the Bill proceed to that Stage;
- provide the Committee with an updated response to the consultation document;

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5 Aquaculture and Fisheries (Scotland) Bill. Policy Memorandum (SP Bill 17-PM, Session 4 (2012)) Available at: http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17s4-introd-pm.pdf.
• draw the Committee’s attention to a recently published two page note on the provisions in the Bill in respect of fixed penalty notices (FPN); and

• inform the Committee that the Scottish Salmon Producers’ Organisation (SSPO) have committed to broaden their reporting of information on sea lice management and control from 1 January 2013.

15. The Committee thanks the Minister for this correspondence which proved very helpful during its Stage 1 consideration of the Bill.

16. The Scottish Parliament Information Centre published a briefing\textsuperscript{11} on the Bill which proved very helpful to the Committee throughout its scrutiny.

Witnesses
17. The Committee took oral evidence from the Scottish Government’s Bill Team on 28 November 2012, and then held three evidence sessions with a wide range of stakeholders, on a themed basis, based on the parts of the Bill (fish farm management; salmon and freshwater fisheries; sea fisheries; and shellfish) as follows—

**Wednesday 5 December, fish farm management**

• a roundtable consisting of academics, representatives from both the farmed and fresh water fishery sectors, and bodies such as The Crown Estate, environmental groups and local authorities.

**Wednesday 12 December, salmon and freshwater fisheries**

• two panels of salmon and freshwater fishery witnesses, examining both the state of resource and the fisheries.

**Wednesday 19 December, sea fisheries and shellfish**

• a roundtable of witnesses on sea fisheries and shellfish. This session also took evidence on the Scottish Government’s intention to bring forward an amendment at Stage 2, should the Bill reach that Stage, on cockle fishing in the Solway.

18. The Committee’s oral evidence-taking concluded with a session with the Minister for Environment and Climate Change on 9 January 2013.

19. Extracts from the minutes of all the meetings at which the Bill was considered are attached at Annexe B. Links to the *Official Report* of the relevant meetings can be found at Annexe D, along with links to all written submissions, including supplementary written submissions and correspondence.

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20. **The Committee extends its thanks to all those who gave evidence on the Bill.** This detailed and wide-ranging evidence has enabled the Committee to properly appreciate and understand the issues involved and to identify appropriate responses and ways forward on aspects of the Bill.

**Fact-finding visits**

21. The Committee carried out two fact-finding visits\(^{12}\) to inform the Committee’s Stage 1 scrutiny of the Bill.

22. The first took place on 9-10 November 2012, and focussed on the salmon and freshwater fisheries aspects of the Bill, visiting the Upper Dee Riparian\(^{13}\) Scheme to look at salmon fishery issues, which included seeing salmon spawning in the river. The trip included a visit to the Marine Scotland Science Garrowburn Research Facility that monitors marine survival of Atlantic salmon. The visit was hosted by the Dee District Salmon Fishery Board and River Dee Trust and the Association of Salmon Fishery Boards (ASFB).

23. The trip also included a visit to the Usan Salmon Fisheries Ltd in Montrose to meet the netsmen and look at relevant interaction issues between netting and district salmon fishery boards. The fishery is a member of the Salmon Net Fishing Association of Scotland (SNFAS).

24. The second visit took place on 16-17 November, and focussed on the aquaculture aspects of the Bill. It involved visiting Marine Harvest operated salmon farms in Glenfinnan (freshwater) and Leven (sea water); their new smolt unit at Lochailort; and the Blar Mhor Salmon Processing Plant outside Fort William.

25. The trip also included a visit to the Lochaber hatchery, a project run by the River Lochy Association in partnership with Marine Harvest, EWOS Feeds, Hvalpsund Nets and MERK International. The Committee was hosted by ASFB and the Lochaber District Salmon Fishery Board.

26. **The Committee thanks those involved in hosting the visits which – by virtue of allowing members an opportunity to see matters relevant to the Bill first hand and discuss a variety of pertinent issues with practitioners – were invaluable in furnishing it with a fuller understanding and appreciation of the operations of the aquaculture and wild fisheries sectors.**

**BACKGROUND TO AND PURPOSE OF THE BILL**

**Contents of the Bill**

27. The Policy Memorandum which accompanies the Bill states that the policy objective of the Bill is to—

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\(^{13}\) A riparian area is the bank of a river – i.e. the relationship between a piece of land and a river or stream.
“[…] ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment. It also aims to amend the Fisheries Act 1981 and modernise existing enforcement provisions to ensure that sufficient powers are in place to enable British Sea Fishery Officers to enforce sea fisheries regulations; introduce legislative provisions to safeguard shellfish water protected areas; make provision for charges for a number of fishery functions; and to extend the scope of offences that could be subject to a fixed penalty notice.”

28. Giving evidence to the Committee, Willie Cowan from the Scottish Government expanded on the aquaculture aspects of the Bill, stating—

“[…] a regulatory framework is already in place and working well, and we have a successful aquaculture industry that has been growing for the past decade or so. The purpose of the bill is to take us to the next stage. The Government supports the aquaculture industry’s ambitions to grow, and there are pressures from the European Commission and its common fisheries policy to increase aquaculture production across the European Union, partly to become self-sufficient and reduce the importation of fish products from other parts of the world and partly to contribute to global food production, which is clearly an issue given the rising population and the limited land resources on which to grow protein.”

29. The Minister gave further detail to the Committee, confirming that the Scottish Government supports the aquaculture industries’ aims to grow by a further 32% by 2020 (around 4% per year).

30. In terms of wild fisheries, the purpose of the Bill was said by the Minister to be the “first step” in modernising the management of Scotland’s salmon and freshwater fisheries.

31. The Bill is presented in six parts and two schedules as follows—

- Part 1 – aquaculture (fish farm management, fish farming: equipment and wellboats, commercially damaging species, control, powers, offences, interpretation);
- Part 2 – salmon fisheries (governance and management);
- Part 3 – sea fisheries (enforcement of legislation, detention of vessels in connection with court proceedings, inspection and seizure of objects used in commercial sea fishing, retention and disposal of property seized by British sea-fishery officers, forfeiture, and enforcement of EU rules);
- Part 4 – shellfish (protection of shellfish waters and orders as to fisheries for shellfish);

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14 Aquaculture and Fisheries (Scotland) Bill. Policy Memorandum, paragraph 2.
• Part 5 – miscellaneous (charging and FPNs);
• Part 6 – general (subordinate legislation, interpretation, ancillary provision, Crown application, Commencement and short title);
• Schedule 1 – commercially damaging species: control schemes; and
• Schedule 2 – forfeiture under section 41 or 42 (sea fisheries).

32. The Committee’s report below on specific issues mirrors the structure of the Bill as detailed above for ease of reference.

Background

Scottish Government consultation

33. The Scottish Government’s consultation\(^\text{17}\) on the possible contents of a draft bill ran from December 2011 until April 2012 and generated a total of 1,342 responses\(^\text{18}\). 1,193 of these were classified as “Interest Group Responses” which gave general comment or were endorsing other organisations’ views, and 149 were classified as “Detailed Responses” which focussed on the consultation questions. The Detailed Responses were used as the basis for the analysis of the consultation which the Scottish Government produced in both Full Report\(^\text{19}\) and Summary\(^\text{20}\) format.

34. Most of the responses analysed were, in general, supportive of the proposals. However, the consultation also received a number of critical responses, predominantly from the aquaculture industry, which was concerned about the possible negative economic impact of increased regulation, much of which many in the industry believed was unnecessary.

35. Some proposals which were included in the consultation document are not included in the Bill, and the Scottish Government published a formal response\(^\text{21}\) to the consultation on 4 October 2012, indicating how it will take forward (or not) the parts of the consultation that are not in the Bill. In addition, the Minister wrote to the Committee on 26 November 2012, as mentioned above, to update this response in light of further evidence to the Committee and other developments.

36. Several policy issues raised in the consultation, but not contained in the Bill, were the focus of much comment and discussion during the Committee’s scrutiny, such as the issue of the effects of sea lice on wild and farmed fish and publication of data on the issue, and the interaction between coastal netting for salmon and rod and line salmon fisheries. These are discussed later in the report, together with other relevant issues not included in the Bill.


37. The Committee noted that the 1,193 “Interest Group Responses” were not directly included in the Consultation Analysis and asked Scottish Government officials how these responses had been taken into account. The Committee was told that several issues raised in these responses were given consideration and had a direct impact on the drafting of the Bill such as FPNs and strict liability, both of which resulted in a change in approach by the Scottish Government.

38. In terms of issues raised which were not pursued in the Bill, such as sea lice data provision, Scottish Government officials told the Committee there had, in their view, been a confusion in the consultation process that everything that was consulted upon was intended for primary legislation, which the Bill Team Leader, Jeff Gibbons, stressed was not the case—

“It was self-evident that many of the individuals who took the time to respond to the various proposals in the consultation were not clear that the proposals did not all relate to primary legislation. We acknowledge that we needed to get that point across. There was some confusion and a belief that the natural progression would be for the proposals to move to primary legislation. However, some of the questions in the consultation were about how we could proceed using existing powers, or whether we needed to use existing powers or could achieve the level of data that we might require using alternative means. As a consequence, we thought it appropriate to use the summer period to get out and about to engage more directly with stakeholders. We established a stakeholder reference group to explain some of the proposals in more detail and the rationale behind some of the objectives, and to allow us to understand some of the responses more fully.”

39. Specific areas where witnesses commented on the consultation process are discussed in the main body of the report where relevant.

40. The Committee appreciates that the Scottish Government carried out a thorough and wide-ranging consultation process in advance of bringing forward the Bill.

41. However, the Committee notes the title of the consultation document was “Aquaculture and Fisheries Bill Consultation Document”, and stated—

“The possibility of an Aquaculture and Fisheries Bill during the current Parliament provides an opportunity for us to take these issues forward. We are therefore consulting, at this early stage in the new Parliament, on key issues and priority areas for possible legislation.”

42. It is evident to the Committee that there was a degree of confusion and misunderstanding about the status and intention of the consultation amongst some stakeholders, which was also acknowledged by Scottish Government officials.

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43. The Committee believes the Scottish Government could have been clearer in its consultation document, and in its publicising of that document, about the framework of the consultation and its possible outcomes, in order to better manage understanding and expectations amongst stakeholders and the wider public. The Committee urges the Scottish Government to learn lessons from its consultation process on this Bill to ensure future consultations provide appropriate clarity about process and potential outcomes.

Legislative background

44. The Bill primarily amends three other Acts (two Acts of the Scottish Parliament and one UK Act)—

- the Aquaculture and Fisheries (Scotland) Act 2007\(^\text{23}\) ("the 2007 Act");
- the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003\(^\text{24}\) ("the 2003 Act"); and
- the Fisheries Act 1981\(^\text{25}\) ("the 1981 Act").

45. The Committee considered the background to the current Bill, in order to understand why new legislation had been brought forward only five years after the last piece of primary legislation on these issues and returns to this point at appropriate parts of the report.

46. The Committee sought to establish whether certain aspects of the 2007 Act were fully effective. Particular areas of interest for the Committee in this regard were sea lice (both tackling the problem and the provision and publication of data) and escapes from fish farms. These issues are dealt with elsewhere in this report.

47. The Minister told the Committee the 2007 Act very much sets the foundation for legislation on aquaculture in particular, and the Bill takes forward issues which have been identified since 2007 which require legislative action. He also described the Bill as future-proofing\(^\text{26}\) the industry in light of the current growth targets and potential new operators coming to Scotland. The Minister stressed the Scottish Government’s presumption was not to legislate unless completely necessary to do so.\(^\text{27}\)

48. The Committee accepts the legislation which currently regulates the aquaculture and wild fishery sectors is in need of updating and improvement, given experiences since enactment of the 2007 Act. The Committee also accepts the Bill is an opportunity for the Scottish


Government to bring forward other proposals, such as those on charging and fixed penalty notices, which concern the marine environment more generally.

49. However, the Committee regrets there seems to have been limited progress in some areas since the 2007 Act, and that with some issues, such as improvements to the structure and operation of district salmon fisheries boards, progress has been slow over a long period and further work is still required. The Committee very much hopes the legislation which emerges from this process (including the Scottish Government’s planned review of wild fisheries management) is appropriately robust, sustainable and fit for purpose in the long-term.

Further Scottish Government work

50. The Minister informed the Committee the Scottish Government has refreshed its Ministerial Group on Aquaculture (MGA) which will take forward on-going issues relating to the industry, including issues included in the Bill. In a letter to the Committee, sent on 17 January 2013, the Minister stated—

“I have tasked the MGA to look in the round at what needs to be done to ensure sustainable growth within Scottish aquaculture in the context of the 2020 objectives, and that includes issues of capacity, interactions, science and potential information gaps.”

51. The Scottish Government also informed the Committee it intends to carry out a full review of wild fisheries management in Scotland, to build on the “first step” provisions included in the Bill. The Minister told the Committee—

“The policy memorandum signals that we are committed to carrying out further work to modernise the management structure for salmon and freshwater fisheries during the current session of Parliament. The bill is the first step, but not the final one, in taking forward our manifesto commitment on the issue.

We have asked officials to draw up proposals for the scope of that further work and we will be in a position to announce our next steps once we have considered that advice. The intention is to establish a baseline review of where we sit so that, as minister, I have an understanding of the mix of the boards that we have and of their capabilities, size and coverage before we move on to develop options, if there are options for further review. Any measures that are proposed would be consulted on fully—there would not be a precipitate change in arrangements—but I would not want to prejudge any review of the governance arrangements, which would be undertaken independently of ministers, because that would be prejudicial to the report. I

28 Minister for Environment and Climate Change. Written correspondence, 17 January 2013. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2013.01.17_-_Letter_from_the_Minister_follow_up_evidence_from_16_Jan_meeting.pdf.
would like to see what the industry and stakeholders think is the best configuration to deliver the right result for the sector.\(^{29}\)

52. The Committee is pleased to note that a Ministerial Group on Aquaculture will continue to work with the industry on implementing the provisions in the Bill, and also to work on other relevant issues. However, with regard to wild fisheries, the Committee is conscious that a significant number of issues remain unresolved and will be subject to further review, and potentially further legislation.

**Policy Memorandum and sustainable development**

53. Perhaps the pivotal word in considering all parts of this Bill is “sustainable”. It is important that the Bill ensures sustainable wild and farmed fishing sectors, in all senses of that word – economical, environmental and social. The Committee was therefore keen to explore with witnesses whether they thought the Bill demonstrated appropriate consideration of sustainability issues, and, more importantly, whether it would contribute positively to the sustainable economic growth of both sectors.

54. The assessment of sustainable development in the Policy Memorandum was criticised in evidence to the Committee by Colin Reid, a professor of Environmental Law at Dundee University—

“[…] the assessment of the impact of the Bill for sustainable development […] is woefully inadequate. Surely many of the Bill's provisions will have a much more profound economic, social and environmental impact, especially for rural communities? The inadequacy of the consideration of sustainable development is a widespread failing […] and it does seem a real lost opportunity that the Parliament is not using this device as a means of thinking carefully about what the measures we pass today will mean for the future.”\(^{30}\)

55. The Committee pursued this issue with Scottish Government officials, and Willie Cowan, the deputy director of performance, aquaculture and recreational fisheries, told the Committee—

“Ministers consider that the policy memorandum and other documents cover the area. One of the issues is the question of what is sustainability. Ministers’ position is that they want to encourage a sustainable, growing industry that minimises its impact on the broader marine environment. The economic benefits for local communities, through jobs, income and cohesion, are a by-product of getting that right. I think that what concerns most stakeholders is the question whether growth is environmentally sustainable, and I think that ministers would say that the documents that accompany the bill are perfectly adequate.”\(^{31}\)

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\(^{30}\) Professor Colin T Reid. Written submission.

56. The Minister outlined to the Committee how he felt sustainable development issues had been reflected in the Bill—

“We believe that the bill is underpinned by good understanding of the science, which we think is key to the matter. The work will continue through initiatives [...] which will look at the sector’s future sustainable growth to facilitate a greater understanding of what can be sustained at a local level and to consider what constitutes sustainable development when a planning application is submitted for additional biomass in a particular location.

I recognise that sustainable development encompasses a number of facets—economic, environmental and social. That is foremost in our minds and is part of the balancing exercise in a bill such as we are considering, in which we must take account of the legitimate aspirations of a sector to grow, ensuring that that happens in a framework that means that the breadth of civic Scotland can be confident that growth is sustainable. That approach is reflected in the provisions in the bill. The clear message is that growth must be sustainable.”

57. The Committee found the Policy Memorandum which accompanied the Bill to be broadly helpful in setting out its policy objectives, why the approaches taken in the Bill were favoured over possible alternatives, and possible effects on various groups and organisations.

58. However, the Committee notes the concerns raised by Professor Reid, of Dundee University, regarding the specific inadequacy of the section in the Policy Memorandum on sustainable development. It asks the Scottish Government to consider whether the assessment of sustainable development in the Policy Memorandum fulfils its potential as a means of ensuring a consistent and thorough regard for the environmental, economic and social impacts of the changes proposed by the Bill and the alternatives.

59. The Committee also notes that no adverse effects or trade-offs between economic, social and environmental aims are identified in the assessment of sustainable development in the Policy Memorandum, and is of the view that that section of the Policy Memorandum might have been strengthened by the inclusion of such information. The Committee recommends the Scottish Government gives consideration to these issues when preparing sustainable development sections of future policy memoranda.

General principles of the Bill

60. The Committee makes specific comment on the provisions in the Bill, and other issues that were raised during its scrutiny, in the main body of this report below. However, as stated in the Summary at the start of this report, the Committee broadly welcomes the proposals contained in the Bill and recommends the Scottish Parliament support the general principles of the Bill at Stage 1, to allow the Bill to pass to Stage 2.

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Petition PE1336

61. The Committee has a petition open which it has previously agreed to consider as part of its scrutiny of the Bill.

62. Petition PE1336, brought forward by Lawson Devery on behalf of the Salmon and Trout Association (STA) calls on the Scottish Parliament—

“[…] to urge the Scottish Government to take immediate action to protect wild salmon and sea trout stocks from inappropriate commercial fish farm activities by taking action to ensure that (a) all sea-based fish farms are moved away from the estuaries of major wild salmon rivers to reduce the impact of sea lice and (b) ban salmon smolt farms from operating within any wild salmon river system.”

63. The issues raised in the petition were taken into account by the Committee throughout the Stage 1 process. In addition, a great deal of evidence was received on this issue and detailed comment is made on the issue of sea lice elsewhere in this report.

64. The Committee will consider the petition once the Bill has completed its passage through Parliament. At that time, the Committee will take a view on whether it wishes to close the petition or keep it open, and if it is kept open, what further action it wishes to take.

Climate change

65. The Committee’s remit includes consideration of climate change policy and issues, which focuses on the Scottish Government’s work to meet its statutory climate change targets as set out in the Climate Change (Scotland) Act 2009.34

66. The Committee therefore considered the impact the Bill may have on climate change, and took evidence on whether the Bill had been suitably “climate proofed”.

67. Climate change may have many implications for aquaculture and fisheries in Scotland. For example, in the case of salmon fisheries increasing river temperatures may cause reduced reproduction of salmon due to physiological stress and increased susceptibility to disease; and cause young salmon to migrate to sea earlier, resulting in a disconnect with the availability of their marine food sources. Reductions in summer rainfall will reduce summer flows which will increase water temperatures further while making it more difficult for salmon to migrate upstream, whilst increased winter flows may scour the gravels in salmon spawning beds (redds) resulting in the loss or damage to eggs.

68. One of the Committee’s fact-finding visits included a visit to the Upper Dee Riparian Scheme, where the Committee learned first-hand about the efforts being made to increase tree cover along parts of the river in order to mitigate the effects of rising water temperatures, due to climate change, at times when salmon will be spawning. The scheme seemed to have a good chance of delivering positive mitigation of climate change on the river, but the Committee heard that in other parts of the country, riparian woodlands are being cut down to allow better access to the river for anglers.

69. The Committee was impressed by the proactive work being undertaken by those managing and operating the Upper Dee Riparian Scheme and believes it is a good example of the sort of long-term planning required to mitigate the possible effects of climate change on the fisheries sectors.

70. However, if other schemes of this nature are to make a contribution to climate change mitigation and adaptation then a more strategic assessment and approach needs to be taken regarding riparian habitat and landscape management measures across Scotland, rather than in one particular area. The Committee therefore recommends the Scottish Government examines, as part of its review of wild fisheries management, how the experiences in the Upper Dee scheme and other best practice measures can be rolled out across the country.

71. Ken Whelan, the Research Director at the Atlantic Salmon Trust, suggested that there was a need for legislation to be adaptive to the needs of climate change—

“There is clear evidence from the work that I have been involved in—we are just about to publish a major publication that looks at 50 years of data—that our bays are changing quite quickly. That poses a challenge to the committee in relation to the legal basis of various acts. Whereas it might have been sufficient in the past to put in place something that was expected to last for perhaps 10 or 20 years, the dynamic of what is happening in the bays is such that it is essential that the bill takes account of the environment in which the industry functions and that there is a clear overview of that.”

72. Mr Whelan went on to outline two specific components within that. Firstly, the effect a changing climate may have on the capacity of inshore bays for large amounts of fish, and secondly, the effect climate change may have on sea lice cycles.

73. Dr John Armstrong, of the Freshwater Fisheries Team and Programme Leader in Marine Scotland, part of the Scottish Government, told the Committee that the higher mortality of salmon at sea which is currently being experienced may also be one of the early signs of the effects of climate change.

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74. Dr Colin Bean, the Science and Policy Adviser at Scottish Natural Heritage (SNH), reassured the Committee on the ability of salmon to adapt in such circumstances—

“[…] we should also remember that these animals have gone through quite a number of changes in temperature over the past 10,000 years since they first arrived in the UK. They are very adaptable—probably more adaptable than we might think—and probably more adaptable than some other species.”

75. And on the issue of climate proofing the Bill, Dr Bean acknowledged it was not a straightforward issue to consider—

“I am not entirely sure what we can do to improve the bill and proof it for climate change—that is a more difficult question. However, allocating powers to the Scottish ministers—for example, to vary close times for seasons—might well be what we will require in the future in order to protect certain life history types or genetic types of animals.”

76. The Minister told the Committee that it was—

“[…] right to identify climate change as a major, major issue. My discussions with fisheries managers suggest to me that river temperatures and the health of our wild fish stocks are a significant problem. I am not a scientist in that respect, but I understand that there is already a gap between recorded river temperatures in summer and the ideal temperature for fish stocks, and that the problem is getting worse, partly because of the removal of trees along river banks, which has reduced cooling capacity for waters, but mainly because of the environmental impact of climate change.”

77. The Minister provided further information on how he felt the Bill was, in places, driven by, and contributing to, climate change mitigation, listing the provisions on taking genetic samples; changes to annual close times; and introductions.

78. The Committee notes the comments made by witnesses with regard to “climate proofing” the Bill. The Committee agrees with the views expressed that this is not a straightforward task, and it will always be a challenge for legislation to prepare for variable future outcomes as a result of the effects of climate change.

79. However, the Committee was encouraged by the practical examples given of how proposals in the Bill could positively contribute towards climate change mitigation and adaptation in fisheries sectors. The Committee recommends the Scottish Government gives careful consideration to ensuring the Bill, and any guidance provided, takes full

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account of climate change mitigation measures, to ensure the aquaculture and wild fisheries sectors contribute to helping Scotland meet its statutory climate change targets and are able to continue to adapt to the emerging effects of climate change.

PART ONE – AQUACULTURE

80. Part 1 of the Bill seeks to improve the regulatory regime for aquaculture, mainly by amending the 2007 Act.

Chapter 1 – fish farm management

81. Chapter 1 introduces a legal requirement for the currently voluntary Fish Management Agreements (FMAg) or Fish Management Statements (FMS) for all fish farms within a Farm Management Area (FMA). It also provides for inspections of farms and the taking of samples, or whole fish, to determine the origins of a fish escape.

Fish farm management agreements and statements - differences

82. A FMAg is an agreement between two or more persons fish farming within a management area. Where there is no FMAg – if there is only one farm in a management area or no agreement has been reached – fish farms must have a FMS. A FMS or FMAg must cover arrangements for fish health management; management of parasites; movement of live fish on and off the farms; harvesting of fish; and fallowing of farms after harvesting. The Bill includes a provision to allow inspections to be carried out and enforcement notices to be served if the measures above are not satisfied.

83. The terms FMAg and FMS reflect those used in the SSPO’s Scottish Finfish Code of Good Practice (CoGP)39 and the Bill states that, so far as possible, the FMAgs and FMSs which will become a legal requirement should reflect the recommendations of the CoGP. This already requires fish farms to operate under a FMAg or, where this is not possible, a FMS. It is believed that the majority of farms comply with the code, however it is currently voluntary (though audited). There was some confusion in evidence given to the Committee about the differences between a FMAg and an FMS. Dr Alan Wells, the Policy and Planning Director with the ASFB, told the Committee—

“There is […] some confusion around the hierarchy between a farm management agreement and a farm management statement. My understanding is that a farm management agreement functions when there is more than one operator in an area, and the operators agree how that area is to be organised, whereas a farm management statement functions when there is only one operator in an area. However, it has not necessarily been made clear that an area with more than one operator might have a farm

management statement if the operators cannot agree on a farm management agreement. I would look for more clarity about that.”

84. Alex Adrian of the Crown Estate sought to provide some clarity, telling the Committee—

“[…] the statement describes an area that has one farming incumbent, and that if a separate company was to come in, it would agree to adhere to the terms of the statement, which at that point would stop being a statement and become an agreement.”

85. The Committee is clear about the difference between a Farm Management Agreement and a Farm Management Statement. However, the Committee notes the issue raised by the Association of Salmon Fishery Boards, and seeks clarification from the Scottish Government on whether farms in an area where a Farm Management Agreement could not be agreed would have an individual Farm Management Statement.

Fish farm management agreements and statements – statutory requirement

86. The Committee explored the issue of whether it was necessary to place FMAs and FMs on a statutory footing, rather than continue with the current voluntary status.

87. Willie Cowan, from the Scottish Government, told the Committee—

“[…] fish farms will be required to have farm management agreements or statements. In most cases just now, those or similar arrangements happen voluntarily, but the Government wanted to ensure that they happened in every instance to protect the whole industry and, indeed, the broader environment.”

88. Professor Phil Thomas, Chairman of the SSPO, told the Committee that 98% of fish farms in Scotland were members of the SSPO, and it was a requirement of SSPO membership that members be signed up to the CoGP which contains details of FMAs and FMs. Professor Thomas also stated that compliance with the CoGP was, in terms of a percentage, “in the high nineties”.

89. He explained that the remaining 2% of fish farms—

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“[…] are on the tips of islands in distant areas of the country. They do not formally operate in a farm management statement situation because they are single farms in particular areas, but they abide by SSPO requests.”

90. Members sought clarity from Scottish Government officials on what the timescales would be for farms to sign up to statutory agreements and statements. Willie Cowan told the Committee—

“We have to consider transitional arrangements, as we do with all new legislation. Given that the majority of fish farmers currently undertake that type of arrangement, we do not anticipate that for the majority it will be a huge burden to revise their agreements so that they comply with the new law. We will work with the industry to understand the gap for farmers who currently have no agreement and the timescale for putting one in place.

At a practical level, it is about co-ordination of stock, treatment and harvesting, so if the bill is passed it will probably make sense for the requirements to come into effect at the beginning of the next production cycle in each area.”

91. However, the Scottish Wildlife Trust was of the view that a FMS in itself would not promote the coordination which was at the heart of a FMAg and was concerned therefore that FMAgs and FMSs were presented in the Bill on an equal footing, rather than FMAgs being more desirable. The Scottish Wildlife Trust also felt agreements and statements should be made publicly available.

92. Professor Phil Thomas was not sympathetic to the call for the publication of statements and agreements, telling the Committee—

“I see no benefit from companies making that information publicly available and I would envisage an additional cost to and burden on companies from doing so.”

93. The Committee received evidence which was concerned that a possible result of the Bill could be that FMSs and FMAgs were not flexible enough to rapidly respond to unexpected circumstances.

94. One other issue which emerged in relation to FMAgs in particular was the need for mediation if agreement could not be reached within a particular FMA. Professor Phil Thomas told the Committee that the SSPO already provides this service where required.

95. The Committee questioned the Minister on this issue and he said that independent arbitration was appropriate in both the establishment of FMAgs and

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also once FMAgs were operating. Willie Cowan confirmed that the SSPO currently has a role to provide this service.

96. The Committee supports the Bill placing the requirements for Farm Management Agreements and Farm Management Statements on a statutory footing. The Committee is also of the view that, as a significant majority of fish farms in Scotland are already operating within this system on a voluntary basis, there should not be an issue in terms of transition from the current to the new arrangements. The focus should therefore be on the farms which are not currently signed up to either a Farm Management Agreement or a Farm Management Statement, to ensure they comply with the new legislation as quickly as possible.

97. The Committee notes that the Scottish Salmon Producers’ Organisation currently provides a mediation service to assist with Farm Management Agreement where there has been a breakdown in relations, and recommends the Scottish Government works with the Scottish Salmon Producers’ Organisation to ensure this service is fully accessible and fit for purpose.

Escapes and obtaining samples from fish farms
98. Section 2 makes changes to the 2007 Act to allow inspections and the taking of samples or whole fish to trace the origins of escaped fish. The current provisions in Section 5 of the 2007 Act allow inspections on farms where an escape has been reported. The new provisions would include powers to take samples from any fish farm to determine the origin of escapes.

99. During its fact-finding visits, both to salmon rivers, and to fish farms, the Committee heard a range of opinions on the number, cause and effects of escapes of fish from fish farms on the wider environment. The Committee saw, first-hand, the efforts being taken by some fish farms to improve equipment and practice to reduce the risk of escapes, and heard about the effects that large scale escapes can have on wild fisheries and on the wider freshwater and marine environment.

100. The Committee heard that there are two main types of escape, the first relating to an identifiable incident, such as extreme weather conditions, human error, or an attack by a predator (e.g. a seal chewing through a net), and the second being the leakage of fish without any specific incident occurring.

101. The Scottish Government wrote to the Committee on 4 December 2012 with data on the number of reported escapes from fish farms since statutory reporting was introduced in 2002. This data showed that, between 2002 and 2012, 2,652,416 fish of all species had been reported as having escaped from fish farms. The Committee is encouraged that the most recent figure for 2012 is 15,334, the lowest recorded figure to date. However, the Committee notes that in the previous year, 2011, the figure was 416,454, which, together with a history of significantly fluctuating figures year-on-year, demonstrates that there is no room for complacency.
102. Dr Alan Wells reminded the Committee that it was important to keep in mind that the statistics detail reported escapes but there is additional anecdotal evidence showing that the number of unreported escapes is not insignificant.

103. It was also noted that some lochs contain hatcheries for both wild and farmed fish and escapes were not only about farmed fish escaping into the wild environment.

104. Professor Phil Thomas noted some concerns with the current drafting of this section of the Bill—

“[...] there is a technical problem with the way in which the bill is written, as the text suggests that an escape at one farm could trigger sampling at every farm in Scotland. We think that that is unreasonable, although we have no difficulty with the notion that, if there is an escape in an area, farms in that location should be sampled.

The important issue is that wild fish, not farmed fish, should be monitored. If we are going to look for escapes, the wild fish population is the key.”

105. The Committee received evidence which suggested alternative methods for tracing the origins of escaped fish. In evidence to the Committee, Europharma stated that—

“[...] contrary to the implications of [...] the Policy Memorandum [...] in Norway the genotyping methodology for traceability of farm escapes is not the only approach being taken and [we] recommend that Scotland also evaluate the alternative method being trialled there: physical tagging of fish.”

106. Ken Whelan was also in favour of physically tagging farm fish, particularly in areas where there was known to be a problem with escapes.

107. The Minister told the Committee that it was not currently practically possible to tag all farmed fish, given the numbers involved. However, he noted that this issue was being looked at globally and that technology was always advancing and may provide alternative options at some point in the future.

108. The escape of farmed fish into the wider environment is obviously undesirable for both the aquaculture and the wild fisheries sectors. It is therefore important these sectors work together to limit the number of escapes, and their effects.

109. The Committee supports the provisions in the Bill which would enable samples to be taken from any fish farm in an effort to determine where an escape had originated so appropriate steps could be taken to prevent further escapes and minimise any resulting impacts.

110. The Committee notes concerns raised by the Scottish Salmon Producers’ Organisation which suggest that an escape could trigger sampling at every farm in Scotland, however the Committee is confident this was not the policy intention of the Bill and that any sampling would be proportionate and based on the scientific need for data.
111. The Committee notes the suggestions put forward for alternative methods of tracing the origins of escaped fish. The Committee recommends the Scottish Government gives further consideration to these suggestions, in association with the aquaculture industry, and reports back to the Committee ahead of Stage 2.

Seals

112. In gathering evidence relating to escapes of fish at fish farms, the Committee received evidence about the threat posed by seals, which are known to predate on some farmed fish, and the methods currently used by the aquaculture industry to prevent these attacks.

113. Alex Kinninmonth, the Living Seas Policy Officer with the Scottish Wildlife Trust, told the Committee—

“30 per cent of escapes in 2011 were caused by predators. In the development of a technical standard, we need to prioritise gaps in knowledge about how predators attack the net so that we can find the most effective and benign way in which to deal with the problem. Last year, 242 seals were killed at fish farms in Scotland. That is no good for wildlife and, frankly, it does the industry no favours. The development of that standard really needs to be prioritised.”

114. The Committee heard in evidence that 20 per cent of fish farms possess anti-predator nets, but that only 13 per cent of farms are using them. Steve Bracken, from Marine Harvest, told the Committee—

“We used anti-predator nets back in the 1970s and 1980s. The nets hang just outside the main net that contains the fish. Their mesh tends to be between 4 inches and 6 inches. I have seen for myself that, when those nets are deployed, all sorts of wildlife gets trapped in them, and it is extremely unpleasant.

We, like many others in the industry, have gone down the route of tensioning nets. That is a function of the size of the pens that we are dealing with today. We have a bigger volume of net, with some of the bigger nets having the volume of five Olympic-size swimming pools. Those bigger nets have to be really well tensioned, which makes it hard for the seals to attack the pen.

In addition, we have put seal blinds into the base. Those are nets of finer mesh that make it hard for seals to come up from underneath and see fish. We also use acoustic deterrents, which are an important part of our equipment, although I am aware of the issues with cetaceans[49]. The design of the equipment is being considered so that it does not affect cetaceans, but there is a lot of work to be done on that.”

48 Animal Concern and the Save Our Seals Fund. Written submission, page 2.
49 The order Cetacea includes carnivorous marine mammals such as whales, dolphins, and porpoises.
We would much prefer to find ways of keeping seals away from our fish. At the beginning of next year, we will trial the use of a copper-based mesh in the base of one of our nets to see what happens. We are considering new materials and, in particular, sapphire netting, which is high-density polyethylene. Stainless steel can be run through that netting. All netting developments are being looked at seriously.\(^5^0\)

115. As well as netting deterrents, the Committee heard evidence that an audio deterrent, a seal-scarer, was being deployed by many fish farms in a bid to keep seals away from the farms.

116. The Committee asked Steve Bracken when a farm would decide to turn on an audio device. He replied—

“That is a good question. That depends on the farm manager and what he believes works best on his farm, based on his experience. Some farm managers will switch it on from the beginning, as they do not want seals coming near the farm at all; other farm managers will wait until there is a problem before putting on the device. Seals can get accustomed to the noise, so it is down to the farm manager to use his judgment on how best to deploy the device on his farm.”\(^5^1\)

117. And he went on to explain that—

“Anecdotally, farm managers will say that they have on occasion seen porpoises and dolphins in the loch when the seal scarer has not been on. When it is switched on, they stay around before moving out. That is not based on a scientific trial, so I cannot say whether it reflects the situation accurately.

New developments are coming along all the time. One new device that is on the horizon and that we are interested in does not emit a loud noise—seal scarers are about 180 or 190 decibels—but it sounds like fingers scratching a blackboard. The seal does not like the noise, and it reacts accordingly.”\(^5^2\)

118. Dr Armstrong told the Committee that the Scottish Government has recently funded the University of St Andrews to develop a new audio seal scarer that would keep the seals away without damaging the seal in any way or affecting cetaceans.

119. The Minister told the Committee that the University of St Andrews has secured an investor for advancing the commercialisation of the new audio device and signed a technology licence for it in December 2012. He added—

“A Scottish Government sponsored research project showed, through captive experiments, that seals can be deterred by many sounds but that this effect


can gradually disappear over time. The new acoustic deterrent involves a ‘startle stimulus’ which appears to continue to work over time.”

120. Dr Bean, from SNH, was of the view that such devices should be regulated if there was concern that seal scarers could negatively impact on seal welfare.

121. The Minister told the Committee that seals should only be shot to protect fish farm stocks as a last resort, so non-lethal alternatives needed to be explored to allow seals to co-exist with the aquaculture industry. The Minister told the Committee about the Scottish Government’s work to develop non-lethal measures which do not cause harm to other species.

122. However, he confirmed to the Committee that the Scottish Government has no plans to regulate the use of seal scarers at the present time, but said that the intention was that on-going research into alternative audio devices would inform “the requirement of the seal licensing system on non-lethal alternatives, including best practice and minimum standards”.

123. The Committee acknowledges the threat seal attacks pose to both the commercial performance of fish farms, and to the wider marine environment in terms of the impact on the number of escapes. However, the Committee notes concerns raised about the number of seals which are being shot at fish farms as part of predator control.

124. The Committee welcomes the efforts being made in some parts of the aquaculture industry to pursue alternative measures, in terms of netting and other equipment, which would prevent seals being able to break through into farm cages.

125. The Committee acknowledges that audio seal scarers may be a cost effective option to keep seals away from fish farms. However, it believes it is essential that such devices are as humane as possible. The Committee therefore recommends the Scottish Government works with the aquaculture industry to ascertain how effective and widespread the use of such devices is, in order to establish clear guidelines on their use.

126. The Committee welcomes the work being done by the University of St Andrews to develop an audio device which is as humane as possible for seals and does not harm other species and is encouraged that the device has secured investment, and a technology licence, which may see it established in the market place as a viable solution for the aquaculture industry. The Committee recommends the Scottish Government continues to work with the University of St Andrews to encourage further investment in, and development of, the device.

53 Minister for Environment and Climate Change. Written correspondence, 17 January 2013. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2013.01.17_-Letter_from_the_Minister_follow_up_evidence_from_16_Jan_meeting.pdf.

54 Minister for Environment and Climate Change. Written correspondence, 17 January 2013.
Chapter 2 – fish farming: equipment and wellboats

127. Part 1, Chapter 2 introduces provisions to allow Scottish Ministers to make subordinate legislation for technical requirements for equipment and wellboats. In terms of equipment, the Bill introduces provisions to make subordinate legislation to set technical requirements and put them on a statutory footing, following further work by the Scottish Technical Standard steering group. In terms of wellboats, the Bill allows for measures to be put in place to control and monitor wellboat operation to control the risks of the spread of parasites, pathogens or diseases.

Equipment

128. The CoGP includes recommendations on containment (in section 4.9 and Annex 14) which require equipment to be “fit for purpose”. The code states that these will be updated when the Containment Working Group reports. The 2007 Act allows inspections to ascertain the risk of escape and the measures in place for containment of fish and prevention of escapes. Inspections are based on the requirements in the CoGP but “fit for purpose” is not defined in the Act.

129. A technical standard for Scottish fish farm equipment is under development. This includes fresh water and marine sites and covers nets, pens and mooring systems. The Scottish Technical Standard steering group (part of the Containment Working Group) has been working on a draft. Section 3 would allow Scottish Ministers to regulate to make the standard statutory. The Bill specifies what could be covered by secondary legislation including the purposes of the technical standard and requirements that can be put in place in terms of the information fish farm operators must provide, powers for inspection and sanctions for non-compliance.

130. Willie Cowan explained the Scottish Government’s aims in this regard—

“One of the Government’s key aims, which is reflected in the bill, is to reduce any potential impact of aquaculture on wild fisheries. One of the main ways to do that is to keep the fish in the cage. That is one of the key issues behind the technical standard provisions in the bill. Indeed, it is one of the key issues for the aquaculture industry as a whole, because every fish that escapes is an economic loss to the industry.”\(^{55}\)

131. Submissions the Committee received suggested that a significant number of escapes occur as a result of human error rather than deficient equipment and that regulations should therefore provide for there to be proper training in the use of fish farm equipment.

132. On the issue of training, Steve Bracken told the Committee—

“[...] when sites are given good equipment, it is key that people are well trained in its use. Some companies in the salmon industry have developed in-house containment training schemes, and we want to spread that throughout the industry. We look at containment in the same way as we look

at sea lice: it is an industry issue, and if we have good ideas we want to be able to share them.”\textsuperscript{56}

133. The Minister was of the view that training should be left as a matter for the industry to address, albeit that the current picture would vary across operators and that this may become a regulatory issue if it was clear that training was not being successfully addressed. The Minister suggested that the technical standard strand of the MGA should take this matter forward.

134. The Committee learned that the technical standard was currently being developed by the Containment Working Group, and that Steve Bracken, from Marine Harvest, was chairing the Group.

135. Steve Bracken outlined the general ethos that is being taken by the Group, compared to more complex systems which exist, in his view, elsewhere, such as in Norway. He told the Committee—

“We have gone for something that will be understandable by farm managers, their staff and managing directors. The document must be not quite unputdownable but readily accessible and understandable by most people who are involved in the industry.”\textsuperscript{57}

136. The Committee supports the approach in the Bill allowing Scottish Ministers to set technical standards for equipment, and returns to this issue in terms of the delivery of the policy aim via secondary legislation later in this report.

137. The Committee awaits the outcome of the work currently being carried out by the Containment Working Group. The Committee is encouraged by the comments made by the Chair of the Group that the regulations will be “readily accessible and understandable” and will pay close attention to these regulations when they come before the Committee.

138. The Committee learned that fish farm escapes can be due to human error, as well as the equipment being used, and therefore agrees with witnesses who highlighted the importance of training of fish farm employees, and others who come into direct contact with farmed fish. The Committee commends the work carried out in this area by Marine Harvest and recommends the aquaculture industry rolls out good practice from those currently operating in-house training schemes.

139. The Committee does not think that such training should become a legal requirement unless a significant evidence-base emerges to suggest that there is a widespread industry failure to adequately manage and deliver such training. The Committee recommends the Ministerial Group on Aquaculture monitors and assesses the effectiveness of training within the


aquaculture industry with a view to intervening if it deems it necessary to do so.

Wellboats
140. A wellboat is defined in the Bill as "a vessel that contains a tank or well for holding water (including sea water) into which live farmed fish may be taken, and [...] kept" for the purpose of transportation storage, slaughter, treatment or any other purpose connected with fish farming. There is currently some guidance in the CoGP on the risks of wellboat operation but no statutory requirement to record movements. There are concerns that wellboats could spread parasites or disease and that a lack of monitoring would mean this might not be identified. Wellboats are shared between Norway and Scotland and there is also work underway in Norway to develop technical standards.

141. Section 5 would allow the control and monitoring of wellboat operation in order to control risks of the spread of parasites, pathogens or diseases. As well as monitoring movements, wellboat operators could be required to use or install particular types of equipment to control risks. Enforcement would come under the provisions in Part 7 of the Marine (Scotland) Act 2010 (Section 7) and enforcement notices could be served to require action where wellboat operators were not fulfilling requirements (Section 6).

142. The Scottish Environment Protection Agency (SEPA)’s submission suggests a way of simplifying the consenting regime for the use of wellboats, where it, and not Marine Scotland, would be responsible for consenting discharges from wellboats. This could, SEPA stated, be cheaper for fish farmers and less bureaucratic. The Minister told the Committee that he was in discussion with SEPA about this proposal and would write to the Committee in due course to provide an update on progress.

143. The modifications needed to wellboats were identified as some of the most significant costs in the Financial Memorandum. The Committee pursued with witnesses whether these costs were considered to be proportionate.

144. Willie Cowan told the Committee that the ball-park figure for retrofitting a wellboat with a filtering system may be approximately £500,000. The Committee also learned that a new wellboat costs between approximately £12 million and £15 million to build.

145. Professor Phil Thomas gave the SSPO view of the wellboat provisions in the Bill—

"Everybody in the industry would be supportive of retrofitting wellboats, but the cost would be massive. That would need to be phased in because, in truth, it is much easier to put the right installation in when a new boat is being brought in, rather than to retrofit. There would be commercial cost considerations. As the bill is written, the definition of a wellboat would cover pretty well every boat that goes anywhere near a fish farm. That is obviously

58 Aquaculture and Fisheries (Scotland) Bill, section 4(1).
not the intention, and nor is it practical. I hope that the definition of wellboats will be adjusted in the final version of the bill.”

146. Willie Cowan told the Committee that the Scottish Government was aware of the possible issue about the definition of what constituted a wellboat and that it would look further at the issue.

147. The Committee welcomes the principle of the provisions in the Bill and joins the aquaculture industry in welcoming newly built wellboats being equipped to the requirements outlined in the Bill. However, the Committee acknowledges there will be significant cost implications involved in bringing existing wellboats up to the required standard.

148. The Committee therefore recommends the Scottish Government ensures the definition of wellboats in the Bill is amended at future stages if necessary, to ensure the legislation applies only to those vessels intended. The Committee further recommends the Scottish Government works with the industry so the provisions in the Bill can be phased in and managed within an appropriate timescale to make sure they are commercially viable as well as environmentally desirable.

149. As part of its evidence gathering on this issue, the Committee learned that few, if any, wellboats were built in Scotland (they are mostly built in Norway) and that, therefore, the retrofitting of wellboats may also largely take place in Norway. The Committee encourages the Scottish Government to work towards securing further building and retrofitting of such vessels in Scotland, given the importance and growth of the aquaculture industry in this country.

150. The Committee also recommends the Scottish Government seeks to work with the Norwegian Government to develop a common standard for wellboats between the two countries.

151. The Committee notes the Scottish Environment Protection Agency’s suggested way of simplifying the consenting regime for the use of wellboats, where it, and not Marine Scotland, would be responsible for consenting discharges from wellboats. The Committee also notes the indication from the Minister that he was in discussion with the Scottish Environment Protection Agency about this proposal. The Committee, recognising the merits of the proposal, looks forward to receiving an update from the Minister on the current discussions between the Scottish Government and the Scottish Environment Protection Agency on this issue.

Chapter 3 – commercially damaging species

152. Chapter 3 deals with commercially damaging species, putting in place measures to allow the Scottish Government to make orders defining such species. There is currently no definition of what such species are and no measures in place

to control them (unless they are invasive and non-native). A draft code of practice has been developed by the Scottish Government’s Shellfish Forum and the Bill would give legislative backing to the measures in the draft code. The chapter also deals with control where a commercially damaging species is confirmed as being present – outlining control agreements, control schemes (where no agreement could be reached), and emergency action notices (in cases where urgent action is required).

153. The Bill defines commercially damaging species as a species of animal or plant which, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a fish or shellfish farm and one that of itself has little or no commercial value. In most cases, orders under Section 8 would apply to native species, as provisions to deal with non-native species are included in the Wildlife and Countryside Act 1981 (as amended). Ministers may make provisions on the movement of species, equipment or water which could contain damaging species and can take samples and carry out surveillance activities (Section 10).

154. Where the presence of a commercially damaging species is confirmed, Ministers may enter into “control agreements” with a fish farm operator (Section 13). This would involve agreeing the measures to be taken and the timeframe needed to deal with the damaging species. Where difficulties were encountered in coming to an agreement, “control schemes” could be put in place (Section 14). This could be carried out if necessary without the agreement or participation of the farmer. Where action is urgent, an “emergency action notice” could be served allowing action to tackle the commercially damaging species in a shorter timeframe (Section 15). Appeals could be lodged against such a notice (Section 16).

Orders relating to commercially damaging species and definition
155. The Committee heard evidence about the effects of one such species, the mussel, *Mytilus trossulus*, which has had a negative effect on mussel farms in Scotland. In that case, the Scottish Government was able to take action but this was only because all mussel farmers active in the loch affected agreed to it. This example was given as a reason why legislation in this area was required.

156. In approaching this issue, it was clear to the Committee that the fundamental basis for ensuring these measures could be effective lay in the definition of what a commercially damaging species would be in the context of the legislation, and pursued this point with witnesses. Alex Adrian, from the Crown Estate, told the Committee—

“Any definition has to be broad enough to catch such things when they arise, because no one can really pick them out. Such species are not invasive non-natives and are not necessarily damaging in their own right; the effects become clear only when the commercial context applies.”

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157. The Bill limits the Scottish Ministers to only being able to make orders specifying a commercially damaging species which, if not controlled, would be likely to have an adverse effect on the economic or commercial interests of a fish or shellfish farming business, and if the species itself is of little or no commercial value. Alex Kinninmonth told the Committee—

“I note that the bill defines a commercially damaging species as something that is without “commercial value”. The danger with that definition is that, although something might be without commercial value, that does not mean that it has no environmental or ecological value.

[...] it has been presented as something that is quite wide ranging, which is a bit dangerous. At the very least, Scottish Natural Heritage should be consulted before something is defined as a commercially damaging species. After all, there is the potential for something quite damaging to happen.”

158. Willie Cowan confirmed that any order defining a commercially damaging species would be consulted upon before being laid, and that agencies such as SNH would be asked for a view as part of that consultation process.

159. Professor Phil Thomas also had some concerns about the current drafting of the provision—

“[...] it has been cast in broad terms in relation to fish farms. However, fish farms are not the issue; instead, the issue is movement of the species and, within that, the movement of boats, particularly inshore boats [...] Any attempt to do something about that should focus not on the fish farm but on how the species got there, which is almost universally down to boats. As a result, the provision is too limited and we would have preferred the Government to have included the opportunity to introduce secondary legislation to get a more comprehensive approach.”

160. The Committee also questioned the Minister on the potential negative impact of genetically modified (GM) salmon on wild salmon, given the USA’s provisional approval of GM salmon, and whether GM salmon could be defined as commercially damaging.

161. The Minister said that as it was illegal to hold or release GM animals without approval, which would include an assessment of potential detrimental effects, he could not envisage a situation where approved GM product would need to be subsequently defined as being commercially damaging.

162. The Committee is supportive of the principle of the Bill’s provisions on commercially damaging species, in order to be able to deal more effectively with incidents such as the appearance of the mussel, Mytilus trossulus, (a

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63 Minister for Environment and Climate Change. Written correspondence, 17 January 2013.
species which was not invasive non-native, but which could cause commercial damage) at Scottish mussel farms.

163. The Committee notes the concerns raised regarding the definition of a commercially damaging species in the Bill, and the call for Scottish Natural Heritage to be consulted before a species is designated as such, to ensure environmental and ecological considerations are also taken into account. The Committee was reassured by the Scottish Government’s intention to consult on orders before they are laid, and to ensure agencies such as Scottish Natural Heritage are asked for a view as part of that consultation process.

164. The Committee also notes the concerns that the provisions are too narrowly drafted and not comprehensive enough, in that they are limited to the presence of species on fish and shellfish farms, rather than casting the net wider to encompass where the species originated from and how it reached the farm. The Committee asks the Scottish Government to re-examine that issue ahead of Stage 2, should the Bill reach that Stage, to ascertain if any amendments are required to better achieve the purpose of the provisions.

165. The Committee notes the comments made by the Minister with regard to the potential impact of genetically modified salmon on wild salmon. However, the Committee remains of the view there could be circumstances (such as an escape of approved genetically modified salmon) in which genetically modified salmon could be commercially damaging to wild salmon. The Committee therefore asks the Ministerial group on Aquaculture to keep this matter under review.

Issues not taken forward in the Bill

166. As discussed earlier, several issues consulted upon were not included in the Bill. The Scottish Government produced a response to the consultation, which it updated on 26 November 2012 in writing to the Committee, explaining which issues contained in the consultation were not taken forward in the Bill, why, and how they would be progressed.

167. Many issues relating to aquaculture are not included in the Bill and the Scottish Government response gives limited information on how they will be taken forward. These issues included—

- revoking consents and dealing with unused consents;
- provision of data on sea-lice, fish mortality and movements, etc;
- powers to reduce biomass consents; and
- seaweed cultivation and discharges from processing plants.

168. Some of these issues provoked considerable comment during the Committee’s evidence taking and are therefore discussed in detail below.
Sea lice - general

169. The Committee heard a great deal about the extent of the effect of sea lice on both wild and farmed salmon. A controversial issue within this, and one which provoked firmly opposing views, was the availability of, and public access to, data on sea lice numbers on salmon stocks, in fish farms – an issue consulted on but not taken forward in the Bill.

170. The Committee heard evidence about the extent of the sea lice problem, how lice move from fish to fish, what effects lice have on the health of fish, what effects lice have on both the aquaculture and wild fisheries sectors; how fish are treated for lice, and what steps could be taken to tackle the problem more effectively for all concerned. Much of the discussion focussed on whether there should be a statutory requirement on the face of the Bill for individual fish farms to regularly publish data on sea lice numbers.

171. In terms of why the issue is not part of the Bill, in his letter to the Committee of 26 November 2012, the Minister updated the Scottish Government’s response to the consultation analysis, which outlined the Government’s summary and response to the issue of sea lice data collection and publication. The letter states—

“There was some support for combined government and aquaculture industry responsibility for data collection and publication. There was strong support for additional information to be provided, as proposed in the Consultation Document. However, there was also strong opposition to this proposal from the aquaculture sector. Scottish Government response: It is anticipated that this proposal will be progressed through non-legislative means, through improved voluntary reporting, in discussion with stakeholders. Alternatively, the Scottish Government has existing powers to progress the proposals through secondary legislation.

Additional information

Part 5, Section 38 of the Aquaculture and Fisheries (Scotland) Act 2007 details the powers available to the Scottish Ministers to make orders around information provision. For now, it remains our intention to progress data collection through voluntary means before the end of the year.”

172. Willie Cowan went into more detail about the route being taken by the Scottish Government with regard to sea lice data—

“[… ] there are powers in the 2007 act for ministers to require the provision of environmental data, so new primary legislation is not required. After discussions with stakeholders, ministers have taken the view that there should be greater disaggregation of sea lice data. Last week, the Scottish Salmon Producers Organisation published an article on its website indicating that from 1 January 2013 the disaggregation of sea lice data would move to

between 25 and 30 areas around Scotland as opposed to the current six. Ministers support that further disaggregation but recognise that in some instances there are commercial confidentiality reasons why it might not be beneficial to the industry given their responsibilities as public limited companies.\(^6^5\)

173. Willie Cowan went on to summarise the fundamental question that the Committee, and ultimately Parliament, should consider, if amendments come forward on this issue—

“The issue for Government and for Parliament generally is whether the voluntary approach that is being advocated provides stakeholders as a whole with a solution that is acceptable or whether we need to come back and consider that through further regulation.”\(^6^6\)

**Origins of sea lice**

174. The Committee considered the issue of sea lice from a number of angles. Firstly, it heard evidence on the origins of sea lice. It heard from Professor Phil Thomas that the assumption that sea lice always originate on fish farms was mistaken, and often lice were brought in on mature fish returning from sea which caused lice outbreaks on farms.

175. Dr Alan Wells acknowledged that there was a lack of clarity on this, telling the Committee—

“Scientifically, we cannot say where an individual sea louse came from or whether it came from a farm or a wild fish. The chances are that it is a bit of both.”\(^6^7\)

176. The Committee notes the evidence it heard on sea lice origins and believes that, whilst it is important, scientifically, to understand the behaviours, cycles and preponderance of lice, the issue sits beyond of what is required by way of regulation as part of this Bill.

**Biomass and revoking consents**

177. SEPA informed the Committee that, under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, Ministers currently have the powers to direct SEPA to reduce the biomass, i.e. the amount of fish, at a fish farm, under certain conditions. SEPA also told the Committee it has the power to revoke the relevant fish farm licences in certain circumstances.

178. However, the Committee heard from several witnesses that it was a matter for fish farms, ultimately, to ensure that the number of fish in their cages was appropriate to the amount that could be treated for lice. The Committee learned that the planning consent for the biomass of a site was managed separately from

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the SEPA licencing of medicine for a site. Douglas Sinclair, an Aquaculture Specialist with SEPA, told the Committee—

“We would say that it is up to the fish farmer to ensure that he holds a level of stock on his farm that can be treated responsibly using the available medicines. In our view, it is a husbandry issue.”

179. Steve Bracken told the Committee that the aquaculture industry took the issue of consents very seriously, and that it was critical to them that consents were not reduced as that would result in fewer tonnages of fish being produced. He said that it was imperative that farms were managed in a way that matched the tonnages with the consents in a way that was environmentally sustainable.

180. The Minister told the Committee that the Scottish Government—

“[… ] consider[s] it to be within the powers of Ministerial Direction to ask SEPA to [reduce biomass] for purposes other than environmental pollution – for example if persistent sea lice issue[s] were unable to be managed appropriately within the available medicine discharge limits.”

181. The Committee believes it is good practice for fish farms to have a level of stock that can be treated appropriately for lice and other diseases and notes the Scottish Government, and the Scottish Environment Protection Agency, have powers to intervene and limit the amount of stock at a farm in specific circumstances.

182. The Committee notes Scottish Ministers and the Scottish Environment Protection Agency have powers to reduce biomass at fish farms and also, in specific circumstances, to revoke consenting licences. The Committee believes these powers are appropriate should intervention be required.

183. However, the Committee is concerned about the separation that exists between the biomass permitted, and the biomass that could be treated with the quantity of medicine licensed to be used at a site, such that it would be possible to have more fish at a site than it were possible to treat, were that necessary. Whilst noting the comments made that it was for the industry to balance these two biomass levels, the Committee, in the absence of sufficient data, recommends the Ministerial Group on Aquaculture keeps this matter under close review.

Treatment of farmed and wild fish

184. Whilst accepting that the 2007 Act already contains the powers required to take action relating to lice outbreaks on fish farms, there was some disagreement amongst stakeholders about whether this extended to wild fish. Dr Alan Wells told the Committee—

69 Minister for Environment and Climate Change. Written correspondence, 17 January 2013.
“[…] the provisions in the 2007 act are specifically about the health and welfare of the fish in the cages but we are equally concerned about the health and welfare of wild fish—the fish outside the cages.”

185. But Professor Phil Thomas was of a different view—

“The perception that the fish health inspectorate cannot take action in relation to wild fish is wrong. The code that the inspectorate uses to inspect has adopted the elements of the industry code that set treatment limits and give guidance on when treatment is given, for example, in the spring, autumn and so on. The fish health inspectorate can follow that code, as that is the code that it uses to inspect. Therefore, that perception is wrong.”

186. The Committee notes the comments made on this issue and would welcome clarification from the Government in advance of stage 2, should the Bill proceed, that the provisions in the 2007 act extend to enable action regarding lice outbreaks in wild fish.

Publication of sea lice data

187. The most controversial aspect of the sea lice issue, and the one which provoked the most debate, was on the issue of the availability of data on the number of sea lice on fish farms. The Scottish Government received a significant amount of feedback on this issue in its own consultation process and, as detailed above, decided to maintain the current voluntary approach to this matter. Professor Phil Thomas outlined what the SSPO has recently agreed to do in this regard—

“What we have agreed to do at this stage, taking further account of the wild fish considerations, is to move on from the area basis on which we have been publishing. Currently, we use six areas across Scotland, which we decided was the most appropriate approach after analysis from a sea lice epidemiology standpoint—albeit that it was done for our own interests. In the future, however, we will move to a situation in which we will have 26 to 28 areas, so there will be a much finer disaggregation.”

188. Ken Whelan helpfully provided some wider European context by outlining to the Committee the situation in Ireland—

“The situation in Ireland is that we have had public access to lice information for quite a number of years. In another life I was responsible for the monitoring in Ireland. My team used to monitor 14 times a year. The material was collected and analysed and within two weeks the farms were made...

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aware of what the monitoring had shown. Within a month, the information was made available publicly. There are huge advantages in that system.”

189. Guy Linley Adams, an environmental solicitor at the Salmon and Trout Association, went on to clarify the current position with the 2007 Act with regard to record keeping and access to those records—

“[…] the 2007 act requires the industry and fish farms to keep records, which are available for inspection, but the records or copies of them are not held by the fish health inspectorate, so they are outside the scope of the Environmental Information (Scotland) Regulations 2004. The public does not have access to records unless the Scottish Government or its agencies hold them.”

190. It was clear that data on sea lice are currently collected and published. The debate focussed on whether these statistics go far enough, and whether there would be merit in placing the publication of data on a statutory footing in the Bill, and making it a requirement for every fish farm to publish individual sea lice data on a regular basis.

191. It was clear to the Committee there were two opposing views on this matter; on one hand, Professor Phil Thomas from the SSPO was of the opinion that publishing data on a farm-by-farm basis would not add to what it is currently, or shortly will be, provided, as the material issue is the number of lice in an area, rather than on specific farms. On the other hand, many witnesses felt the publication of farm-by-farm data would be more helpful and transparent and would assist all those interests affected by an outbreak by providing more specific local information.

192. Steve Bracken, from Marine Harvest, a significant owner and operator of fish farms in Scotland, told the Committee his company had published sea lice data online, and had done so since 2009. However, these are not on a farm-by-farm basis.

193. Alex Adrian, the Aquaculture Operations Manager at the Crown Estate, suggested that the primary driver behind the publication of data should be based on the affected interests—

“The argument about making data available is being made on the basis that there are adjacent interests that may be affected by lice on fish farms, but it is the context of just how those adjacent interests are affected and the significance of that effect that is material here. I would suggest that the publication of lice data is material to those whose interests are affected and the level at which the lice are being managed. For example, in an area management system, it is entirely acceptable that a particular farm’s lice

counts would be made available to the interests that may be affected within the management area.”

194. Douglas Sinclair, from SEPA, gave the Committee some context on how information about sea lice compared to other areas in terms of data publication—

“It is one of the few areas in the Scottish environment in which someone can be doing something that can significantly impact on someone else’s interests and there is no public access to what is going on. We regulate various areas. For example, if someone lives downwind of smoking chimneys on a factory and they want to find out what is in the smoke, they can find out from us—from the published record. Fish farming in Scotland is the one omission. For all sorts of reasons, it ought to be sorted out and the information ought to be published.”

195. The Committee also received evidence from Guy Linley-Adams on how the provision of farm specific data could be best achieved in legislative terms—

“[…] that can easily be dealt with by amending the Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, which was drawn up under the 2007 act. Primary legislation is not needed.”

196. The Minister helpfully and clearly outlined the Scottish Government’s position on sea lice data. He confirmed that data is currently collected on a farm-by-farm basis, and that this information is made available to those with a local interest on a case-by-case basis, to ensure that those who require the information in order to respond had access to it. However, he also confirmed that the Scottish Government did not believe that farm-by-farm data should be published routinely, due to a combination of commercial sensitivities and the information already being available to those who require it. The Minister stressed that the Scottish Government is seeking to correctly judge the balance between such commercial sensitivities and environmental considerations. He told the Committee—

“On commercial sensitivities and the publication of data, the key point is to understand that, because of the nature of the retail market in the UK and elsewhere, there are huge sensitivities about sea lice. In the public discourse about the issue, there is often frenetic debate.

Every fish farm probably has some sea lice—I would be amazed if there was a farm that had none—just as sea lice infest wild salmon irrespective of whether the industry operates in the locality. We need to give operators the opportunity to flag up problems to the industry internally and to the officials who regulate the sector. They will have to publish data that perhaps will not give the degree of granularity that is being suggested but which will enable communication at the necessary level so that we can step in, determine

whether measures are being taken and, if they are not, take regulatory action.”

197. The Minister acknowledged that the Scottish Government’s approach did leave a possible gap in that farm-by-farm sea lice data was not available to inform research, and in response to this he told the Committee—

“[…] a strand of the ministerial group on aquaculture’s work will be about identifying gaps in the research and trying to increase collaboration between the academic community, the industry and people who are involved in commercial research. I hope and expect the MGA to work to ensure that gaps are filled, by prioritising research in areas in which we need information.”

198. The Committee acknowledges the issue of sea lice, predominantly at fish farms, is an emotive and controversial issue which has elicited a great deal of comment and conflicting views from stakeholders, both in responses to the Scottish Government’s consultation, and in the Committee’s own evidence taking.

199. It is clear to the Committee that outbreaks of sea lice are a significant issue for the aquaculture industry, and one which every fish farm operating in Scotland must take very seriously.

200. The Committee notes that data on sea lice is currently required to be collected on a farm-by-farm basis. The Committee also notes that this data can be examined, and copies of it taken, by the Fish Health Inspectorate (which is part of Marine Scotland and the Scottish Government). Fish farms can also share this data with other interested parties as part of Farm Management Agreements. However, there is currently no requirement for such data to be routinely placed in the public domain.

201. The Committee notes the call for such data to be published, to increase transparency within the aquaculture industry; improve the ability to respond to sea lice outbreaks; and inform scientific research. However, the Committee also notes the nervousness from within the industry that such publication could present commercial difficulties, both for specific farms, and in terms of reputational damage for companies, and also threaten the confidence of consumers, and therefore, potentially the overall marketability of the product.

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

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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).

204. The Committee is also concerned that the current lack of accessible farm-by-farm data leaves an important gap in that such data, though collected, cannot be used to inform scientific research. The Committee recommends the Ministerial Group on Aquaculture gives careful consideration to how farm-by-farm sea lice data can be made available to inform scientific research and reports back to the Committee before the conclusion of Stage 2.

PART TWO – SALMON FISHERIES, ETC.

205. Part 2 deals with salmon and freshwater fisheries and largely amends the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, particularly in relation to governance by and of District Salmon Fisheries Boards (DSFBs) and management of salmon fisheries. The Bill makes a number of changes to the powers and duties of DSFBs (including requiring publication of annual reports and financial accounts; the holding of an annual public meetings; and minutes of meetings to be published). The intention is to improve DSFB’s transparency and accountability.

206. Part 2 also includes provisions to allow the introduction of a carcass tagging scheme for all net-caught salmon to replace the current voluntary scheme, making it an offence to sell or possess salmon which is not tagged.

207. Part 2 also contains powers of entry for inspectors to take samples of fish, or to tag fish, to carry out analysis, tracking or monitoring etc, and gives the Government powers to conduct inquiries and investigations into salmon and freshwater fisheries. This also gives Ministers more powers in relation to conservation measures, rules on baits and lures, and annual close times.

208. Finally, Part 2 provides for monitoring and good practice regarding the introduction of fish or fish spawn into salmon fisheries and the possibility for Scottish Ministers to change the rules on consenting introductions under particular circumstances.

209. As mentioned elsewhere in this report, the Scottish Government informed the Committee that the provisions in this part of the Bill were to be seen as a “first step” in the Government’s planned widespread review of wild fisheries management in Scotland.
Consultation

210. Concerns were expressed by the ASFB that the details of this section of the Bill were not consulted upon.80

211. Responding to this point, Willie Cowan told the Committee—

“The consultation paper was not as detailed as the bill, but we struggle to identify where the requirements in the bill are any more onerous than the requirements on other public bodies or bodies that have been created by statute.”81

212. The Committee notes the point made by the Association of Salmon Fishery Boards that much of the detail of Part 2 of the Bill was not specifically consulted upon by the Scottish Government. Whilst acknowledging the Scottish Government’s response that the requirements in the Bill are proportionate and in line with those experienced by public bodies, or bodies created by statute, the Committee recommends the Scottish Government carefully considers the contents of future consultations to ensure all aspects likely to appear in legislation are consulted upon.

Background and context

213. In order to better understand the requirement for, and likely effectiveness of, the provisions in this part of the Bill, the Committee took evidence on a number of related background and contextual issues. Whilst not directly part of the legislation before the Committee, this evidence did provide very important underpinning information which enabled the Committee to better assess the legislation.

Wild salmon and sea trout – stock numbers

214. The tensions between the farmed and wild fishing sectors, which the Committee was frequently aware of during its evidence taking, often focussed on a perception that fish farming is having a negative effect on wild fisheries. The Committee explored this issue from many angles, one of which was to better understand the current health of wild salmon and sea trout stocks in and around Scotland.

215. The Atlantic Salmon is listed on Annex 2 of the EU Habitats Directive82 as a species for which Member States are required to designate Special Areas of Conservation (SACs). 11 rivers in Scotland have been designated as SACs where salmon are the main reason for the designation.83 SNH carries out monitoring of SACs which shows that in two of the rivers, salmon are in “favourable condition”, and in the other nine, are classified as “unfavourable recovering”.

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80 Association of Salmon Fishery Boards. Written submission, paragraph 3.
83 These are the Tweed, Tay, Dee (Aberdeenshire), Spey, Berriedale and Langwell, Thurso, Naver, Little Gruinard, Grimersta (Langavat), Bladnoch, and South Esk.
216. This issue was explored with witnesses on 12 December 2012. Dr John Armstrong, from Marine Scotland, gave the Committee a broad picture of salmon and sea trout stocks—

“[…] in Scotland in 2011 the total number of sea trout caught and retained and also released was 23,324 and the total number of salmon was 87,915. For salmon, that is the sixth highest rod catch in our records. Superficially, that might give the impression of quite a rosy picture. Indeed, in terms of the overall fishery in Scotland that is a good situation. However, one reason for such good rod catches is the dramatic decline in coastal net catches over the past couple of decades. That decline is because mortality of fish at sea has progressively increased so fewer fish are now returning to Scottish waters. However, because fewer fish are being caught in the coastal nets, the number of fish that are coming into the rivers and being caught are being maintained or are increasing slightly.

The overall, broad conservation picture is quite healthy but there is not much scope for further reductions in net fisheries, for example, should there be further increases in mortality at sea. The good news is that in recent years, the number of fish returning to the coast has at least maintained at a steady level, if not increased slightly. That is the broad picture.”

217. Callum Sinclair, the Director of the Rivers and Fisheries Trusts of Scotland (RAFTS), endorsed this view but noted that within that general healthy picture, there are regional differences which should not be overlooked.

218. Dr Colin Bean, the Science and Policy Adviser at SNH, also highlighted the difference in the health of stocks at different parts of their life cycle—

“We have fish that come back as grilse—after one winter at sea—of course, and multi-sea winter fish that will come back at other times of the year. If we look at the longer-term trend of spring fish, for example, we will see a longer decline of the spring stock component. That seems to have stabilised recently, but it is still an issue of some concern in respect of the overall salmon components.”

219. On the issue of the concerns relating to the trends in spring fish (which is also discussed in the section on catch and release below) Willie Cowan told the Committee—

“The spring runs are certainly an issue, although they are more of an issue in some areas than in others. A key point that we do not understand is why some rivers do reasonably well in the spring while others, which may even be in relatively close geographical proximity to them, do not. The issue is hugely complex. However, the bill will provide ministers with an order making power to introduce regulations for a national interest, which would have the potential to override local fishery board interests. Powers within the bill would enable

ministers, if it were thought necessary, to introduce national overriding regulations that would apply to all fisheries."\textsuperscript{86}

220. The Committee also explored the state of sea trout stocks. The Committee posed the question - can direct and conclusive links be made between, say, poor sea trout stocks in the west of Scotland with the prevalence of fish farms in that area, whilst stocks in the east, where there are no farms, are stronger?

221. The evidence given to the Committee was not conclusive, as it seemed that whilst a general picture could be given of weaker stocks in the west and stronger ones in the east, within that there were regional differences which perhaps highlighted that there was more to explain stock levels than just the proximity of fish farms. Dr Armstrong told the Committee—

"Many factors affect the survival of sea trout at sea, and trying to tease out different factors simply from catch statistics will always be very difficult, given the complexity of the situation."\textsuperscript{87}

222. And Dr Bean provided further enlightenment—

"[...] there are sea trout projects going on in other parts of the United Kingdom—for example, the Celtic sea trout project and the Moray Firth sea trout project. Those projects were set up because sea trout were in decline in parts of the UK other than the north-west of Scotland. It is true that the number of sea trout off the west of Scotland has declined, and people are looking for a cause-and-effect relationship between aquaculture and that decline. Aquaculture—through sea lice numbers—undoubtedly has an impact on sea trout.

However, there are other factors that we must consider. Climate change is one such factor. Changes in hydrological conditions could result in redd washout—the washout of the egg nests of sea trout. In addition, there is a lack of understanding of what makes a sea trout go to sea in the first place."\textsuperscript{88}

223. The Committee was encouraged to learn that against a backdrop of long term decline the number of salmon returning to Scottish rivers is stabilising and in some places increasing slightly, which together with a reduction in netting, has boosted rod and line catches to near record levels. It is obvious that the factors which affect stocks can be complex in nature and it clear there is no room for complacency on the issue.

224. Sea trout stocks seem to be at greater threat and the Committee was interested to learn of the work on-going in Scotland, and elsewhere, to better understand the reasons for this and the best ways to respond.

Wild salmon and sea trout – stock data

225. The Committee explored the issue of how robust current counting and stock data was – can it be relied upon as giving a truly accurate picture of the state of stocks? Dr Armstrong explained the current counting situation in Scotland—

“There are few well-validated counters in Scotland, particularly in strategic locations. There is a big opportunity for fisheries management to increase that network. Once we have counters with absolute data, we can start to calibrate some of our other data sources, such as catch data. There is big potential for increasing the numbers of counters to improve our understanding of fish stocks.”

226. The Committee explored whether a mandatory reporting of rod-and-line fishing effort for salmon and sea trout would improve the current collection of data. Dr Bean from SNH agreed that it would, and Callum Sinclair said—

“Yes, if someone could come up with an effective way of assessing rod catch effort. The Marine Scotland science statements that I have read seem to confirm that no satisfactory practical means has been devised to obtain meaningful information. If someone could come up with a way in which we could have meaningful and useful information, I would say yes.”

227. The Royal Society of Edinburgh’s evidence also states that there should be a legal requirement for rod and line fisheries to report fishing effort, i.e. the number of rod days fished. They explain that this information is provided in England and Wales, and that if it were provided in Scotland, it would allow more meaningful analysis of catch statistics, because changes in catches due to changes in effort could be accounted for. The Scottish Government’s Salmon Catch Statistics for 2011 (published April 2012) states that “we have no time series of fishing effort information associated with the rod and line fishery.”

228. The Minister told the Committee that the issue of data collection and use would form part of the Scottish Government’s review of wild fisheries management in Scotland. In particular, the review would examine what data is currently collected and available, with a view to identifying where the gaps are. In addition, the Minister subsequently drew the Committee’s attention to the Policy Memorandum, which outlines the Scottish Government’s intention to consider the need for a national data collection workstream to consider the most efficient collection and use of information and statistics on fish and fisheries.

229. The Committee is firmly of the view that the more robust the data, the better policy and legislation will be. The Committee recommends the Scottish Government takes note of the points made by Dr Armstrong of Marine Scotland - that an increase in the network of well-validated counters, in strategic locations, would lead to improved data and understanding of

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fish stocks and updates the Committee on how this situation could be improved.

230. **Witnesses supported mandatory reporting of rod-and-line catch of salmon and sea trout to help improve current data and statistics, provided that a robust means could be identified and agreed upon to obtain such information. The Committee therefore recommends the Scottish Government explores methods for recording rod-and-line salmon and sea trout effort data and reports back to the Committee before the completion of Stage 2.**

231. **The Committee also recommends the Scottish Government gives consideration to introducing a legal requirement to record the number of rod days fished, as is the case in England and Wales, and reports back to the Committee before the completion of Stage 2.**

**Wild salmon and sea trout – catch and release schemes**

232. On its fact-finding visit to the River Dee, the Committee heard about the success of its catch and release scheme, which has made a very significant contribution to the healthy state of salmon stocks in the Dee. The success in the Dee has seen a cultural buy-in by those fishing which has resulted in no decline in the number of angling lets.

233. Callum Sinclair told the Committee about the wider success of catch and release schemes in Scottish salmon rivers—

> “The voluntary take-up of catch and release over a generation in Scotland has been quite fantastic to watch. The total figure for catch in the round of all fish in Scotland is 73 per cent. The voluntary figure for catch and release of all spring fish, which people are particularly concerned about, is 91 per cent. In the SACs, a total of 6,116 spring fish were caught last year, of which 5,554 were returned and 562 were killed. That equates to less than 300 fish of the spring-run take-in for each SAC.”

234. The Committee speculated on how accurate data could be on stocks if fish were being caught on multiple occasions due to the success of catch and release schemes. How could those collecting the data be sure that a fish had not been caught, and counted, previously?

235. **The Royal Society of Edinburgh’s evidence states that—**

> “The annual salmon fishery statistics show that in 2011, 73% of the annual salmon rod catch was released. Given the widespread adoption of catch and release practices across District Salmon Fishery Boards, consideration should be given to the introduction of measures to record multiple catching of the same fish. Without this, the rigour of the catch statistics as a conservation tool is eroded.”

236. Dr Armstrong told the Committee—
“Typically, throughout the year perhaps 10 per cent of salmon coming into a river might be captured by rods. For spring fish, the proportion is a bit higher and might be up at 20 per cent. If a fish is captured and released, it still has a one in 10 chance of being captured again, so the level of inflation is actually rather low. We have made adjustments to our trend figures to account for that inflation, but they do not make a difference to the general trends that we report.”

237. Given the success of the Dee scheme, the Committee explored the option of making catch and release schemes mandatory under the Bill. Callum Sinclair’s view on this was—

“When evidence shows that the stock is under particular stress or is in decline, mandatory catch and release could be entirely justifiable. That would be eminently preferable to draconian closures of rivers or fisheries.”

238. The Committee was impressed with the success of the River Dee catch and release scheme, both environmentally and commercially. This is a good example of exactly the sort of measure that can be undertaken nation-wide as it appears to deliver multiple benefits with few negative consequences. The Committee therefore recommends District Salmon Fishery Boards consider the appropriateness of establishing such a scheme on rivers in their areas.

239. In terms of the issue of fish being caught multiple times affecting the catch data, the Committee is reassured by the comments made by Dr Armstrong from Marine Scotland that the impact of this is quite low and that figures are adjusted to take account of it to ensure it does not affect the recording of general trends.

Governance of District Salmon Fishery Boards

History of fisheries boards management

240. During its evidence taking, it became clear to the Committee that the debate over changes to the District Salmon Fishery Board system has a long history, and it is helpful to briefly set out that history to place the current proposals in context.

241. The report of the Salmon Strategy Task Force published in 1997, recommended the replacement of DSFBs with 20 Area Fishery Boards. These would principally be responsible for salmon and sea trout fisheries, although the report said that giving these bodies responsibility for other species should be considered. The Task Force report reviewed previous work on this area. Proposals to replace DSFBs with larger area committees responsible for all species of fish date back to the Hunter Committee of 1965.

242. A Green Paper, “Scotland’s Freshwater Fish and Fisheries: Securing their future” was published in 2001. It did not propose the wholesale replacement of

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DSFBs but did propose the establishment of Area Fisheries Management Committees at catchment level who would produce Area Fishery Management Plans. Where there was agreement, DSFBs could combine and take on the role of these Committees.

243. Work on freshwater fisheries was taken forward by a Freshwater Fisheries Forum. Proposals for a Draft Aquaculture and Freshwater Fisheries Bill were put forward in 2005. The consultation document said the structure favoured by the forum was a “Unitary authority” model covering salmon, trout and coarse fish. However it went on to say that developing legislative proposals would take longer than the timescale available for the Bill. The Bill went on to be enacted as the Aquaculture and Fisheries (Scotland) Act 2007.

244. The present Bill makes a number of changes to the way DSFBs operate, but would not fundamentally alter the administration and management of salmon and freshwater fisheries. The Scottish Government’s Bill team said that the Government planned to scope out a review of the management structures for salmon and freshwater fisheries during the passage of the current Bill, with a view to introducing further legislation within the lifetime of the current Parliament.

245. The Committee asked the Minister why the Freshwater Fisheries Forum had not met since 2009, something some witnesses regretted in evidence to the Committee. The Minister said that the Forum had had a specific lifespan, between 2004 and 2009, during which it had been involved in a lot of useful work. He went on to add that he had an “open mind” about the role the Forum could play in the forthcoming review.

Proposals in the current Bill
246. Section 20 of the Bill introduces new requirements to the financial powers and duties afforded to DSFBs as set out in the 2003 Act. The Bill introduces a suite of good governance obligations requiring DSFBs to act in a way consistent with public bodies i.e. in an open, fair and transparent way.

247. There were varying views in evidence to the Committee on the new requirements. While DSFBs did not appear to firmly oppose the good governance requirements in general, some reservations were expressed about the details.

Holding meetings in public
248. With regard to establishing a principle of conducting meetings in public except when there is good reason to hold them in private, ASFB stated—

“[…] it is important and legitimate that some aspects of meetings can be held in private (e.g. when discussing deployment of bailiffs, CCTV cameras, staff wages etc.). It is also important that DSFBs are able to raise contentious ideas, which may never be taken forward, without concern that these would

be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting."^{98}

249. Some DSFBs also expressed concerns about the costs of moving meetings to venues with sufficient capacity for members of the public to attend, and also of advertising meetings in local newspapers. There was a general point of view that came through the evidence-taking that the provisions in this part of the Bill could threaten the existence of smaller DSFBs. Further comment on these issues can be found in the section on the Financial Memorandum which accompanies the Bill, later in this report.

250. The Minister responded to this issue, telling the Committee—

“...In my discussions with the managers of larger fishery boards, I have found that they recognise that situation and have sought to collaborate with smaller boards to provide them with a bit of expertise and support, where that is practical. Obviously, that cannot be done ad infinitum, because supporting the smaller boards has a financial implication for the larger ones, but a degree of collaboration is taking place between colleagues in the fisheries community to help smaller boards to adopt best practice and take things forward."^{99}

251. Simon McKelvey, the Director of both the Cromarty Firth Fisheries Trust and the Cromarty Firth District Salmon Fisheries Board, welcomed the intention to conduct more DSFB business in public.

252. There was some concern that, given that DSFB members were currently volunteers, albeit that most were also proprietors, the Bill’s proposals may discourage people from continuing to volunteer.

253. In responding to this point, and whether boards would need to share resources, merge etc, the Minister again stated that the Scottish Government’s forthcoming review would address these issues—

“...We need to understand what the financial and other implications of the proposals might be. That is why the review is important. We need to understand where we are and where we might go and to consult on the options before deciding what path to take with regard to the smaller boards in Dumfries and Galloway and the larger ones, such as the Dee and the Don boards. We will take on board the results of that consultation before we develop any firm proposals. I do not want to be prescriptive at this point."^{100}

254. The Committee notes the evidence it received relating to meetings of District Salmon Fishery Boards and under which circumstances business could be considered privately. The Bill provides for an annual public meeting to be held by every District Salmon Fishery Board, and for other

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^{98} Association of Salmon Fishery Boards. Written submission, paragraph 15.
meetings to be held as appropriate. In terms of meetings other than the annual public meeting, the Bill clearly states that District Salmon Fishery Boards may decide to consider particular items in private, if there are good reasons for doing so. The Bill also states that District Salmon Fishery Boards should state reasons for taking any items in private, and minute those reasons.

255. The Committee considers the provisions in the Bill to be an important and necessary step in improving the accountability and transparency of District Salmon Fishery Board activities.

256. However, the Committee has sympathy with the concerns of smaller Boards that they may be less able, in terms of resource, to cope with the implementation of the provisions in the Bill than larger Boards. The Committee therefore welcomes the Minister’s acknowledgement of this issue and his commitment to address the matter in the Scottish Government’s forthcoming review.

257. The Committee therefore recommends that the enactment of the relevant sections of the Bill dovetail appropriately with the outcomes and implementation of the Scottish Government’s review, to ensure there is no unmanageable adverse impact on smaller Boards in the short-term.

Involvement of other interests
258. In its response to the Scottish Government consultation, the Scottish Federation for Coarse Angling, stated—

“[…] in addition to being given a specific duty to act fairly and transparently; Boards should also be obliged, when developing and implementing management activities, to have regard to the effects on other freshwater species and to consult representatives of the anglers who pursue them.”

259. Ron Woods, from the Scottish Federation for Coarse Angling, went on to tell the Committee—

“Our concern might be addressed through future management structures, but it ought to be raised just now. The statutory remit of boards is to

“do such acts, execute such works and incur such expenses as may appear to them expedient”

with the aim of protecting and improving the migratory fisheries or increasing the salmon population. That is, doubtless, a sensible objective for a district salmon fishery board, but there is no counterbalance in the board’s role. Nothing obliges a board to have any regard to the impact of its activity on other species of fish or on other angling activities in the area. When introducing management measures of any kind, boards should have a

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260. The Committee notes the points raised on this issue and can see the merit in District Salmon Fishery Boards consulting other fisheries interests as part of their management of salmon rivers. The Committee therefore recommends the Scottish Government considers these points within the scope of its forthcoming wider review.

Complaints procedure
261. The Bill includes provisions to ensure that DSFBs maintain, keep under review, and publish and record arrangements for dealing with complaints, particularly in relation to a specified list of potential complainants.

262. Concerns were expressed to the Committee by the ASFB regarding the proposal which states that DSFBs must keep records of how complaints were responded to and disposed of. The ASFB was of the view that this went beyond requirements placed on other public bodies and was overly prescriptive.

263. The Committee notes the comments made by the Association of Salmon Fishery Boards but after careful consideration is content the complaints procedure provisions in the Bill are proportionate and appropriate and will assist District Salmon Fishery Boards in improving overall transparency and accountability.

Members’ interests
264. The Bill includes provisions relating to Board members’ interests, including definition, registration and declaration of relevant financial interests, and preventing members from taking part in the board’s consideration of any business in which the member has a relevant financial interest.

265. The Committee heard evidence from George Pullar, the Vice Chairman of the SNFAS, which suggested that some DSFBs do not currently prevent Board members’ interests from unfairly and unduly influencing decision making. Mr Pullar told the Committee—

“In my experience, boards are run like cabals. A group on the board runs the show and other board members do not even know what is happening.”

266. Beauly DSFB believed that preventing members of a board with financial interests in a matter from participating in decisions was impractical because most Board members were proprietors who, by definition, could have a potential financial interest in Board decisions.

267. The Royal Society of Edinburgh however, supported this measure and believed it should go further—

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“[…] there would be substantial public and community benefit from annual publication of a list of salmon fisheries owners and occupiers in Scotland. This would increase transparency in the system. This is a topic which the Land Reform Review Group[104] may seek to address.”

268. Simon McKelvey told the Committee that the ASFB current code of good governance already includes guidance on this issue which says that Board members with a relevant financial interest in a particular decision should declare it.

269. The Committee notes the differing views on the appropriateness of the provisions in the Bill relating to the declaration of Board members financial interests, and the exclusion of members taking part in business where there could be a potential conflict of interests.

270. The Committee believes it is important to not only establish the principle of improving accountability and transparency by declaring such interests, but also to place that principle on a statutory footing in the Bill. The Committee also supports the provision relating to excluding members from participating in business where there are identified conflicts of interest.

Management

Carcass tagging

271. Section 22 inserts a new Section into the 2003 Act providing an enabling power to allow Scottish Ministers to introduce a carcass tagging scheme. Regulations could be introduced requiring salmon legally caught and retained by any method or one particular method to be tagged. Once the regulations are in place, it will be an offence to sell or possess salmon which are not tagged.

272. Several witnesses supported the introduction of a tagging scheme, which would bring Scotland in line with England, Wales and Ireland, but believed the details of the scheme should have been included in the Bill rather than the Bill providing for the scheme to be introduced via secondary legislation.

273. However, the Royal Society of Edinburgh welcomed further consultation on the issue, stating—

“We welcome the fact that further consultation with stakeholders is being undertaken to ensure any scheme does not impose a disproportionate financial burden on small businesses.”[106]

274. The ASFB told the Committee that it would like to see tagging requirements applied to rod caught fish which are not returned to the river. In addition it believed that once these provisions are in place, it should be made illegal to buy untagged rod caught fish as well as sell them—

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“Purchase of rod caught fish: It is illegal to sell rod caught fish but it is not illegal to purchase rod caught fish. Once we have a statutory system of carcass tagging in place, we believe that it should be illegal to both sell and purchase an untagged fish.”

275. The Minister told the Committee that he did consider it necessary to create an offence for purchase of rod caught salmon given that once a carcass tagging scheme came into force, it would be illegal for a person to have an un-tagged salmon in their possession.

276. Some witnesses also wanted to see a scheme involving individually numbered and recorded tags. Simon McKelvey told the Committee—

“I fully support a carcass tagging scheme, which needs to be backed up by numbered and recorded tags. I agree that it should be for nets and for rods. To that end, within the Cromarty Firth region, we introduced a rod and line carcass tagging scheme last year. Initially, there was quite a bit of opposition from local angling clubs but, after one year of the trial, we have overall support from the angling clubs. One club has seen a doubling in the number of fish that are returned by the end of the season.”

277. George Pullar was in favour of a tagging scheme but not numbered tags—

“It is unnecessary and it would be more work for netsmen. We have limited time to do anything during the season—we are running about and we are very busy.”

278. Craig Campbell, the Chairman of the Migratory Fish Committee with Scottish Anglers National Association, disagreed—

“Tagging has been done, it works and none of us has found any great problem with it. As regards numbered tags, if we do not number the tags, how will we confirm the catch data? If we do not number the tags, how will we prevent illegal sales of English-caught fish through Scottish markets?”

279. The Minister said that numbering the tags for scanning purposes was possible and that he could not identify any technical reason why this could not be undertaken. In circumstances where scanning on boats was impractical, scanning could take place on the shore.

280. The Minister and the lead Scottish Government official, Willie Cowan, discussed the provision for rod caught fish to be tagged, and suggested that doing so may complicate one of the purposes of tagging, in that it will be illegal to sell a fish that is not tagged, and it is illegal to sell rod caught fish. Therefore a tagging
scheme for rod caught fish would have to be a separate tagging scheme from the scheme proposed in the Bill.

281. In subsequent correspondence to the Committee, the Minister stated that the provisions in the Bill enable the creation of a tagging scheme which would be applicable to both rod caught and/or net caught salmon and that the Scottish Government has not yet made a decision about the type and coverage of the scheme that will be introduced. However, should a tagging scheme be introduced it would be an offence for a person to have in their possession any salmon not tagged and so the creation of a specific offence for the purchase of rod caught would not be necessary.

282. The Minister told the Committee that before any order is brought forward regarding carcass tagging, a full consultation will take place which will consider issues such as numbering and scanning.

283. The Committee notes the significant support for the introduction of a carcass tagging system, and welcomes the inclusion in the Bill of an enabling power to allow this to be brought forward, via secondary legislation, in due course.

284. The Committee notes the comments made on how such a scheme should be realised, including numbering tags, and notes that before any secondary legislation is brought forward on this, a full consultation will take place which will enable full consideration of the detail of such a scheme. However, the Committee supports the individual numbering of tags and believes it would be an essential part of making the tagging scheme effective.

285. The Committee can see the benefits in rod-caught fish being tagged, in terms of it leading to better data being collected to inform science. However it notes the Scottish Government is not yet decided on the issue and has reservations regarding the purpose and practicalities of such a scheme. The Committee encourages the Scottish Government to explore the practicalities of tagging rod-caught fish.

286. The Committee believes the provisions in the Bill in relation to tagging have the potential to close the current loophole which currently makes it illegal to sell, but not buy, a rod caught salmon.

Fish sampling and investigations
287. Section 23 introduces a new section to the 2003 Act to give Scottish Ministers powers to access fish farms for sampling and research purposes. Section 24 amends the 2003 Act giving Scottish Ministers’ powers to conduct inquiries and investigations into salmon and freshwater fisheries. The caveat that such investigations should never cause damage or interference to the rights of the owner or occupier of the fishery is removed. New requirements on information provision are introduced.
288. SNH supported these measures though called for clarification on whether hatcheries were included in the sampling provisions. Fisheries interests were, in general, not opposed to these provisions.

289. ASFB supported the sampling provisions in its written evidence but stated—

“We believe that genetic samples can be taken without killing the fish in question but where such sampling would be likely to involve killing fish we consider that the local DSFB should be fully consulted prior to sampling taking place.”

290. The Committee supports the sampling and investigation provisions in the Bill but draws the attention of the Scottish Government to the comments made by the Association of Salmon Fishery Boards that local District Salmon Fishery Boards should be consulted if the sampling would involve killing fish.

Monitoring, evaluation and varying orders

291. Sections 25-26 make changes to the sections of the 2003 Act which relate to DSFBs' abilities to apply to Scottish Ministers to prohibit the use of specific baits and lures; set annual close time; and make salmon conservation regulations. The changes would allow Scottish Ministers to ensure that where DSFBs have applied for regulations to be put in place, they can be required to monitor and evaluate their effects.

292. Reservations were expressed about monitoring requirements for close times and conservation measures and their potential financial implications for smaller boards. The River Tweed Commission stated—

“With respect to Section 25, whilst we generally support the provision to monitor orders we believe that this should only be for orders made on the initiative of the boards themselves; further we do not think it is proportionate to make non-compliance a criminal offence.”

293. The Committee did not receive a significant volume of evidence on these sections of the Bill. The Committee notes the comments made by The River Tweed Commission regarding Section 25 only applying to orders made on the initiative of District Salmon Fishery Boards, and expressing concern at the proportionality of making non-compliance an offence. The Committee draws these comments to the attention of the Scottish Government.

Close times

294. Section 26 of the Bill would give Scottish Ministers a new power that they do not have at present to change annual close times for salmon fishing. This follows the recommendations made by the Scottish Mixed Stock Salmon Fisheries Working Group which proposed that Government should ensure that it has all the powers to act at its own hand where there is no DSFB; the appropriate DSFBs have not proposed conservation measures; or there is a cross boundary

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111 Association of Salmon Fishery Boards. Written submission, paragraph 21.
112 River Tweed Commission. Written submission, page 1.
dimension. This is viewed as particularly important for meeting EU obligations as Scottish Ministers do not currently have the necessary powers to ensure that obligations under the Habitats Directive are met and they could therefore be liable to infraction proceedings.

295. Craig Campbell highlighted a potential advantage of these provisions to the Committee, saying—

“One quirk in the administration of salmon and sea trout fisheries in Scotland is that we have some missing links, because we have rivers without district salmon fishery boards. It is essential that the powers exist so that, in loco parentis, the Government can act like a district salmon fishery board.”

296. Callander McDowell and the Usan Salmon Fisheries Ltd were both concerned that DSFBs had shortened the length of the closed season for rod fisheries below the 168 days set out in the 2003 Act which Callander McDowell suggested demonstrated they were—

“[…] more concerned about providing sport for anglers and increasing the revenue for their members than for the protection of the wild salmon.”

297. As to whether there was actually a current requirement for close times to be altered, Dr Bean told the Committee—

“I think that we have to look at close seasons because, for example, climate change may mean that fish are on spawning areas at later times of the year than they would have been previously. Some salmon seasons start very early in the year, in January, when fish are still in the redds, so there may well be a case for amending the start and end of seasons. There is a good biological reason for doing that in some circumstances.”

298. And Simon McKelvey added—

“[…] we do not support a general change in the close season across the board, but if evidence identifies that a change is required and justified, clearly we should always have that option available if we are serious about conservation and better management.”

299. The Minister, and the lead Scottish Government official, Willie Cowan, both confirmed that the close time provision was intended to address potential conservation issues, such as the effects of climate change on salmon and sea trout, to ensure that close times reflect what is actually happening in rivers.

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114 Callander McDowell. Written submission, page 3.
115 Redds are spawning nests made by salmon or trout.
The Committee notes comments made to it regarding the need for a power to change annual close times and supports the Bill’s provision which would give Scottish Ministers such a power.

Introduction of fish for re-stocking

The Bill would make some changes to the controls on the release of salmon. At the moment DSFBs are responsible for authorising the release of salmon within their districts, and Scottish Ministers are responsible for areas where a DSFB does not exist. Section 28 of the Bill would change this and allow Scottish Ministers to make regulations which would make them responsible for authorising releases of salmon instead of DSFBs.

The Committee saw and heard first hand evidence regarding re-stocking of fish during its fact-finding visits to both the River Dee and to the Fort William area. It appeared to the Committee, and several witnesses confirmed this in evidence, that there were a number of reasons why re-stocking was a legitimate and necessary practice on salmon rivers in Scotland.

In oral evidence to the Committee Dr Bean, from SNH, was supportive of the provisions in the Bill. He told the Committee that it was, indeed, possible for a river to be restocked too much, and that he was concerned that some DSFBs were not complying with current legislation, such as the EU Habitats Directive, or current scientific best practice, in their approaches to restocking.

Dr Bean told the Committee—

“[…] we support stocking as a management tool, but district salmon fishery boards and others quite often look at stocking as the first tool in the box when they should really be trying to address the environmental issues that have led to the reduction in recruitment to stocks by, for example, removing a fish barrier or through some other habitat management prescription.”

The ASFB proposed that an independent panel of stakeholders should be set up to consider decisions related to releases of all fish species and advise the Scottish Government prior to the granting of consent.

Simon McKelvey told the Committee—

“I would like the decision-making process to be more transparent, particularly in cases in which district salmon fishery boards are self-regulating. First, there should be a requirement to seek advice. There should be a management objective for the activity that would stand up to some scrutiny. There should also be an associated monitoring assessment programme and an exit strategy because, as Colin Bean mentioned, stocking is sometimes legitimate for a period to help recovery after an accident or incident. However, that should not mean that it is a recurring intervention.

In the consultation response and in this meeting, we have stated that we would strongly favour some sort of public register of regulatory decisions on

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stocking so that such decisions on fish movements made by the DSFBs or Marine Scotland are apparent to us all, so that we can see the justification for the action if it is approved and, I guess, so that we can challenge it if we wish.”

307. And went on to add—

“[…] the key issue is how we better inform stocking activity if it is to take place and how we better regulate its extent. There is certainly room for improvement in regulatory practice, in where and how advice is given to those who make regulatory decisions and in how visible those decisions are.”

308. The Minister, and Willie Cowan, both confirmed to the Committee that the intention of the Bill on this issue was to improve transparency and get a better picture of stocking practices across Scotland. The implication was that a public register, or additional management body, was not required, because the Bill would achieve the desired outcomes and Marine Scotland already fulfilled the necessary management functions. Lindsay Anderson, a solicitor with the Scottish Government, did confirm that the Bill would require amendment to make provision for such a register.

309. The Committee acknowledges the various legitimate reasons for releasing salmon into rivers for restocking purposes. However, the Committee notes the concerns raised by Scottish Natural Heritage regarding current examples of European Union law not being fully complied with by some District Salmon Fishery Boards when carrying out restocking.

310. The Committee therefore supports the provisions in the Bill on this issue which it agrees will help to establish a more robust picture, and better transparency, of current practices, to allow better management in the future.

311. However, the Committee notes the comments made by the Association of Salmon Fishery Boards and others regarding the input they should have in this process and the need for greater transparency. The Committee therefore recommends the Scottish Government consults fully ahead of introducing any orders relating to introductions of fish.

Issues not included in the Bill

Coarse fishing
312. The Bill does not include any provisions relating to coarse fishing. Ron Woods expressed disappointment about this in evidence to the Committee—

“I do not think that the bill does anything for coarse fishing or coarse fish. We raised a number of issues in our response to the consultation, none of which has been taken up in the bill, as yet. It is possible that they will be taken up in

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the next round of consideration of freshwater fishing management issues, although in our view there is actually a need for legislative change [...] the bill is something of a disappointment from our point of view.”

313. The Minister gave a commitment to update the Committee on the Scottish Government’s thoughts on this issue, and Willie Cowan stressed that the forthcoming review of wild fisheries was just that, i.e. would not just focus on salmon, but on all wild fisheries, which includes coarse species.

314. The Committee sympathises with the disappointment of the coarse fishing sector that comments it made to the Scottish Government’s consultation ahead of this Bill were not reflected anywhere in the Bill itself.

315. However, the Committee is reassured by the comments made by the Minister, and by the lead Scottish Government official, Willie Cowan, that the Scottish Government will reconsider the views of the coarse fishing sector, and include relevant issues in the Scottish Government’s forthcoming review.

Salmon netting - background
316. As part of its fact-finding visits to support its scrutiny of the Bill, the Committee visited the Usan Salmon Fisheries Ltd in Montrose, to meet representatives from both that fishery, and the representative umbrella organisation, SNFAS. The Committee also discussed issues relating to the interactions between netting and the operation of DSFBs with representatives from the ASFB and individual DSFBs.

317. It quickly became evident to the Committee that in the case of Usan Salmon Fisheries Ltd and the DSFB’s within which it operates, there were severe tensions between the DSFB and the fishery. The Committee undertook to develop a better understanding of what those particular tensions were, and also to see if those issues were replicated in other parts of the country, with an overall view to determining a recommended way forward on this issue.

318. To underpin this work, the Committee also gathered background information which showed that netting in Scotland had reduced significantly over time, and that currently there are few netsmen operating commercially in Scotland, with 80% of the netting catch in 2011 being taken from four river districts - the Tweed, South Esk, North Esk and Strathy.

319. The essential nub of the tensions lies, on one side, with netsmen feeling that they are being unfairly restricted and penalised in their commercial operations by unworkable regulations and DSFB decisions, and, on the other side, fishery boards being concerned at netting overfishing salmon from more than one river (mixed stock fisheries), leading to stocking and conservation issues in salmon rivers.

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320. In written evidence to the Committee, Usan Salmon Fisheries Ltd outlined the outcomes they were hoping the Bill, if amended, may be able to deliver for them—

- removal of netting from the management of DSFBs and placing them under the control of the Scottish Government’s Inshore Fisheries Team; and

- abolition of the weekly close time legislation and replacement with a minimum days at sea allowance.

**Salmon netting - management**

321. Usan Salmon Fisheries Ltd and the SNFAS told the Committee in written evidence—

“[…] we wish to see coastal netting removed from the management of local fishery boards all together. It is clearly recognised that we, and operations like ours, are an inshore fishery and the Esk board itself (our local management) has indicated it cannot manage us appropriately. We have sustained years of relentless persecution at the hands of the local fishery board, which is dominated by angling interests managing for abundance without the slightest regard for netting interests other than to see them put out of business. Therefore it is appropriate to consider transferring us to the management of Scottish Government Inshore Fisheries Team. This is effectively how other Scottish inshore fisheries are managed and there is therefore no sensible rationale for continuing to subject us to continued inept, haphazard and discriminatory management.”

322. In oral evidence, George Pullar, of Usan Salmon Fisheries Ltd, elucidated on this issue, telling the Committee—

“[…] the people who are currently managing the asset are those who are trying to put us out of business. For example, we found out yesterday that we have been fortunate in being awarded protected geographical indication status for Scottish wild salmon, which is a great accreditation for the industry. However, the ASFB and fishery boards all objected to the move. They are supposed to be representing us, and we give them revenue every year for that representation. We in Montrose are paying £5,350 per annum to people who are lobbying to put us out of business.

If we were moved over to inshore fisheries the Government would, as ever, look at us impartially and not as a vested interest, and it could liaise with the fishery boards if it so chose.”

323. Simon McKelvey responded to this point, stating that—

“[…] the nets are exploiting the same resource, so we need to find a way collectively to manage that resource. We would be concerned if different
exploiters of a resource were to be dealt with in different places. We understand, and I am sure that the committee will be familiar with, some of the tensions in the dynamic between netting and angling operations or their proprietors. That tension in itself is unfortunate. A solution to the tension must be found that does not split management of the resource. In essence, they are catching the same fish so it would be unfortunate if we had two separate cycles of consideration of how we manage the system. My preference would be to retain the management in the same place.”

324. The Minister told the Committee that the Scottish Government is well aware of the issue and that the upcoming wild fisheries review would consider it.

325. The Committee notes the call from Usan Salmon Fisheries Ltd for netting interests to be removed from DSFB management, and transferred to direct Scottish Government management. Whilst the Committee sympathises with some of the local circumstances behind this proposal, it was not convinced during its evidence-taking that this was a widespread issue across Scotland. The Committee is therefore not persuaded that the proposal is necessarily the most appropriate response in seeking to resolve the local tensions highlighted.

326. The Committee notes the Scottish Government’s commitment to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

Close times and days at sea

327. Another issue raised by Usan Salmon Fisheries Ltd was that of the current weekly close times (currently 6pm Friday until 6am Monday), and the suggestion that these be replaced by a designated days at sea allowance. Usan Salmon Fisheries Ltd argued that the current close times are too restrictive, setting fixed times for netting equipment, such as leaders (long curtain like nets which act as barriers to guide, or lead, the fish into the catching bags) to be brought in to shore which can be impractical.

328. On the issue of weekly close times, Usan Salmon Fisheries Ltd stated in its written evidence that replacing close times with a days at sea allocation would—

“[...] avoid the need for us to wrestle with the conflicts of current fisheries legislation (avoiding inadvertent breaches of the law, due to circumstances out-with our control) and health and safety considerations (which of course must remain paramount at all times).”

329. The Committee heard evidence that it could be dangerous for netsmen to go to sea and remove leaders to comply with close time legislation if weather conditions were very poor.

125 Usan Salmon Fisheries Ltd/Salmon Net Fishing Association Scotland. Written submission, paragraph 13.
330. ASFB did not agree with this proposed change however, and told the Committee that in cases where weather or other unexpected circumstances prevented the removal of leaders to comply with close times, it would like to see leaders removed for a corresponding time period as soon as possible.

331. Simon McKelvey stressed to the Committee that it should be remembered that the current close times were set for a very good reason and were important in attempting to avoid unsustainable exploitation of mixed stocks. He suggested that a possible compromise to try and resolve the current limitations, and the issues of health and safety highlighted by George Pullar, would be to ensure that, in circumstances where leaders were not removed for a weekend, they could be subsequently closed (say on a Monday and Tuesday) for the same equivalent period, when it was safer for boats to go to sea.

332. The Minister acknowledged these issues and again confirmed to the Committee that this issue would be considered as part of the Scottish Government’s forthcoming review.

333. The Committee appreciates the difficulties netsmen can encounter in trying to adhere to weekly close times in challenging weather conditions.

334. In acknowledging the need for close times for conservation and stocking reasons, it is evident to the Committee that a degree of flexibility is required in the application of close times to take account of bad weather and any other unexpected circumstance.

335. However, the Committee is not persuaded that replacing the current close times with a days-at-sea allocation would provide an acceptable solution to this issue, in part because it would be very difficult to monitor.

336. The Committee welcomes the Scottish Government’s intention to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

Sale of netting stations

337. ASFB believe that, when a netting station is put up for sale, or is to be leased to a third party, the relevant DSFB should—

“[…] in the interests of salmon conservation, have a statutory right of first refusal to purchase (or lease) that netting operation before any proposed sale (or lease) could proceed.”

338. George Pullar was not supportive of this call, telling the Committee—

“[…] Giving people a pre-emptive right would take us back to the dark ages.”

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126 Association of Salmon Fishery Boards. Written submission, paragraph 28.
339. But Simon Mckelvey did not agree—

“[…] in some circumstances such a right would be justified. We are aware of netting stations that are used only as a front to launder fish. In some areas of Scotland, netting stations where, to the best of everyone’s knowledge, there is no boat or anything else, are putting in returns.”128

340. The Minister told the Committee he would give further consideration to this issue as part of the Scottish Government’s review, but did stress that he would not want a market for such sites to develop, and that he was keen for de-commissioned sites to remain de-commissioned.

341. The Committee notes the evidence it received on the merits of District Salmon Fishery Boards having a first right of refusal to purchase or lease a netting operation once it had been placed on the market. The Committee also notes a right of first refusal is different from a pre-emptive right to buy a netting station. The Committee remains of an open mind on this issue and notes the concern of the Minister to ensure de-commissioned sites remain de-commissioned.

342. The Committee notes the issue will form part of the Scottish Government’s upcoming review of wild fisheries management in Scotland and awaits developments with interest.

Salmon netting – conflict resolution

343. There was some concern expressed to the Committee that the many issues of conflict reported between netting and fishing interests in the Esk DSFB were not representative or indicative of a wider-scale problem in other areas where netting still takes place.

344. George Pullar told the Committee—

“There has to be somewhere for netsmen to go to complain. As far as I can see, fishery boards are answerable to no one apart from the proprietors who voted them in in the first place. Given that no one governs them at the moment, it is important that the bill contains something to ensure that they are answerable.”129

345. Simon Mckelvey told the Committee—

“An awful lot of these problems seem to relate directly to the problems that George Pullar faces in his own area, and I just do not think that the same is the case at a national level. I am not sure that we will get good legislation by

dealing with an issue that has arisen in one area instead of dealing with the situation in the whole country.”

346. Dr Bean felt that the key aim in any conflict resolution was that it was informed, and driven, by the science and not by particular personalities.

347. The Minister agreed that some form of mediation to resolve this issue would be worth exploring and could be included in the Scottish Government’s forthcoming review.

348. The Committee was disappointed to hear of the breakdown in the relationship between some netsmen and board members in the Esk District Salmon Fishery Board (in Angus). Whilst receiving no evidence that this was an indication of a wider problem, the issue did demonstrate the need for independent mediation within District Salmon Fishery Boards to deal with such issues of conflict and competing interest. The Committee agrees with Dr Bean that any such conflict resolution should be informed by scientific advice regarding the health of salmon stocks, and other species, in any particular area.

349. The Committee recommends the Scottish Government includes in its response to this Report, details of how it intends to take this issue forward to ensure better, and more transparent, conflict resolution within District Salmon Fishery Boards.

Funding of DSFBs
350. Some responses also commented on the funding of DSFBs in relation to netting. The Rivers and Fisheries Trusts of Scotland said in its written evidence—

“There is currently an imbalance in the financial contributions made to conservation and management by the exploiters of the resource. In 2010, net fisheries accounted for over 45% of retained catch, but contributed 1.3% of the total funding raised by DSFBs for fishery management.”

351. Alternatively, netsmen believed that the contribution they are giving to DSFBs is not being used to promote or, indeed, protect or represent, their interests. Usan Salmon Fisheries Ltd stated—

“We have sustained years of relentless persecution at the hands of the local fishery board, which is dominated by angling interests managing for abundance without the slightest regard for netting interests other than to see them put out of business.”

352. The Committee offers no comment on the appropriateness of the financial contribution made by netting operations to District Salmon Fishery Boards, but would sympathise with any situation whereby a business was
making financial contributions to fund an umbrella management body which, it perceived, had an active agenda to curtail the operations of that business. The Committee recommends the Scottish Government ensures this issue is part of its forthcoming review of wild fisheries management in Scotland.

PART THREE – SEA FISHERIES

353. Part 3 deals with sea fisheries and brings Scotland into line with the rest of the UK in terms of marine enforcement powers. The Bill confers the powers afforded to marine enforcement officers in the Marine (Scotland) Act\textsuperscript{133} to British sea-fishery officers (BSFOS) in order to enforce sea fisheries legislation in the Scottish zone and in relation to Scottish fishing vessels anywhere in the world. The Part also makes it possible for BSFOS to detain foreign vessels in port in cases of alleged offences and allows enforcement officers to inspect and seize objects connected with commercial sea fisheries where an offence is suspected.

354. The Committee notes the lack of evidence on the majority of this part of the Bill and concludes stakeholders are therefore broadly content with the proposed provisions, albeit subject to the following comments.

Inspection and seizure of objects used in commercial sea fishing

355. Section 34 gives powers to enforcement officers to inspect objects connected with commercial sea fisheries and, where an offence is suspected, seize them. Rules are also set in place on reporting concerning seized objects and their retention and disposal.

356. In its written evidence to the Committee, Seafish stated that an amendment to the Bill should be considered to make it clear that conducting valid scientific research on a commercial fishing vessel, that is not a specific research vessel, would provide a valid defence of ‘grounds for release’ of objects seized under these powers.

357. Craig Burton, of Seafish, told the Committee—

‘We conduct real-time research on commercial vessels using gear that may or may not be legal under current requirements. We raised the issue because we are keen for the matter to be clarified before the bill proceeds further, so that there is no ambiguity for enforcement officers.’\textsuperscript{134}

358. The Committee notes the concerns raised by Seafish with regard to the inspection and seizure powers and the use of scientific equipment on board commercial vessels and asks the Scottish Government to provide clarity on this issue, and to consider bringing forward an amendment at Stage 2, if necessary, should the Bill reach that Stage.


Enforcement of EU rules

359. Section 44 amends section 30(1) of the Fisheries Act 1981 which currently provides for enforcement of EU rules within the Scottish zone (200 nautical mile limit). This section extends these powers to all Scottish fishing vessels when they are outside the Scottish zone.

360. In a letter to the Committee dated 26 November 2012, the Minister wrote that the Scottish Government would put forward an amendment to the section on enforcement of EU rules—

“The Bill currently contains provisions to amend Section 30(1) of the Sea Fisheries Act 1981. This concerns the regulatory framework of the Common Fisheries Policy, which places obligations and restrictions on others and not just exclusively on the masters and owners of fishing vessels. Following further consideration, we have concluded that the amendment as drafted does not deliver our policy intention in that it does not explicitly apply to shore based trades, and therefore a further minor amendment is necessary.”

361. Following the evidence session with Scottish Government officials, Willie Cowan wrote to the Committee to clarify the Scottish Government’s understanding of stakeholders’ views on this section—

“I should have made it clear that while both the Fisherman’s Association Limited (FAL) and the Scottish Fishermen’s Federation (SFF) have expressed general satisfaction with the focus of the Bill, they have expressed a little concern with a potential practical issue arising from the proposed Scottish Government amendments to Section 30(1) of the Sea Fisheries Act 1981 to improve the enforceability of Community provisions under the Common Fisheries Policy (CFP) […]

The practical issue raised by FAL and SFF was around what they considered to be a lack or absence of any parliamentary scrutiny that may result from less transposition of EU Regulations into domestic law, and that fishermen may be less well served if they did not have statutory instruments to consult to find out what their obligations are. In response we noted that most EU measures are directly applicable with little discretion available to the Scottish Government in implementation, and that Scottish Ministers are bound by Section 57(2) of the Scotland Act to operate in a way which is compatible with EU Law. We also noted that the Scottish Government has historically provided sea fisheries operators with guidance on their regulatory obligations and that will not change going forward.”

362. The Committee notes the proposed amendment to the Bill at Stage 2, should the Bill proceed to that Stage, put forward by the Scottish Government. Given relevant stakeholders had no further comment on this
issue following sight of the proposed amendment, the Committee is content this issue will be satisfactorily resolved.

PART FOUR – SHELLFISH

363. Part 4 deals with shellfish and amends the 2003 Act to insert provisions relating to the protection of shellfish growing waters. These provisions are currently contained in the Shellfish Waters Directive, but this will be repealed by the Water Framework Directive next year, hence the need to transpose the Directive through the Bill. A new section is added in the Bill to enable Ministers to designate by order areas of coastal or transitional water as “shellfish water protected areas” within River Basin Management Plans. The part also makes minor amendment to shellfish related order making powers.

364. Willie Cowan told the Committee that the amendments would continue to ensure the existing provisions remain in place, and not bring in any new obligations.

Protection of shellfish waters

365. The Committee heard that good water quality is important for the production of high quality shellfish. Water bodies can be impacted by pollution from various sources such as run-off from agricultural land or discharges from sewage treatment works. Designated shellfish areas are currently protected by the EU Shellfish Waters Directive (SWD). The Directive prescribes the minimum quality criteria which must be met by shellfish waters, and guideline values which Member States must endeavour to observe.

366. SEPA has responsibility for implementing the SWD. For each of the 80 designated areas SEPA maintains a Pollution Reduction Plan which identifies point source discharges and potential risks of diffuse pollution and highlights required improvement actions. Pollution Reduction Plan’s often require action from Scottish Water and they have invested significant amounts of resources to meet standards. The investment programme is included in the Quality and Standards process run by Scottish Government, in collaboration with Scottish Water, SEPA, SNH, the Water Industry Commissioner and other stakeholders. Where agricultural or urban diffuse inputs are suspected of being the dominant sources of contamination, SEPA will look to devise and implement site-specific plans to ensure such inputs are minimised.

367. Compliance with the SWD in itself will not ensure the protection of public health. This is the objective of the Shellfish Hygiene Directive which is the responsibility of the Food Standards Agency (FSA). The FSA designates “harvesting areas” (normally smaller than shellfish areas), sets standards and reports the classification of harvesting areas (as A to C) according to the presence of faecal indicator organisms. The degree of shellfish contamination determines

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the degree of depuration (purification) required before shellfish are commercially marketable.

368. The SWD will be repealed in 2013. The Scottish Government carried out a consultation exercise on integration of the SWD into water protection legislation from 4 October 2011 until 27 December 2011. This received 22 responses which were broadly supportive of the proposals. The Bill amends the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act) to insert provisions relating to the protection of shellfish growing waters. A new section is inserted into the WEWS Act to enable the Scottish Ministers to designate by order, areas of coastal or transitional water as “shellfish water protected areas” within River Basin Management Plans (RBMP).

369. In written evidence to the Committee, SEPA welcomed the provisions in this section. In particular, it welcomed the proposal in the Explanatory Memorandum to—

“[...] align the process of designation and de-designation of shellfish waters with the RBMP timescale (i.e. every 6 years) and to set up a working group to take forward a range of supporting actions.”

370. Scottish Water outlined a number of areas which it thought were unclear in the Bill. It wanted to know how the framework of environmental objectives would be developed and how the designation and de-designation cycles would be aligned to the RBMP process. It welcomed the consideration of disproportionate cost on other bodies—

“Scottish Water has already invested substantial sums to enhance assets in the vicinity of shellfish waters and it is important to ensure investment is both proportionate and effective. In many cases Scottish Water may not be the primary cause of water quality problems and we welcome the commitment to address sources of diffuse pollution.”

371. Seafish welcomed the provisions in the Bill but thought that not all of the specific protections under the SWD were included. In particular, it was concerned that—

“[...] the wording within section 47.4(b) (ii) might appear to offer SEPA the opportunity to decide that it may not be ‘necessary or desirable’ to implement protection measures in areas where it considers that the expense would not be commercially justified. Whilst not the intent of the Bill, this may prove to be prejudicial to some smaller shellfish cultivators located in some of the more remote and fragile rural areas.”

372. The Committee pursued this particular issue at its roundtable session on 19 December 2012. Walter Speirs of the Association of Scottish Shellfish Growers told the Committee—

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137 SEPA. Written submission, page 3.
138 Scottish Water. Written submission, page 1.
139 Sea Fish Industry Authority (Seafish). Written submission, page 1.
“We are not clear about who will make the judgment on the cost benefit analysis. In the extreme case, we would accept that to spend millions of pounds upgrading a sewage plant for a small output shellfish farm would not make sense. However, we are certainly not clear about how that judgment would be made and who we would work with or negotiate that through; how that will be managed is a little vague.”

373. He expressed his frustration about Scottish Water’s attitude to water pollution and its effect on shellfish growers—

“To be perfectly frank, I think that Scottish Water does not want to be as open as it could be, just in case someone comes after it for compensation, and we really have to move on from that position. I suppose that if Scottish Water were to alert a shellfish farmer that there had been a spill and if, as a result, the farm could not sell its produce, the door would be left open to the farmer making a claim against the loss of sales. If we can get that scenario out of the way and work together more productively, I think that Scottish Water can do a lot of positive things to help us to move forward jointly. It would be helpful to have a more open discussion without the fear of litigation.”

374. The Committee explored the issue of the different classes of water, and the effect of classification on the shellfish growing industry. Jennifer Howie, the Head of Shellfish Unit with the FSA, made the point to Committee that Class B waters, and shellfish grown in them, were perfectly fine. However, industry reps strongly believed that there was a “perception” with consumers, and therefore within the industry, that Class A is better.

375. The Committee invited Scottish Water to give evidence to it as part of its evidence taking, and it was unfortunate that it could not take up that invitation. Scottish Water did however, at the Committee’s request, provide a written response to the points raised in evidence.

376. Scottish Water stated—

“It is our view that through our investment we have largely removed the impact of Scottish Water discharges as a source of shellfish water downgrade. In terms of how me might address other sources, we believe there are lessons to be learned from SEPA’s priority catchment work and would agree that further investigation, licensing and promoting good practice for septic tanks would be appropriate.”

377. Willie Cowan told the Committee that Scottish Water was engaged with the Shellfish Forum, and went on to outline the development of a pollution notification system for shellfish growers—

“One of the practical things that we are trying to get is a real-time notification when there has been, for example, a sewage spillage as a result of a heavy storm. We are trying to set up some kind of red light or red flag system so
that Scottish shellfish growers can be notified very quickly when an incident has happened in an area so that they can manage their business around it.”

378. Scottish Water also commented on this issue in its correspondence to the Committee, noting that it has agreed with shellfish growers to alert them in the event of an Environmental Pollution Incident (a spill caused by a problem with a Scottish Water asset) that could lead to a spill into shellfish water. Scottish Water noted that no such incidents had occurred since the agreement had been put in place.

379. Scottish Water went on to note that with regard to an alert system to cover Combined Sewer Overflow (CSO) spills, there was further work required. It noted that CSOs in the vicinity of shellfish waters are designed to operate at a frequency that protects shellfish waters but that, in most cases, there will not be monitoring in place. Scottish Water added that it was currently exploring a monitoring strategy for such CSOs, and that this was a key step that must take place before progressing work on an alert system.

380. Scottish Water concluded—

“More importantly, we must recognise that (as noted by FSA Scotland in the transcript), shellfish waters may be significantly impacted by runoff during rainfall events. Alerting shellfish growers purely on the basis of a CSO discharge would not cover other sources of loading. As noted above, our bathing water studies have highlighted that in many cases Scottish Water assets are not the limiting factor to achieving compliance.

We suggest much work is required to better understand the relationship between the various sources of microbiological loading to shellfish waters and the impact of heavy rainfall. In particular, it would be useful to understand the extent to which risk to health is exacerbated by harvesting shellfish during extended periods of wet weather, which have been shown to be a key constraint on bathing water quality. Further study may inform the most appropriate response to be made. We are keen to continue to engage with shellfish growers and others to explore this further.”

381. The Committee notes the support from witnesses for the Scottish Government seeking to continue to protect shellfish growing waters and welcomes these provisions in the Bill.

382. It is clear to the Committee that good water quality is vital for the shellfish industry and there are commercial, as well as environmental, considerations in terms of faecal contamination of otherwise good quality waters. For progress to continue it is vital agencies such as the Scottish Environment Protection Agency and Scottish Water work closely and cooperatively with the shellfish growing and marketing industries.

383. The Committee notes the proposals outlined by the Scottish Government for developing an effective notification system to alert shellfish

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growers of significant pollution issues. However, the Committee also notes the comments made by Scottish Water with regard to alerts relating to Combined Sewer Overflow spills and the further work it believes is required before such a system could be established.

384. The Committee believes the development of such a system would be of great benefit to the shellfish growing industry and therefore recommends the Scottish Government works closely with Scottish Water and the shellfish industry to establish this and updates the Committee on progress towards establishing such a system.

Orders as to fisheries for shellfish

385. Sections 48-49 make changes to the Sea Fisheries (Shellfish) Act 1967 under which Scottish Ministers may make Several and Regulating orders to manage shellfish fisheries. Currently, powers are restricted to orders relating to certain types of shellfish listed in the Act. The Bill would allow such orders to be made for any kind of shellfish and removes the requirement for regulations to be made to add new species to this list any time an order was sought for a species not already listed. The Ministers’ powers to appoint an inspector to conduct an inquiry into applications for an order are also clarified.

386. Craig Burton, of Seafish, told the Committee—

“Anything that simplifies the process, speeds it up and reduces the cost to an applicant must be a positive measure. I understand the reluctance of the catching sector, which is inherently reluctant to consider such fishery orders, because they see them as landlordism of the sea.

Granting a right of several fishery or regulated fishery to take a named species in a named area could be regarded as a bit of landlordism. However, on a practical basis, someone who is looking to cultivate a species, use the natural environment and so on needs a level of protection, given what they are putting in.”

387. The Committee notes the evidence received on this issue which is supportive of these measures. The Committee is content with the provisions in the Bill which remove the requirement for regulations to be made every time the list of shellfish in the 1967 Act needs to be extended, and also to clarify the Ministerial powers to appoint an inspector to conduct an inquiry into applications for an order.

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143 The right of a Several fishery bestows ownership of the shellfish on the Grantee and is a property right that may be leased or transferred.
Cockle fishing
388. The Scottish Government wrote\textsuperscript{145} to the Committee with a proposed amendment it intended to bring forward to this section, should the Bill proceed to the next Stage—

“Amendment 1: Cockle fishing in the Solway Firth

Current offence provisions in relation to the Solway Firth prohibit "fishing for" cockles. So enforcement officers have to gather sufficient evidence in the act of fishing. It is problematic to do this for an act that is rarely if ever witnessed by the authorities. Health and Safety considerations mean that enforcement officers cannot easily venture out onto the sands where the illegal cockle fishing takes place (the "Morecambe Bay" issue). So the path to improving the odds for more effective enforcement lies, we believe, not in the creation of additional enforcement powers, but in framing the offence provisions in a way which is more closely aligned with the scenarios where suspected illegal cockling activity is often detected.

These scenarios include where suspected cockle gatherers are intercepted in laybys or car parks close to beaches either before or after they have been on the sands. Where such detections come immediately after the act of illegal fishing, the cockle gatherers may be found with cockles in their possession. However, illegally gathered cockles are often left in caches on the beach to be collected at a later time and the presence of cockles alone may not necessarily represent sufficient evidence of the act of fishing for them. It has not been un-common for those who are intercepted on their way to the foreshore to make it clear to enforcement officers that they will simply curtail their activity that night, with the clear inference that they will return again on another night when their activities might go unobserved. So to date, enforcement efforts have primarily frustrated illegal cockling activity rather than resulted in prosecutions.

Vehicular access to the foreshore along the Solway Firth is limited. As a result cockle fishermen often have to travel several miles diagonally over the sands - usually on quad-bikes - to get to the cockles beds. In the past at least one local land owner was suspected of providing access from the public road network to the foreshore for cockle fishermen via a private road on his property. However the landowner would not permit vehicular access to Marine Scotland when officers wanted to take their vehicles down his private road to look for illegal cockle gathering on the adjacent foreshore. Officers were faced with the prospect of walking down the road but without a vehicle - not least for health and safety considerations - this is less than ideal and ultimately thwarted the officers' attempts to intercept anyone fishing illegally. When this issue was raised previously, advice seemed to be that this could perhaps be overcome by giving officers of Marine Scotland a general power or responsibility to patrol the foreshore.

We wish to amend both the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967 - the latter since historic and possible future controls on cockles have used regulating orders and a possible several order has been mooted - to introduce defined circumstances in which the courts may be entitled to infer that accused persons had fished for, or were about to fish for cockles (or other shellfish) in contravention of any principal order. The circumstances that the courts could take into account include:-

Persons are found in possession of the apparatus and paraphernalia associated with cockle fishing, which might include rakes, sacks, riddles, etc;

Persons are found in possession of cockles.”

389. In advance of this issue coming forward at Stage 2, should the Bill reach that Stage, the Committee took evidence on the proposed Scottish Government amendment from Dumfries and Galloway Police.

390. David McCallum, Chief Inspector with Dumfries and Galloway Constabulary, told the Committee that he was supportive of the Scottish Government’s proposed amendment but that he would take things on a stage further and make the provision in two parts; the first part to deal with a person found in circumstances in which it is reasonable to suspect they intended to commit the offence; and secondly for those found with tools and paraphernalia from which it is reasonable to conclude that they intended to commit the offence.

391. Lindsay Anderson, a solicitor with the Scottish Government, told the Committee that the Government was still considering the exact wording of the amendment(s) that would be brought forward at Stage 2, should the Bill reach that Stage, adding—

“[…] there are issues about evidence, burdens of proof and how attempts at illegal cockle fishing can be proven. Relevance is certainly the aspect of the offence that we would be considering. That comes down to how evidence is gathered and proven. Those are things that we are certainly aware of and they are being fed into the policy process.”

392. The Committee also discussed wider issues of illegal harvesting and selling of shellfish, and witnesses agreed that there were other issues that would require further thought in relation to this area. In particular, the issue of the traceability of cockles and other shellfish, and the robustness of the documentation currently required to sell product, both within the UK and abroad, was of concern, with witnesses giving anecdotal evidence to the Committee about large quantities of illegally caught cockles, and other shellfish, being sold overseas.

393. The Minister updated the Committee on this issue—

“I am pleased to report to the committee that we now have a much more joined-up approach to the enforcement of the law against illegal cockling and that most, if not all, of the relevant bodies have now put in place formal

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memorandums of understanding and data-sharing agreements. I hope that this is an important step in understanding the scale of the problem, that it will inform future targeting of resources and effort on tackling it and that, when we have the detail of the amendments, they will inform the “how” in how we will go about this.”

394. The Committee supports the principle of the Scottish Government’s suggested amendment to the Bill (should the Bill reach Stage 2), in terms of strengthening the law regarding illegal cockle fishing. The Committee believes this is a significant problem, particularly in the Solway, but also in other parts of Scotland, and that the law as it currently stands does not give the police sufficient powers to deal effectively with the issue.

395. The Committee notes the suggestion put forward by the Chief Inspector of Dumfries and Galloway Constabulary that the suggested amendment would be further strengthened by it being split into two parts to deal with those with, and without, paraphernalia associated with illegal activity in their possession. The Committee recommends the Scottish Government considers this suggestion and speaks further to the police regarding this before bringing forward any amendment(s) at Stage 2.

396. The Committee also recognises that this amendment alone will not solve the issue of illegal shellfish harvesting in Scotland, and therefore recommends the Scottish Government continues to work closely with all relevant agencies and industry bodies to develop proposals for tackling issues such as the difficulty in tracing and tracking shellfish, and the documentation required to sell shellfish both in the UK and overseas.

PART FIVE – MISCELLANEOUS

397. Part 5 deals with charging and fixed penalty notices (FPNs). In terms of charging, the Bill introduces powers for Ministers to introduce charges for functions relating to aquaculture, freshwater fisheries and sea fisheries. Current services carried out by Marine Scotland for free will be reviewed and charges brought forward (for example functions carried out by the Fish Health Inspectorate to prevent the spread of diseases). Any introduced charge would have a test applied to it to ensure it was proportionate and targeted appropriately.

398. In terms of FPNs, the Bill amends the 2007 Act to widen the cases in which Marine Scotland can issue them. The cases in the 2007 Act only relate to sea fisheries, and the Bill extends this to all marine and sea fisheries offences which Marine Scotland has responsibility for. In this regard, this part of the Bill extends beyond the matters previously covered, i.e. beyond aquaculture, salmon and freshwater and sea fisheries. The Bill also proposes an increase of the maximum level of penalty from £2,500 to £10,000.

Charging

399. The SSPO’s written submission expressed concern about the principle of the Scottish Government charging for its own core functions or for services which are already provided by industry preferred commercial suppliers. The SSPO view was that it was vital that any such charges brought forward by order be subject to the affirmative subordinate legislation procedure, to ensure greater parliamentary scrutiny. This point was also made by the SLC in its report to the Parliament on the delegated provisions within the Bill (see the section on delegated powers later in this report).

400. Walter Speirs expressed some unease on this issue, telling the Committee—

“Marine Scotland carries out certain duties in relation to EU legislation—things that are not of any benefit to us but which we have to do. I think that the Food Standards Agency is in a similar position. If those charges were passed back to industry, that could be disproportionate in terms of the profit margins of some small businesses. We have to be careful that we do not pass non-specific charges back to small businesses from large organisations, as that could cripple them.”

401. The Minister explained the rationale of the provisions to the Committee—

“The general principle is that Marine Scotland provides a number of services free of charge or, at best, at less than full cost; however, given the demands of the growing marine industry sector and the public finances themselves, such a principle is no longer sustainable. The primary purpose of charging is to promote the efficient use of resources. Indeed, there are compelling arguments for charging where public services are provided in competition with those in the private sector, where a direct economic benefit accrues to the user or, where practicable, to recover the costs of regulating commercial activities.”

402. The Minister added that details of the charges were not yet available and would be subject to full consultation before any orders were brought forward.

403. The Committee notes the comment in evidence on this issue and welcomes the Scottish Government’s intention to consult fully before any charging orders are brought forward.

404. The Committee joins the Subordinate Legislation Committee in asking the Scottish Government to consider the merits of making these orders subject to the affirmative subordinate legislation procedure.

405. The Scottish Anglers National Association (SANA) expressed concerns, in its written evidence, that Part 5 could create powers that would allow ministers to
introduce rod licensing. This concern was not shared by Ron Wood, who stated that he did not share SANA’s point of view, explaining—

“That is not to say that we favour rod licensing, but we believe that more money needs to be invested in fisheries management for freshwater species. We believe that it is not unreasonable that some of that money should be raised from anglers, although—I would say this, of course—we believe that some more public money would be useful. We think that how that money is raised should be a completely open question and that rod licensing should not be removed from the options at the outset. It is not necessarily the case that we favour it or would wish it to happen, but we do not share the deep-rooted aversion that SANA expresses.”

406. However, the Scottish Government, in additional evidence to the Committee, clarified that there was no intention, or indeed ability, to introduce such a scheme—

“Section 50 will allow charges to be imposed in connection with the carrying out of specified statutory functions. At the present time there is no national system of rod licensing in Scotland and hence no relevant statutory functions. As a consequence the proposed charging power in section 50 cannot impose such a charge.”

407. The Minister subsequently wrote to relevant stakeholders to provide clarity, stating—

“The provision within the Aquaculture and Fisheries (Scotland) Bill will enable Scottish Ministers to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions (these are functions under legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing). However, we have not yet made any decisions about which functions might be subject to any future charging regime. This is a matter which will be fully consulted upon in due course and even then it will be for Parliament to make a decision on any charging proposals after consultation.

Some people have jumped to the incorrect conclusion that this means that the Scottish Government plans to introduce charges for rod licenses in Scotland.

As we have explained to the RACCE Committee of the Scottish Parliament, and the Cabinet Secretary has explained to the angling community via Twitter, there is no national rod licensing system in Scotland that a charge could be introduced for, so the proposed power in the Bill could not be used

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to introduce such a charge. Furthermore, the Scottish Government has no current plans to introduce a rod licensing scheme either.”

408. SANA subsequently confirmed that it was reassured by the Scottish Government’s clarification on this issue.

409. The Committee welcomes the Scottish Government’s clarification that it has no plans to introduce a rod-licensing scheme. However, the Committee asks the Scottish Government to consider the issues raised in evidence relating to investment in fisheries management and the part anglers could play in that.

Fixed penalty notices

410. A FPN is a fine which for some offences can be an alternative to seeking a criminal conviction in court. The provisions in the Bill would not prevent a case being taken to court if that was deemed appropriate by Marine Scotland or if the offender chose not to pay the fine in the set timeframe.

411. The Bill increases the maximum level of penalty, currently set at £2500, to £10,000. This will widen the scope of offences which can be dealt with using FPN as they are for now limited to minor offences by the maximum penalty level.

412. The Policy Memorandum states that the purpose of widening the FPN regime is so more cases can be dealt with outwith the criminal justice system. This reduces costs on both the state and operators and means cases are dealt with more quickly. It also means that operators can avoid a criminal conviction. This follows the general pattern of reform to the criminal justice system including several Scottish and UK wide reviews which have recommended extending the range of alternatives to prosecution and looking at a sliding scale of penalties for more minor offences in particular regarding business non-compliance with regulatory obligations.

413. In terms of why the Government felt this step was necessary, Jeff Gibbons, the Bill Team Leader with the Scottish Government, told the Committee—

“There are instances of non-compliance at one level or another. The move creates an additional disposal option for compliance officers and the extension will ensure a consistent approach. There is no suggestion that a raft of fixed-penalty notices will suddenly be issued; the move is simply a natural progression from an existing disposal option that our compliance officers have, under their current powers […] The key issue is that individual inspectors would not and could not hand out fixed-penalty notices on the spot. If an inspector uncovers an instance of non-compliance that they think warrants a report, they send a report to a central unit that considers reports from across Marine Scotland’s activities. That unit identifies whether there is

sufficient evidence to enable a report to be made to the procurator fiscal. That is the first test. If there is sufficient evidence, the question is whether to submit a report to the procurator fiscal or to offer a fixed-penalty notice. It is only after a matter has passed the test of whether there is sufficient evidence to submit a report that we move the question how it should be dealt with.\textsuperscript{153}

414. The Scottish Government published a note\textsuperscript{154} on its website in October 2012 to: supplement the background provided in the Policy Memorandum on FPNs; outline how FPNs would relate to the existing provisions; set out the process undertaken before the FPN option would be pursued; and provide some examples of the types of offences where they might be applicable.

415. Douglas Sinclair, an aquaculture specialist with SEPA, told the Committee that the agency strongly supported the inclusion of these provisions in the Bill, because courts cases were inevitably expensive and bureaucratic for all concerned, adding—

\begin{quote}
\textquote{I am aware that, in many cases, people whom we regulate and who may have faced a case in court would have preferred to take a fixed-penalty notice as a lesser option for crimes of lesser seriousness because of the cheapness, the immediacy and the fact that they can get the offence out of the way.}\textsuperscript{155}
\end{quote}

416. Steve Bracken indicated that the aquaculture industry now has a better understanding of the FPN proposals—

\begin{quote}
\textquote{When the idea of fixed-penalty notices appeared, there was definitely a knee-jerk reaction in the industry, because we did not see that coming and did not understand what it was about. There was a lot of disquiet on the farms—not just in Marine Harvest but in the industry overall. Since then, the bill team has put out good information that further explains what fixed-penalty notices are about. The original thought was that they would be applied immediately on farms, but the process has now been explained, which has helped. I am not saying that the industry endorses fixed-penalty notices, but it understands them better.}\textsuperscript{156}
\end{quote}

417. Professor Phil Thomas told the Committee that the SSPO has accepted that FPNs will be introduced but asked that the Scottish Government be required to publish statistics on their use.

418. Craig Burton told the Committee that the extension of the FPN scheme to all marine and freshwater fisheries-related offences which are the responsibility of

Marine Scotland, brought a degree of concern within some parts of the industry because of the uncertainty of what this could lead to in practice.

419. The Committee notes the concerns raised about extending the offences covered by fixed penalty notices to all marine and freshwater fisheries related offences which are the responsibility of Marine Scotland because of the uncertainty about exactly what offences the fixed penalty notices would apply to.

420. However, the Committee is in favour of streamlining the legal processes involved in enforcing legislation, and supports the view expressed by the Scottish Environment Protection Agency that better use of fixed penalty notices should lead to improvements in cost effectiveness and a reduction in bureaucracy for both the regulators and the regulated.

421. The Committee is also reassured by comments made by Scottish Government officials who clarified how the fixed penalty notice system would be applied in this area. The Committee does see merit in the Scottish Government publishing statistics on the number of fixed penalty notices issued in this area in the initial years of the scheme, in order to better assess its effectiveness, and therefore recommends the Scottish Government give thought to how best to collect and publish this information.

FINANCIAL ISSUES

422. The Scottish Parliament’s Finance Committee issued a call for views on the Financial Memorandum of the Bill and received two responses, one from the ASFB and one from FSA Scotland. The Committee subsequently forwarded those responses on to the RACCE Committee for consideration but made no further comment.

423. In its response to the Finance Committee, the ASFB stated that—

“We believe that there are a number of unintended consequences arising from the approach adopted in Part 2 of the Aquaculture and Fisheries (Scotland) Bill, and indeed we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation.”

424. The response goes on to outline the potential additional expense for some DSFBs if the Bill’s provisions are enacted, such as—

- being required to conduct meetings in public unless there is good reason to hold certain discussions in private;

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158 Association of Salmon Fishery Boards. Written submission to the Finance Committee.
- the requirement to maintain and keep under review the process for handling complaints;

- the requirement to publish details of certain consultations and reports in newspapers;

- a potential negative knock-on effect on DSFB donations to charitable Fisheries Trusts as a result of increase DSFB expenditure elsewhere.

425. The ASFB response makes the concluding point that—

“In the case of smaller DSFBs we believe that some of the costs relating to good governance may be disproportionate and indeed may threaten the existence of some of these organisations.”

426. The Scottish Government’s Bill team told the Committee on this issue—

“There is no intention to try to put the smaller boards out of business, but there is an intention to try to raise the bar, in that a lot of what is covered in the bill is carried out by the better boards. The bill is about raising the bar so that everybody adheres to minimum levels in relation to what they do, how they do it and transparency. Ministers do not want to impose a regulatory burden that would make it impossible for those guys to improve the fisheries, which is their statutory purpose.”

427. Further comment on this issue is made in the relevant section in the report above.

428. The FSA response indicated that the potential impact on the FSA as a result of the Bill’s provisions regarding shellfish waters, although not clearly set out, are accurate in terms of their presumptions.

429. The Committee notes the Finance Committee received two responses with regard to the Financial Memorandum on this Bill and presumes therefore there is not widespread concern amongst relevant industries and stakeholders about the Bill’s potential financial impact.

430. However, the Committee notes the concerns raised by the Association of Salmon Fishery Boards regarding the potential impact the provisions in Part 2 of the Bill, regarding the governance and management of District Salmon Fishery Boards, could have on smaller district boards.

431. The Committee refers readers to the relevant section elsewhere in this report which deals with the issue of District Salmon Fishery Boards’ governance and the potential impact on boards of different size and resource.

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159 Association of Salmon Fishery Boards. Written submission to the Finance Committee.

DELEGATED POWERS

432. The Delegated Powers Memorandum describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. The Bill introduces many delegated powers and this has been criticised by some stakeholders. SSPO state that Ministers are given significant enabling powers and ASFB has suggested that some provisions should be dealt with through primary rather than secondary legislation.

433. The Committee questioned Scottish Government officials on why there is such a reliance on secondary implementing legislation in the Bill. In response, the Committee was told by Willie Cowan—

“The primary reason why ministers seek the enabling powers is the technical nature of the provisions that will ultimately be implemented. Ministers are seeking enabling powers, on the back of which further consultation is under way even now with stakeholders on what their implementation will look like. It is not unusual for enabling powers to be used to implement something such as technical standards, which are by their nature technical and can move apace and require further amendment.

At this point, ministers think that the balance between primary legislation and enabling powers is right. The fallback is that the use of each enabling power would undergo a further round of detailed technical consultation with stakeholders before coming back to the Parliament for consideration.”

434. The Committee went into further detail with regard to the technical standards in Section 3, and how prescriptive the intention of the legislation was and if the drafting was suitably wide enough to allow Ministers to prescribe what needed to be prescribed. Alastair Mitchell, the Head of the Aquaculture Unit at the Scottish Government, responded—

“It is not the intention to micromanage the farming of the fish but, as with all the other elements of the incremental approach that we are taking, if a risk were identified, we would discuss that with the industry and would consider how we would deal with it.”


436. The SLC raised a number of issues in its report as follows—

- the first related to the status of the CoGP for aquaculture as proposed in the Bill and noted that the Scottish Government has indicated to the SLC that intends to bring forward an amendment at Stage 2, should the Bill pass to that Stage, to amend the reference to the CoGP in the inserted section 4A(5) of the 2007 Act;

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• Section 3 of the Bill, regarding the power to prescribe technical requirements for equipment used in fish farming, required clarification by the Scottish Government in a number of areas;

• regarding Section 20 of the Bill, containing a power enabling the Scottish Ministers to modify by order the good governance requirements placed on DSFBs and to impose additional requirements for specified purposes (section 46F(1)), the Scottish Government is considering an amendment to clarify that this only applies to amended section 46F(2) as is the policy intent;

• regarding Section 22 on carcass tagging, the SLC was of the view that the affirmative subordinate legislation procedure would be more appropriate than the negative procedure. The SLC reported that the Scottish Government agreed with this point and intended to amend the Bill appropriately at Stage 2, should the Bill reach that Stage; and

• with regard to Section 50, containing the power to charge in connection with fisheries functions, the SLC was of the view that these powers were, significant and should, again, be subject to the affirmative subordinate legislation procedure rather than the negative procedure. The SLC asked the Scottish Government to consider this issue ahead of Stage 2.

437. The Committee notes this Bill contains a large number of enabling powers which will possibly come forward at a later stage by way of secondary legislation. While this is not in itself unusual, the Committee is keen to ensure the delegated power provisions contained in the Bill are subject to the appropriate levels of parliamentary scrutiny when measures are brought forward in future.

438. The Committee thanks the Subordinate Legislation Committee for its very thorough report on the delegated power provisions in the Bill. The Committee supports the recommendations made by the Subordinate Legislation Committee and asks the Scottish Government to give full consideration to any outstanding issues ahead of Stage 2.
ANNEXE A: GLOSSARY

Glossary of acronyms used most frequently in the report

- ASFB – Association of Salmon Fishery Boards
- CoGP - Scottish Finfish Code of Good Practice
- DSFB – District Salmon Fishery Board
- FMA – Farm Management Area
- FMAg – Farm Management Agreement
- FMS – Farm Management Statement
- FPN - Fixed penalty notice
- FSA - Food Standards Agency
- MGA – Ministerial Group on Aquaculture
- SANA - Scottish Anglers National Association
- SEPA – Scottish Environment Protection Agency
- SLC – Subordinate Legislation Committee
- SNFAS - Salmon Net Fishing Association of Scotland
- SNH – Scottish Natural Heritage
- SSPO – Scottish Salmon Producers’ Organisation
- SWD - Shellfish Waters Directive.
ANNEXE B: EXTRACT FROM THE MINUTES OF THE RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

22nd Meeting, 2012 (Session 4)
Wednesday 24 October 2012

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

28th Meeting, 2012 (Session 4)
Wednesday 5 December 2012

Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence in round table format on the Bill at Stage 1 from—

Allan Wells, Policy and Planning Director, Association of Salmon Fishery Boards;
Ken Whelan, Research Director, Atlantic Salmon Trust;
Alex Kinninmonth, Living Seas Policy Officer, Scottish Wildlife Trust;
Alex Adrian, Aquaculture Operations Manager, Crown Estate;
Professor Randolph Richards, University of Stirling;
Professor Chris Todd, University of St Andrews;
Douglas Sinclair, Aquaculture Specialist, Scottish Environmental Protection Agency;
Steve Bracken, Business Support Manager, Marine Harvest;
Guy Linley-Adams, Environmental solicitor, Salmon and Trout Association;
Professor Phil Thomas, Chairman, Scottish Salmon Producers’ Organisation;
Councillor George Farlow, Vice Chair of the Planning, Environment and Development Committee, Highland Council.

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

29th Meeting, 2012 (Session 4)
Wednesday 12 December 2012
Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Colin Bean, Science and Policy Adviser, Scottish Natural Heritage;
Callum Sinclair, Director, Rivers and Fisheries Trusts of Scotland;
Dr John Armstrong, Freshwater Fisheries Team and Programme Leader, Marine Scotland, Scottish Government;
Simon McKelvey, Director, Cromarty Firth Fisheries Trust and Cromarty Firth District Salmon Fisheries Board;
George Pullar, Vice Chairman, Salmon Net Fishing Association of Scotland;
Ron Woods, Policy Officer, Scottish Federation for Coarse Angling;
Craig Campbell, Chairman, Migratory Fish Committee, Scottish Anglers National Association.

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

30th Meeting, 2012 (Session 4)

Wednesday 19 December 2012

Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence in roundtable format on the Bill at Stage 1 from—

Craig Burton, Inshore Manager, Seafish;
Stephen Cameron, Managing Director, Scottish Shellfish Marketing Group;
Jennifer Howie, Head of Shellfish Unit, Food Standards Association Scotland;
Walter Speirs, Chairman, Association of Scottish Shellfish Growers;
Peter Pollard, Principal Policy Officer (Water), Scottish Environmental Protection Agency;
David McCallum, Chief Inspector, Dumfries and Galloway Constabulary.

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

1st Meeting, 2013 (Session 4)

Wednesday 9 January 2013

Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Paul Wheelhouse, Minister for Environment and Climate Change, Willie Cowan, Deputy Director of Performance, Aquaculture and Recreational Fisheries, and Lindsay Anderson, Solicitor, head of branch, Scottish Government.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

3rd Meeting, 2013 (Session 4)
Wednesday 23 January 2013

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered a draft Stage 1 report, and agreed to consider a revised draft at its next meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

4th Meeting, 2013 (Session 4)
Wednesday 30 January 2013

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee agreed its draft Stage 1 report.
Subordinate Legislation Committee

62nd Report, 2012 (Session 4)

Aquaculture and Fisheries (Scotland) Bill

Published by the Scottish Parliament on 18 December 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a)
   (i) subordinate legislation laid before the Parliament;
   (ii) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Subordinate Legislation Committee

62nd Report, 2012 (Session 4)

Aquaculture and Fisheries (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 4 and 18 December 2012 the Subordinate Legislation Committee considered the delegated powers provisions in the Aquaculture and Fisheries (Scotland) Bill at Stage 1 (“the Bill”)¹. The Committee submits this report to the Rural Affairs, Climate Change and Environment Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM²”).

OVERVIEW OF THE BILL

3. The Aquaculture and Fisheries (Scotland) Bill was introduced in the Scottish Parliament on 3 October 2012 by the Scottish Government. The Bill makes provision on a number of matters in relation to the management structures for farmed and wild fisheries, and to enhance the regulatory framework for those fisheries.

4. The Bill is divided into 4 parts and 2 schedules. Part 1 relates to aquaculture (dealing with fish farming and shellfish farming, and not any other type of product, such as kelp, which may be produced by aquaculture).

5. Part 2 is mainly concerned with salmon fisheries. Part 3 makes provision in relation to sea fisheries, and Part 4 relates to shellfish. Part 5 has miscellaneous provisions, including in section 50, powers to charge in connection with fisheries functions. Part 6 has general provisions. This includes on subordinate legislation in

¹ Aquaculture and Fisheries (Scotland) Bill available at: Aquaculture and Fisheries (Scotland) Bill - Parliamentary Business : Scottish Parliament

section 52, interpretation provisions in section 53 and powers to make ancillary provisions in section 54.

6. In the consideration of the DPM at its meeting on 4 December, the Committee agreed to write to Scottish Government officials to raise questions on the delegated powers. This correspondence is reproduced in the Annex.

DELEGATED POWERS PROVISIONS

7. The Committee considered each of the delegated powers in the Bill.

8. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in section 1(2) (inserting section 4A(6) of the Aquaculture and Fisheries (Scotland) Act 2007); sections 5, 8, 9, 14, 20 (inserting section 46G of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003; sections 25, 26, 28(3), 34(11), 47, 48, 51(2), 54 and 56.

9. The Committee’s comments and, where appropriate, recommendations on the other delegated powers are detailed below.

Section 1(2) – (inserting section 4A(2), (3) and (5) of the Aquaculture and Fisheries (Scotland) Act 2007) - the Code of Good Practice for Scottish Finfish Aquaculture
Power conferred on: The Scottish Salmon Producers’ Organisation (“SSPO”)
Power exercisable by: Code of Practice
Parliamentary procedure: None

Background
10. Section 1(2) gives statutory effect to the issue by the Scottish Salmon Producers’ Organisation (SSPO) of the Code of Good Practice for Scottish Finfish Aquaculture (“the Code”), as revised from time to time.

11. The effect of that power in the new section 4A(2) to (5) of the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”) is that farm management agreements and statements must reflect so far as possible any recommendations in the Code, and so including recommendations on the various matters set out in subsection (4) such as fish health management. The Code also defines the farm management areas in which the requirements apply.

12. The Code of Good Practice recommends good practice measures for fish farming. Section 1(2) is designed to achieve that farm management agreements and statements will require to reflect such good practice.

Comment
13. The Committee considers that the powers of the SSPO to issue the Code, with the effects in section 1(2), are a form of delegated power since the section confers on the Code and its authors the function of setting out good practice standards, with which fish farmers must endeavour to comply.
14. The Committee accepts however that the proposed power of the SSPO to issue the Code is part of the policy and substance underlying section 1(2), on which the Committee does not form a view. The Committee also accepts that the policy intention is for the SSPO to continue to define farm management areas, per the Code. It is however for the Committee to draw the attention of the lead committee to the effects of section 1(2).

15. The written response to the Committee confirms that the policy intention is to avoid a situation where the Government becomes involved in day to day management of fish farms, but instead seeks to ensure that good practice is adopted by all members of the aquaculture industry (this being presently determined by the SSPO).

16. The Committee however has considered the scope of this power, in relation to the intended policy as so confirmed. The inserted section 4A of the 2007 Act contains no explanation or restriction that the Code must set out matters of good practice. Farm management agreements and statements must reflect so far as possible any recommendations made in the Code, including recommendations on the various matters set out in subsection (4), such as fish health management.

17. Any such recommendations in the Code at the time of making an agreement or statement will need to be reflected in agreements and statements. An agreement or statement will require review at least every 2 years (inserted section 4A(4)(c)). The Committee considers it appropriate to draw the scope of this power to the attention of the lead Committee considering the Bill.

18. The Committee notes from the written response that the reference to the Code as set out in the inserted section 4A(5) is not accurate, and that Scottish Ministers shall lay amendments to correct this at Stage 2. (The written response does not clarify the detail of the proposals to correct the reference, and this is not immediately apparent from the version of the Code which is available at www.thecodeofgoodpractice.co.uk.)

19. So far as that relates to the detailed reference to the Code, the Committee is content to consider those amendments further after Stage 2.

20. The Committee draws the status conferred on the Code of Good Practice for Scottish Finfish Aquaculture, issued by the Scottish Salmon Producers’ Organisation to the attention of the lead Committee. It notes that any recommendations of the Code must (so far as possible) be reflected in farm management agreements and statements.

21. It observes that the policy intention as confirmed in the written response from the Scottish Government is to seek to ensure that good practice is adopted by members of the aquaculture industry, by means of the farm management agreements and statements. The inserted section 4A of the Aquaculture and Fisheries (Scotland) Act 2007 contains no explanation or restriction that the Code must set out matters of good practice.
22. The Scottish Government has also confirmed that the reference to the Code in the inserted section 4A(5) of the 2007 Act will be amended at Stage 2. The Committee will consider that amendment further after Stage 2.

Section 3 – power to prescribe technical requirements for equipment used in fish farming

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Background

23. Section 3(1) of the Bill creates a power for the Scottish Ministers to make regulations prescribing technical requirements for equipment to be used for, and in connection with, fish farming. Further provision can be made to ensure such requirements are complied with.

24. Section 3(4)(b) provides that the regulations may “confer functions on any person in relation to the prescribing of requirements”.

25. The regulations may by section 3(3)(g), and (5) to (7) create criminal offences for failures to comply with the regulations. Section 3(6) provides that the regulations may provide for continuing offences, and for any such offences to be punishable by a daily or other periodic fine, of an amount to be specified in the regulations. Unlike the provision for the maximum penalty for a single criminal offence in section 3(5), no maximum amount of daily or periodic fine is stated in section 3(6).

Comment – section 3(4)(b)

26. The Committee asked the Scottish Government how it is anticipated that the power in section 3(4)(b) above would be exercised, and by whom. The response confirms that-

“It is considered appropriate that Scottish Ministers define [the technical] standards to ensure that all practitioners are covered by the standard. Scottish Ministers will ensure compliance through audit undertaken by a recognised regulatory body. Details are still being finalised and it is recognised that there are a number of potential options – Scottish Government in-house experts…3rd party experts on behalf of Scottish government, industry in-house expertise, or industry “external” experts such as… Food Certification International….It is therefore appropriate that persons other than the Scottish Ministers may be given functions in respect of setting requirements as they will provide the necessary expertise and assistance in setting the technical standards.”

27. The Committee considers that this explains why the powers in section 3(4)(a) (but not (b)) are required, to possibly delegate to another person or persons in the regulations powers to determine the appropriate technical requirements, or how those requirements are to be agreed and set. Other persons may have the requisite expertise to determine or agree on the appropriate standards.
28. The Committee is concerned however as to the wide scope of section 3(4)(b) as framed. The wording is very general. The Committee considers that potentially it enables any delegation of the function of prescribing in law the technical requirements for the equipment to be used in fish farming – and whether all or part of that function.

29. The Committee considers that a clear distinction should be made between the power delegated to the Scottish Ministers (alone) to prescribe by regulations the requisite standards, and on the other hand functions that may be delegated to other persons in those proposed regulations, as to how the standards will be agreed and set. It is significant that the Scottish Ministers (alone) should have the function of prescribing the requirements by the subordinate legislation to follow the Bill, given that the obligations in the regulations may attract criminal penalties and other sanctions if breached. The DPM and the written response to the Committee have not suggested that a power is sought to delegate to other persons the prescribing of the requirements by another form of subordinate legislation (such as rules).

30. The Committee considers that that distinction is not clearly respected by paragraph (b) of section 3(4) as drafted. Evidently by the first line of paragraph (a), it is the regulations to be made by the Scottish Ministers which shall “prescribe requirements”.

Comment - section 3(6)

31. The written response by the Scottish Government provides further explanation why the power in section 3(6) to provide in the regulations for daily or periodic fines is considered necessary. Maximum fines at level 4 on the standard scale (£2,500) would be appropriate in most cases, but-

“There may well be circumstances (for example a chronic failure of containment leading to a preventable large scale escape) where a significantly higher penalty would be more appropriate...To address such significant failings we do not think it would be helpful to determine what would effectively be an arbitrary maximum penalty.”

32. The Committee accepts the explanation that the potential consequences of a breach of the proposed regulations in some circumstances may be such that a high level of fine could be appropriate. However, by section 3(5) any criminal offence created in the regulations must provide for the offence to be triable under summary procedure and punishable by a fine not exceeding level 4 (£2,500).

33. The Committee is not clear why, given that a maximum level 4 penalty is specified as the punishment for an offence created by the regulations, some appropriate maximum level of fine cannot be specified for continuing offences as a daily or other periodic fine.

34. The Committee therefore asks the Scottish Government to consider this further, in responding to this Report.

35. The Committee therefore draws to the attention of the lead committee that section 3(4)(b) provides that regulations under section 3(1) may “confer
functions on any person in relation to the prescribing of requirements.” The Committee has concerns as to the scope of this power, so far as it could enable the regulations to confer functions on other persons apart from the Scottish Ministers to prescribe (by a form of subordinate legislation under the regulations) the technical requirements for equipment used in fish farming.

36. The Committee recommends that the Scottish Government consider for Stage 2 how section 3(4) could more clearly distinguish between the power proposed to be delegated to the Scottish Ministers (only) to prescribe by subordinate legislation the requisite standards or how they would be set; and on the other hand functions which may be delegated to other persons in the regulations, in relation to how the technical requirements will be agreed and set.

37. The Committee also recommends that the Scottish Government considers in advance of Stage 2, in relation to section 3(6), whether this power could specify some appropriate maximum level of a daily or other periodic fine as the punishment for continuing offences which may be created in the regulations.

Section 20 – (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) – Ministerial power to modify the good governance requirements

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Background

38. Section 20 of the Bill introduces good governance obligations on district salmon fishery boards. It does so by amending section 44 of, and inserting new sections 46A to 46G into, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”).

39. The inserted section 46F confers a power enabling the Scottish Ministers to modify by order, the good governance requirements placed on District Salmon Fishery Boards (“DSFBs”), and to impose additional requirements for specified purposes (section 46F(1)). Those purposes are to ensure that the boards’ affairs are conducted in (1) an open and accountable manner and (2) to appropriate standards of propriety and good governance (inserted section 46F(2)).

Comment

40. The Scottish Government’s written response to the Committee acknowledges that the powers to modify the good governance requirements are only intended to be used for those purposes described in the inserted section 46F(2).

41. The “basic” governance requirements in section 44(1) of the 2003 Act are for DSFBs to prepare an annual report and an audited statement of accounts, relating to the activities of the board, and for the clerk to call an annual meeting of qualified proprietors in the district, for the purposes of considering the report and accounts.
42. The Scottish Government has undertaken to consider an amendment at Stage 2 to reflect the correct policy intention.

43. The Committee notes that the Scottish Government has undertaken to consider an amendment at Stage 2 in relation to the powers in section 20 (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003). The Government has noted that as drafted the repeal of the good governance requirements placed on district salmon fishery boards, including the “basic” requirements in section 44(1) of the 2003 Act would be competent, and this is not the policy intention. The power of modification is intended to be used only for the purposes set out in the inserted section 46F(2) of the 2003 Act.

44. The Committee shall consider the Bill as amended in this respect after Stage 2.

Section 22 – salmon carcass tagging
Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Background
45. Section 22 of the Bill inserts a new section 21A into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.

46. The regulation-making power in section 21A(1) of that 2003 Act will enable the Scottish Ministers to put in place a statutory scheme for carcass tagging of wild salmon.

47. New section 21A(3) states that the regulations may make “such modifications of Part 5 of this Act as the Scottish Ministers think fit”. Part 5 of the 2003 Act deals with enforcement matters, including the powers of constables and water bailiffs under that Act, and offences provisions. The powers in section 22 will allow any modifications to that Part 5 in its application to the salmon carcass tagging regime, which are thought appropriate to enable enforcement of the new regime.

48. The Committee asked the Scottish Government to reflect on whether the power should be subject to the affirmative procedure, where primary legislation was being amended. The Government has considered that it will amend the Bill to achieve this.

49. The Committee is content with the powers in section 22 in principle.

50. The Committee notes that after reflection the Scottish Government has decided that the affirmative procedure would be a more appropriate level of scrutiny for regulations under the inserted section 21A of the 2003 Act, where the power in section 21A(3)(c) to modify Part 5 of the 2003 Act is used. It will bring forward an amendment at Stage 2. The Committee will consider this amendment after Stage 2.
Section 50 – power to charge in connection with fisheries functions

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** Regulations

**Parliamentary procedure:** Negative procedure

**Background**
51. Section 50(1) confers a power on the Scottish Ministers which will enable them to make regulations for or about the imposition of charges in connection with the carrying out of fisheries functions, which will also be specified in the regulations.

52. Section 50(2) defines the functions in relation to which the Scottish Ministers may impose a charge (if the regulations specify the function or functions). These are functions of the Scottish Ministers under any legislation relating to fish or shellfish farming, salmon or freshwater fisheries, or sea fishing. It also covers functions of persons appointed or authorised by Ministers to enforce the legislation, such as sea fishery officers. It extends to functions under domestic and EU legislation.

53. The regulations will set out the proposed amount of charges, by whom payable and when, including setting down the circumstances in which charges may be reduced or waived, and any exemptions.

54. Section 50(4) contains some restrictions. The charges may only require a person to pay so far as the person is someone in relation to whom a fisheries function has been carried out. The charge may not exceed the reasonable costs incurred in carrying out the function, in the particular case (so charges should not generate a profit).

**Comment**
55. The Committee queried in the written correspondence, in connection with the scope of these powers, why the Bill could not prescribe the specific functions for which the charging regime would apply, possibly with a power to modify or add to them.

56. Given that these are significant new powers to impose charging across a wide range of fisheries and fishing functions, explanation was also sought on why the negative rather than the affirmative procedure has been considered to offer a more suitable level of scrutiny by the Parliament of the exercise of these powers. The written response from the Scottish Government did not comment on this second aspect.

57. The response explains that in developing policy in this area, Scottish Ministers have not yet made any firm determination about which specific functions (within the very wide range in section 50(2)) will be subject to any future charging regime. This will be consulted on before the powers to make the regulations are exercised (for
which the Bill makes provision in section 50(5)). The powers in section 50 are therefore framework powers, which permit charging arrangements in connection with functions to be specified later, and with the further detail to be set out in the regulations, after consultation.

58. The Committee considers that the powers to charge in connection with fisheries functions in section 50 are significant powers. The proposed regulations would specify which functions the charging regime will relate to within the wide range of functions described in subsection (2) of that section, the persons to be subject to charge, the amounts of charge, and other matters as listed in section 50(3).

59. Accordingly the Committee considers that the exercise of the powers in section 50 to make regulations should be subject to the affirmative procedure. The Committee considers that the Scottish Government should consider this further in advance of Stage 2.
ANNEX

Correspondence with the Scottish Government

On 4 December 2012, the Subordinate Legislation Committee wrote to The Scottish Government as follows:

Aquaculture and Fisheries (Scotland) Bill at Stage 1

1. The Subordinate Legislation Committee considered the above Bill on Tuesday 4 December and seeks an explanation of the following matters

Section 1(2) – (inserting section 4A(2), (3) and (5) of the 2007 Act) - power to modify the definition of the Code of Practice
Power conferred on: The Scottish Salmon Producers’ Organisation (“SSPO”)
Power exercisable by: Code of Practice
Parliamentary procedure: None

2. Section 1(2) enables the Scottish Salmon Producers’ Organisation (SSPO) to issue the Code of Good Practice for Scottish Finfish Aquaculture.

3. The effect of that power in the new section 4A(2) to (5) of the Aquaculture and Fisheries (Scotland) Act 2007 is that farm management agreements and statements must reflect so far as possible any recommendations in the Code, and so including recommendations on the various matters set out in subsection (4) such as fish health management. The Code also defines the farm management areas in which the requirements apply.

4. The Committee asks for an explanation as to:
   
   • Why it has been considered appropriate to confer this power on the SSPO by issue of a Code of Practice (rather than the powers to regulate these matters being exercisable by regulations by Scottish statutory instrument), and so not subject to scrutiny by the Parliament, nor attracting the drafting and publication requirements which apply to a statutory instrument?
   
   • Why it has been considered appropriate that power is conferred on SSPO to define the farm management areas for the purposes of this regime, rather than these being prescribed by Scottish statutory instrument which again could allow scrutiny by the Parliament?

5. The Code of Good Practice recommends good practice measures for fish farming, and an intention of section 1(2) appears to be that farm management agreements and statements will require to reflect such good practice.
6. The Committee asks for an explanation as to:

- Why it has been considered appropriate to enable the Code to include any recommendations determined by the SSPO which the agreements and statements must reflect so far as possible, there being no provision that the Code (or any later document) shall specify good or best practice measures to be reflected in the agreements and statements?

Section 3 – power to prescribe technical requirements for equipment used in fish farming

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

7. Section 3(1) of the Bill creates a power for the Scottish Ministers to make regulations prescribing technical requirements for equipment to be used for and in connection with fish farming. Further provision can be made to ensure such requirements are complied with.

8. Section 3(4)(b) provides that the regulations may “confer functions on any person in relation to the prescribing of requirements”.

9. The Committee asks for an explanation as to:

- How it is anticipated that this power would be exercised, and by whom?

10. The minimum requirements to be prescribed by regulations shall attract the criminal penalties and other official enforcement measures which will also set out further in regulations.

11. The Committee asks for an explanation as to:

- Why it is considered appropriate that persons apart from the Scottish Ministers (in regulations subject to Parliamentary procedure) could be given functions in relation to prescribing these requirements?

12. Section 3(6) provides that the regulations could provide for continuing offences, and for any such offences to be punishable by a daily or other periodic fine, of an amount to be specified in the regulations. Unlike the provision for the maximum penalty for a single criminal offence in section 3(5), no maximum amount of daily or periodic fine is stated in section 3(6).

13. The Committee asks for an explanation as to:

- Why this has been considered appropriate, or whether a maximum level of penalty could be specified in section 3(6)?
Section 9 – movement of species, etc.

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

14. Section 9(1) enables provisions to prohibit or control the movement of any commercially damaging species present or suspected of being present in any body of water.

15. Section 9(2) provides for the matters that may be contained or provided for in an order under section 9.

16. There is no provision in section 9 for any maximum time period for provisions for or about the prohibition or control of the movement of species, etc. Nor does the list of matters which may be included in an order as set out in section 9(2) include provision as to the authorised period of the controls.

17. The Committee asks for an explanation as to:
   - Why it is considered appropriate not to include in the Bill any such provisions as to the time periods for which the prohibition or control of the movement of species, etc. will apply?

Section 14 – Control schemes

Power conferred on: the Scottish Ministers
Power exercisable by: Scheme (not made by Scottish statutory instrument)
Parliamentary procedure: None

18. Section 14 provides a power for Scottish Ministers to make control schemes for the control of commercially damaging species on fish and shellfish farms. The orders are not statutory instruments and are not subject to parliamentary controls.

19. Section 14(5)(c) states a control scheme may include incidental, supplemental, consequential, transitional, transitory or saving provision.

20. The Committee asks for an explanation as to:
   - In relation to section 14(5)(c) why it considers a power to make incidental, supplemental, consequential, transitional, transitory or saving provisions in a control scheme is required, the circumstances in which such powers may be exercised, and why no parliamentary control nor the formal requirements of a Scottish statutory instrument are considered appropriate for such provisions?
Section 20 – (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) – Ministerial power to modify the good governance requirements

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

21. Section 20 of the Bill amends section 44 of, and inserts new sections 46A to 46G into, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, to introduce good governance obligations on district salmon fishery boards.

22. The Committee asks for an explanation as to:
   - Why the power in section 20 (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) is necessary, so far it enables any modification- including repeal- of section 44(1) of the 2003 Act, which has the “basic” requirement for a district salmon fishery board to prepare annual reports and audited statements of accounts relating to the activities of the board, and an annual meeting to consider the report and accounts, and
   - How it is envisaged that that power shall be exercised?

Section 22 – salmon carcass tagging

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

23. Section 22 of the Bill inserts a new section 21A into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.

24. The regulation-making power in section 21A(1) of that 2003 Act will enable the Scottish Ministers to put in place a statutory scheme for carcass tagging of wild salmon.

25. New section 21A(3) states that the regulations may make “such modifications of Part 5 of this Act as the Scottish Ministers think fit”. Part 5 confers powers on Ministers by regulations to impose charges in connection with the carrying out of fisheries functions.

26. The Committee asks for an explanation as to:
   - Why the power in the new section 21A(3)(c) of the 2003 Act to make “such modifications of Part 5 of this Act as the Scottish Ministers think fit” is appropriate, why it could not be framed as a power to make modifications which are consequential on making regulations under the new section 21A(1), and how it is envisaged this power could be used?
Given that the power is to modify provisions in the Act, whether the affirmative procedure is a more suitable level of scrutiny for the exercise of this specific power?

Section 28(3) – power to modify salmon fishery boards’ functions under section 33A

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<td>Parliamentary procedure:</td>
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27. Section 28(3) inserts a new section 33B into the 2003 Act. This enables the Scottish Ministers to make provision by regulations to recall to Scottish Ministers, or restrict, DSFB functions when consenting to the introduction of salmon or salmon spawn into inland waters, under section 33A of the 2003 Act.

28. The Committee asks for an explanation as to:

- In relation to the powers in section 28(3), how section 33A(3A) was added to that Act. Section 33A was added by the Aquaculture and Fisheries (Scotland) Act 2007, but that addition did not include a subsection (3A).

Section 50 – power to make regulations to impose charges for the carrying out of certain fishery functions.

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29. Section 50(1) confers a power on the Scottish Ministers which will enable them to make regulations for or about the imposition of charges in connection with the carrying out of fisheries functions; which will also be specified in the regulations.

30. Section 50(2) defines the functions in relation to which the Scottish Ministers may impose a charge. These are functions of the Scottish Ministers under any legislation relating to fish or shellfish farming, salmon or freshwater fisheries, or sea fishing. It also covers functions of persons appointed or authorised by Ministers to enforce the legislation, such as sea fishery officers. It extends to functions under domestic and EU legislation.

31. The Committee asks for an explanation as to:

- Why is it necessary for the scope of the powers to extend widely to all the types of functions set out in section 50(2) under domestic and EU legislation, given that the Delegated Powers Memorandum suggests that the regulations will impose charges “in connection with certain specific fishery functions”; and so why would it not be appropriate for the Bill to prescribe those specific functions for which there would be charging, possibly with a power to modify or add to them?
• How is it envisaged that these powers would be exercised, and in relation to which functions (beyond the list of matters that can be covered in regulations in section 50(3); 

• Given that these are significant new powers to impose charging across a wide range of fisheries and fishing functions, why the affirmative procedure would not offer a more appropriate level of scrutiny by the Parliament of the exercise of the powers rather than the proposed negative procedure – in particular for the selection of the specific functions to which the charging regime would apply?

Section 51(2) – power to modify definition of “relevant offence” and descriptions of persons.

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

32. The power in section 51(2) (inserting section 25(2B)(a) of the Aquaculture and Fisheries (Scotland) Act 2007) permits any amendment of the definition of “relevant offence” for the purposes of the fixed penalty notice provisions in that section 25.

33. The Committee asks:

• Given that the Delegated Powers Memorandum does not explain why the power to amend the definition of “relevant offence” in any way is required, could the scope of this power be drawn more narrowly?

The Scottish Government responded as follows:

Section 1(2) – power to modify the definition of the Code of Practice

The Scottish Government would not characterise the powers in section 1(2) as one which confers a power on the SSPO in connection with the Code of Good Practice.

Instead the new provision is intended to place an obligation upon all those engaged in the business of fish farming to adhere to farm management agreements or statements which reflects aspects of good industry practice. Such standards are currently contained in a voluntary industry code.

The Scottish Government considers that farm management areas are best determined by those engaged in the business of fish farming. Such areas are already set out in the voluntary code. Please see the following link for ease of reference:

http://www.thecodeofgoodpractice.co.uk/cogp/3-5-area-management#Section87

Farm management agreements will be drawn up between farmers according to the industry standards and against the existing farm management areas (subject to the minimum standards set out in inserted section 4A (4) (b).
The provision reflects a policy intention to avoid a situation where government becomes involved in day to day management of farms, but instead seeks to ensure that good practice is adopted by all members of the aquaculture industry.

It has been brought to the Scottish Government’s attention that the reference to the Code of Good Practice, set out in inserted section 4A (5) is not accurate and Scottish Ministers will be bringing forward amendments to correct this at stage 2.

Section 3 – power to prescribe technical requirements for equipment used in fish farming

The detail of the proposed technical standard is being developed by an expert containment technical standards group whose membership includes fish farmers, trade associations, equipment providers & manufacturers, insurers, engineers, research institutes, Scottish Government (policy and fish health inspectorate) and other regulators. The overall intention of the Scottish Technical Standard (STS) would be to help prevent escapes from technical failure and related issues at Scottish finfish farms. To achieve that end all fin fish farms operating in Scotland should have equipment appropriate for the environmental conditions in which they operate - nets, pens, moorings etc - and which effectively contain fish and prevent escapes. The intention, therefore, is that the regulations will prescribe those standards.

The STS will apply to all Scottish freshwater and marine finfish farms and cover nets, pens and mooring systems. It will also cover land-based facilities for screens and flood risk. It will set standards for the design, construction, materials, manufacture, installation, maintenance and size of equipment and be flexible to take into account environmental conditions of different site locations – taking into account, for example, wave height, wind and current speeds as well as flood risk assessments for land-based, pond and raceway sites. It will cover site surveys (measurements and monitoring of current, wave height and speed over time and pertinent geographical features) and take account of historical weather and tidal conditions - allowing for predictions of wind, wave and current conditions that might be expected at that site over the lifetime of the equipment. Consideration of current particularly tidal and wind generated, is crucial given it usually generates the greatest forces on equipment. The standard will also cover mooring systems - in terms of holding the equipment together, maintaining the structure of the fish farm and anchoring it to the seabed. This includes the type of seabed (rock, mud etc), type, size and weight of anchor and fitness to withstand the expected loads and forces the structure will be subjected to.

The standard also includes pen design and construction both in terms of connecting together but also material type and strength, net design and construction again in terms of material but also breaking strength and mesh size (to prevent fish escaping through the net). There will also be requirements on fish farm operators, employees and agents to keep records, for example of net testing, equipment replacement and also report equipment failures, for example where a particular of mooring has failed or where nets have degraded or damaged easily.

It is expected that following further consultation the regulations will come into force by summer 2014. It is recognised that there will also need to be an appropriate lead-in
period to allow for existing equipment to be replaced. This will be determined as part of the consultation process. It should be stressed that this will not represent a requirement to renew all finfish farm infrastructure; given the significant investment in recent years it can be expected that a significant proportion of existing or planned replacement infrastructure will meet the STS once introduced.

It is considered appropriate that Scottish Ministers define standards to ensure that all practitioners are covered by the standard. Scottish Ministers will ensure compliance through audit undertaken by a recognised regulatory body. Details are still being finalised and it is recognised that there are a number of potential options - Scottish Government in-house experts such as the Fish Health Inspectorate, 3rd party experts on behalf of Scottish Government; industry in-house expertise, or industry “external” experts such as their independent auditors of the CoGP – Food Certification International. This issue will be progressed through the STS steering group, but we will look to take opportunities to dovetail compliance assessment with existing inspection and audit procedures. It is therefore appropriate that persons other than the Scottish Ministers may be given functions in respect of setting requirements as they will provide the necessary expertise and assistance in setting the technical standards.

Under existing powers in the Aquaculture and Fisheries (Scotland) Act 2007 Marine Scotland inspects fish farm sites to ensure that measures are in place to contain fish and prevent escapes. Non-compliance carries a maximum fine of level 4 on the standard scale. Our current view is that small breaches - for example failure to replace incorrect or poorly maintained equipment (e.g nets of incorrect mesh size) - would incur fines on the same scale. Failure to remedy the situation (after further discussion with inspectorate) would incur periodic fines on the same scale for as long as deemed necessary and until the situation is remedied. We would envisage this to be appropriate in most circumstances. However, there may well be circumstances (for example a chronic failure of containment leading to a preventable large scale escape) where a significantly higher penalty would be more appropriate. That example might give rise to the loss of a whole mooring and pen system and loss of tens of thousands of fish. To address such significant failings we do not think it would be helpful to determine what would effectively be an arbitrary maximum penalty.

Section 3(7) of the Bill also provides that the sanctions that may be specified in the regulations may include the suspension or revocation of any authorisations required by fish farm operators to operate as such, for example, an authorisation under the Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85).

In view of the technical nature of the requirements we considered it appropriate that the development of the standard was informed by an expert group (membership set out above) to ensure the measures will be proportionate to the risk of escape, and correct for the Scottish industry and environment.

We consider that the level of early and ongoing stakeholder involvement in the project will ensure that the standard will be appropriate, proportionate and will be fit for purpose for the industry operating in Scotland.
Section 9 – movement of species

It is the Scottish Government’s view that it is not necessary or desirable to include in the bill provisions as to time periods etc. for which the prohibition or control of the movement of species etc. will apply.

It is possible to identify the presence of a commercially damaging species and to take appropriate action in response, but it is not possible to determine with any degree of certainty what length of time the prohibition or control of the movement of species would required to be in place. On that basis, we consider that a precautionary approach remains appropriate.

The necessity for prohibitions or controls under section 9 will be monitored. Scottish Ministers have the ability to amend and revoke orders when necessary in response to new information about the effect and extent of such controls.

Section 14 – control schemes

These provisions will only be able to be made once a species has been specified as a commercially damaging species, as provided by section 8 of the Bill. As species require to be specified by Order, Parliament will have had the opportunity to scrutinise the decision to specify the species as a commercially damaging species and will therefore have determined that the species is of concern.

In situations where a control scheme is considered necessary, speed may be paramount as delays could lead to the species spreading further and resulting in greater impacts. The power is appropriate in this regard as it will allow action to be undertaken quickly as opposed to having an enabling power exercisable by SSI which could unduly delay action and result in greater spread of the commercially damaging species.

In addition control schemes will have a localised effect in relation to those in a particular specified area. It is thought that since the schemes have a limited local interest that a scheme rather than an enabling power exercisable by SSI is an appropriate power in these circumstances.

The powers to make incidental, supplemental, consequential etc. provision have been inserted to allow the scheme to be flexible and adaptable over time, particularly since a scheme can be varied from time to time, replaced or revoked.

This is consistent with the approach taken in the Wildlife and Countryside Act 1981, as amended by the Wildlife and Natural Environment Act 2011, in relation to invasive non-native species which may be similar in terms of impacts and actions required (although the scope of these provisions are narrower as they relate only to aquaculture businesses as opposed to the wider environment).

Section 20 – Ministerial power to modify the good governance requirements

The Committee asks why the power in section 20 (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) is necessary
and how it is envisaged it be used. The power to modify the good governance requirements is to allow the provisions to be adapted to respond to any future changes in the landscape of good governance in the public sector. The policy intention is for the power to be available to update and add to the good governance requirements, not to dilute them.

It is noted that, as currently drafted, repeal of the good governance requirements, including 'basic' requirements under section 44(1) would be competent under 46F (1) (a). The power of modification is intended to be used only for the purposes in section 46F (2); the Scottish Government will consider an amendment at Stage 2 to reflect this.

Section 22 – Salmon carcass tagging

At paragraph 24 the Committee notes that regulations under new section 21A(3) of the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003 may make "such modifications of Part 5 of this Act as Scottish Ministers think fit". Paragraph 24 further states that Part 5 confers powers on Ministers by regulations to impose charges in connection with the carrying out of fisheries functions. To clarify, the reference in new section 21A(3) is to Part 5 of the 2003 Act which deals with enforcement matters; the power to impose charges in connection with the carrying out of fisheries functions is at Part 5 of the Aquaculture and Fisheries Bill.

The Committee asks why the power to modify Part 5 of the 2003 Act is appropriate and how it is envisaged it is used. Regulations under new section 21A may make provision for the appointment of authorised persons to carry out enforcement functions for a carcass tagging scheme. The nature of enforcement will depend on the type of scheme created, but examples of authorised persons might be Marine Scotland compliance officers, staff in local fishery offices or from Marine Scotland Science. However, it is intended that the existing enforcement provisions available in Part 5 of the 2003 Act also be available for the carcass tagging scheme.

Part 5 provides for powers of constables and water bailiffs and it may be considered desirable for the carcass tagging regime to be enforced by these persons. For example in remote areas it may be impractical to appoint persons for the specific purpose of enforcing and ensuring compliance with the regulations, so Ministers may wish to extend the existing powers of water bailiffs and constables for these purposes. The provision, as drafted, will allow any modifications to Part 5 of the 2003 Act, in its application to the new regime, which are thought necessary or desirable to enable enforcement of the carcass tagging regime. For example, existing section 55 (1) of the 2003 Act might be amended to insert reference to inspection of carcass tags or records associated with carcass tagging.

The Committee also asks whether the power might be framed as a power to make modifications which are consequential on making regulations under new section 21A (1). The Scottish Government's view is that the drafting of the provisions at section 21A is such that the power at section 21A (3) (c) is necessarily in consequence of the creation of the new regulatory regime at section 21A (1). The power could not be used otherwise and therefore no amendment is required.
The Committee further asks whether, as the power is to modify primary legislation, affirmative procedure is a more suitable level of scrutiny for its exercise. The Scottish Government agrees, on reflection, that affirmative procedure is more appropriate for regulations under new section 21A where subsection (3) (c) is used. Accordingly, the Scottish Government will undertake to bring forward an amendment at Stage 2 to achieve this.

Section 28 (3) – power to modify salmon fishery boards' functions under section 33A

The Committee asks in relation to the powers in new section 28(3), how section 33A(3A) was added to the 2003 Act. New section 28 makes various amendments to the 2003 Act. Subsection (2) makes amendments to existing section 33A. New subsection (3A) of section 33A of the 2003 Act is inserted by section 28(2)(b) of the Bill.

Section 50 – power to make regulations to impose charges for the carrying out of certain fishery functions

In developing policy in this area, Scottish Ministers have not yet made any firm determination about which functions will be subject to any future charging regime. This is a matter which will be consulted upon before the powers conferred by section 50 are exercised (this is built into the Bill at Section 50 (5).

The primary purpose for charging is to promote the efficient use of resources. There are also compelling arguments for charging for public services provided in competition with the private sector or where a direct economic benefit accrues to the user or, where practicable, in order to recover the costs of regulating commercial activities.

For illustrative purposes, the Policy Memorandum and accompanying documents to the Bill outline a number of existing activities where the introduction of a charging regime might be considered appropriate where it is possible to demonstrate a clear link between the activity and the benefit to an individual stakeholder or group of stakeholders.

However, as specific functions have not been identified, the Bill has been drafted to provide Scottish Ministers with sufficient scope to develop a charging regime after a full consultation exercise is undertaken.

Section 51(2) – power to modify definition of relevant offence and descriptions of persons

Section 51 (2) of the bill will repeal and replace the definition of a "relevant offence" in section 25 (2) of the Aquaculture and Fisheries (Scotland) Act 2007. Such offences are those with respect to which a fixed penalty notice may be offered.

The new definition set out in section 51(2) (ii) will define offences with reference to enactments and persons with certain enforcement functions. Since it is likely that such legislation and enforcement functions are liable to change in the future, it is
thought that the power inserted by 51(2) in section 25(2B) (a) is necessary to allow the definition of offence to keep pace with other legislative change. The use of fixed penalty notices is an important enforcement tool and it is thought desirable that such changes should not have to wait for changes to be made using primary legislation.

Against this background, the Scottish Government does not consider that the power requires to be drawn more narrowly.
27th Meeting, 2012 (Session 4), Wednesday 28 November 2012

**ORAL EVIDENCE**

Willie Cowan, Deputy Director of Performance, Aquaculture and Recreational Fisheries, Alastair Mitchell, Head of Aquaculture Unit, and Jeff Gibbons, Aquaculture and Fisheries Bill Team Leader, Scottish Government.

**SUPPLEMENTARY WRITTEN EVIDENCE**

Marine Scotland

28th Meeting, 2012 (Session 4), Wednesday 5 December 2012

**ORAL EVIDENCE**

Allan Wells, Policy and Planning Director, Association of Salmon Fishery Boards;  
Ken Whelan, Research Director, Atlantic Salmon Trust;  
Alex Kinninmonth, Living Seas Policy Officer, Scottish Wildlife Trust;  
Alex Adrian, Aquaculture Operations Manager, Crown Estate;  
Professor Randolph Richards, University of Stirling;  
Professor Chris Todd, University of St Andrews;  
Douglas Sinclair, Aquaculture Specialist, Scottish Environmental Protection Agency;  
Steve Bracken, Business Support Manager, Marine Harvest;  
Guy Linley-Adams, Environmental solicitor, Salmon and Trout Association;  
Professor Phil Thomas, Chairman, Scottish Salmon Producers’ Organisation;  
Councillor George Farlow, Vice Chair of the Planning, Environment and Development Committee, Highland Council.

**SUPPLEMENTARY WRITTEN EVIDENCE**

Professor Chris Todd  
Scottish Salmon Producers’ Organisation  
Guy Linley-Adams, Solicitor, on behalf of the Salmon & Trout Association Scotland

29th Meeting, 2012 (Session 4), Wednesday 12 December 2012

**ORAL EVIDENCE**

Dr Colin Bean, Science and Policy Adviser, Scottish Natural Heritage;  
Callum Sinclair, Director, Rivers and Fisheries Trusts of Scotland;  
Dr John Armstrong, Freshwater Fisheries Team and Programme Leader, Marine Scotland, Scottish Government;  
Simon McKelvey, Director, Cromarty Firth Fisheries Trust and Cromarty Firth District Salmon Fisheries Board;
George Pullar, Vice Chairman, Salmon Net Fishing Association of Scotland;
Ron Woods, Policy Officer, Scottish Federation for Coarse Angling;
Craig Campbell, Chairman, Migratory Fish Committee, Scottish Anglers National Association.

SUPPLEMENTARY WRITTEN EVIDENCE

Dr Colin Bean, SNH (first response)
Dr Colin Bean, SNH (second response)
Association of Salmon Fishery Boards

30th Meeting, 2012 (Session 4), Wednesday 19 December 2012

ORAL EVIDENCE

Craig Burton, Inshore Manager, Seafish;
Stephen Cameron, Managing Director, Scottish Shellfish Marketing Group;
Jennifer Howie, Head of Shellfish Unit, Food Standards Association Scotland;
Walter Speirs, Chairman, Association of Scottish Shellfish Growers;
Peter Pollard, Principal Policy Officer (Water), Scottish Environmental Protection Agency;
David McCallum, Chief Inspector, Dumfries and Galloway Constabulary.

1st Meeting, 2013 (Session 4), Wednesday 9 January 2013

ORAL EVIDENCE

Paul Wheelhouse, Minister for Environment and Climate Change, Willie Cowan, Deputy Director of Performance, Aquaculture and Recreational Fisheries, and Lindsay Anderson, Solicitor, head of branch, Scottish Government.

SUPPLEMENTARY WRITTEN EVIDENCE

Scottish Salmon Producers’ Organisation
Callander McDowell
Scottish Government

SUBMISSIONS RECEIVED IN RESPONSE TO CALL FOR VIEWS

- Animal Concern and the Save Our Seals Fund (134KB pdf)
- Atlantic Salmon Trust (309KB pdf)
- Professor Brian Austin, Director, Institute of Aquaculture, University of Stirling (67KB pdf)
- Beauly District Fishery Board (123KB pdf)
- British Trout Association (BTA) (262KB pdf)
- Callander McDowell (84KB pdf)
- The Crown Estate (77KB pdf)
The following submissions were endorsed by several organisations and individuals (listed)

- **Association of Salmon Fishery Boards (252KB pdf)**

Endorsed by:

- Kyle of Sutherland District Fisheries Board
- Helmsdale District Salmon Fisheries Board
- The Outer Hebrides Fisheries Trust
- Western Isles District Salmon Fisheries Board
- Urr District Salmon Fisheries Board
- Netherdale Estate
- Salmon & Trout Association
- Kyle of Sutherland DSFB and the Kyle Fishery Trust
- Nith District Salmon Fishery Board
- The River Deveron District Salmon Fishery Board
- Bell Ingram
- Argyll District Salmon Fishery Board
- The Wester Ross Area Salmon Fishery
- The Tay District Salmon Fisheries Board
• Beauly District Fishery Board (endorse paragraphs 12-23 only)
• Andrew Graham-Stewart (with reference to the aquaculture sections of the Bill)
• Findhorn District Salmon Fishery Board

• Scottish Environment LINK (143KB pdf)
  Endorsed by:
  • Marine Conservation Society
  • National Trust for Scotland
  • RSPB Scotland
  • Scottish Ornithologists’ Club
  • Scottish Wildlife Trust
  • Whale and Dolphin Conservation
  • WWF Scotland

• Scottish Salmon Producers’ Organisation (133KB pdf)
  Endorsed by:
  • Marine Harvest

• Rivers and Fisheries Trusts of Scotland (RAFTS) (197KB pdf)
  Endorsed by:
  • The River Don Trust

• Salmon & Trout Association (99KB pdf)
  Endorsed by:
  • Andrew Graham-Stewart (with reference to the aquaculture sections of the Bill)

OTHER WRITTEN SUBMISSIONS RECEIVED

Rivers and Fisheries Trusts of Scotland (RAFTS)
Marine Scotland
Scottish Government
Scottish Water
11:08

On resuming—

Aquaculture and Fisheries (Scotland) Bill: Stage 1

The Convener: Agenda item 4 is stage 1 consideration of the Aquaculture and Fisheries (Scotland) Bill. In our first evidence session on the bill, we will hear from officials on the content of the bill and associated documents. I should tell the committee that it is not for officials to answer questions on policy decisions; instead, they are here to offer clarification on the bill and its associated documents. Discussions on policy aspects should be left for the minister. We intend to look at the bill in considerable detail and will take evidence from stakeholders throughout December, with a final evidence session with the minister in the new year.

I welcome to the meeting Willie Cowan, deputy director of performance, aquaculture and recreational fisheries, Alastair Mitchell, head of the aquaculture unit, and Jeff Gibbons, bill team leader.

I will kick off the questioning. The policy memorandum states that one of the bill’s primary purposes is to effectively manage the interactions of farmed and wild fisheries. How do farmed fisheries currently interact with wild fisheries and what are the implications for their sustainable economic development?

Willie Cowan (Scottish Government): Clearly they interact with each other because they are both in the same place. Fish farming activity takes place in the freshwater and marine environments where wild fish stocks also live, and interaction happens by virtue of the fact that they are neighbours. At the moment, there is a regulatory framework for managing the siting of fish farms and considering the implications of siting individual farms in various places; Marine Scotland has an inspection regime for fish health; and the Scottish Environment Protection Agency monitors discharges into the marine environment.

The Convener: So there is a framework in place at the moment. In the absence of the bill, what would be the implications for wild fisheries of increasing aquaculture production in accordance with the Government’s targets?

Willie Cowan: As you say, a regulatory framework is already in place and working well, and we have a successful aquaculture industry that has been growing for the past decade or so. The purpose of the bill is to take us to the next stage. The Government supports the aquaculture industry’s ambitions to grow, and there are pressures from the European Commission and its
common fisheries policy to increase aquaculture production across the European Union, partly to become self-sufficient and reduce the importation of fish products from other parts of the world and partly to contribute to global food production, which is clearly an issue given the rising population and the limited land resources on which to grow protein.

**The Convener:** What are the implications, then, for wild fisheries?

**Willie Cowan:** The implications of growth?

**The Convener:** No—the implications of aquaculture.

**Willie Cowan:** Wherever there is an industrial input, there must be an impact of some sort. As you will be aware from the written evidence that you have been sent and various media reports—I also understand that you have been out and about visiting various stakeholders—interpretations of the actual and perceived impacts of aquaculture on wild fisheries differ. The Government is keen to ensure that any impacts are managed and mitigated to an acceptable level, and a key issue for the committee in its consideration of the evidence will be the extent to which there are actual rather than perceived impacts and the evidence base in that respect.

**The Convener:** I have anecdotal evidence from a netsman on the north coast who in the past year has caught in the region of 100 salmon that were originally from an aquaculture source. That is the impact on wild salmon as monitored by a netsman; I presume that the impact on rivers might be similar.

11:15

**Willie Cowan:** The impact of escaped farm salmon on wild stocks has recently been the subject of a study, which found no evidence of a substantial impact of one on the other. However, there continue to be concerns about introgression, mixed breeding and farmed animals taking up the space that wild fish are in.

One of the Government’s key aims, which is reflected in the bill, is to reduce any potential impact of aquaculture on wild fisheries. One of the main ways to do that is to keep the fish in the cage. That is one of the key issues behind the technical standard provisions in the bill. Indeed, it is one of the key issues for the aquaculture industry as a whole, because every fish that escapes is an economic loss to the industry.

**The Convener:** The fact that, in the previous year, that same netsman caught only six fish that had come from escapes suggests that there is an urgency for the technical measures to work.

**Willie Cowan:** Yes. We can provide you with data on escapes over the past decade. You will see from that information that, generally speaking, they have reduced considerably. There was a single incident last year during the Christmas storms in which a whole fish farm in Shetland was washed away. I had interesting conversations with the then minister on hogmanay as to what we would do about that. One of the issues was that, although 300,000 fish escaped, we simply do not know how many of them escaped live into the wild environment. That skews the understanding behind the numbers, but it is clearly in everybody’s interest to reduce escapes from aquaculture.

**The Convener:** We will move on to some of the different parts of the bill in a minute but, first, we will have another question related to the policy memorandum from Graeme Dey.

**Graeme Dey:** Good morning, gentlemen. Will you outline for us all why new legislation is necessary to achieve the purpose of the bill as outlined in the policy memorandum when, for example, the Aquaculture and Fisheries (Scotland) Act 2007 provides for a statutory code of practice on aquaculture? Could the measures in the bill not have been achieved by amending or replacing that code?

**Willie Cowan:** Some of them could have been but, to date, ministers have preferred that the industry have its own code and for that code to be flexible and updated, as opposed to there being a statutory code, which, by its nature, can become out of date quickly. The preference was for the industry code to continue but to introduce statutory requirements about how aspects of it should be used.

That is where the farm management area comes in. In essence, fish farms will be required to have farm management agreements or statements. In most cases just now, those or similar arrangements happen voluntarily, but the Government wanted to ensure that they happened in every instance to protect the whole industry and, indeed, the broader environment.

**The Convener:** We will move on to sustainable development issues.

**Claudia Beamish:** The assessment of sustainable development in the policy memorandum has been criticised in some of the written evidence that the committee has received. In his submission to the committee, Professor Colin Reid, who is a professor of environmental law at the University of Dundee, states:

*"the assessment of the impact of the Bill for sustainable development … is woefully inadequate. Surely many of the Bill’s provisions will have a much more profound economic, social and environmental impact, especially for rural communities? The inadequacy of the consideration of..."*
sustainable development is a widespread failing ... it does seem a real lost opportunity that the Parliament is not using this device as a means of thinking carefully about what the measures we pass today will mean for the future."

That is the assessment of one person who is at the University of Dundee, but I quote it to highlight the question to you. Is the assessment of sustainable development in the policy memorandum fulfilling its potential as a means of assessing the environmental, economic and social impacts of the bill’s provisions and their alternatives?

Willie Cowan: Ministers consider that the policy memorandum and other documents cover the area. One of the issues is the question of what is sustainability. Ministers’ position is that they want to encourage a sustainable, growing industry that minimises its impact on the broader marine environment. The economic benefits for local communities, through jobs, income and cohesion, are a by-product of getting that right. I think that what concerns most stakeholders is the question whether growth is environmentally sustainable, and I think that ministers would say that the documents that accompany the bill are perfectly adequate.

Claudia Beamish: Will you expand on that? What analysis was done on that in the context of the bill? You said that ministers think that the documents are adequate. It is for ministers to explain that in detail, but can you help me to understand the process of analysis? Concern has been expressed, particularly in view of the national marine plan being delayed until 2014 and the need to consider everything in the context of the EU marine strategy framework directive. I am puzzled as to why a professor at the University of Dundee, to mention but one person, would raise such concerns.

Willie Cowan: I think that I am right in saying that the individual in question has expressed similar concerns in relation to other bills and accompanying memoranda, so the concerns are not specific to aquaculture and fisheries.

The national marine plan is a good starting point. As you said, it has been delayed; we hope to publish the next draft in the new year. The plan will set the baseline for development in the marine environment, of which aquaculture and wild fisheries are part. The aim of the bill is to ensure that the sustainable growth of aquaculture can happen over time.

I do not think that the bill or the accompanying documents say that passing the bill will in any way guarantee sustainable growth; they say that the bill gives us the opportunity to enhance the existing framework, to ensure that, on a staged basis, the aquaculture industry can grow sustainably during the period to 2020, which is the initial timescale for the targets that the Government supports and which will be included in the marine plan.

If at any point in the process there is evidence of issues with the sustainability of growth, there will be the opportunity to address those issues at that time.

Jim Hume: Good morning, gentlemen. The convener has already highlighted an example of a potential clash in the far north: I represent the far south, where the Galloway Fisheries Trust, the Nith fisheries, the Tweed Foundation, the Tweed Forum and so on have been doing a huge amount of work on wild fisheries. Of course, that work is not just environmental but economic in nature in recognition of the fact that these fisheries are large economic drivers in very rural areas. The concern, therefore, is that both the environment and the economy might be damaged not just by escapees but through certain unintended consequences such as the spread of sea lice and so on from fish farms. How many of those economic, environmental and social impacts have been taken into account in the bill’s development?

Willie Cowan: At the most basic level, the Government’s purpose is to create sustainable economic growth, and everything that the Government does and that civil servants do to support Government is viewed through that lens. Ministers absolutely recognise the economic benefits that come from wild fisheries and want them to be enhanced. The Government has made it quite clear that aquaculture growth and the protection of wild fisheries are not an end in themselves but are two areas where the sectors very often—though not all the time—share the same space. We need to consider them hand in hand when we examine the issues, the impacts and the interactions. I think that it is reasonably clear that, as part of meeting its wider social responsibilities, the aquaculture industry has in some well publicised instances been very supportive of the work of some of the wild fishery boards and trusts.

Ministers want to ensure that rural and coastal areas thrive through a mix of industry and activity, none of which should, of course, detract from Scotland’s selling point: its prime clean environment and waters. Everything is viewed through that prism.

Jim Hume: We all share that view but what potential negative impacts have been identified in the work that you have done so far? I have already mentioned sea lice and escapees, but have you identified any others?

Willie Cowan: As I have said before, any activity has its risks. You have outlined two of the key issues that the aquaculture industry must
continue to work on and get better at. Evidence and research from around the world postulate the actual impact of aquaculture on wild fisheries, and we are looking at that evidence carefully, because it helps us to develop not only our policy position but the broader management and regulatory position. Although there are risks, the issue for Government and the broader government that manages and regulates the aquaculture industry is to ensure that any such risks are properly managed and mitigated.

11:30
Jim Hume: I will press the point for a specific answer. I listed two risks. What other risks have you identified in your research so far?

Willie Cowan: You identified the two key risks. More broadly, there could be other potential risks of disease. The management of disease falls under the fish health inspectorate’s regime and is part of the regulatory regime that we manage.

The Convener: We will turn to the issue of delegated powers.

Richard Lyle: Good morning, gentlemen. I have no problem with the bill. It amends the Fisheries Act 1981, which is 31 years old—some of us are older than that. However, I have a problem with the delegated powers memorandum.

I will ask my question, but you might say that you are not permitted to answer it and that it is for the minister to answer. The bill introduces many delegated powers and has been criticised by stakeholders. Ministers are given almost open-ended enabling powers, and it has been suggested that some provisions should be in primary rather than secondary legislation. Why is there a strong reliance on secondary implementing legislation in the bill?

Willie Cowan: The primary reason why ministers seek the enabling powers is the technical nature of the provisions that will ultimately be implemented. Ministers are seeking enabling powers, on the back of which further consultation is under way even now with stakeholders on what their implementation will look like. It is not unusual for enabling powers to be used to implement something such as technical standards, which are by their nature technical and can move apace and require further amendment.

At this point, ministers think that the balance between primary legislation and enabling powers is right. The fallback is that the use of each enabling power would undergo a further round of detailed technical consultation with stakeholders before coming back to the Parliament for consideration.

Richard Lyle: Will we cover every section that needs an enabling power or will we have a get-out-of-jail clause?

Willie Cowan: I am sorry; I do not follow the question.

Richard Lyle: Will you cover every enabling power or will the approach be open ended?

Willie Cowan: The enabling powers that are being sought are specific. Ministers’ policy position is that the enabling powers will be used when appropriate and when the detailed consultation and development work has been done. We will have a detailed product to bring back to the Parliament and we will say, “The purpose of this detailed secondary legislation is X, Y and Z, and this is all the work that has been done to support it.” There is no suggestion of having a single enabling power to introduce sweeping regulations.

Nigel Don: Good morning, gentlemen. If I put section 3(1)(a) of the bill together with section 3(2)(a), I am left with the impression that the provisions are about technical requirements for the containment of fish. Most of what I have seen written down suggests that that is to do with materials for things such as pens and nets.

Like other members, I am conscious that there are lots of what might be described as pots, pans, pumps and pipework—there is all sorts of stuff out there and I suppose that some fish are even transferred in plastic containers and buckets. I do not want to trivialise the matter, but is any limit to the technical stuff intended? Is section 3 intended to be all encompassing of how fish are kept on farms?

Willie Cowan: In relation to the technical standards, the development process has taken place over a number of years through a sub-group of the ministerial group on aquaculture that brings together the industry, the gear manufacturers, the vets and the insurance companies. The development process is continuing with a broad church of people who are ultimately involved in making this happen.

We will come back to the extent to which the detail of a technical standard should apply in the consultation. I take the point that the end-to-end production process that begins with the eggs and goes up to the point of harvest is very long and complicated—essentially, it is a two-year process. Ministers want to put in place technical standards that provide a consistency of approach across the industry, but which are relevant to the specific locations of farms. Ministers would not want to provide a detailed bible that the industry had to follow step by step.

Alastair Mitchell (Scottish Government): The primary purpose of the conversations with the
industry and other stakeholders is largely to discuss equipment for the prevention of escapes.

**Nigel Don:** I think that I understand that, but I want to pursue the issue. I am grateful to Mr Cowan for pointing out that we are talking about the process from egg to finished fish. What I am trying to check is whether you believe that what is written down in the provisions in question is wide enough. It seems to me that it is if it were necessary to prescribe the tray on which the egg is first placed to hatch. I am just asking whether that is the intention—it would make perfectly good sense. I am not suggesting that everything in the bill or everything that happens out there should be regulated; I am merely asking whether the provisions are wide enough to cover that, should it be necessary.

**Alastair Mitchell:** We would move on the basis of risk, if that is the essence of the question. It is not the intention to micromanage the farming of the fish but, as with all the other elements of the incremental approach that we are taking, if a risk were identified, we would discuss that with the industry and would consider how we would deal with it.

**Claudia Beamish:** I have a question about the other issue that was highlighted as a risk—sea lice. I believe that all the councils in the aquaculture zone, SEPA, environmental NGOs and other stakeholders favoured publication of sea lice data at individual farm level. How could one take forward those concerns? Sea lice are obviously a big risk. The Association of Salmon Fishery Boards has asked for the issue to be dealt with in the bill. How can wider communities, angling associations and others in rural areas be reassured on the issue? On the back of that, I cannot understand why it is necessary for the farm-level information to be commercially secret. Perhaps you could expand on those issues.

**Willie Cowan:** The first point to make is that there are powers in the 2007 act for ministers to require the provision of environmental data, so new primary legislation is not required. After discussions with stakeholders, ministers have taken the view that there should be greater disaggregation of sea lice data. Last week, the Scottish Salmon Producers Organisation published an article on its website indicating that from 1 January 2013 the disaggregation of sea lice data would move to between 25 and 30 areas around Scotland as opposed to the current six. Ministers support that further disaggregation but recognise that in some instances there are commercial confidentiality reasons why it might not be beneficial to the industry given their responsibilities as public limited companies.

**The Convener:** I think that we are now straying into consultation stuff with regard to part 1. After all, the issue is not just the delegated powers that we have been discussing. I believe that Alex Fergusson has a couple of questions on these matters, so it might be an idea to give him a chance to ask them and see whether we can come back to the previous point.

**Alex Fergusson:** Thank you, convener—you have given me something to ask.

Good morning, gentlemen. I wonder whether we can talk about the consultation process for a little bit. I believe that the pre-legislative consultation received a total of 1,342 responses, 1,193 of which were essentially lumped together as interest group responses. Even if those people were signing a pro forma document, we are still talking about a lot of voices with something to say about the bill. How were those voices taken into account before the legislation was introduced?

**Willie Cowan:** I will ask Jeff Gibbons to respond to that question.

**Jeff Gibbons (Scottish Government):** We certainly discussed the issue with stakeholders before the consultation was published and the responses analysed to ensure that they were aware of the methodology that was adopted, which is common across the Scottish Government. We made it very clear that, although many of the responses were tick-box exercises, they were still registering views that we took on board and reflected in the accompanying documentation. We also decided that, in our response to the consultation, we would provide further detail on how we would deal with the issues that were not going to be progressed through the bill but might be progressed through, for example, enabling powers that we already had or even voluntary means.

**Alex Fergusson:** Are you able to give examples of issues that were raised under the heading “interest group responses” that have been included in the bill?

**Jeff Gibbons:** I think that the issue was more about addressing some of the concerns that were raised. The responses raised two prominent concerns: first, the application of fixed penalty notices and the rationale behind that policy initiative; and, secondly, strict liability. In many ways, the responses merged the two proposals, which indicated some confusion about the approach that was being taken. Indeed, concerns about the application of and the rationale behind the strict liability policy enabled us to reflect on whether our existing powers were sufficient or whether there was evidence to suggest that they were not working in practice. On that basis, ministers took the decision that there was no case for progressing the matter.
As for fixed penalty notices, the vast majority of responses expressed concern about the application of the policy and the process involved. Following further discussions, we issued a very detailed notice about fixed penalties that acknowledged the concern about the policy rationale and explained how the process would work in practice, and we think that that alleviated some of those concerns.

Alex Fergusson: So, despite the fact that the responses were not included in the consultation analysis, you can put out the message that responding in such a way is not a waste of time. I think that it is important for people to know that.

Jeff Gibbons: Absolutely. Indeed, we sent the additional documentation that we produced on fixed penalty notices to individuals instead of representative bodies to ensure that the message got out and was understood.

Alex Fergusson: Will you talk me through the process by which the Government decided not to deal in the bill with some of the key issues that were raised and were included in the analysis? As Claudia Beamish mentioned, one major negative impact of fish farming is sea lice. It seems to me that the opportunity has been passed by to include provisions in the bill on, for instance, collecting data on sea lice and on deaths and movements of fish, and to include powers to prescribe a lower sea lice threshold. I imagine that there was a considerable response to the consultation on those issues, but that opportunity seems to have been passed by.

11:45

Jeff Gibbons: It was self-evident that many of the individuals who took the time to respond to the various proposals in the consultation were not clear that the proposals did not all relate to primary legislation. We acknowledge that we needed to get that point across. There was some confusion and a belief that the natural progression would be for the proposals to move to primary legislation. However, some of the questions in the consultation were about how we could proceed using existing powers, or whether we needed to use existing powers or could achieve the level of data that we might require using alternative means.

As a consequence, we thought it appropriate to use the summer period to get out and about to engage more directly with stakeholders. We established a stakeholder reference group to explain some of the proposals in more detail and the rationale behind some of the objectives, and to allow us to understand some of the responses more fully. For us, a key element was that the postcard responses, if you like, that we received did not really give the required level of detail about the concerns. In some ways, the responses reacted to other responses that we had received.

We took a considerable amount of time to reflect on those provisions. As I said, we thought that, to inform everybody about the process, it was important to set out in our consultation response additional information about why we were not looking to progress matters through primary legislation—where that was the case—and what we were looking to do as an alternative. We signposted existing legislation that we think can be used to achieve some of the objectives and where we might use voluntary means. For example, on data collection—in the round, rather than just on sea lice—the aim is to progress using voluntary means, rather than legislation, in the spirit of openness and transparency, which is one of the key messages in the bill. Ministers have made it clear that they do not want to legislate unless they have to.

On sea lice, the other part of the SSPO’s announcement last week was on progressing the recommendations in the healthier fish working group about additional information. That is a step forward on the data and people’s ability to assess how the process will work in practice. Our response to the consultation reflects the level of reflection that we had on the original proposals.

Alex Fergusson: Can you say that the bill as lodged and in the form that we now have it has changed much from what you originally envisaged because of the consultation responses?

Jeff Gibbons: I can, because we did not consult on the bill. That was one of the issues. We consulted on proposals. There was initial confusion about that. Although there was not a bill in its understood form, people thought that the proposals constituted a bill, but that was not the case.

Willie Cowan: That is a key point. The bill is part of a package. We have the existing regulatory framework and the propositions in the bill. If the powers in the bill are granted, we will have further detailed consultation on secondary legislation. We can use existing powers and regimes differently to achieve different outcomes and, where appropriate, we have the potential to put in place voluntary measures, rather than legislation. The bill is part of a package; it is not the only thing.

Alex Fergusson: That is useful. Thank you.

The Convener: We will move on to issues regarding part 1 of the bill. Angus MacDonald will kick off.

Margaret McDougall: Sorry, convener, but can I ask a question on that last point for clarification?

The Convener: Yes.
Margaret McDougall: For my personal clarification, are you saying that, rather than include provisions in the bill, you will rely on information on sea lice and the like coming voluntarily?

Willie Cowan: We are saying that in relation to data on sea lice and data generally, there are currently powers in the 2007 act for ministers to make regulations to require data to be provided. Ministers have taken the view that no other primary legislation is required for that purpose and that their preferred way forward is the voluntary provision of information in order to try to encourage openness and transparency between neighbours. That is the approach that ministers have chosen to take at this point in time but there are powers within the 2007 act for ministers to come back to the Parliament and seek regulation if that is necessary.

Margaret McDougall: Is that voluntary provision approach working at the moment?

Willie Cowan: That is the point that I and Jeff Gibbons just raised. There have obviously been discussions between Government and stakeholders on what could be put in place. A proposition is out there now that is subject to further discussion. As stage 1 of the bill progresses and we get towards stage 2, what the proposition is and what will be provided will become clearer. Stakeholders will have the opportunity to take a view on whether that is appropriate from their perspective and then the debate will continue. So we are in the process, but we do not have the final product just now.

Claudia Beamish: Does the proposition include a question about whether it would be more appropriate in the view of stakeholders to see the issues around sea lice, disaggregation and so on within the bill?

Willie Cowan: No, because as I said, there is existing primary legislation that provides powers for ministers to come back to Parliament for regulation, so from the Government perspective there is no need for further primary legislation in order to do any of that. The issue for Government and for Parliament generally is whether the voluntary approach that is being advocated provides stakeholders as a whole with a solution that is acceptable or whether we need to come back and consider that through further regulation.

Alastair Mitchell: It is probably worth adding that we welcome what the SSPO put forward last week. We see that as a constructive development. In that context, the voluntary way forward seems to be working but clearly we will keep an eye on that.

The Convener: We will now move to questions on part 1 of the bill.

Angus MacDonald: The bill proposes to introduce a legal requirement for fish management agreements or fish management statements for all fish farms. It also provides for inspections of farms and the taking of samples, or whole fish, to determine the origins of fish escapes. What are the main differences between the FMAs and FMSs in the industry code of practice and those proposed in the bill?

Willie Cowan: The industry code of practice contains provision for farm management areas to be put in place amongst their members in a non-legislative way, if I can put it like that. So although the majority of production in Scotland is covered by people who are signed up to the code of practice, not all of it is. The bill seeks to put that element on a statutory basis so that every fish farmer, irrespective of whether they are a member of the SSPO, is required to have an agreement or a statement and those statements must have as a minimum the items that are specified on the face of the bill. It takes what is essentially the non-statutory basis that the majority of farmers currently sign up to and puts it on a statutory basis that requires all fish farmers to sign up.

Angus MacDonald: If the bill goes through, will there be a strict timescale for signing up?

Willie Cowan: We have to consider transitional arrangements, as we do with all new legislation. Given that the majority of fish farmers currently undertake that type of arrangement, we do not anticipate that for the majority it will be a huge burden to revise their agreements so that they comply with the new law. We will work with the industry to understand the gap for farmers who currently have no agreement and the timescale for putting one in place.

At a practical level, it is about co-ordination of stock, treatment and harvesting, so if the bill is passed it will probably make sense for the requirements to come into effect at the beginning of the next production cycle in each area.

Angus MacDonald: Part 1 provides for the possibility of setting legal technical requirements for fish farms and for measures to be put in place to control and monitor wellboat operation. In the financial memorandum, the modifications that are needed to wellboats were identified as accounting for some of the most significant costs. What modifications are proposed? Are the costs proportionate?

Willie Cowan: The key aspect of the wellboat provision is the installing of a filter that will stop sea lice going back into the marine environment, whatever their stage of development. Ball-park figures suggest that retrofitting a wellboat with a filtering system could cost in the order of £500,000. In recent years, some wellboats have
been built with the capability to retrofit such a system; other, older wellboats do not have that capability. In Norway, some wellboats are being built with the equipment installed.

From an environmental management perspective, the logic is pretty straightforward: if we manage to capture a pest, let us not recycle it back into the environment.

**Angus MacDonald:** If we are commissioning new wellboats, it makes sense that they should have filtering equipment. You said that modification could cost £500,000. Off the top of your head, how much does a new wellboat cost?

**Willie Cowan:** In the order of £12 million to £15 million.

**Angus MacDonald:** I hope that some will be built in Scotland in future and not just in Norway.

**Willie Cowan:** That would be welcome economic development.

**Angus MacDonald:** In its submission to the committee, Europharma Scotland said: “I wish to bring to your attention that—contrary to the implications of section 55 of the Policy Memorandum ... in Norway the genotyping methodology for traceability of farm escapes is not the only approach being taken, and recommend that Scotland also evaluate the alternative method being trialled there: physical tagging of fish.”

Has the Scottish Government considered that alternative approach to tracking escapes?

**Willie Cowan:** The Government, through Marine Scotland Science, will consider the best way of achieving the policy intention. The provision in the bill is about getting the specimen; what is done with the specimen downstream will be subject to technological advances. There is not a one-stop-shop approach, whereby we say, “We’ll take the specimen and do this and only this with it.” We will take the specimen and consider the best way of identifying where the fish came from, given what has been developed and is in place in the market.

12:00

**The Convener:** We are discussing the technicalities of the bill at the moment and it is very useful to have your views. We will get stakeholders’ views in due course. Let us move on to part 2, which deals with salmon and freshwater fisheries.

**Margaret McDougall:** Part 2 deals with governance by the district salmon fishery boards. It includes provisions to allow the introduction of a carcass tagging scheme, which would make it an offence to sell salmon that are not tagged. It allows for inspectors to enter salmon fisheries to take samples of fish, to tag fish or to carry out monitoring or analysis. It also gives ministers more powers in relation to conservation measures, to rules on baits and lures and to annual close times. In addition, part 2 provides for the possibility for Scottish ministers to change the rules on consenting introductions, under particular circumstances.

Concerns have been expressed by the Association of Salmon Fishery Boards that the details of section 2 were not “consulted upon or agreed with by the majority of consultation respondents”.

Was enough information provided in the consultation on the planned provisions?

**Willie Cowan:** The consultation on part 2 was largely in two parts. The first part was on improvement of management arrangements, carcass tagging and that kind of stuff. It went into that in some detail. The second part was on good governance, openness and transparency in the operation of boards. The consultation paper was not as detailed as the bill, but we struggle to identify where the requirements in the bill are any more onerous than the requirements on other public bodies or bodies that have been created by statute.

The general principle was to improve openness and transparency in management of the sector—given that the boards are, to all intents and purposes, public bodies or bodies that are created by statute. The Government’s assertion is that they should be able to display certain commitments in relation to that. It is reasonable to say that we did not consult on the exact detail of every provision, but we consulted on the principles of good governance, openness and transparency. What has come into the bill reflects what people would expect of statutory and public bodies.

**Margaret McDougall:** Have you had any follow-up from those bodies in response to that?

**Willie Cowan:** Yes. The ASFB is on the stakeholder reference group for the bill. We have met it both as part of that group and separately, and we have heard the same concerns that have been outlined to you. You have also received a couple of responses from individual boards, but I do not think that any great concern has been expressed in those. There are concerns at the margins about the practical implications of some of the proposed provisions for some of the smaller boards, but the Government’s position is that, for a statutory body with a number of powers at its hand, what is suggested in the bill is entirely reasonable.

**Margaret McDougall:** As part of the consultation process, was any consideration given to the proposal from netsmen’s organisations that
their management be transferred to inshore fisheries groups?

Willie Cowan: That issue did not form part of the consultation process. However, as you will be aware—it is stated in the policy memorandum—the Government is committed to doing more work on the management arrangements for the wild fish sector. I expect that questions about the movement of particular sectors, or sectors within sectors, will form part of that consultation. I expect that the Government will want to take views on the matter during the next stage of the process.

Margaret McDougall: There is a conflict between river fishermen and netsmen, who feel that they would be better managed within inshore fisheries groups than by the fishery boards.

Willie Cowan: Yes.

Margaret McDougall: Why did you decide not to include that in the bill?

Willie Cowan: The first and primary reason was that it was not specifically consulted on in the consultation paper last year. The consultation paper was based on three things. In relation to the management of fisheries, the issue was what work had been undertaken that would enable us to propose legislation. For example, a lot of what is in the bill came out of the mixed-stock fisheries working group recommendations. Work had been undertaken that enabled us to take a view, consult on that view and come to Parliament with it. The second area for consultation was what could be done to improve openness and transparency in the operation of the boards as statutory bodies. The third issue on which we consulted was the Government’s commitment to do more in this area within the lifetime of the current Parliament. The questions were what we could do in the consultation paper at that point in time, what we could bring into the bill and what other issues regarding the sector might be covered in the second stage of the process.

Margaret McDougall: You said that you will consult on the issue that the netsmen’s organisations have raised regarding their management. When are you likely to do that?

Willie Cowan: I said that the Government is committed to a two-stage process in the sector. The next stage is to consider what further areas need to be looked at in relation to management of wild fisheries, and the place of the netsmen within that management regime is an area that I expect ministers will want to look at. However, we have not yet discussed with ministers the scope of the review. Given that it is a key issue for the netsmen, which has been raised with the committee both during your visits and in evidence, I expect that ministers will want to look at it. I cannot commit the ministers to that today, but that is what I anticipate.

Margaret McDougall: When will that happen? When will they look at it?

Willie Cowan: I think that we will scope out what the review might look like during stages 1 and 2 of the bill, taking account of the views that have been expressed. I suspect that there will be a consultation in the latter half of next year, with a proposition for a bill coming after that. This session of Parliament runs until 2016, and I expect the first part of the process to kick off during the bill’s passage through Parliament.

Alex Fergusson: I will return to salmon fishery boards. There is undoubtedly a school of thought, if I can put it that way, that the way in which further regulation of the salmon fishery boards is covered in the bill is almost along the lines of saying, “We’re bringing in further regulation of the aquaculture industry, so we’d better do something about the other sector as well to balance up the regulatory programme.” I am not saying that it is a widely held view. What is it about that sector, specifically, that makes you believe that it needs further regulation? Many people believe that it works reasonably well.

Willie Cowan: The main issue from ministers’ perspective is that those bodies are established by statute and have powers given to them by that statute. The question then is to what extent ministers, Parliament and the general public can be assured that the powers are being used appropriately and that the boards are undertaking the responsibilities that have been assigned to them through the statutory provisions.

One reason for committing to further work is simply the age of much of the legislation that is involved and the fact that it has been consolidated many times—most recently in 2003. There are questions about how fit for purpose the existing legislative regime is for the sector. The main reason behind the drive for openness and transparency relates to whether, in a modern society, it is right that a statutory body is not required to do what is set out in the bill.

Alex Fergusson: I am grateful for that explanation. I have a number of reservations, but they are probably better addressed at stage 2 and through amendments rather than now. Thank you for that explanation; I appreciate it.

Nigel Don: I will pursue that matter. I entirely respect the idea that any organisation or individual that has a statutory power is responsible for how that power is exercised and needs to be accountable for it. However, I am conscious that some of the river boards are very small. I am getting the message that, if we come along and say, “This is the way it’s going to be regulated.
You need to do X, Y and Z, and if you don’t, you might finish up in jail”—I am exaggerating slightly—people will say, “Actually, I already do this more or less voluntarily. This isn’t worth the candle. I’m going away.” The small boards might simply cease to exist. Is that understood to be a possible consequence of what is proposed?

**Willie Cowan:** As with everything in the bill, ministers want to be proportionate; this is not about imposing disproportionate burdens on small organisations. Ministers fully recognise that many boards are very small and that the work is undertaken voluntarily by people who have an interest in trying to improve fisheries in their areas, as is the purpose of the boards.

There is no intention to try to put the smaller boards out of business, but there is an intention to try to raise the bar, in that a lot of what is covered in the bill is carried out by the better boards. The bill is about raising the bar so that everybody adheres to minimum levels in relation to what they do, how they do it and transparency. Ministers do not want to impose a regulatory burden that would make it impossible for those guys to improve the fisheries, which is their statutory purpose.

**Nigel Don:** Two little technical points arise immediately from pages 18 and 19 of the bill. First, there is mention of “audited accounts”. Some organisations can find it incredibly expensive to get audited accounts and it can be a complicated process.

Secondly, how is one to send a copy of the notice to salmon anglers and attendant netsmen? One could probably find the netsmen, but how on earth is one supposed to send a notice to salmon anglers when one may not have a clue who they are?

**Richard Lyle:** We will move on to part 3 of the bill, on which Richard Lyle has a question.

**Richard Lyle:** Part 3 deals with sea fisheries and will bring Scotland into line with the rest of these islands in terms of marine enforcement powers. It makes it possible for sea fisheries officers to detain foreign vessels in port in cases of alleged offences, and allows enforcement officers to inspect and seize objects that are connected with commercial sea fisheries where an offence is suspected.

Few consultees responded to the proposals on sea fisheries. Have any further concerns been raised about the provisions in part 3 of the bill?

**Willie Cowan:** We met fisheries representatives from the Scottish Fishermen’s Federation and the Fishermen’s Association two weeks ago; there are no issues of concern around that part of the bill from the sea fishing industry.

**The Convener:** Part 4 deals with shellfish and will amend the Water Environment and Water Services (Scotland) Act 2003. Are any difficulties expected in the transposition of the shellfish water directive provisions into the WEWS act?

**Willie Cowan:** No—it is a straightforward transposition. For reasons that we do not fully understand, the European Commission has decided to let a regulation lapse. Although it will probably be replaced in time, it leaves a gap in management of shellfish waters, which is not healthy for our industry or the environment. Ministers are taking the opportunity now simply to transpose what is currently in an EU regulation into domestic law, which should be relatively straightforward. Again, no issues of concern have been raised in relation to that.

**Richard Lyle:** The effect is to continue the existing protections that are in place—it is not to bring in any new protections obligations. It is simply to ensure that the existing framework can continue when it drops out of the Commission’s regulation.
The Convener: We will move speedily on to part 5, on which Graeme Dey wants to ask you a question.

Graeme Dey: We have already covered the generality of my intended question, but I would like to ask about a specific case. Anglers have expressed concern that rod licensing could be introduced through secondary legislation, using the powers that are contained in section 50. Regardless of whether that is a policy that the current Government might pursue, would it be possible for such charging to be introduced?

Willie Cowan: As I understand it, ministers would have to change the whole management regime for angling to enable that to happen. What you describe is, essentially, what happens through the Environment Agency in England, where there is a completely different management regime.

I do not know whether such charging could be introduced. I will ask my lawyers and get back to you in writing. I would say, however, that it is unlikely that that would happen.

Graeme Dey: Clarity on that would be helpful.

Nigel Don: We understand that there have been no prosecutions of aquaculture businesses under existing rules. In that case, why is there a need for the fixed-penalty notice provisions?

Jeff Gibbons: There are instances of non-compliance at one level or another. The move creates an additional disposal option for compliance officers and the extension will ensure a consistent approach. There is no suggestion that a raft of fixed-penalty notices will suddenly be issued; the move is simply a natural progression from an existing disposal option that our compliance officers have, under their current powers.

Willie Cowan: The move is not an extension of the fixed-penalty scheme to aquaculture; it is an extension of the fixed-penalty scheme to other marine activities, including aquaculture.

Nigel Don: Is it fair to suggest that the fixed-penalty notice is one where the person who is not complying has to opt out rather than opt in? In other words, it is perhaps not so easy to get the evidence that you want to have in order to bring a criminal prosecution but, if you use a fixed-penalty notice, the person who receives it has to think in default about how they are going to get out of it. Is that the case?

Jeff Gibbons: That is not at all the case; it was one of the concerns that was raised about the original proposal. The leaflet that we forwarded is clear about the level of evidence. There is no dilution of the evidence that will be required and it will be up to an individual whether to accept it. Thereafter, reporting processes are followed, up to the level of the procurator fiscal. There is no question of there being a lesser standard of evidence or of a confetti approach being taken. The notice is an option.

Willie Cowan: The key issue is that individual inspectors would not and could not hand out fixed-penalty notices on the spot. If an inspector uncovers an instance of non-compliance that they think warrants a report, they send a report to a central unit that considers reports from across Marine Scotland’s activities. That unit identifies whether there is sufficient evidence to enable a report to be made to the procurator fiscal. That is the first test. If there is sufficient evidence, the question is whether to submit a report to the procurator fiscal or to offer a fixed-penalty notice. It is only after a matter has passed the test of whether there is sufficient evidence to submit a report that we move to the question how it should be dealt with.

Nigel Don: That brings me back to the original point. If there have been no prosecutions, why are we expecting circumstances in which the new provisions might apply?

Jeff Gibbons: The new provision is not pre-empting a raft of fixed-penalty notices, as I said earlier. That is not to say that cases have not necessarily been reported to the procurator fiscal, and the procurator fiscal has chosen not to progress them. Procurators fiscal have the option of choosing a fixed-penalty notice or another disposal. The move provides to our compliance officers a common set of options across the range of Marine Scotland’s work. It provides an alternative that is almost accepted practice elsewhere in the criminal justice system. It is a stepping stone towards deciding whether the offence is sufficient to go to the procurator fiscal.

The key point that some people have forgotten is that, before the fish health inspectorate became part of Marine Scotland, it reported directly to the procurators fiscal and could go directly to them. The bill aspires to put things in step with how non-compliance is dealt with elsewhere, which involves an option for a compliance team to issue a fixed-penalty notice, after due consideration of evidence.

Willie Cowan: Over the past couple of decades, there has been adopted the general policy position of moving to non-court disposals wherever feasible in order to free the justice system from having to deal with the more minor regulatory aspects of non-compliance.

The Convener: Thank you for your evidence. As the officials in charge of the bill, you have provided us with a lot of bait and lures to play in front of the forthcoming sets of witnesses. It is useful to know the technical background, and we
appreciate your efforts to enlighten us. We will follow up the issues with gusto.

We have now come to the end of the public part of the meeting. We are glad that so many members of the public find this an interesting subject, and we expect to see them all back here again when we speak to the next set of witnesses.

We will now clear the room of people in the cheap seats.
Dear Lynn

AQUACULTURE AND FISHERIES (SCOTLAND) BILL – FOLLOW UP FROM STAGE 1
EVIDENCE SESSION: WEDNESDAY 28 NOVEMBER 2012

Following my attendance at Committee last week, I promised to write with my response to a specific question in relation to rod licensing, and to provide some additional information on reported fish farm escapes.

During evidence, Graeme Dey MSP asked whether rod licensing could be introduced through secondary legislation using the powers contained in Section 50 of the Aquaculture and Fisheries (Scotland) Bill.

Section 50 will allow charges to be imposed in connection with the carrying out of specified statutory functions. At the present time there is no national system of rod licensing in Scotland and hence no relevant statutory functions. As a consequence the proposed charging power in section 50 cannot impose such a charge. I hope that clarifies the position.

In addition, and as promised, I have attached at Annex A detailed data on reported fish farm escapes over the past decade (2002-2012).

Finally, and in order to supplement the response I provided in connection to Part 3 of the Bill (Sea Fisheries), I should have made it clear that while both the Fisherman’s Association Limited (FAL) and the Scottish Fishermen’s Federation (SFF) have expressed general satisfaction with the focus of the Bill, they have expressed a little concern with a potential practical issue arising from the proposed Scottish Government amendments to Section 30(1) of the Sea Fisheries Act 1981 to improve the enforceability of Community provisions under the Common Fisheries Policy (CFP). This provision will also be subject to a further amendment which the Minister for Environment and Climate Change intimated to the Convener in his letter of 28 November 2012.
The practical issue raised by FAL and SFF was around what they considered to be a lack or absence of any parliamentary scrutiny that may result from less transposition of EU Regulations into domestic law, and that fishermen may be less well served if they did not have statutory instruments to consult to find out what their obligations are. In response we noted that most EU measures are directly applicable with little discretion available to the Scottish Government in implementation, and that Scottish Ministers are bound by Section 57(2) of the Scotland Act to operate in a way which is compatible with EU Law. We also noted that the Scottish Government has historically provided sea fisheries operators with guidance on their regulatory obligations and that will not change going forward.

I hope that is helpful.

Yours sincerely

Willie Cowan

cc to: Fisherman’s Association Limited (FAL) and the Scottish Fishermen’s Federation (SFF)
Reported fish farm escapes (2002-2012) - estimated number of fish lost and number of incidents (in brackets)

<table>
<thead>
<tr>
<th>Year</th>
<th>Atlantic salmon</th>
<th>Rainbow trout</th>
<th>Other **</th>
<th>All Species</th>
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<tr>
<td>2002</td>
<td>309,996 (8)</td>
<td>80,000 (1)</td>
<td>0 (0)</td>
<td>389,996 (9)</td>
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<td>1,560 (1)</td>
<td>8,025 (2)</td>
<td>161,438 (16)</td>
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<td>90,593 (10)</td>
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<td>10,000 (1)</td>
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<tr>
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<td>7,970 (3)</td>
<td>15,800 (1)</td>
<td>901,653 (23)</td>
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<td>155,653 (20)</td>
<td>36,866 (4)</td>
<td>12,230 (1)</td>
<td>204,749 (25)</td>
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<tr>
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<td>154,466 (12)</td>
<td>56,151 (7)</td>
<td>26 (2)</td>
<td>210,643 (21)</td>
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<td>3,434 (2)</td>
<td>0(0)</td>
<td>15,334 (5)</td>
</tr>
</tbody>
</table>

Points to note:
1. Statutory reporting was introduced in May 2002.
2. Any suspected escape or circumstance which gives rise to a significant risk of escape must be reported to the Scottish Ministers through Marines Scotland.
3. Major winter storm in January 2005. Five escapes alone accounted for 633,334 fish (127,000, 194,000, 80,000, 151,821, 80,513).
4. Code of good Practice operational from January 2006. Escapes data from then therefore more robust.
5. Other** inclusive of Brown/Sea trout, Cod, Arctic char and Halibut.
Aquaculture and Fisheries (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is consideration of the Aquaculture and Fisheries (Scotland) Bill. This is our second evidence session on the bill. Today, we will have a round-table discussion on matters relating specifically to aquaculture in parts 1 and 5 of the bill.

I welcome everybody and ask our witnesses to introduce themselves—just to say who they are, not to make a speech. We will have plenty of questions for you in due course and we want to make this meeting flow as well as we can. If the discussion is to flow, it will be through you indicating to me when you wish to speak and not speaking over other people. We look forward to your participation and a positive meeting this morning. It is important for us, as laypeople, to understand the intricacies of the bill.

We will start the introductions with Alan Wells.

Alan Wells (Association of Salmon Fishery Boards): I am from the Association of Salmon Fishery Boards.

Steve Bracken (Marine Harvest): I am the business support manager with Marine Harvest and the chair of the improved containment working group.

Professor Chris Todd (University of St Andrews): I am from the University of St Andrews.

Professor Phil Thomas (Scottish Salmon Producers Organisation): I am the independent chairman of the Scottish Salmon Producers Organisation. I am not, as it says on the agenda, the chief executive. I might have aspirations to be the chief executive but that is another matter.

Professor Randolph Richards (University of Stirling): I am from the institute of aquaculture at the University of Stirling and the chair of the healthier fish working group of the ministerial working group.

Alex Adrian (Crown Estate): I manage aquaculture business for the Crown Estate.

Councillor George Farlow (Highland Council): Good morning. Madainn mhath. I am vice-chair of Highland Council’s planning, environment and development committee.

Douglas Sinclair (Scottish Environment Protection Agency): I am a fish farming specialist with the Scottish Environment Protection Agency.
Ken Whelan (Atlantic Salmon Trust): I am research director with the Atlantic Salmon Trust.

Guy Linley-Adams (Salmon and Trout Association): I am solicitor for the Salmon and Trout Association’s aquaculture campaign.

Alex Kinninmonth (Scottish Wildlife Trust): I am policy officer with the Scottish Wildlife Trust.

The Convener: Thank you. My colleagues with the purple nameplates are the committee members.

I will start off with a general question to help us get some sight of the bill. As a member of the committee that scrutinised the Aquaculture and Fisheries (Scotland) Act 2007, I recall the debate at the time, although perhaps not in intricate detail. Has that legislation worked in tackling sea lice and fish farm escapes? If not, why not?

Professor Thomas: The 2007 act is pretty comprehensive in that it gives Marine Scotland in particular total access to all farm records for every farm in Scotland and very substantial powers to demand that farms correct any activity that the fish health inspectorate feels needs to be corrected. Ultimately, it can give fish health inspectors the powers to take over and run farms. In that regard, it is a pretty extensive piece of legislation.

Alan Wells: Phil Thomas is right to say that the 2007 act allows the Scottish ministers to require the execution of such works or the taking of other steps for the purpose of the prevention, control or reduction of parasites. However, we have been informed by the fish health inspectorate, which is responsible for that activity, that the powers are limited to dealing with problems with farmed fish—in other words, the fish in the cages—and do not extend to the health and welfare of wild fish.

We do not believe that the 2007 act specifically precludes action to be taken with regard to the health of wild fish but, if it does, it would be useful for the 2007 act to be amended to allow that action to happen. In short, the provisions in the 2007 act are specifically about the health and welfare of the fish in the cages but we are equally concerned about the health and welfare of wild fish—the fish outside the cages.

Guy Linley-Adams: My point is the same as Allan Wells’s. The law as currently interpreted by the fish health inspectorate contains a lacuna in that if the inspectorate finds a severe lice problem on a farm it can order a lice treatment only for the farmed fish, not for the wild fish. It is an issue of welfare rather than the wider environment.

Councillor Farlow: We have been wondering why medicine and biomass production are not related. After all, on a terrestrial farm we would not let livestock health suffer because of a lack of medicine, and I do not see why the same should not be the case in a sea loch.

Douglas Sinclair: In response to George Farlow’s comment, I point out that the issue was certainly discussed in the consultation on aligning biomass with what we might call treatable biomass. At the minute, we authorise the amounts of medicine that our model suggests are appropriate for the environment and license the level of biomass that is appropriate at a given fish farm, but the two numbers are not necessarily aligned at each farm. We would say that it is up to the fish farmer to ensure that he holds a level of stock on his farm that can be treated responsibly using the available medicines. In our view, it is a husbandry issue.

Alan Wells: Picking up on that, I note in its submission that the SSPO feels that it was a missed opportunity not to give the Scottish ministers the power “to allow them to instruct SEPA to vary CAR licences”.

That almost inevitably would mean an increase in the fee for a licence for treatment under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, but it would not necessarily take into account the environmental effects of the medicine.

Councillor Farlow’s point is correct from that point of view. Rather than allow unconsented treatment with the associated issues, it would be far better to ensure that the permitted biomass and sea lice treatments are linked. Basically, farmers should not be permitted to hold more fish than they can effectively treat at any given time.

Professor Thomas: I want to pick up on the point that Alan Wells made initially and that Guy Linley-Adams followed up. The perception that the fish health inspectorate cannot take action in relation to wild fish is wrong. The code that the inspectorate uses to inspect has adopted the elements of the industry code that set treatment limits and give guidance on when treatment is given, for example, in the spring, autumn and so on. The fish health inspectorate can follow that code, as that is the code that it uses to inspect. Therefore, that perception is wrong.

One tricky issue that is often lost in the debate is that there seems to be an assumption that sea lice come from fish farms. Sea lice are already there. For many fish farmers, the most problematic issue is when a run of mature wild fish come in, as they bring in sea lice—there is a sea lice strike on farms. In that situation, there can be rapid increases in sea lice numbers. The point about the CAR licence is that, when such situations occur and there is a critical incident, it would be helpful to be able to vary the CAR licence so that the fish farmer can deal with the specific incident promptly.
The Convener: I will bring in Nigel Don, and we can home in on sea lice.

Nigel Don (Angus North and Mearns) (SNP): I have been intrigued by what I have learned in the past few weeks in trying to work out what on earth is going on out there. Given that there are a lot of very capable people round the table, I wonder whether you can help me to understand the science a little more. I will ask several questions. I know that that is the wrong way to ask questions, but I do so deliberately in the hope that it will open up the debate rather than just have one question answered.

Wild smolts come down a river, sit in a sea loch and then eventually go to sea. Let us assume that the sea loch has a fish farm in it. We have to accept that, if there is a fish farm, there must potentially be at least some reservoir of lice and that, if there was no fish farm, there would potentially be at least a smaller reservoir. I can understand that that might have an effect on smolts going to sea—they might pick up lice before they do so—and we know that that has something to do with mortality. I can understand all that, I think.

I have no understanding, however, of how the lice that are potentially on the fish that are inside the nets get on to smolts that are outside the nets, or whether a further net that is some distance beyond that would effectively stop lice from moving between the wild and farmed populations. The other thing that I have no understanding of is how long the smolts might be in the sea loch in their passage from river to sea and how long the fish might be in the sea loch once they come back from the sea and before they move up the river to spawn, which Phil Thomas has just mentioned.

There is a lot of scientific stuff on which I plead complete ignorance, and I do not think that any of it is covered in the papers. I ask the witnesses to work their way through the model to give us an idea of how lice move round in the environment and how we can control them. We know that people have different vested interests in the environment. Your answers might enable us to work out how we can protect all the vested interests, which I am sure is what we really want to do.

Professor Richards: The life cycle of the lice is fairly complex and involves a number of stages. It starts with an egg stage. The eggs hatch out into free-swimming stages in the sea. There is then a further moult and then, eventually, they get on to fish. The cycle then goes through a number of moults on the fish, until an adult stage is reached. Generally, the females then produce eggs, which continue the cycle. That takes several weeks to progress.

We discussed the issues in the healthier fish working group, and the whole concept behind when treatment should occur is really to protect the wild fish and to avoid the infectious cycle continuing. It is not so much to do with a problem with the welfare of farmed fish. At the same time, we must be aware that, the more frequently treatment is undertaken, the more likely it is that resistance to products will develop, so the two things must be balanced. Smolts going out to sea are more likely to be subject to infection from lice in the free-living stages in the sea and then to go through the cycle.

10:15

The advantage of the monitoring that goes on in fish farms is that we can monitor the different stages developing through the fish’s life cycle and we can see the lice going from stage to stage, so we know in advance when adult stages are likely to develop. That means that people are warned of when a treatment will be likely. With advance warning, treatment can be put in place. The levels that we have chosen take account of smolt migration to reduce the impact as much as we can.

Ken Whelan: The challenge is interesting. I will work my way down through the points for members—it is useful to do that. Professor Richards is right about the smolts moving out.

It is important to separate sea trout from salmon, because they behave differently. Salmon are trying to get to the big corridor—the highway that will bring them north—as quickly as possible. Salmon therefore tend to move through the bays much more quickly than sea trout. For a lot of sea trout, the bays are their homes so, in the round, sea trout are much more likely to pick up large numbers of lice than salmon are, because sea trout are in the location.

I am not aware of any way to contain physically the tiny free-swimming stages that Professor Richards mentioned. Interesting research in Scotland in the past few years has shown clearly that, once such lice get out into the environment, they can end up in the interface between the freshwater and salt water moving around in the bays. At that stage, they are looking for a host—an animal on which they can settle—and they do not separate out between fish that are in cages and wild fish that are in the bays.

We do not have a lot of information about how long fish stay in sea lochs—that is certainly a gap that we need to fill—but the small amount of research that has been done suggests that salmon tend to move out much more quickly than sea trout.
Another important thing in a lot of the published literature is consideration of the very early stages of lice, rather than the bigger lice that we see photographs of. Generally, the biggest problem that can occur is a large release of juvenile lice synchronously with a smolt run. If what is known in technical terms as an epizootic occurs—when a bloom of very tiny lice appears in the bay—that can pose a major risk to any salmonid that is in the bay.

When there is an epizootic in the bay, intense infestations of lice occur. To a layperson, the lice causing the problem would not even appear as lice—they are like dust on the fins, back fins and tails of fish. The period when the smolts go to sea—between March and May in any given year—must be kept clear of epizootics. That is the critical period in which management must take place.

The Convener: Several people want to come in. I will call Alan Wells, Steve Bracken and then Professor Todd.

Alan Wells: A lot of what I wanted to say has been covered. I emphasise the difference between sea trout and salmon—

The Convener: It helps if we do not repeat things.

Alan Wells: Absolutely.

I will pick up on Phil Thomas’s comment that sea lice come from wild fish. Originally, that was the case for sure—sea lice are a natural parasite and it is clear that the original infestations came from wild fish—but we are in no position to say where an individual louse came from and, because of the complexities that we have talked about, we certainly cannot track a juvenile louse from any given host to a subsequent infection. Scientifically, we cannot say where an individual sea louse came from or whether it came from a farm or a wild fish. The chances are that it is a bit of both.

Steve Bracken: I have just two points. To pick up on what Alan Wells said, it is important to stress that, when smolts go to sea, they have no lice on them and are completely lice free, so they acquire lice in the marine environment.

The second point picks up on what Ken Whelan was saying. The idea of a secondary net going around a fish farm to trap lice or keep lice out would not work, given the size of mesh that would be required. If we tried that, we would reduce the oxygen flow to the fish, which could kill them.

Professor Todd: I reiterate that the larvae are less than a millimetre in size. They are so small that it is physically impossible to contain them. Therefore, one of the consequences is that gravid females among farmed fish will by definition be releasing larvae to the wider environment. In a fjord or a sea loch, that gives a farmer a potential problem of reinfection of the stock and it must also impact on any adjacent wild stocks.

Those impacts go beyond the local environment. By the time that the juvenile lice that an emigrating smolt picks up become reproductive, the smolt will be in the Norwegian sea and will be interacting with fish from the east coast of Scotland, Norway and Russia. There will be cross-infection. The genetic analyses that we ran some years ago showed that, genetically, the population of Lepeophtheirus in the north Atlantic is a single population because not only are the larvae transported but the fish also move large distances.

There are two other important points. Lepeophtheirus is extremely unusual among parasites in that it shows 100 per cent prevalence on wild fish. The vast majority of parasite infection levels seldom get anywhere near 100 per cent because, by chance alone, some host will not be infected. That means either that the animal is extraordinarily effective at finding the fish or—more likely—that the behaviour of the fish is such that they will always be in the right place to encounter the parasite. You should not underestimate the efficacy of the parasite in maintaining that host-parasite relationship.

Professor Thomas: This is just a point of detail, but it is an important one. What has been said is correct. The area in which we would get problems is where sea lice on farmed fish are shedding the juvenile elements that become free swimming. However, the whole of the treatment strategy that the industry has adopted since the early 1990s has been geared towards counting sea lice on farmed fish and treating them before that shedding stage—treating adults to prevent the shedding.

The difficulty is that, when wild runs of salmon come in from the sea with heavy infestations of lice, the transfer of lice from the wild salmon to the farmed salmon tends to be a mixture of lice of different stages, including lice that are quite close to mature as well as lice that are at the free-swimming stage.

Nigel Don: Up to now, I understood that lice did not transfer except when they were in their first stages, when they are so small that they get out and about—the idea of a bloom was mentioned. However, Phil Thomas is suggesting that mature fish coming back from the sea bring lice at different stages and that lice at later stages in their development might transfer at that point. That is not what I thought that everybody else had told me. I thought that a mature louse would not transfer. Was I wrong?

Professor Thomas: Without getting too complicated, there are two different types of sea
lice, one of which often comes in not on salmonids but on other fish species. It can transfer in a range of ways. However, you are right in thinking that the predominant route of transfer is through the free-swimming stage.

The Convener: We must move on to specific issues to do with sea lice and the situation in the industry. We will do that after we hear from Alex Adrian.

Alex Adrian: Thank you, convener. It is important to remember in the discussions that we do not get caught up in thinking that there are absolutes here, because these are biological interactions that are subject to a high degree of variability because of commercial husbandry and management practices, the prevalence of wild fish and their stock status, environmental variables and seasonal cycles. There is no silver bullet solution. I stress that we are talking about biological interactions that need to be monitored and managed.

The first question was on how the bill differs from the 2007 act. The bill advocates the engagement that will lead to the management of the biological interactions. From both the wild fisheries side and the farmed fish side, there are variables and events on a seasonal basis that will either increase or decrease the severity and prevalence of particular infestations. It needs to be borne in mind that that is an on-going management issue. In my view, there is no point at which, in the absence of a vaccine or something like that, we can say that we have sorted it out. In the current climate, it is a case of on-going communication and management at a level that is pertinent to the prevailing local conditions. It is not necessarily about a national solution but about working at a local level at which the practical manifestation of both farmed and wild fish status can be most easily dealt with.

The Convener: Nigel Don has a further, specific question.

Nigel Don: I have a question about the publication of data on sea lice, on which we have heard different views. Would the publication of that data at individual farm level pose a problem for the industry? Will it not be published eventually anyway?

The Convener: Who would like to answer that?

Professor Thomas: I am happy to.

The Convener: I just point out that you said at the beginning that there is total access to records under the 2007 act.

Professor Thomas: That is absolutely right.

The Convener: If that is the case, then in the light of Nigel Don’s question when will all those figures be published?

Professor Thomas: Let me describe the context. The fish farming industry, like agriculture and all other parts of the food chain, works under a normal regime of statutory regulation—that is common across the piece. That statutory regulation works in all sections of the industry on the basis of having legally set rules and regulations and an inspectorate system that operates alongside. That is the system under which aquaculture operates at the moment.

As it happens, the aquaculture industry has gone further—that is partly for its own reasons; it is not entirely altruistic. For the past two years, we have been publishing area-based sea lice counts. Frankly, the ideal would be a monitoring system that is based on free-swimming sea lice in loch waters everywhere, because that would provide information both for the farmed fish industry and the wild fish sector.

What we have agreed to do at this stage, taking further account of the wild fish considerations, is to move on from the area basis on which we have been publishing. Currently, we use six areas across Scotland, which we decided was the most appropriate approach after analysis from a sea lice epidemiology standpoint—albeit that it was done for our own interests. In the future, however, we will move to a situation in which we will have 26 to 28 areas, so there will be a much finer disaggregation.

The convener asked why we do not simply publish the data for every farm. In my view, that would not contribute much because the issue is the sea lice in an area. There is also the fact that there is almost a moral situation, if I can put it that way, as far as the farmer is concerned. Where a farmer experiences a strike of sea lice coming in from the wild, it seems unreasonable, certainly from my standpoint, to tell the farmer that he has to put on a website every single tick infection that he has on his farm. It is not normal business practice in any part of the food chain.

I am sure that Alex Fergusson, for example, would react in exactly the same way if I told him that he has to put on a website every single tick infection that he has on his farm. It is not normal business practice in any part of the food chain.

10:30

The Convener: I think you have been named, Mr Fergusson.

Alex Fergusson (Galloway and West Dumfries) (Con): I thought I recognised it, convener.

I take the point, Professor Thomas. I no longer farm but when I did, and if I farmed now, I would
have to record every treatment that I undertook against ticks in a logbook that would be made available to the Department for Environment, Food and Rural Affairs on inspection. However, that is publicly available and, as I understand it, every other sector that collects site-specific emissions data has to report it to a regulatory body, which publishes that data. Can you convince me why salmon farmers should be any different?

**Professor Thomas:** I disagree on the detail of that. Let me put it this way: can you point me to any area at all in which individual disease, lice or tick occurrence on farms is published?

**The Convener:** There is a forest of hands.

**Alex Fergusson:** I am happy to leave it to others, convener.

**The Convener:** Douglas Sinclair had his hand up first.

**Douglas Sinclair:** Phil Thomas’s point is correct, in that we are talking about ectoparasites—parasites on the outside of animals, be they cattle or sheep. The difference is that the ectoparasites on the outside of salmon pose a significant risk to other people’s interests. If Alex Fergusson has his cattle in the byre in winter and they have ticks, ringworm or whatever else, unless it is something really bad, such as foot and mouth, the risk to other people’s interests in the environment is negligible. Lousy fish in cages in sea lochs in Scottish waters are a direct risk to other people’s interests. There is a disconnect between sea louse infestations and louse infestations on terrestrial animals.

I reiterate Alex Fergusson’s point. It is one of the few areas in the Scottish environment in which someone can be doing something that can significantly impact on someone else’s interests and there is no public access to what is going on. We regulate various areas. For example, if someone lives downwind of smoking chimneys on a factory and they want to find out what is in the smoke, they can find out from us—from the published record. Fish farming in Scotland is the one omission. For all sorts of reasons, it ought to be sorted out and the information ought to be published.

**The Convener:** A number of people want to come in on this issue.

**Ken Whelan:** I will talk about the experience in Ireland. Many of the farms that I can talk about would have sister farms here in Scotland. The situation in Ireland is that we have had public access to lice information for quite a number of years. In another life I was responsible for the monitoring in Ireland. My team used to monitor 14 times a year. The material was collected and analysed and within two weeks the farms were made aware of what the monitoring had shown. Within a month, the information was made available publicly.

There are huge advantages in that system. Phil Thomas talked about a lice strike. Whatever the source of a lice strike, if the information is published the full support of the state can go to the areas where the problems are, rather than being spread out widely throughout the fish farming community. There are huge advantages in that the areas where the problems are can be identified and solutions can be found.

My experience of the Irish programme is that it has worked very well in both the context of the farming sector and the context of the wild sector. I would recommend that sort of approach to you.

**Jim Hume (South Scotland) (LD):** I declare an existing farming interest.

I refer to something that Professor Thomas said. We already have diseases that have to be notified, including foot and mouth, sheep scab, brucellosis and tuberculosis. How serious are sea lice? Are they extremely damaging to wild fish and therefore should they be notifiable? We have plenty of examples of notifiable diseases that do significant damage to land-based industries.

**The Convener:** I am sure that people will want to respond to that.

**Guy Linley-Adams:** I want to talk about the scale of the lice problem in the context of the number of fish on a fish farm. An average fish farm will have about 300,000 fish—the farmers will correct me if I am wrong—and it takes a very low number of egg-producing lice on those fish to produce a very large number of juvenile lice that are outside the cage and in the wider sea environment. Those lice would not be there from the wild fish. It is a question of scale.

On a point of clarification, the 2007 act requires the industry and fish farms to keep records, which are available for inspection, but the records or copies of them are not held by the fish health inspectorate, so they are outside the scope of the Environmental Information (Scotland) Regulations 2004. The public does not have access to records unless the Scottish Government or its agencies hold them.

As Douglas Sinclair knows, I use the 2004 regulations fairly regularly against SEPA. I can get access to information about the amount of organic detritus from fish farms and information about sea lice chemical treatment residues in the sediments that surround fish farms. The fish health inspectorate and Marine Scotland science put on the website records of the number of fish that have escaped from fish farms.
The only piece of information that I cannot get is how many ovigerous lice are on the fish in the fish farm concerned, which is a surrogate for the number of juvenile lice that will come out of the fish farm and enter the wider environment. That is the gap that needs to be plugged.

Claudia Beamish (South Scotland) (Lab): I seek clarification on the reasons for confidentiality in relation to fish farms. Ken Whelan talked about what happens in Ireland and the committee has had evidence about the situation in Norway, where I understand that the approach to disclosure is more bold. At this stage, as a layperson who has been on two visits and has read the evidence, I think that the need for confidentiality needs to be balanced with the need to take account of public perception.

I am concerned about the issue. The Atlantic Salmon Trust said in its written submission:

"the Bill does nothing to take forward the concept of disclosure."

I thought that the need for accountability was a reason for introducing the bill. I am keen to hear what the producers think about confidentiality and related issues.

Professor Thomas: May I first pick up on some of the other points that have been made? First, there are notifiable diseases in fish farming, just as there are in farming. Secondly, Douglas Sinclair suggested that fish farming is different from terrestrial farming. That is not the case. Ticks on one farm will affect ticks on the farm next door, as I suspect the committee is aware. More important, perhaps, parasites on farm animals will affect humans, because humans come into contact with the animals. That does not happen in fish farming. It is simply not true that fish farming is peculiar and different from other industries.

On systems elsewhere, the Norwegians have exactly the same arrangement as we have in Scotland. The Norwegian industry publishes sea lice data on an area basis. The only difference is that in Norway the data is collected by the industry and published through a public agency website—there is no other difference in the approach that is taken. In Norway, individual farmers share sea lice data within groups, as happens in Scotland as part of the area management agreements, so there is a direct parallel in that regard.

I will pick up on what Ken Whelan said. The system is different in Ireland. Counts on farms are much less frequent than in Scotland, and I think that I am right in saying that the results are published retrospectively at the end of the year. The route that we have taken in Scotland is to publish quarterly data. We will continue to do that, and there will be much greater disaggregation of the data, so it will cover much smaller areas than it has done in the past. That is not being done for fish farming; it is being done specifically in relation to the wild fish interests.

Ken Whelan: On a point of clarification, in Ireland the data are published publicly every month, and they are available within two weeks. They are not published on a yearly basis.

The Convener: You have made that point. Thank you.

Alex Adrian: I want to make a point about context. The argument about making data available is being made on the basis that there are adjacent interests that may be affected by lice on fish farms, but it is the context of just how those adjacent interests are affected and the significance of that effect that is material here. I would suggest that the publication of lice data is material to those whose interests are affected and the level at which the lice are being managed. For example, in an area management system, it is entirely acceptable that a particular farm’s lice counts would be made available to the interests that may be affected within the management area.

If we are looking at the performance of the management area as a whole, it may well be that the lice figures that relate to the farms collectively in the area are more relevant because they will give an idea of how, collectively, that area is managing the significance of the effects of the lice. I would be interested to know why someone who is entirely unaware of the particular local context and significance feels that they should be privy to individual farm lice data.

I will give an example. Let us imagine a scenario in which a farm manages to keep its lice levels just below an agreed threshold and one in which a farm manages to keep its lice levels almost to zero but breaches the threshold on one or two occasions. In my view, no one really knows which scenario is worse and which has a greater effect on the local interests. Although in one case there has been a breach and in the other there has not, there is not necessarily a direct relationship between that and the impacts that emanate from the farms. I come back to the point that lice data is relevant only when the context is appreciated. Outside that, I think that it is necessary to ask why it should be made available.

The Convener: George Farlow wanted to get in earlier.

Councillor Farlow: I just wanted to say that Highland Council receives figures from Marine Scotland science. Even when the numbers of sea lice are within the bounds of the code of good practice, there can still be a significant impact on the environment. From a local authority point of view, the impact on the environment is a planning
issue that we would like to talk about as soon as we can.

Alex Kinninmonth: We can fully accept the argument that sea lice are naturally occurring, but we are interested in the industry’s management response to that. It is important that we get a proper and objective view of sea lice levels on a farm level. The proposal that has been put forward by the industry certainly needs to be discussed further by stakeholders before we can accept that it takes forward the openness and transparency agenda, which we understood was one of the underpinning elements of the Government’s consultation on the bill and the package of measures alongside it.

The evidence that the committee has received and the responses to the consultation on the bill would seem to suggest that the weight of opinion is that access to farm-level data in a raw or disaggregated form is the preferred option. That is certainly the view of the Scottish Wildlife Trust through Scottish Environment LINK, and it has been endorsed by individual organisations, the wild fisheries interests, SEPA, the Association of Salmon Fishery Boards and many councils in the aquaculture zone, including Highland Council. I could go on.

The aggregation of data can mask issues at local level. From the perspective of our members, it fuels speculation that there is something to hide in all of this. That needs to be remembered.

10:45

The Convener: There will be a chance for other people to come in. We must keep moving along, although there are perhaps some specific questions that follow on from those remarks.

Alex Fergusson: There are some other things that I would like to ask about, but I will move on because I appreciate the time pressure. Biomass was mentioned earlier—I think by Councillor Farlow. I ask Douglas Sinclair to expand on what powers are available to SEPA currently to deal with the biomass caused on fish farms. How often have those powers been used? How and when might further powers be created to reduce biomass due to sea lice infestation?

Douglas Sinclair: We currently issue a licence for fish farms under the controlled activities regulations, and it contains a range of limiting conditions designed to keep the discharges from the fish farm within the capacity of the environment. We use a variety of models to set those limits, aiming to ensure that the environment outwith the immediate vicinity of the fish farm is protected.

As I say, we use a range of models. Certain models are used to set the limit for the biomass on the farm—the amount of fish that can be kept on the farm—and different models are used to set the limit for the amount of chemicals that can be used to treat the fish. That can give rise to a situation in which, for example, the farmer can hold 1,000 tonnes of fish on the farm but may have access only to a sufficient quantity of medicines to treat 800 tonnes. In the consultation on the bill, there was a suggestion that there will be powers whereby we may be instructed to reduce the biomass consent in such circumstances to 800 tonnes—the amount of biomass that can be treated with the medicines that are available. We are open to that, but the provision does not appear in the bill because ministers probably already have that capability under their power to direct us to reduce biomass.

Generally, we have never taken the step to reduce biomass for reasons of sea lice management, because we expect that farmers ought to keep farms at a level of stock that they can treat with the medicines that are available to them—that would be good husbandry. We felt that straying into the realms of dealing with biomass in relation to lice would be straying into fish health matters, which are not business for SEPA to attend to. We do reduce biomass for other reasons. For example, where the impact of a fish farm on the sea bed is unacceptable, we may reduce biomass at those farms—perhaps five to 10 farms a year would fall into that category. However, we do not generally reduce biomass for reasons of sea lice management.

Alex Fergusson: Claudia Beamish described herself as a layperson and I very much fit into that category on this issue. Is there currently a power to revoke fish farm licences? If there is not, should there be? If so, under what circumstances should it be exercised?

Douglas Sinclair: SEPA has powers to revoke any CAR licence. The usual reason for that would be that the environmental impacts are beyond the sustainable limits that we have imposed. In the context of fish farming, if the sea bed was badly damaged and there was evidence of nutrient enrichment in the sea loch that was causing algal blooms, we might consider revoking a fish farm licence. It is not something that we do often, if at all. We would normally seek to reduce the level of impact or to reduce the level of production on the farm to a sustainable level. Most fish farms can be operated sustainably at a certain level; it is a question of finding the right level. Normally, the computer models that we use are reasonably accurate, but the environment is a living entity and is very variable. Sometimes, the models do not fit the environment and we find ourselves needing to
reduce the biomass on a fish farm. That happens on a small number of occasions each year.

**Steve Bracken:** It is important to stress that no farmer wants to have lice on their fish and farmers will do everything that they can to control the numbers that they have because, ultimately, fish can die from lice and we do not want that. Their health can also be impaired generally, and we do not want that either. Therefore, control is paramount.

We take reductions in consents very seriously. It is a bit like a supermarket being told that it is going to lose its delicatessen, meat counter and vegetable counter and being left to get on with running its business. We do not want any reduction in consent because that would mean fewer tonnes of fish being produced by the farm. It is, therefore, critical that we manage the farm in a way that keeps its tonnage matching the consent, looking at the environment at the same time to ensure that there is no detriment.

**The Convener:** Has Alex Fergusson finished his questions?

**Alex Fergusson:** Can I make one brief observation?

**The Convener:** Yes.

**Alex Fergusson:** An analogy was made between agriculture and aquaculture, and we talked about the differences earlier. There is a big difference in that, if a diseased animal escapes from a farm, it can be rounded up with the neighbouring animals and any other animals with which it has come into contact, and appropriate action can be taken. I do not think that that is the case with escapees from fish farms. That is a significant difference when we are discussing this type of fishery.

**The Convener:** I ask Claudia Beamish to be brief.

**Claudia Beamish:** I am not sure that I have had an answer that I can understand about the confidentiality issue. I am going to press people on this as I really would like to hear from the SSPO and others who are present the reasons for the need for confidentiality, in view of the points that I made earlier.

**Professor Thomas:** I can only respond as I responded before. The suggestion is that the data is confidential, but it is not. All data on all farms is available to the fish health inspectors at all times. Indeed, it is an offence to prevent a fish health inspector in any way from getting access to the data. That is exactly the same as the position in any other industry.

On the degree of publication of information on things such as practices on fish farms, we have published the code of good practice reports every year. The industry is in no way doing anything or indeed wishing for anything that does not apply to any other industry. It is in exactly the same situation. It is difficult to see why there should be an exception for fish farming.

In response to Alex Fergusson’s point about escapes, I note that there is an assumption that fish with diseases are escaping. It is difficult to support that assumption in any sense at all. If fish at fish farms are diseased, they will be treated on those farms. The levels of escapes are not as low as we would like, but they are already incredibly low. They have come down over the years, and that pattern will continue—there will be fewer escapes. I do not see the basis for the concern about the risk posed by escaped fish. The numbers simply do not support that.

**The Convener:** I ask people to make brief remarks, as we have a lot of questions. We do not want to shorten the winter, so we would like to get through them this morning.

**Alan Wells:** The discussion and the representations that came through the consultation and have come to the committee are about the publication of data. The SSPO said that it does not want to publish farm-level data for reasons of commercial confidentiality. I do not think that that point has been answered. I believe that it is important to publish local-level information because it will allow the industry to demonstrate its management response. When there is a problem, no matter whether it has come from wild fish or from cross-infection between farms in an area, the industry will then be able to demonstrate at the local, individual level how it has responded and taken action on that basis.

If we look at the SSPO website and the data on the north mainland, which is one of the six areas, we see that across that entire area, for the whole of the month of June, sea lice levels were 458 per cent above the treatment threshold level. We could look at that in a few different ways. We could decide that all farms in the area are 458 per cent above the level, but I do not believe that that is the case. I believe that two or three farms had serious problems with sea lice. It is entirely within the public interest for people to know where those problems are and that they are being dealt with.

**The Convener:** We have already heard the arguments about having measurements in 26 areas, so we have heard that piece of evidence.

Steve Bracken and Professor Richards have comments on this point.

**Steve Bracken:** Our sea lice numbers are published on our Marine Harvest website, which we have done since 2009. The figures are not confidential.
Randolph Richards: There is strict veterinary control of what goes on in all farm sites. The healthier fish working group was asked to come up with a mortality level that required notification to Marine Scotland, which it did. Marine Scotland can therefore investigate independently the cause of an increase in mortality to see whether anything serious is happening—whatever the cause—or whether a new problem is developing. That is clearly set out in the workings of the group and is followed by the industry.

The Convener: We will move on to the overall approach to regulation in fish farms. Graeme Dey has a question on that.

Graeme Dey (Angus South) (SNP): Good morning. I am interested in the general picture. Is fish farming in Scotland subject to a more or less stringent regulatory regime than fish farming in other countries? What are the effects of regulation on the competitiveness of the industry?

Professor Thomas: First, I must explain why fish farming in Scotland is different. Scotland’s ability to fish farm is disadvantaged because we have relatively small sites. For example, our sites cannot be as big as sites are allowed to be in Norway and our cost base tends to be higher because of the scale of the sites. That is offset, frankly, by the industry having done, over quite a number of years, a good job at placing Scottish farmed salmon as the premium product in the world market. In effect, we balance off higher costs against the better price that we get for salmon worldwide.

If you want to make comparisons on regulations around the world, it is probably best to look at the major competitors, which are Norway, Chile and North America, including Canada. The regulations in Norway are different, and many people would argue that they are much easier to operate. For example, Norway has a much more progressive licensing regime for new medicines. That is difficult for us because, sometimes, the Norwegian industry will get access to a new medicine a number of years before it would appear in Scotland. That is partly due to the regulatory system—the regulations are not entirely Scottish; some regulations come from the European Union—which does make it that bit more difficult.

In Chile, the regulations are—I need to be careful how I say this—much less restrictive than they are in Scotland. It will always be one of the lowest-cost producers in the world. In any market where Scotland competes with Chile, we would only ever compete for the 1 or 2 per cent in the premium part of the market because we cannot produce competitive commodity salmon.

Regulation in North America varies from region to region. Overall, on things such as medicine, we are quite reasonably well placed. It has a shorter list of medicines to use than we have; some of its operations, such as new developments, are rather more flexible than ours; and it does rather well because there is a national plan in Canada that is focused on developing fish market farming. The Canadian Government is being very supportive in particular regions in covering the costs of new farms and providing investment grants to people coming in.

Ireland is the only other country that I should mention, and the situation there is interesting. The industry has stagnated for a number of years—Ken Whelan can probably comment on that rather better than I can. The Irish Government is investing to develop Government farms, which would free up the development of the industry.

I will make a final point, after which I will be quiet. You might ask why there is all this activity and investment in aquaculture. The reason for that is simple: if you look at food security, you will see that, by 2030, we will not balance world food supplies without further development of aquaculture because there will be a protein gap that simply cannot be filled.

11:00

Councillor Farlow: The Highland Council is very supportive of the Scottish Government’s plan to expand fish production by 50 per cent—indeed, it is in our council programme—but we recognise that such a move will at times give rise to environmental difficulties. The council produces supplementary guidance on wind farms to encourage developers to know the framework within which we are working, and has a wish or an aspiration to produce similar supplementary guidance for the aquaculture industry to encourage—how shall I put it?—efficient and effective movement towards the granting of planning approval to the industry where appropriate to increase the speed of that expansion. If the industry came to the council for pre-application advice and responses, it would be a very useful move and the members—if not the officers—would be keen for that to happen.

Douglas Sinclair: I guess that, as one of the regulators, I should respond.

I do not disagree that much with Phil Thomas. When I look at what is happening in developed countries such as Canada, Norway and Scotland—I will leave Chile to one side for the moment—I think that the situation is a bit of a curate’s egg. All are probably good in parts. In Scotland we do—or have to do—certain things that cause the industry problems. For example, Phil Thomas mentioned the situation with access to medicines, which is more complex in Scotland.
as a member of the EU than it is in a country such as Norway that has signed up only to parts of EU treaties.

Overall, when you take into account complexity, costs and the number of regulations, not much separates the developed countries. A comparative cost study of Canada, Scotland and Norway that was carried out a few years ago put us in the middle in terms of cost per tonne production. We—and I do not just mean SEPA—do quite a good job with regulation in Scotland. It is necessarily restrictive in parts—that is the nature of regulation—but it contributes to the premium value that Phil Thomas’s members enjoy. People who buy the salmon believe that they are buying something from a good, clean and well looked-after environment.

Alex Kinninmonth: My comments are less about regulations than about responding to Professor Thomas and Councillor Farlow’s points.

On Professor Thomas’s comments about premium quality, one might argue that Scotland is not the best place in the world for salmon farming, given various aspects such as costs and size that have already been mentioned. We should support the industry on the basis of the environment’s carrying capacity, but the growth figures that Councillor Farlow has quoted and which, as far as I am aware, are supported by the Scottish Government do not take that into account. I really think that that needs to be taken on board. Growth can take place as long as it is not detrimental to other environment users such as shellfish cultivators or tourism operators; after all, they are all quite important.

As for the point about food security, no one should be under the illusion that Scottish salmon is going to feed 7 billion mouths. It is just not a great argument. However, we can be a world leader in sustainable production, act as a knowledge base for sustainable practices and sell Scotland’s environment as a brand that stands for fantastic produce from a healthy and clean environment. Healthy seas and coasts and wild salmon in our rivers are hugely important to the people of Scotland, and we need to retain all that if we are to go forward with the industry.

The Convener: As you will understand, we will ask many different people the same questions in due course. We need to move on, but you may be able to come back in.

Graeme Dey: What proportion of the fish farming industry is signed up to the code of good practice and what do inspection regimes show about the levels of compliance?

Professor Thomas: The answer is that 98 per cent of producers are signed up. The reason is that 98 per cent of producers are in the SSPO and it is not possible for a producer to be an SSPO member unless they are signed up to the code of good practice. It is almost a quasi-statutory situation.

The compliance levels are in the high 90s. As in every food industry in the United Kingdom and elsewhere, non-compliance mainly happens when there is a change in regulation, particularly if it involves a change in record keeping. It normally takes the industry about 12 months to implement such a change fully and catch up.

If there is a change in regulation that requires a different approach to record keeping, there will be an increase in non-compliance—it will still be small—in relation to that component. That disappears within 12 months as people catch up and get their records systems in place.

Graeme Dey: Are there any other views on that?

Professor Richards: The industry is severely audited by a vast number of different organisations, in particular the supermarkets, which insist on a higher standard than is required by legislation. It is probably more regulated than any other production industry.

Professor Thomas: Steve Bracken can probably comment on that.

Steve Bracken: At the end of November, we examined the number of audits that we have had in Marine Harvest this year. We have had 270 audits this year and have more to come. Those relate to 14 different schemes and organisations, and are in addition to the code of good practice, of course.

Graeme Dey: Would it have been possible to introduce the measures that are in the bill through a statutory code of practice or for the industry code to be amended to reflect such measures? What approach would have been best?

Guy Linley-Adams: If your question is partly about providing farm-specific sea lice data, that can easily be dealt with by amending the Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, which was drawn up under the 2007 act. Primary legislation is not needed.

Professor Thomas: The difficulty with statutory codes is that they ossify. The advantage of having an industry code is that it can be revised quickly to take account of best practice and new developments.

I take exception to the point that was made earlier about Scotland seeking to have a world-class sustainable industry. It is not that Scotland is seeking to have it, because it already has one. The industry standard has been driven up over the years by the code of good practice. That is why
The code needs to be led by the industry, albeit that the Scottish Government selects from the code the elements that it needs to build into its regulatory inspection regime.

**The Convener:** We will move on to questions from Claudia Beamish on fish farm management.

**Claudia Beamish:** I have a quick supplementary question on the point that has just been made. In the context of our discussions so far, will Councillor Farlow expand on the comment in Highland Council’s written submission that

“It is, however, disappointing that a number of the proposals set out in the consultation have not been carried forward into the Bill”?

**The Convener:** That is not a small point.

**Councillor Farlow:** One of the issues that we had concerns fish farm management.

**Claudia Beamish:** I will come on to that, so we will leave that point until we come to questions on it.

**Councillor Farlow:** As I mentioned before, sea loch environments are of huge concern to Highland Council residents. As Alex Kinninmonth has pointed out, there is a huge difficulty with expanding the industry in pristine lochs at the rate that the Scottish Government has suggested. We want to see how that is managed. For example, given the number of unused Crown Estate licences, the Highland Council believes that there is plenty of scope to advance the industry within any guidance that might be issued. We just wonder where we will be with that if—I am not criticising anyone in particular—companies take a dog-in-the-manger attitude to prevent expansion of the industry. In the interests of promoting jobs and economic growth in remote and rural areas, we would like to see changes in that regard.

**The Convener:** That takes us back to the discussions at the time of the 2007 act on the degree to which sites are owned but not used. I raised questions about that at the time, but it sounds like not much has changed. Perhaps we can come back to that in the wrap-up, but some of those issues might be encompassed in our next set of questions on fish farm management, which Claudia Beamish will ask.

**Claudia Beamish:** I hope that the panellists will find it helpful if I ask a whole range of questions, as my colleague Nigel Don did, so that we can open up this area of discussion.

Can anyone clarify the difference between fish farm management agreements and fish farm management statements? What proportion of fish farms are not part of such agreements, and what problems might that pose? What do the panellists think about the requirements in the code of good practice on the preparation of agreements and statements that the bill will require all fish farms to follow? Who should be involved—from our perspective as a committee, it is very important that we try to understand this—in the production of area management agreements and statements? How are the areas covered by agreements delineated?

I hope that those questions open up the subject in a way that is useful to the panellists.

**The Convener:** Who wants to kick off? Alex Adrian’s organisation has been responsible for issuing many fish farm licences.

**Alex Adrian:** Let me respond first to the question about management agreements. As I indicated, we think that such agreements are a key feature of the bill. Local management is a key element in managing the interactions both between farms and between farms and adjacent interests such as wild fisheries. In effect, the legislation is about trying to manage relationships, because good management agreements are based on good relationships. It is very hard to legislate for relationships, but what the legislation can do is advocate for the need for people to engage. That is the starting point.

Let me make two points. First, there has to be a degree of pragmatism on the part of both farms and wild fisheries as to where and how they sit in a way that correctly addresses biological connectivity. Where lines are drawn not simply for commercial or other reasons, they need to reflect proper biological connectivity and where they are discrete from other areas. That is an important point.

Secondly, as regards what should be included, the bill sets out the broad-scale framework, but I would leave it to those who constitute the members of a management agreement to decide exactly how things are managed. There is no point in prescribing nationally how to manage local circumstances. The point of local management agreements is that their application is down to the participants in those agreements.

**The Convener:** Any supplementary questions?

11:15

It is fair to have some guidance on expectations around the reporting of performance in relation to how locally set treatment thresholds, fallowing or other schemes have been addressed. How agreements manifest themselves will be particular to certain areas, of course, but, from a framework point of view, it is fair to expect those issues to be addressed.

Once the farm management agreements between different farm areas are in place and the industry can demonstrate that its component parts
can live happily side by side without one farm having an influence on another farm, we will start to be able to demonstrate the reduced potential of any effect on adjacent interests. To my mind, the farm management agreements involve farmers sitting side by side with other farmers and with wild fish interests.

There is precedent for what I am talking about. We should not lose sight of the fact that we had the tripartite working group, out of which came the area management agreements, many of which are still in place and are still working extremely effectively. We are not reinventing the wheel. We simply need to bring everyone into the fold.

Alan Wells: I agree with a lot of what Alex Adrian said, but there are a couple of aspects that are slightly confusing. First, a person who carries out a fish farming business at a fish farm that is located in a farm management area must do various things, but there is not actually a duty to farm within a farm management area. I believe that that would be covered by the code, but I would like there to be some thinking along those lines.

There is also some confusion around the hierarchy between a farm management agreement and a farm management statement. My understanding is that a farm management agreement functions when there is more than one operator in an area, and the operators agree how that area is to be organised, whereas a farm management statement functions when there is only one operator in an area. However, it has not necessarily been made clear that an area with more than one operator might have a farm management statement if the operators cannot agree on a farm management agreement. I would look for more clarity about that. When I came into this area, I thought that there was an agreement if there were more than one operator and a statement if there were only one. However, there seems to be a little bit of dubiety on the outskirts of the issue.

The Convener: Can Phil Thomas dispel the dubiety?

Professor Thomas: Yes. First, on Claudia Beamish’s point about statistics, as far as I am aware, everyone in the SSPO—only 2 per cent of people are outside the SSPO—is working under a farm management statement or a farm management agreement. At the last count, two independent farms were not in the SSPO, both of which are on the tips of islands in distant areas of the country. They do not formally operate in a farm management statement situation because they are single farms in particular areas, but they abide by SSPO requests.

The way in which farm management areas are determined takes into account hydrographic factors such as the bay areas that the farms are in. Biosecurity requirements in relation to vessel movements are also taken into account. A number of factors come into the farm management area designation.

In essence, farm management areas that are too big simply become unmanageable. That is one of the reasons why Chile has such enormous problems. It has a formal, Government-driven farm management area system, but the areas are far too big. Norway did not have a farm management area system, but it is now basing its system on Scotland’s system. However, within these four walls—this is not to be recorded, as they say—my judgment is that Norway is making exactly the same mistake as Chile did: it is making the areas so big that they are unmanageable.

The agreements are by nature more of a plan, because they say that two or more companies are going to work together. As circumstances change—as management changes—the companies might need to adjust what they do, but they would adjust it in concert, so there is an active process going on around the agreements.

To clarify, from memory, farm management statements were introduced about four years ago for a specific purpose. A number of relatively small producer companies were operating in particular areas, and we became concerned that if somebody else established themselves in such an area, they might want to manage it differently from the way in which it was being managed. Farm management statements were put in so that the companies that were already in an area could put down a marker and say, “This is the way that this area is managed.” If someone wanted to come into an area and develop, they would need to fit in with the area management system that was in place or negotiate changes. That was the reason for those statements.

The section of the bill that deals with that has a number of errors—in inverted commas—in it. There are one or two factual mistakes and there are some points of detail that are simply incorrect in terms of the operation of the system. We have raised those points with the bill team and we are hopeful that the team will address them as the bill moves through to stage 2.

The Convener: Those points should be in the written evidence.

Councillor Farlow: We would like whole loch, or complex of lochs, management areas so that all the users of a loch would be able to have a public input into the planning—as the old saw goes, if you fail to plan, you plan to fail. We would also like to carry on with our input into, for instance, the
Pentland Firth and Orkney waters marine spatial plan, which Marine Scotland has commenced. Marine Scotland has found our expertise in terrestrial planning useful when it comes to engaging with all users in the Pentland Firth. Members will understand that there are some dangerous users of the Pentland Firth and Orkney waters and some relaxed people who carry on their business without incurring environmental damage—I think that the convener knows whom I am referring to.

We would like to work like that all the way round the Highland area—85 per cent of the people in the Highland Council area live within 5 kilometres of the coast, so the issue is hugely important for us. Fifty per cent of Scotland's territory is marine environment, so we are hugely aware of the significance of planning in marine waters around our coast, particularly in relation to the industries that are bound to raise hackles. If you want to fill a room in Ullapool, have a discussion on fish farming or onshore wind—you would be able to fill Hampden Park, I can tell you that. Those are huge issues for all members of Highland Council. Our aspiration is for whole loch, or complex of lochs, management areas.

Incidentally—this is a point for Phil Thomas—that would discourage scrutiny of the commercial production figures for one particular fish farm because you could take a holistic view of the area. Many other people would be using the loch and we would like to see that as the basis of the approach. Also, we have experience of discussions with Argyll and Bute Council in relation to cross-border lochs. It would be daft if we had one regime for Highland Council and did not agree it with our colleagues across the border.

Alex Adrian: Our interpretation is that—as Phil Thomas said—the statement describes an area that has one farming incumbent, and that if a separate company was to come in, it would agree to adhere to the terms of the statement, which at that point would stop being a statement and become an agreement.

On area management, an important point—as Councillor Farlow said—is that we want those areas to be set out. That will come down to filling knowledge gaps on hydrography and marine topography with regard to exactly where the biological connectivity is—and is not—in relation to the farms.

There is one important element that relates to regulation. Everybody recognises that a well-run management area would incorporate things such as a synchronised fallow among all the farmers in that area. I do not think that any farmer would dispute the fact that that would make a significant difference to their ability to control lice and to retain the effectiveness of treatment compounds.

However, in order to do that, those farmers will need farms elsewhere to maintain their production. That brings into play the strategic nature of area management agreements with regard to planning. A planning proposal in one area may have effects and impacts to be considered in that area, but it may also have material benefits in another area. Where a particular development may allow a synchronised fallow to be undertaken elsewhere, there is a net strategic benefit to that development. Regulators will need to bear that in mind: it is not just the farm but its wider impact on the strategic management of the operation that is important, and that will be key to making the area management principle work.

The Convener: There are a lot of questions still to come, but I will let Alex Kinninmonth in first, followed by Margaret McDougall and Alex Fergusson.

Alex Kinninmonth: I will try to be brief. It is my understanding that farm management agreements and statements should undertake to co-ordinate activities in an area. I am not sure that having a farm management statement as opposed to an agreement promotes such co-ordination, as it would seem to undermine efforts to co-ordinate within the agreement. However, those things seem to be presented on an equal footing in the bill, so perhaps that should be examined.

With regard to Councillor Farlow's points, the agreements and statements should be publicly available in the interest of openness and transparency, and they would certainly benefit from the participation of stakeholder groups that have an interest in the marine environment, the wild salmonid environment or any other activities that take place. I support that view.

Margaret McDougall (West Scotland) (Lab): Good morning, gentlemen. Fish farms mostly contain salmon. I will widen the issue out. Section 1(2) of the bill inserts a provision that requires marine fin-fish cultivation sites to "be party to a farm management agreement, or ... statement."

That may have little relevance for those businesses, but it would have an impact on, and add a burden to, the sector.

What are your views on a mechanism for mediating between parties and when it should be used? Could there be requirements for cultivation or certified organic standards that differ from those for conventional farms when contentious issues arise?

The Convener: Does anyone want to pick up on those points?

Professor Thomas: I am happy to chip in. The difficulty is that, in the industry's view—which I
support—farm management areas are necessary to allow for co-ordination between farms. There is a valid debate on whether those areas should relate to particular fish species or not.

For instance, there is a particular issue in relation to salmon and trout coming together, because of shared disease issues. We could argue that, if we were to farm cod—we do not at present—some farm management agreements might have quite different requirements, but agreements would still be needed.

11:30

I am not aware of any area at all, or any farm management agreement, where there has been a problem in relation to organic production. A number of SSPO producers produce both organic and non-organic salmon. From memory, one fairly small producer that is not an SSPO producer produces organic salmon independently, but that is in an area where there are no other farms around, so the issues never arise. However, in farm management agreements, there are no difficulties with the two types of production system.

I think that Margaret McDougall used the term “restitution”. The whole basis of a farm management agreement is to get people in an area to co-operate in a way that avoids the possibility that they will in any way interfere with or damage other businesses. To pick up on Councillor Farlow’s point, that means managing an area so that, in effect, the set of companies in the area all operate under the same regime. Therefore, as far as I am aware, that issue has never arisen.

The Convener: Does Alex Fergusson have any further points?

Alex Fergusson: Yes, I have one question on the subject. Would anyone like to comment on the possibility of the details of FMAs and FMSs being made publicly available in the interests of openness and transparency—on a register, for instance? Does anybody think that that is a good idea or, perhaps, a bad one?

Professor Thomas: I am sorry to hog the conversation, but the agreements are live documents. They will change regularly, depending on what the farms do to vary their production cycles and so on. I have to tell you that fish farming is not a nationalised industry, although I am beginning to doubt that, given some of the comments that have been made. We must have a system in which companies can operate closely together to manage areas. I see no benefit from companies making that information publicly available and I would envisage an additional cost to and burden on companies from doing so. It is as simple as that.

Alex Fergusson: I hope that I can be forgiven for asking questions on issues that we need to know about, simply to tease out the issues that other people raise with us.

Professor Thomas: Surely.

Alex Fergusson: That is what we are here for.

The Convener: Indeed.

Mr Bracken, when we visited Loch Linnhe, we talked about the fact that there are something like 17 fish farms between the head of the loch and the sea. Can you remind us of the details? That might help with Alex Fergusson’s point.

Steve Bracken: There are not as many as 17.

The Convener: It must have been the wind—I could not hear you properly at that point.

Steve Bracken: It probably was.

We have four farms in Loch Linnhe and, further south, Scottish Sea Farms has a presence. Therefore, it is important that we work together and exchange information about, for example, when we are going to treat for sea lice. That is key to both of us producing top-quality fish. There is no question but that that is the way that the industry has to operate. We need area management agreements between companies. Basically, such agreements involve companies sharing information on what they are doing and when they are doing it.

Guy Linley-Adams: Whether the agreements should be on a public register depends on what they are about. If they are about on-farm activities within the black box, if you like, of the farm—activities that are contained in the farm and stay within it—there is no need for anything to be on a register. However, the moment those agreements relate to something that goes out into the wider environment, where other interest groups, including wild fish interest groups, have a legitimate public interest, of course there is a need for the agreements to be in the public domain.

Margaret McDougall: I feel that I did not get an answer to my question on mediation and the requirement for a mediation mechanism. I seek clarity on that. Does the panel feel that there is no need for a mediation mechanism, because everyone will sign up to the agreements and everything will be hunky-dory?

Professor Thomas: I apologise if I was not clear earlier. The position is that there is often mediation or facilitation for farm management agreements, which is provided by the SSPO. Having a statutory producers organisation allows companies to get together and share information in a way that allows matters to be facilitated. The situation that historically has been tricky—this partly explains what I said earlier about farm
management statements—is when a company, often a new producer, comes in and buys existing fish farms. That can mean that, in an area where, for example, two companies operate, when the ownership of one company changes, the new company might want to do something slightly different. When that happens, there is a need for facilitation, but I would debate whether one would call it mediation. Again, that would be provided through the SSPO.

We would not necessarily do that directly—we might bring in people. For example, we had a big area in Shetland around St Magnus Bay, for which our perception was that we needed to expand the farm management area and get an agreement for a bigger area. Three companies were involved, and because they all had slightly different systems, our approach was to get them to agree to operate through a single independent veterinary adviser who would, in effect, advise all three companies. That allowed the companies, over about 18 months, to bring their systems into line so that there was a single area for management.

Therefore, that facilitation process takes place already. I apologise if I was not clear on that earlier.

The Convener: Thank you for that point. I see that Claudia Beamish wants to come in. We are short of time on this issue, but there will be a chance for other members to come in later.

Claudia Beamish: It is a quick question this time.

The Convener: Is it?

Claudia Beamish: Yes.

Should there be a fallback position that would allow ministers to intervene if an area management statement was regarded as inappropriate?

The Convener: Let us ask the minister that.

Claudia Beamish: Okay.

Professor Thomas: Again, I can give a direct response. Such a mechanism already exists, in the sense that, if the fish health inspectorate puts a risk rating on an area that it inspects, and if it thinks that any element of a farm management agreement would increase the risk in the area, it would increase the intensity of inspection. There is therefore pressure on companies in that, if they do not want a fish farm inspector with them every day of the week, they try to ensure quickly that anything that the fish farm inspectors object to is addressed. That is the fallback position, if you like.

The 2007 act has provisions that allow the direct intervention of the inspectorate in running a farm, but I do not think that anybody would particularly want to go down that route; it would be much better for the farmers to respond to issues and run their own farms.

The Convener: We have about five subjects to deal with, so I would like shorter questions and answers. Jim Hume will lead on the issues of escapes, equipment and taking samples.

Jim Hume: I will divide my questions into two and address the issue of escapes in the second part. The bill will allow the Scottish ministers to make subordinate legislation for technical requirements for equipment, which will have to be deemed fit for purpose. The improved containment working group will work on updating that. The bill also provides for a technical standard for Scottish fish-farm equipment. What do the panellists think about the approach that the bill has taken on that? Perhaps you could also give information on how technical standards in Scotland compare with those in other areas.

The Convener: That is a start.

Alan Wells: The technical standard will inevitably be delivered in secondary legislation, because it is still being developed. Steve Bracken chairs the group that is developing the standard, which provides a welcome way forward. Through that group, information was collected on the reasons for escapes. In 2010, about a third of escapes were due to human error and had nothing to do with technical standards. It is important to put that point on the record.

It is also worth making it clear that, although reports of escapes are by definition limited to reported escapes, we are aware of quite a number of unreported escapes. I will give one example from the freshwater side. Loch Shin in Sutherland is impacted by a hydroelectricity scheme, and smolts there were having difficulty in getting past the dam.

The local fishery board and the local trust set up smolt traps on a number of the tributaries into the loch to intercept smolts, which could be transferred to the other side of the dam. The area has two freshwater farms and, in one of the tributaries—which was near one farm—more than half the fish were of farmed rather than wild origin. However, the tributary that was nearest to the other farm had no fish that were of farmed origin. In 2011, 288 non-native salmon were caught in the trap in one tributary into Loch Shin. Last year, 540 fish were caught in that trap. However, no escapes were reported at that loch. There is a problem above and beyond what is reported.

The Convener: You have put that on the record.

Alex Adrian: The standard will be incorporated into secondary legislation, but a process that incorporates equipment development must be
addressed, too. That is because the industry moves ahead quickly with technological developments and because of things such as proposals for offshore farming.

In many cases, no one may be very confident about how what has been proven to work in one environment will behave in another environment. There must be scope to allow producers of equipment to deploy and test it, and they must know that they can undertake a process to have their equipment certified as or tested for being fit for purpose in particular environments. That is about process as well as specification.

Steve Bracken: When the improved containment working group was set up, the universal belief was that we needed a technical standard for the salmon and trout industries. We looked at Norway, because it leads on such legislation. When we looked in detail at the standard there, which is called NYTEK, we realised that it was very complicated. More than 90 people were involved over 10 years in developing that standard, which was a huge piece of work. The standard does the job, but it did not fit our bill for being understood day to day on a fish farm.

We have gone for something that will be understandable by farm managers, their staff and managing directors. The document must be not quite unputdownable but readily accessible and understandable by most people who are involved in the industry.

Alan Wells is right about the human error aspect of escapes, which is the second part of what our group is doing. The equipment is being looked at and we are ensuring that it is fit for purpose on all sites but, when sites are given good equipment, it is key that people are well trained in its use. Some companies in the salmon industry have developed in-house containment training schemes, and we want to spread that throughout the industry. We look at containment in the same way as we look at sea lice: it is an industry issue, and if we have good ideas we want to be able to share them.

11:45

Angus MacDonald (Falkirk East) (SNP): With regard to escapes, I am curious to know whether any thought has been given to using fish that are sterile. Has there been any discussion of that within the industry?

Steve Bracken: Yes, there is discussion and on-going work on that. However, we see our job as ensuring that we keep our fish where they should be, which is in the nets and tanks. Therefore, our key priority is ensuring that we have safe containment facilities for our fish.

Ken Whelan: I will make two quick points. There are two ways in which fish can escape. First, there is the classic escape when a cage goes down. Secondly, given the numbers that Guy Linley-Adams mentioned—we are dealing with hundreds, thousands and millions of fish—there is always leakage of some small fish over time, particularly from freshwater containment. Funnily enough, it is the small fish that may pose the greatest biological threat, because they can adapt to the environment better.

For decades, we have discussed how to quantify escapes in the debate about fish farming. There are two new approaches that we might look at. First, in the context of a very large programme that I was involved in that looked at salmon at sea, we have developed new genetic techniques that can quickly tell us whether a fish is of fish-farm or wild origin. We need to monitor the wild spawning stock—particularly the juveniles—to quantify whether escapes are a problem, and some of that work is already on-going.

Secondly, I encourage the industry to consider hard tagging. Systems are now available whereby nose tags can be put into baby salmon. If even a proportion of salmon at the sites where there are concerns were tagged with those hard tags, at least we would know where the fish were ending up and exactly which farm they came from. That could be useful in the context of individual farms about which there are concerns.

The Convener: The point that Alan Wells made raises a question about the fact that, on the same inland loch, fish are being bred both for the wild salmon stock and to feed into fish farming. He mentioned Loch Shin, which is in my constituency, and I know the circumstances there. We will try to tease out the concerns. For example, I would not like it to be said—because we do not know—that the hatchery that is breeding smolts for the river is any better than the hatchery that is breeding smolts for fish farming. That fish farming company is working in five other lochs. We must be careful about getting balanced information, which we will try to get in written form later. In some lochs, fish are being grown for both wild and farmed circumstances within the same farming structure. That is where the technical standards are important. We must know the issues and we will explore them a bit further with other witnesses.

Jim Hume: We have heard that human error is part of the problem. Do the witnesses think that we should have mandatory training in the use of fish-farm equipment? Should there be regular sampling of fish that are being farmed? Would it be practical to tag fish? It would be useful to know.

Professor Thomas: I will address all those points, but I will begin with your previous point. The industry’s main concern about secondary
The industry should have no problem with the notion that Ken Whelan has raised of wild fish being sampled and their genetics tested. However, there is a technical problem with the way in which the bill is written, as the text suggests that an escape at one farm could trigger sampling at every farm in Scotland. We think that that is unreasonable, although we have no difficulty with the notion that, if there is an escape in an area, farms in that location should be sampled.

The important issue is that wild fish, not farmed fish, should be monitored. If we are going to look for escapes, the wild fish population is the key.

**The Convener:** We have several more questions to ask. People will be wondering when I am going to suspend the meeting for human purposes, so I ask members and witnesses to keep their remarks short.

**Alan Wells:** I will quickly respond to the points that Phil Thomas made. First, I will give an example of why it is important to be able to sample widely. With regard to Loch Shin, the first time that those smolts were found in the wild, the fish had already been moved from the freshwater site into seawater. If we want to find out where the escapes come from, we have to be able to trace them to the seawater cage, wherever that might be, and sample from there. That is why we need a wide system.

I agree with Phil Thomas that we need to be able to sample the wild fish but, equally, we need to have the baseline data for farmed fish. The Rivers and Fisheries Trusts of Scotland is operating a project to consider that issue, but the aquaculture industry appears to be unwilling to provide the baseline samples, which makes determining the level of the problem, if there is one, almost impossible.

**Alex Kinninmonth:** We have perhaps moved on from this point but, going back to the causes of escapes, 30 per cent of escapes in 2011 were caused by predators. In the development of a technical standard, we need to prioritise gaps in knowledge about how predators attack the net so that we can find the most effective and benign way in which to deal with the problem. Last year, 242 seals were killed at fish farms in Scotland. That is no good for wildlife and, frankly, it does the industry no favours. The development of that standard really needs to be prioritised.

**The Convener:** Graeme Dey wants to come in on that point.

**Graeme Dey:** When trawling through the written submissions, I noted an assertion that only 20 per cent of fish farms possess anti-predator nets, and that only 13 per cent of them are actively being used. If that is correct, does that mean that seals are not a major problem for the industry, or is it that there is an overreliance on obtaining shooting licences or using acoustic deterrents to deal with the issue?

**Steve Bracken:** We used anti-predator nets back in the 1970s and 1980s. The nets hang just outside the main net that contains the fish. Their mesh tends to be between 4 inches and 6 inches. I have seen for myself that, when those nets are deployed, all sorts of wildlife gets trapped in them, and it is extremely unpleasant.

We, like many others in the industry, have gone down the route of tensioning nets. That is a function of the size of the pens that we are dealing with today. We have a bigger volume of net, with some of the bigger nets having the volume of five Olympic-size swimming pools. Those bigger nets have to be really well tensioned, which makes it hard for the seals to attack the pen.

In addition, we have put seal blinds into the base. Those are nets of finer mesh that make it hard for seals to come up from underneath and see fish. We also use acoustic deterrents, which are an important part of our equipment, although I am aware of the issues with cetaceans. The design of the equipment is being considered so that it does not affect cetaceans, but there is a lot of work to be done on that.

We would much prefer to find ways of keeping seals away from our fish. At the beginning of next year, we will trial the use of a copper-based mesh in the base of one of our nets to see what happens. We are considering new materials and, in particular, sapphire netting, which is high-density polyethylene. Stainless steel can be run through that netting. All netting developments are being looked at seriously.

**Graeme Dey:** In practical terms, what prompts you to switch on the acoustic deterrent, or do you leave it running?

**Steve Bracken:** That is a good question. That depends on the farm manager and what he believes works best on his farm, based on his experience. Some farm managers will switch it on from the beginning, as they do not want seals coming near the farm at all; other farm managers will wait until there is a problem before putting on the device. Seals can get accustomed to the...
noise, so it is down to the farm manager to use his judgment on how best to deploy the device on his farm.

The Convener: You will understand that we are concerned with noise in the sea in a wider sense and the impact on wild animals and cetaceans, because it is a potential hazard for them. Have dolphins or whales caused you any difficulties in sea lochs?

Steve Bracken: Anecdotally, farm managers will say that they have on occasion seen porpoises and dolphins in the loch when the seal scarer has not been on. When it is switched on, they stay around before moving out. That is not based on a scientific trial, so I cannot say whether it reflects the situation accurately.

New developments are coming along all the time. One new device that is on the horizon and that we are interested in does not emit a loud noise—seal scarers are about 180 or 190 decibels—but it sounds like fingers scratching a blackboard. The seal does not like the noise, and it reacts accordingly.

Claudia Beamish: As an ex-teacher, I fully understand that the noise of fingers scratching a blackboard is no good for the kids, or for anyone.

I had questions about seals, but they have been covered. I am glad about that because, in view of the evidence that we have received, it was important to get answers. I have no further questions.

The Convener: We will move on to wellboats.

Angus MacDonald: At previous evidence sessions, we have heard that, to avoid the spread of parasites and disease, wellboats need to be modified. A Government official estimated the cost of retrofitting each boat to be about £500,000. What would be the cost to the industry of complying with retrofitting?

Given the time constraints, I will raise another point, which is about the SEPA proposal to simplify the consenting regime, under which it—not Marine Scotland—would be responsible for consenting discharges from wellboats. I am curious to hear panel members’ views on SEPA’s proposal.

Professor Thomas: The industry would be fully supportive of changes to the consenting regime. A problem area that the industry has identified is the need for two separate licences for discharging the same material into the same place, but from different sources. That does not make sense.

Everybody in the industry would be supportive of retrofitting wellboats, but the cost would be massive. That would need to be phased in because, in truth, it is much easier to put the right installation in when a new boat is being brought in, rather than to retrofit. There would be commercial cost considerations. As the bill is written, the definition of a wellboat would cover pretty well every boat that goes anywhere near a fish farm. That is obviously not the intention, and nor is it practical. I hope that the definition of wellboats will be adjusted in the final version of the bill.

12:00

The Convener: Okay. Do people have any other points?

Councillor Farlow: Most people in the tourist industry in the Highlands would prefer it if wellboats looked like boats. That would be useful.

The Convener: Thank you. It would be even nicer to know whether they could be built in Scotland at some point.

Professor Thomas: I think that there is some confusion here. George Farlow is probably referring to feed barges. From that standpoint, the industry, too, prefers feed barges to look like boats. A particular issue is that we have problems throughout the country as a result of the requirement, under the planning system, for boats to be painted different colours in different places. That is a separate issue.

Angus MacDonal: I have noted in my travels that all the wellboats that I have seen seem to be registered in Ålesund in Norway. I am curious as to whether the panel members think that there is a monopoly, because there do not seem to be any Scottish-registered boats in that respect at all. For a start, how many wellboats are operating in Scotland and are they all registered in Norway?

Steve Bracken: I do not know the number of Norwegian boats operating in Scotland, but you are right that the Norwegians have a monopoly in Scotland and, indeed, probably the world when it comes to salmon farming. I think that the reason for that is that wellboats developed, as the industry has, out of Norway. The Norwegians’ methods of farming have demanded that they have hatcheries close to the shore, and wellboats are ideal for taking the smolts straight from the hatchery. The Norwegians developed the technology and have embraced it, whereas in Scotland that has unfortunately not been the case.

The Convener: We will move on to the issue of commercially damaging species.

Margaret McDougall: Because of the time pressure that we have, I will not go into a preamble about the commercially damaging species proposals and I will take it that all the panellists are familiar with that aspect of the bill. What are the panellists’ views on those proposals?
What do you think about how the bill defines commercially damaging species?

**The Convener:** Does SEPA have a view on that?

**Douglas Sinclair:** I have no particular comment to make on the issue.

**Alex Adrian:** I think that the bill documents refer to the example of the Mytilus trossulus occurrence—I would not call it an outbreak—in Loch Etive.

**The Convener:** What is that?

**Alex Adrian:** Mytilus trossulus is a species of mussel. I will give the committee a bit of background on the issue. It is chiefly the blue mussel—Mytilus edulis—that is farmed in Scotland. Mytilus trossulus is a species with a soft shell and low meat yield. It is generally picked off in the wild by predators, but in a farming environment it is protected. It consequently flourishes and it displaces the blue mussel, which has a commercial impact on mussel farms in Loch Etive.

The problem is that Mytilus trossulus is not an invasive, non-native species as such. I therefore think that the bill has to be quite broad in picking up something that is commercially damaging. The species is not necessarily environmentally damaging or damaging in the wild, but it has an impact in a commercial context. It is quite hard to be prescriptive about such species. I think that the bill says that those things will arise when they arise and that we want to be prepared for them when they arise.

On the example of the trossulus event, Loch Etive has quite low salinity. It has a high freshwater input and the surface layers are of a salinity below 30 parts per 1,000, which suits Mytilus trossulus. As I have said, the mussel is protected by the farming environment. Over time, it displaced the commercial blue mussel to the detriment of mussel production in the loch, such that all production has now been cleared out of it and an attempt is being made to fellow all farms in order to get rid of the background trossulus population and restock with blue mussel.

Any definition has to be broad enough to catch such things when they arise, because no one can really pick them out. Such species are not invasive non-natives and are not necessarily damaging in their own right; the effects become clear only when the commercial context applies.

**Alex Kinninnicht:** I have no detailed comments to make on the issue, but I note that the bill defines a commercially damaging species as something that is without “commercial value”. The danger with that definition is that, although something might be without commercial value, that does not mean that it has no environmental or ecological value.

Alex Adrian is right to point out that the provision has been brought in to deal with specific circumstances, but it has been presented as something that is quite wide ranging, which is a bit dangerous. At the very least, Scottish Natural Heritage should be consulted before something is defined as a commercially damaging species. After all, there is the potential for something quite damaging to happen.

**Professor Thomas:** The main problem is that, although the provision was triggered by the Mytilus trossulus issue that Alex Adrian referred to, it has been cast in broad terms in relation to fish farms. However, fish farms are not the issue; instead, the issue is movement of the species and, within that, the movement of boats, particularly inshore boats.

The provision does not pick up plant species, and there is a long-term concern about invasive plant species clogging nets on fish farms. Any attempt to do something about that should focus not on the fish farm but on how the species got there, which is almost universally down to boats. As a result, the provision is too limited and we would have preferred the Government to have included the opportunity to introduce secondary legislation to get a more comprehensive approach.

**The Convener:** You have made your point.

Margaret, do you want to follow that up or move on to another issue?

**Margaret McDougall:** I simply point out that ministers already have the right to enter into control agreements and enforce measures if the farmer does not agree. I take it that everyone agrees with that approach.

**Professor Thomas:** There is an inconsistency. If there were a plant species infestation—if I can call it that—on a fish farm, the bill would allow something to be done about the fish farm but nothing at all to be done about, say, the local pier where the same species might also be established. In other words, one aspect might be dealt with, but that would not solve the more general issue. Our concern is that the provision is limited.

**The Convener:** Current legislation on invasive species might well overlap in that respect. I do not want to prolong the discussion, but I simply note that Margaret McDougall has made a fair point.

Shall we move on to charging, Margaret?

**Margaret McDougall:** What are the panel’s views on the proposed new powers for the Scottish ministers to set charges in relation to aquaculture? Is it right that the Government should
be able to charge the industry for the cost of regulating it?

The SSPO seems to suggest that it would prefer some of the work that is or could be done by the Government to be done by the private sector. Is that what its submission means?

Professor Thomas: We made two specific points. We believe that any charges that are introduced should be dealt with by Parliament via the affirmative procedure. It is crucial that Parliament scrutinises any specific charge.

As for the provision of services by the private sector, we already have established commercial services for diagnostics. It is fair to say that every company in Scotland uses the commercial service in preference to the service that is available through Marine Scotland. For us, the issue is why a charge should be introduced for a Marine Scotland service or why the Marine Scotland service should be required to be used when commercial services are available that do exactly the same thing and, when judged on a commercial basis, do it rather better. It is an issue not of charging but of structure.

If charging procedures are to be introduced on any basis, for anything, the operation of Marine Scotland needs to be reviewed. It has to be recognised that Marine Scotland was established in rather unusual circumstances, in that it was clubbed together from existing organisations and parts of Government, rather than by starting with a remit and working back from there. If the intention is to start charging for anything, the starting point is to have a proper assessment of what exists and what Marine Scotland does. Any individual charges for anything would need to be considered by Parliament under the affirmative procedure.

Steve Bracken: When it comes to audits and technical inspections, we have provided Marine Scotland with a range of schemes that the industry is involved with. Rather than reinvent the wheel and come up with a new audit scheme, it would be helpful if those schemes were studied and perhaps used in any future audits and inspections.

The Convener: We will ask Marine Scotland about that.

Councillor Farlow: As we look forward to 2020, if fish farming expands, there will be a consequential expansion in smolt production. A few years ago, one of Highland Council’s area planning committees gave permission for expansion to a smolt company in Highland. The consent is to last only 10 years and, when that period ends, the company will have to reapply. I wonder what facilities there are for such a set-up with marine fish farming. That would be one way of controlling companies that had issues during the 10-year period.

The Convener: Would anyone like to respond to that or shall we just leave it on the table?

Professor Thomas: The whole basis of the transfer of planning responsibility to local authorities for fish farm approval was that it would give fish farms a permanency that would allow companies to build the capital investment of the fish farm into the capital investment of the company. I was not involved at the time, but that was one of the main arguments for the transfer to local authorities.

The difficulty with short-term licences is that, if we want somebody to invest a lot of money in building a fish farm, they have to expect to have a long enough period to get a rate of return on their investment and maintain their capital. I understand George Farlow’s point, but we have chosen to go down one route and, if we were to go down a different route, we would have to look at the whole regime again.

The Convener: We will take forward that point. In the meantime, Richard Lyle has a question on fixed-penalty notices.

Richard Lyle (Central Scotland) (SNP): Good afternoon, gentlemen. There are fixed-penalty notices in most areas of life. What does the panel feel about them? Do you agree that they will reduce court costs for you and the Government and that cases will be dealt with more quickly?

12:15

Douglas Sinclair: We do not regulate under the regime that is being discussed as part of the bill, but there is parallel consultation on new legislation that is being developed that will include provisions for fixed-penalty notices with respect to environmental crime.

As I came from the hard end of SEPA’s business, I strongly support fixed-penalty notices, because the disposal of cases in court is incredibly costly and bureaucratic for the regulator and the regulated. I am aware that, in many cases, people whom we regulate and who may have faced a case in court would have preferred to take a fixed-penalty notice as a lesser option for crimes of lesser seriousness because of the cheapness, the immediacy and the fact that they can get the offence out of the way.

We support the use of fixed-penalty notices as part of a regulatory and enforcement regime.

Professor Thomas: The industry has been uneasy about fixed-penalty notices. It has no history of major criminal transgressions of any sort, and there was concern that fixed-penalty notices would be trivialised. There was also concern that we would suddenly find that large numbers of fixed-penalty notices were being...
handed out and having an impact on a company’s reputational position in the market.

We have accepted that fixed-penalty notices will be introduced, but we would be keen for the Scottish Government to be required to publish statistics on them, so that we can have a clear view of what happens over time. We require information.

Richard Lyle: Would that not breach data protection legislation? If your company or another company was continually in the paper for getting fined, would you not feel that you were being picked on?

Professor Thomas: The reality is that, as we know, anything that happens in the aquaculture industry is on the pages of the newspapers the next day. In fact, it is usually there the day before, if I can put it that way. There is no lack of public awareness about the aquaculture industry.

Richard Lyle: There is no secrecy in your business.

Professor Thomas: That is right. However, we feel that there is an issue. We have received reassurances from the Scottish Government and the bill team about how fixed-penalty notices will be used and we have said that we are content with that. Very clear guidance has now been provided about what fixed-penalty notices will apply to, and we would like to understand the impact.

The industry has no record of offences. The number of cases against aquaculture companies that have ended up in court is infinitesimally small. Therefore, if large rafts of fixed-penalty notices started to appear, we would have concerns.

Steve Bracken: When the idea of fixed-penalty notices appeared, there was definitely a knee-jerk reaction in the industry, because we did not see that coming and did not understand what it was about. There was a lot of disquiet on the farms—not just in Marine Harvest but in the industry overall.

Since then, the bill team has put out good information that further explains what fixed-penalty notices are about. The original thought was that they would be applied immediately on farms, but the process has now been explained, which has helped. I am not saying that the industry endorses fixed-penalty notices, but it understands them better.

The Convener: We have had a wide range of remarks and evidence. We have a couple of questions with which to finish. If Claudia Beamish wished to make a small point, that would be helpful.

Claudia Beamish: My question might be answered quickly, but it is certainly not a small point, convener. The witnesses may wish to submit further written evidence if they feel that there is no opportunity to highlight points.

The Convener: You took the words out of my mouth.

Claudia Beamish: I am sorry, convener.

I have a broad question. Particularly in view of the delay to the national marine plan, does any of the witnesses have concerns about the cumulative effect of fish farms on the broader marine environment?

Ken Whelan: I have a comment on the broader marine environment that relates to another part of the committee’s work, as it concerns climate change. There is clear evidence from the work that I have been involved in—we are just about to publish a major publication that looks at 50 years of data—that our bays are changing quite quickly. That poses a challenge to the committee in relation to the legal basis of various acts. Whereas it might have been sufficient in the past to put in place something that was expected to last for perhaps 10 or 20 years, the dynamic of what is happening in the bays is such that it is essential that the bill takes account of the environment in which the industry functions and that there is a clear overview of that.

That relates directly to two things. The first is the capacity issue that we have talked about. The future capacity of the bays, particularly inshore, to take large amounts of fish might well be compromised. The second thing is the number of cycles of sea lice. We have some good published evidence that, as a result of increasing temperatures in the bays, sea lice are naturally producing more cycles per year.

Another important factor that has been mentioned is how space can be fully used and allocated even to the existing industry. All that relates directly to the bays’ ability to handle the particular impacts in the future in a quickly changing environment.

The Convener: That is an important point.

I ask Alex Adrian to be brief.

Alex Adrian: I would just like to make the point that the fish farming and aquaculture industry needs the pristine environment. It is not divorced from that environment; the industry relies on it.

Many years ago, at the outset of aquaculture, it was considered a good thing that people who went into the marine environment had a commercial interest that relied on the good status of that environment. In some respects—the point might seem odd in this context—we have guardians of the environment out there, whereas before we did not. Sitting on the shore and proselytising about
the marine environment are one thing, but being out there and taking commercial risks in relation to the pristineness or otherwise of the environment are a different matter. We should bear it in mind that aquaculture relies on the good quality of the environment.

The Convener: I call Douglas Sinclair to finish on this point.

Douglas Sinclair: We are confident that the cumulative impact of the components that we manage—the nutrient and pollutant impacts—is well managed in Scottish coastal waters.

The Convener: There are people who need to be informed of what has been said today so that they can provide their points of view. To reiterate what Claudia Beamish said, we will look at any follow-up evidence that witnesses provide. We intend to try to build a confident view in the committee of the issues related to the bill, because it is of vast importance to many parts of our natural environment, as well as our industries.

With that in mind, I finish with a general question. What are the economic benefits of salmon farming and the wild salmonid fisheries respectively?

Alex Adrian: There are figures to indicate the benefits. I echo the comment that the North Atlantic Salmon Conservation Organization made a number of years ago by saying that both industries are parts of Scotland’s salmon sector. We should not try to separate them out too much.

There are benefits to be derived on both sides. If we look at some of the issues that are raised in papers on wild fisheries, we see people asking why they should not take advantage of work that is happening in salmon farming. Each sector has value. On the farmed side, there is a lot of interest in retaining the Scottish identity of some stocks or retaining the ability to assist with the retention of their integrity. We should not lose sight of the fact that there are other benefits and value to be accrued, in addition to simply the economic value.

The Convener: That was a balanced set of comments.

Alex Kinninmonth: It is a good question to end on. We often discuss fish farming and salmon fishing as two elements that operate in isolation from other things, but we need to go beyond that and go down a strategic route for managing our marine environment that takes a holistic approach, rather than look at fish farming separately from salmon fishing.

We need to look at not only the economic but the social impact or benefits that we can derive from our coastal habitats and marine waters. Wildlife tourism is a major factor in a lot of the areas that we are discussing. As Claudia Beamish said, marine planning needs to take a strategic view and balance multiple activities so that we get gains from everything.

Steve Bracken: The Scottish salmon farming industry produces in the region of £400 million-worth of products, and wild fisheries produce in the region of £113 million-worth of products—I believe that I have got that right.

The Convener: As you know, in this Parliament we have to have our figures absolutely correct.

Steve Bracken: Just to be clear, I am talking about millions.

I agree with Alex Adrian that salmon farming and wild fisheries are both vital industries for the coast and inland parts of Scotland. I am absolutely sure that we can go on and become bigger and better in both areas. However, that will not happen overnight. We need to look at the economic value of those industries and the spin-offs. We contribute a lot to the vitality of the economies of cities and towns on the west coast and in the Highland region.

The Convener: That is an interesting point on which to finish. We could perhaps go on all day, but some people near me have suggested that they are losing the will to live. The session has been fascinating. It is excellent that we have had such a wide range of views in the time that we have had. I thank all of you for giving us your time and views.

I will allow time for the public gallery to clear and the witnesses to leave before we move into private session.

12:27

Meeting continued in private until 12:45.
Supplementary written submission from Professor Chris Todd

I apologise for the delay in writing. You [Alex Fergusson MSP] will recall our brief conversation at the conclusion of last week's (December 5) evidence session and my suggestion that I should write to you briefly on questions raised by yourself and Claudia Beamish, but on which I was unable to contribute verbally at the time. I know the Convenor had a challenging task to progress all the items on your agenda in good time given the numbers of requests from witnesses to speak.

You both raised inter-related questions concerning the recording, reporting and publication of lice levels on farms. I would offer you the following observations – which are a strictly personal (i.e. not institutional) opinion – based upon my own research expertise and interests in further understanding the interaction between farmed and wild salmonids.

It is apparent from the consultation responses and written evidence to your Committee that there is considerable public interest in the availability and timely publication of sea lice levels on salmon farms. I am aware of no compelling argument that convinces me that sea lice data should be considered commercially confidential.

From a scientific perspective I believe it essential that sea lice data should be collated and published on a farm by farm basis. Concatenating and pooling data for multiple farms (or sites) within a sea loch or bay and publicising a summary statistic would considerably erode their utility in ascertaining farm performance and would effectively preclude informative and detailed scientific analysis of potential interactions with both other farmed and wild fish.

In the latter respect, I note the important recent publication by Jansen et al. (2012) in *Proceedings of the Royal Society B* (doi: 10.1098/rspb.2012.0084; attached). The focus of their study was to determine whether the continued expansion of the Norwegian salmon aquaculture industry would comprise an ever-increasing challenge to sea lice control on farmed fish. In brief, they sought to ascertain if local sea lice infection pressure was related to the density of fish on farms: more salmon on a farm provides more hosts for parasites, which may produce more infective larvae and therefore local sea lice populations might be increasingly challenging to control. Presently, in Norway, farms are required to keep lice levels low in springtime (an average of <0.5 adult females per fish, 1 December-1 July) and this legislative threshold is currently under review.

The analyses of Jansen et al. (2012) are extensive and very comprehensive and included all farms throughout the Norwegian industry. Their analyses were possible only because the Norwegian data are publicly available in a consistent format and are reported in detail and on a per farm basis. For the period 2002-2010 inclusive they were able to analyse >61,000 observations of average lice density embracing 1442 farms.

Their key finding is that there is indeed a relationship between local fish density and lice infection pressure. From the wider perspective perhaps their most important conclusion was that: "*With a continued increase in the density of farmed salmon, our analyses suggest that the current management regime will lead to increasing sea*
lice infection pressure in fish farms, as well as increasing efforts of chemotherapeutic control and hence the risk of development and the spread of treatment resistance. To counter this development, we believe regulations will need to go from a threshold defined for the average infection per fish to a threshold based on a measure of the spatial sea lice density.” These results might well lead the Norwegian authorities to require the industry to control their lice levels on a fjord/total biomass basis, rather than applying a simple, single national threshold level per fish irrespective of farm size.

Several respondents in the written evidence to your Committee commented on the need for sea lice infection pressure to be assessed not as a per fish average, but scaled to allow for the number of fish on a farm. (In brief, an average of 0.5 adult female lice per fish within a given sea loch comprises a low infection pressure if there are 1,000 fish on a farm, compared to a farm with the same average lice density but 100,000 host fish.) I would concur with that view, but would emphasize also the importance of sea lice infection levels being recorded and reported on a per farm basis and made publicly available in a consistent and detailed format.

Attached:

Sea lice as a density-dependent constraint to salmonid farming

Peder A. Jansen, Anja B. Kristoffersen, Hildegunn Viljugrein, Daniel Jimenez, Magne Aldrin and Audun Stien

Proc. R. Soc. B published online 8 February 2012

Supplementary data
"Data Supplement"
http://rspb.royalsocietypublishing.org/content/suppl/2012/02/07/rspb.2012.0084.DC1.html

References
This article cites 43 articles, 13 of which can be accessed free
http://rspb.royalsocietypublishing.org/content/early/2012/02/07/rspb.2012.0084.full.html#related-urls

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Sea lice as a density-dependent constraint to salmonid farming

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Fisheries catches worldwide have shown no increase over the last two decades, while aquaculture has been booming. To cover the demand for fish in the growing human population, continued high growth rates in aquaculture are needed. A potential constraint to such growth is infectious diseases, as disease transmission rates are expected to increase with increasing densities of farmed fish. Using an extensive dataset from all farms growing salmonids along the Norwegian coast, we document that densities of farmed salmonids surrounding individual farms have a strong effect on farm levels of parasitic sea lice and efforts to control sea lice infections. Furthermore, increased intervention efforts have been unsuccessful in controlling elevated infection levels in high salmonid density areas in 2009–2010. Our results emphasize host density effects of farmed salmonids on the population dynamics of sea lice and suggest that parasitic sea lice represent a potent negative feedback mechanism that may limit sustainable spatial densities of farmed salmonids.

Keywords: Lepeophtheirus salmonis; host density; parasite transmission; population dynamics

1. INTRODUCTION

Global fisheries catches have been relatively stable over the last two decades [1]. Depletion of many fish stocks [2–5] and estimates of the natural primary production in the oceans [6] suggest that there is little prospect for growth in fisheries catches in the near future. Over the same period, production volume in aquaculture has grown at a rate far exceeding that of the global human population [7], suggesting that aquaculture has the potential to supply animal proteins in response to the growing demands [7–9]. It is recognized that current intense fish farming practices can cause pollution and disease problems, escaped fish have negative impacts on wild stocks, and that farming of carnivorous species puts pressure on wild fish populations used for feed [3,8,10,11]. Together with space limitations, these factors have been predicted to set natural limits to sustainable intensities of fish farming.

The principle of density-dependent disease transmission rates is a cornerstone in the epidemiological theory of infectious diseases [12]. The expectation that disease problems in aquaculture will increase as the density of farmed fish increases is therefore well founded. However, while examples of infectious disease problems in aquaculture are plenty [16], there is a lack of studies evaluating the importance of host densities for disease transmission in full-scale production systems [17–19]. Thus, there is little empirical evidence in support of the notion that diseases may become a main factor limiting future growth in the aquaculture industry.

Marine salmon farming in Norway is one of the most industrialized fish farming enterprises in the world [20], producing close to one million tonnes of Atlantic salmon (Salmo salar; 0.93 million tonnes) and rainbow trout (Oncorhynchus mykiss; 0.05 million tonnes) in 2010 [21]. Standing stock biomass of farmed salmon has roughly doubled over the period 2002–2010 (see electronic supplementary material, figure S1) and farmed salmon were recently estimated to outnumber return migrating wild salmon by a factor of 250–700 in Norwegian coastal waters [16]. Still, the spatial density of farmed salmon varies substantially along the coast with generally lower densities in the north than in the southwest (figure 1).

Growing concern is raised about the sustainability of salmon farming on this large scale, in particular with regard to transmission of parasitic sea lice [22–24].

Farmed salmonids are grown in floating net pens allowing free water exchange, and hence pathogen exchange,
Sea lice are naturally occurring ectoparasitic copepods that transmit directly between hosts by planktonic larvae. They have temperature-sensitive development and reproductive rates [25], and they occur frequently in marine salmonid farms. Sea lice infections on salmonids in Norway are dominated by the salmonid specialist *Lepeophtheirus salmonis*, while the generalist *Caligus elongatus* occur at lower abundances [26,27]. The potential negative impacts of sea lice of farm origin on wild salmon populations cause environmental concerns and conflicts with wild salmon stakeholders [28,29]. Empirical studies support the hypothesis that sea lice of farm origin is a main source of infection in wild salmon [24,27,30]. Less focus has been on transmission between salmon farms. One reason for this may be that sea lice control, e.g. using efficient chemotherapeutic treatments or cleaner fish of the family *Labridae*, has been successful at keeping sea lice abundances at sub-clinical levels in salmon farms. However, reports on the development of chemotherapeutic resistance in sea lice populations [31,32] suggest that this situation may change.

Here, we report from a first large-scale study of the effect of farmed fish densities on parasite abundances and control efforts in a highly industrialized fish farming system. In our study system, the density of infective sea lice larvae in the waters around the fish farms is likely to be the main determinant of the infection rate (i.e. the force of infection [12]) experienced by individual hosts. We reason that a large population of hosts in surrounding waters is likely to harbour a large population of adult parasites and thereby produce more infective larvae than a smaller population of hosts. In addition, infective larvae densities are likely to be affected by temperature since both fecundity and generation time of sea lice are temperature dependent [25]. Hence, our expectations were that sea lice infection rates should be high in fish farms surrounded by a high density of farmed salmonids and/or in warm waters, and that sea lice infection rates should be lower in areas with low salmonid densities or colder waters. We also expected a strong seasonal pattern in sea lice infection rates, driven by seasonal fluctuations in water temperature. Our data do not contain direct measures of infection rates, but estimates of sea lice abundances and control intervention efforts. We analyse sea lice abundance as a proxy for infection rate. The rationale behind this is that the rate of change in sea lice abundance over a given period of time will be determined by infection rate, given a constant sea lice mortality rate. Hence, when
controlling for abundance backwards in time as well as changes in sea lice mortality, different levels of abundance will reflect different levels of infection rate. We assume that major changes in sea lice mortality arise from control interventions undertaken to accommodate regulations on the maximum legal thresholds of sea lice abundance (see electronic supplementary material, methods), which therefore needs to be taken into account when interpreting infection rate based on sea lice abundance data.

We analyse monthly data on sea lice counts, parasite control efforts and production volume from all active marine salmonid farms along the coast of Norway in the years 2002–2010. We first investigate the importance of local biomass density (LBD) of farmed salmonids on both the average abundances of infection and on control intervention efforts in an analysis of data aggregated at a regional spatial scale and annual temporal scale. Thereafter, we investigate the effect of LBD, control interventions and temperature on the temporal variability of abundance of infection in individual farms. We use autoregressive models to capture the temporal autocorrelation in lice abundances within farm sites. Both Atlantic salmon and rainbow trout are parasitized by sea lice, but rainbow trout tends to have lower infection levels [33]. In addition, sea lice abundance tends to increase with fish size owing to an increasing period of exposure to infection with age and/or owing to changes in infection rates with size [34]. We, therefore, included farmed species of salmonids and mean fish weights in the analyses.

2. METHODS
(a) Data
Atlantic salmon (*Salmo salar*) and rainbow trout (*Oncorhynchus mykiss*) are farmed on a large scale in Norway [16]. For simplicity, we term this salmonid farming in this paper. Operators of salmonid farms must have a legal concession authorized by the Directorate of Fisheries (DFF; www.fiskeridir.no) and all farms are registered with a geo-reference in the aquaculture licence register, which is available at DFF’s website. For farms that actively farm salmonids in the marine environment, it is mandatory to report key statistics on their fish stocks, fish health-related statistics and water temperature at a depth of 3 m, to responsible authorities on a monthly basis. The present data cover monthly reports from all farmed stocks of salmonids in marine waters in Norway over the period January 2002 to December 2010.

Sea lice infections may be by *Lepophlebius salmonis* or *Caligus elongatus* [26,27], hence we use the term ‘sea lice’ in this paper. Sea lice infections in farmed salmonids are regulated through maximum thresholds to abundance of mobile stages of lice (see electronic supplementary material, methods). To enforce these regulations, farmers are instructed to count sea lice on farmed salmonids at regular intervals and report the highest mean count during a month. The mean count of sea lice from a sample of 20 fish from one net pen (before August 2009) or the mean of means from samples of 10 fish from multiple net pens (from August 2009) was reported (see electronic supplementary material, methods). To get an integer number to be used in the present statistical count model, the dependent variable was derived by multiplying reported mean counts of sea lice by 20 and rounding off this to the nearest integer (see electronic supplementary material, methods).

The total dataset consists of 61161 reported mean counts of mobile sea lice from a total of 1442 salmon farms (electronic supplementary material, figure S2). Monthly mean counts of sea lice were highly aggregated and for each month between 12.4 and 51 per cent (34.3% for the total dataset) of the active farms reported zero sea lice.

Monthly statistics reported by salmonid farms and explored directly as explanatory variables for the sea lice counts included: mean fish weight; water temperatures; whether farmed species was Atlantic salmon or rainbow trout; whether medical sea lice treatment was applied; or whether cleaner fish of the family *Labridae* were applied. In addition, we estimated a proxy variable for farm site salinity, expressing the relative exposure to freshwater for given farm sites. This latter variable was only used to analyse a subset of the data comprising 50 per cent of the farm sites with the lowest estimates for freshwater exposure (see electronic supplementary material, methods and table S4).

The reported number of fish and mean fish weight in the farm stocks were used to calculate farm-specific LBD of farmed salmonids. For each farm in each month, stock biomass was calculated as the number of fish multiplied by mean weight. The LBD surrounding each farm in each month was calculated as a kernel density of stock biomasses within 40 km seaway distance of given farms, where the biomass on the farm for which LBD was estimated was not included. A Gaussian kernel density function (density() in the statistical package R [35]) with a standard deviation of 20.25 km, and which was truncated at 40 km, was used for the LBD calculations. Pair wise seaway distances between salmon farms were compiled from Kristoffersen et al. [36]. We did not distinguish between farmed species of salmonids in the LBD estimations.

Further details on data compilation and processing are given in the electronic supplementary material.

(b) Exploratory analyses of region-level data
To explore the data on an aggregated level, the dataset was subdivided into three geographical regions (figure 1); the north-region (all farms north of 67° latitude), the mid-region (farms between latitudes 67°–62° 35 min) and the south-region (all farms south of 62° 35 min latitude). Further subdivisions of the data were done on a monthly basis (figure 4; electronic supplementary material, figure S4), or a yearly mean basis (figure 3), for farms located in areas with low (less than 33.3 percentile), medium (33.3–66.6 percentiles) and high (greater than 66.6 percentile) LBD. We analysed dependencies of sea lice counts, medical treatments and the use of cleaner fish on LBD for the aggregated data using ordinary linear regression.

(c) Analyses of farm-level data
Analyses on aggregated scales may mask effects of predictor variables since averages over regions, or over years, are not necessarily representative for direct effects on farms. Therefore, we also performed more detailed analyses of farm-level data. We explored the relationship between monthly numbers of sea lice on 20 fishes and the explanatory variables: sea lice counts on the farm in earlier months, water temperature, mean fish weight, LBD, medical treatments; whether the farmed species was Atlantic salmon, the use of cleaner fish, and region. Water temperatures, sea lice counts, medical treatments and LBDs all tended to oscillate on an annual period (electronic supplementary material, figures S3–S4). To ensure that possible effects of temperature, LBD or medical
treatment on sea lice counts were not merely owing to harmonized oscillations, a seasonal component comprising four sines and four cosine functions with periodicities of 12, 6, 4 and 3 months, respectively, were included in the model. Furthermore, to ensure that a trend in the sea lice count data, and possibly in explanatory variables, did not confound parameter estimates, a nonlinear overall trend modelled by five b-splines was included in the model [37].

In order to fit a model to the data, it is necessary to assume an appropriate probability distribution for the response variable, i.e. the number of sea lice per 20 fish. Count data are typically modelled assuming either a Poisson or negative binomial (NB) distribution [38]. The high proportion of zero counts in the data was not adequately captured by these distributions. We therefore used a two-component mixture model, which defines the response variable as a mixture of a NB and a Bernoulli distribution, termed a zero-inflated negative binomial (ZINB) distribution. The NB distribution was chosen because of overdispersion of the data in addition to the excess zeros (see electronic supplementary material, methods).

The ZINB distribution allows zero counts to arise from two distinct mechanisms: either a count from a NB distribution (including the possibility of a zero count) or an excess zero count [39,40]. Covariates of each process may or may not be the same, affording flexibility to construct models with the potential to explain a higher degree of variability than assuming a single distribution. In the present analyses, we fitted the ZINB models using the function zinbinfl() from the pscl package (v. 1.02) in R [35], and compared models using the Akaike information criterion (AIC).

In initial analyses, we found that utilization of cleaner fish for controlling sea lice infection was significantly associated with high sea lice counts in the regression models. We do not anticipate high sea lice counts to be promoted by the use of cleaner fish. Since including the use of cleaner fish as an explanatory variable in the ZINB models does not contribute to gained insight into determinants of sea lice abundance, this variable was excluded from further farm-level analyses.

To investigate the robustness of our conclusions to potential problems in the data, separate ZINB models were run for each of the three regions and for subsets of data (see electronic supplementary material, table S4). (i) To investigate the potential impact of the use cleaner fish on parameter estimates, we fitted the model to the subset of data that included only salmonid cohorts with no report of cleaner fish use. (ii) Similarly, to investigate the potential impact of variation in salinity on parameter estimates, we fitted the model to the cohorts grown on the farms with less than median estimates for freshwater exposure. (iii) To investigate the potential impact of the change in reporting methodology in August 2009 on parameter estimates, we fitted the model to the data from before August 2009 only. Finally, (iv) to investigate the potential impact of correlations between salmonid cohorts within the same farm on parameter estimates and SE estimates, we fitted the model to the data from one random cohort per farm. Additional problems associated with temporal and spatial correlations were evaluated by estimating the temporal autocorrelation and the spatial variogram of the residuals.

3. RESULTS

(a) Exploratory analyses of region-level data

Overall, the abundance of sea lice oscillated annually with a lag in relation to the annual fluctuations in water temperature, with low infection levels in March–April and peak infections in September–November (figure 2). To visually illustrate the main patterns in the relationship between the LBD of farmed salmon, sea lice abundances and intervention efforts, we display annual estimates of these variables for each coastal region (north-, mid- and south-regions; figure 1) and within regions for the terciles of farms with the lowest, intermediate and highest LBDs (figure 3). Overall, the average LBD was positively associated with the abundance of sea lice, medical treatments and the use of cleaner fish (electronic supplementary material, table S5). However, the patterns differed spatially. On this coarse scale, there was no evidence for LBD being associated with sea lice abundance, the use of medical treatments or cleaner fish in the north-region, but increasingly strong associations in the mid- and south-regions (electronic supplementary material, table S5). In addition, both sea lice abundance and intervention efforts were lower in the north-region than in the mid- and south-regions over the range of overlapping LBDs (figure 3), suggesting that lower water temperatures in the north reduced sea lice infection rates. Smoothed sea lice counts, medical treatments and LBDs over the study period are shown for the regions and LBD terciles in figure 4. Increasing sea lice counts and intensified medical treatments, especially in high LBD farms, are seen during the late part of the study period in the mid- and south-regions, but not in the north-region (figure 4).

(b) Analyses of farm-level data

In our ZINB regression analyses of count reports of sea lice, the results from the two model parts in the ZINB regression model were consistent in their trends. Estimated positive effects in the NB model for the sea lice counts were, in general, accompanied by negative estimated effects on the probability of excess zeros (table 1). A strong temporal autocorrelation in sea lice counts on the salmonid farms suggested that counts in a given month depended on counts from the same farm in the previous four months. Furthermore, high water temperatures, high mean fish weights and the farmed...
After controlling for other predictor variables, including water temperature and LBD, in the ZINB regression model, there were additional effects of a seasonal trend and a time trend (electronic supplementary material, figure S5). Furthermore, there were still effects of region (table 1). Separate regression analyses for each of the three geographical regions suggested that fluctuations in water temperature had a stronger effect on sea lice counts in the north-region than in the south- and mid-regions (table 1). However, the effect of LBD was similar in all three regions even though there was no detected effect of LBD in the north in the analyses of region-level data (table 1 and figure 3). Finally, ZINB analyses of subsets of the data other than region were consistent with the analysis on the total dataset (electronic supplementary material, table S4).

In order to validate the full ZINB model, residuals were plotted against all explanatory variables and any remaining spatial correlation was explored by a variogram. No remaining patterns were observed. Furthermore, a mixed effects model of the residuals, with farm site as a random effect, was estimated. The standard deviation of the residuals and the random effect were 1.49 and 0.20, respectively. Hence, the random effect only accounted for 0.20/1.49^2 = 1.8% of the variance left in the residuals. A random effect with cohort of farmed salmonids nested within farms did not improve the fit. The residual first-order temporal autocorrelations were estimated for each cohort and found to be significant for less than 6 per cent of the cohorts. We conclude that no major systematic patterns were left in the residuals.

4. DISCUSSION

LBD of farmed salmonids was associated with abundance of sea lice, such that high LBDs implied expectations of high sea lice counts. This association was consistent for different salmonid farming regions. Furthermore, high LBD was associated with intensified efforts to control sea lice infections. The positive LBD association with both sea lice abundance and control efforts accord with expectations of increased production of sea lice transmission stages at elevated host densities of farmed salmonids, and suggests that local host density is a main factor determining the infection pressure experienced by farmed salmonids in Norway. Given the prevailing production system for farming salmonids, parasitic sea lice may accordingly limit local densities of farmed salmonids in Norway. Over the late part of the study period, peak abundances of sea lice and frequencies of medical treatments increased, especially in intensive farming areas. This pattern may suggest that chemical control of sea lice infections became less feasible in these areas, possibly owing to evolving resistance in the sea lice population towards commonly used drugs. The Norwegian Food Safety Authority reports increasing incidences of reduced sensitivity and/or resistance to medical treatments, as well as changes in the composition of the active substances.

Figure 3. (a) Average counts of mobile sea lice per fish, (b) mean monthly proportion of farms treated medically against sea lice and (c) mean monthly proportion of farms reporting the use of cleaner fish, plotted against the average LBD of farmed salmonids. Estimates are given for each year (2002–2010), within years for farms located in areas with low (less than 33.3 percentile; triangles), medium (33.3–66.6 percentile; squares) and high (greater than 66.6 percentile; circles) LBD, and for each region (north, blue; mid, red; south, yellow). Lines are least-squares linear regressions through the data, where black represents all data and coloured lines represent corresponding regions.
used in chemotherapy and increasing quantities of drugs applied to farmed salmon to control sea lice [41]. Reduced sensitivity and/or resistance in sea lice to a range of different medical substances, and in different geographical areas, have been documented [42–46]. The efficacy of treatments has also been shown to decrease over time [32], and suggested to depend on the frequency of treatments by a given drug [31]. Given evolving resistance to treatment in sea lice and that this is reinforced by increasing densities of farmed salmon owing to increasing frequencies of treatment, a worst case scenario will be that resistant sea lice spread from high LBD areas and reduces sustainable levels of salmon farming on extended spatial scales along the coast. Alternatively, new methods to control sea lice infections may appear. There is focus on moving production from open to closed systems. Research and development activities are also directed at developing new drugs or combinations of drugs for medical treatments, developing vaccines and farming of cleaner fish [47,48], all testifying to the importance of the problem when using the production technology applied today.

As expected, sea lice counts were influenced by water temperatures [25]. The north–south gradient in temperature, in addition to generally low densities of farmed salmonids in the north, probably explains low sea lice counts in the north-region. Also, intervention efforts were low in the north-region, compared with the south- and mid-regions, over the range of overlapping LBDs. The temperature effect suggests that colder water temperature in the north reduces sea lice transmission. There is, therefore, a reason to believe that comparable levels of LBD will entertain smaller sea lice populations in the north than in the south, all conditions apart from temperature being equal.

In our initial analyses, we found that the utilization of cleaner fish for controlling sea lice infection was significantly associated with high sea lice counts (see §2). The reason for this finding is likely to be that efforts to control infections are elevated when farms experience high sea lice abundances. Such a positive association could potentially also have been attained for medical treatments. The difference between the two intervention variables in their association with sea lice abundance is probably caused by a subtle long-term effect of cleaner fish, whereas the effect of medical treatments are more instant and stronger. Nevertheless, our finding emphasizes the need for

Figure 4. Locally weighted polynomial regression curves fitted to mean counts of (a) mobile stages of sea lice, (b) proportion of farms reporting medical treatments against sea lice and (c) mean local biomass of farmed salmonids (LBD) for the south-region, mid-region and north-region. For each month, the locally weighted polynomial regression curves are plotted separately for farms located in areas with low (less than 33.3 percentile), median (33.3–66.6 percentile) and high (greater than 66.6 percentile) LBD. All locally weighted polynomial regression curves were fitted using the lowess() function in R, with a smoother span of 0.4. Blue line, low LBD; black line, medium LBD; red line, high LBD.
Salmon density effects on sea lice  P. A. Jansen et al.

Table 1. Parameter estimates, with standard errors in brackets, for the predictor variables entered into the zero-inflated negative binomial models to explain reported sea lice counts. Statistics for the total dataset and for separate models for the south-region, mid-region and north-region are shown (LBD, local biomass density; med. treat., medical treatment; temp, water temperature; bin, binary variables; t, month). Coefficients for the seasonal and time trends are not given in the table, but shown graphically in electronic supplementary material, figure S5.

<table>
<thead>
<tr>
<th>Predictor Variables</th>
<th>Total Dataset</th>
<th>South-Region</th>
<th>Mid-Region</th>
<th>North-Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>1.52 (0.09)</td>
<td>1.65 (0.14)</td>
<td>1.61 (0.15)</td>
<td>0.27 (0.26)</td>
</tr>
<tr>
<td>LBD</td>
<td>0.75 (0.01)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sea lice count</td>
<td>0.0081 (0.0002)</td>
<td>0.0067 (0.0002)</td>
<td>0.0081 (0.0003)</td>
<td>0.015 (0.0008)</td>
</tr>
<tr>
<td>Sea lice count -1</td>
<td>0.0029 (0.0002)</td>
<td>0.0029 (0.0002)</td>
<td>0.0026 (0.0003)</td>
<td>0.0043 (0.0007)</td>
</tr>
<tr>
<td>Sea lice count -2</td>
<td>0.0013 (0.0002)</td>
<td>0.0010 (0.0002)</td>
<td>0.0017 (0.0003)</td>
<td>0.0023 (0.0007)</td>
</tr>
<tr>
<td>Sea lice count -4</td>
<td>0.0011 (0.0002)</td>
<td>0.0011 (0.0002)</td>
<td>0.0012 (0.0003)</td>
<td>0.0015 (0.0008)</td>
</tr>
<tr>
<td>log(temp °C + 0.6; t)</td>
<td>0.60 (0.04)</td>
<td>0.56 (0.06)</td>
<td>0.55 (0.06)</td>
<td>1.10 (0.10)</td>
</tr>
<tr>
<td>log(fish weight (kg); t)</td>
<td>0.24 (0.01)</td>
<td>0.27 (0.01)</td>
<td>0.31 (0.01)</td>
<td>0.13 (0.02)</td>
</tr>
<tr>
<td>Med. treat. (bin; t-1)</td>
<td>-0.20 (0.02)</td>
<td>-0.24 (0.02)</td>
<td>-0.22 (0.03)</td>
<td>-0.21 (0.06)</td>
</tr>
<tr>
<td>LBD (t-1)</td>
<td>0.14 (0.01)</td>
<td>0.15 (0.01)</td>
<td>0.12 (0.01)</td>
<td>0.11 (0.04)</td>
</tr>
<tr>
<td>Atlantic salmon</td>
<td>0.16 (0.03)</td>
<td>0.14 (0.03)</td>
<td>0.20 (0.05)</td>
<td>0.32 (0.09)</td>
</tr>
<tr>
<td>log(theta)</td>
<td>-0.39 (0.01)</td>
<td>-0.32 (0.01)</td>
<td>-0.22 (0.01)</td>
<td>-0.69 (0.02)</td>
</tr>
<tr>
<td>Intercept</td>
<td>2.93 (0.22)</td>
<td>2.29 (0.34)</td>
<td>1.71 (0.41)</td>
<td>5.71 (0.48)</td>
</tr>
<tr>
<td>North-region</td>
<td>0.75 (0.05)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South-region</td>
<td>0.52 (0.04)</td>
<td>-2.55 (0.04)</td>
<td>-2.32 (0.05)</td>
<td>-2.21 (0.07)</td>
</tr>
<tr>
<td>Sea lice count</td>
<td>-0.72 (0.04)</td>
<td>-0.72 (0.06)</td>
<td>-0.80 (0.08)</td>
<td>-0.73 (0.10)</td>
</tr>
<tr>
<td>Sea lice count -1</td>
<td>-0.41 (0.05)</td>
<td>-0.47 (0.06)</td>
<td>-0.48 (0.08)</td>
<td>-0.36 (0.11)</td>
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<tr>
<td>Sea lice count -2</td>
<td>-0.30 (0.04)</td>
<td>-0.40 (0.06)</td>
<td>-0.07 (0.08)</td>
<td>-0.61 (0.10)</td>
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<tr>
<td>Sea lice count -3</td>
<td>-0.85 (0.09)</td>
<td>-0.28 (0.14)</td>
<td>-0.38 (0.17)</td>
<td>-2.43 (0.20)</td>
</tr>
<tr>
<td>Sea lice count -4</td>
<td>-0.13 (0.01)</td>
<td>-0.12 (0.02)</td>
<td>-0.18 (0.03)</td>
<td>-0.15 (0.03)</td>
</tr>
<tr>
<td>Med. treat. (bin; t-1)</td>
<td>0.32 (0.06)</td>
<td>0.27 (0.08)</td>
<td>0.31 (0.10)</td>
<td>0.58 (0.16)</td>
</tr>
<tr>
<td>LBD (t-1)</td>
<td>-0.25 (0.02)</td>
<td>-0.21 (0.02)</td>
<td>-0.21 (0.04)</td>
<td>-0.27 (0.08)</td>
</tr>
<tr>
<td>Atlantic salmon</td>
<td>-0.62 (0.05)</td>
<td>-0.75 (0.06)</td>
<td>-0.24 (0.12)</td>
<td>0.11 (0.19)</td>
</tr>
</tbody>
</table>

experimental studies to evaluate control effects of cleaner fish and other interventions. Also other variables that are expected to affect sea lice population dynamics need further study, e.g. salinity [34,49] and the possible development of resistance/loss of sensitivity of sea lice to medical treatments [31,32]. To counter this development, we believe regulations need to go from a threshold defined for the average infection per fish to a threshold based on a measure of the spatial sea lice density.

The rapid development of a highly industrialized production of farmed salmon has contributed to a strong belief in continued growth in aquaculture [7,9]. We propose that infectious diseases represent a potent density-dependent negative feedback mechanism that may limit such growth.

REFERENCES


Supplementary written evidence from the Scottish Salmon Producers’ Organisation

KEY POINTS

- Fish farming industry is a strategically important asset for Scotland, the UK and EU. Further expansion of fish and shellfish is an EU/UK policy priority.

- The ex-farm value of Scottish farmed salmon in 2011 was £585m. (UK wild marine fish landings in Scottish ports were valued at £406m). Overall economic impact of salmon farming is estimated at over £1,300m per annum.

- Scottish salmon and sea trout angling make virtually no contribution to food supply or food security, but it has an indicative current value estimated as £95-100m. A figure of £12-13m has been estimated for the areas of Highlands and Islands where salmon farming also takes place.

- Twelve wellboats routinely operate in Scotland, with two additional vessels being contracted for occasional use. The majority of these vessels are Norwegian built.

- The fish farming industry attracts a small number of anti-farming groups, who claim to represent environmental interests, wild fish interests, or anti-corporate interests, often in combination. Like many other sectors of the food industry, the fish farming sector addresses this campaigning through its own retailer and consumer communications.

- We have concerns that anti-fish farm campaign groups aim to undermine the role and authority of Scottish Government and the Scottish regulatory agencies. We also believe that campaigners’ demands on public bodies represent a drain on public expenditure.

- We interpret ‘interactions’ between fish farming and wild salmon fisheries to mean biological interactions between wild fisheries and farms and vice versa.

- In the context of stock status in the North Atlantic, the evidence indicates that salmon farming has had no significant or long-term effect on wild Atlantic salmon. Over recording periods ‘pre-salmon farming’ and ‘post-salmon farming’, each of more than 30 years, the total wild salmon catches in the area of Scotland where salmon farming is located have been consistently approximately 10% of the total Scottish catch.
- Nonetheless, salmon farmers remain committed to working with wild fisheries managers to mitigate potential impacts on wild fish; and to address concerns about risks to farm fish from wild stocks.

- We have already made a proposal to modify the existing publication of area-based farm sea lice information to support closer working with local fisheries. We believe this information must be matched by wild fish information supplied by fisheries managers on a local basis. This will underpin an integrated local ‘Fisheries Area Management’ approach, which we believe would offer significant benefit to both farm and fisheries managers.

- We have commented specifically on the shooting of seals to provide information which may not have previously been available to members of the committee.

INTRODUCTION

At the conclusion of Rural Affairs, Climate Change and Environment Committee meeting on the 5 December it was indicated that supplementary written evidence would be welcomed. Against that background, the SSPO wishes to provide additional comment on selected topics relevant to the Committee’s deliberations, and we remain at the Committee’s disposal with regard to requests for further information.

STRATEGIC ASSETS OF SCOTTISH AQUACULTURE

Globally, farmed fish production now exceeds the catch of wild fish and provides over half of the total amount of fish consumed by humans. The Food and Agriculture Organisation of the United Nations has concluded that further expansion of the aquaculture sector is critically important if we are to meet future requirements for fish and safeguard food security (1).

Both the UK and EU are substantial importers of fish (the EU is only ca 35% self-sufficient in fish supply). Therefore EU and UK markets are vulnerable to reductions in fish supply and increasing fish prices. The EU now has a clear policy to grow and develop aquaculture production (2). This will be implemented through the Common Fisheries Policy. Member States will each be required to adopt strategic multi-year plans for expansion. Scotland’s Draft National Marine Plan (3) can be seen as a first step in that process: it is an acknowledgement that aquaculture is one of Scotland’s key assets and that there is scope for its further development, subject to a competitive economic environment for capital investment.
ECONOMIC ASSESSMENTS AND WELLBOATS

Economics

This section is written in response to the Convenor’s question of 5 December 2012, when he asked “What are the economic benefits of salmon farming and the wild salmonid fisheries respectively”.

The UK is the third largest producer of farmed fish and shellfish in the EU (behind Spain and Italy), with more than 80% of UK aquaculture production coming from Scotland. Scottish total aquaculture production in 2011 was 170,762 tonnes comprising 7,285 tonnes of shellfish and 163,448 tonnes of finfish. Farmed finfish included Atlantic salmon, rainbow trout, brown trout, halibut and Arctic charr. However, at 158,018 tonnes, farmed salmon dominated and made Scotland the third largest farmed salmon producer in the world. The farm gate value of salmon was £585m (for comparison, UK-vessel fish landings in Scotland in 2011 were valued at £406m). Taking account of upstream and downstream businesses, the aggregate economic impact of salmon farming is estimated to be over £1,300m per annum.

In contrast to salmon farming, sport fishing for salmon and sea trout in Scotland makes virtually no contribution to food supply or food security, although it has economic and social value. There are no publicly accessible records of fisheries proprietors and occupiers, no formal recording of angler effort, and no reporting of income from fisheries in Scotland, so it is difficult to assess the contemporary economics of Scottish salmon angling with any precision. The Homarus report (2008) (4) suggested that ‘few proprietors appear to keep good records of income generated by their fisheries’. The most comprehensive data available is arguably that of Radford and his colleagues (5) based on a 2003 survey of anglers’ ‘total visit’ expenditures. That analysis indicated anglers of all types spent a total of £113m per annum in Scotland in 2003, and that £73m was accounted for by salmon and sea trout anglers. Allowing for inflation it is reasonable to estimate the current economic value of the salmon and trout sector as £95-100m. A regional analysis (4) suggests that around 12.5% of this income, amounting to £12-13m, is generated in the areas of the Highlands and Islands where salmon farming is also located.

Wellboats

SSPO holds no detailed information about wellboats operating in Scottish waters. However, industry enquiries suggest that there are currently 12 boats permanently working in Scotland with a further 2 boats contracted (from Norway) on an occasional basis. Of the 12 permanent boats two have been retrofitted, we believe in Scotland. The remaining boats are suggested to have been constructed in Norway.
INTERACTIONS OF FARmed AND WILD FISHERIES

In the meeting of 28 November the Convener indicated that part of the intention of the bill was to address ‘interactions’ between fish farming and wild fisheries. We interpret this as meaning the biological interactions between wild fisheries and farms and vice versa, and we have commented on that below. However, some of the discussion on the 28 November referred to the ‘media’. We therefore wish first to comment on that aspect.

Media Campaigns

Despite its huge national and international success and its very wide public acceptance, the aquaculture sector attracts the attention of a range of anti-farming campaigners. These individuals and organisations variously campaign from the standpoint of environmental interests, wild fish interests, or anti-corporate interests, often in combination. As an example, since 2010, Guy Linley-Adams has headed a major media campaign led by the Salmon & Trout Association (S&TA) designed to drive salmon farming into land-based closed-containment farming systems. Likewise, Don Staniford of the Global Alliance Against Industrial Aquaculture (GAAI) has campaigned against ‘salmon, shrimp, tuna and ‘Frankenfish’ farming’, evidently with the aim of closing down all fish farming in Scotland and elsewhere. For information, Canadian Supreme Court Judge, The Honourable Madam Justice Adair, recently said “I have concluded Mr Staniford is akin to a zealot. Virtually anything that conflicts with his view and vision is wrong, bad, disgraceful or worse. He is highly suspicious. Neutral facts...will lead him to jump to irrational conclusions.” These campaigns have showered the Scottish Government and regulatory agencies with demands for information under FoI or EIR followed by press releases which attempt to erode retailer and consumer confidence in aquaculture and impugn the reputation of individual farming companies. For campaigners of this type, this ‘legitimate lobbying’ to gain ‘consumer-traction’ is a normal tool of the trade. Like many other sectors of the food industry, the fish farming industry addresses this kind of campaigning through its own communications with retailers and consumers. We have concerns that the lobbying and campaigning is aimed to undermine the role and authority of the Scottish Government and Scottish regulatory agencies and we also believe that dealing with campaigners’ demands represents a substantial drain on public expenditure. However, we do not believe the campaigning can be or could be addressed by legislation and it should therefore probably not be a focus for the Committee’s considerations.

Biological Interactions

Regional Analysis

The marine aquaculture industry is located only on the North West mainland of Scotland and in the Western and Northern islands. These areas historically have been responsible for about 10% of the total Scottish catch of wild salmon by netting...
and rod-angling. This figure has not changed significantly between catch records in the 1950s and the present day (commercial salmon farming began in 1980). Likewise, for both salmon and sea trout, the evidence from total catch statistics is that salmon and sea trout catches have varied very similarly in both the fish farming area and elsewhere in Scotland (8). As a result of climate-related changes since 1970, there have been reductions in total salmon stocks across the whole Atlantic Ocean range; and, like other countries which count Atlantic salmon as part of their indigenous fauna, these have been experienced in Scotland. Additionally, there have been changes in the balance of catch between net-fisheries and rod-angling, which have differed between areas of Scotland: in particular the decline of netting stations on the east coast has released a larger ‘reservoir’ of fish into the rivers for angling. Scottish angling catches overall have increased substantially over time, despite the overall pattern of decline in wild stocks.

Thus as statements of fact: (a) if it was true that there were any regional impacts of marine fish farming, such impacts would be confined within the 10% of the total Scottish stocks associated with the farming areas; (b) the catch data indicates that there has been no impact of farming on reduction of stocks at a farming-area level; and (c) Scottish angling catches have increased, substantially despite the overall reduction in salmon stocks in all parts of Scotland.

**Scientific Evidence**

We would be happy to consider the scientific evidence on sea lice and escapes with the RACCE Committee. However, our impression is that such detailed consideration would not necessarily provide the inputs the Committee is seeking. Suffice it to say that the overall evidence is that: (a) overall mortality of outwardly migrating wild salmon is typically 95% (9, 10); even in the worst case scenario coastal sea lice (which are always present in coastal regions even in the absence of salmon farms by virtue of the presence of wild salmonids, their natural hosts) may account for only 1-2% of this figure (9, 10); (b) there is no evidence that this mortality is any greater in fish farming areas; and (c) there is evidence that farmed-fish escapes at the level experienced in Scotland have no significant effects on wild fish populations (11, 12, 13).

**Fisheries Area Management**

Notwithstanding the fact that there is no evidence of regional effects, some wild fisheries managers continue to have concerns about potential local impacts of salmon farming on wild stocks; and unless these can be properly identified, quantified and characterised they cannot be addressed or managed. Salmon farmers are keen to work with local fisheries managers both to manage any potential impacts of farming on wild fish and to meet farmers concerns about risks to farm fish from wild stocks. Significant progress on joint working was made during the period when the Tripartite Working Group was in operation, and some groups continue to work
effectively as local forums. However, we believed there is need to re-establish a comprehensive framework which will not only provide fisheries managers with information on local fish farming but will also provide farmers with information on the local fisheries, which is currently not accessible. The Scottish salmon industry already publishes information on sea lice management and control, and SSPO has recently made a proposal, which includes the provision to publish enhanced area-based farm sea lice information, to be brought together with wild fish data supplied by fisheries managers on a local area basis. This would provide for an integrated local ‘Fisheries Area Management’ approach, which we believe would offer significant benefits to both farm and fisheries managers. It would provide local evidence and experience, which is likely to be more trusted and persuasive than extrapolations from the scientific literature, and it would address the need to achieve hard information on which to base management actions by either sector.

OTHER POINTS

We were dismayed by the views of Richard Lyle, MSP (12 December) on the ‘dislike’ of fish farmers for seals. We wish to make the point that these comments are wholly without foundation. For the sake of clarity, fish farmers have a legal duty under the Animal Health and Welfare (Scotland) Act 2006 to safeguard their stock from predation. To this end they invest heavily in tension netting, seal deterrents and other devices, having due regard to planning restrictions in some areas, to industry best practice and local experience. It is a matter of record that the aquaculture industry is permitted to shoot a strictly limited number of seals as a last resort, under licence. The Scottish Government reported that in the first 6-months of 2012, 105 seals had been shot across 230 fish farms. As a point of reference, for wild fisheries, where fish are wholly excluded from any animal health and welfare legislation, 137 seals were shot across 40 fisheries and netting stations to protect the commercial value of the wild salmon stock.

REFERENCES


In its supplementary written evidence to the Committee, the Scottish Salmon Producers Organisation refers to the campaign run by the Salmon & Trout Association and names me as heading that campaign.

The SSPO describes how, in its view:

“these campaigns have showered the Scottish Government regulatory agencies with demands for information under FOI or EIR followed by press releases which attempt to erode retailer and consumer confidence in aquaculture and impugn the reputation of individual farming companies”.

The SSPO continues:

“we have concerns that the lobbying and campaigning is aimed to undermine the role and authority of the Scottish Government and Scottish regulatory agencies…..”

As a solicitor regulated by the Law Society for Scotland and acting for a Scottish registered charity, the Salmon & Trout Association, I would like to reassure the Committee that the basis for any request for information made by me to departments of Scottish Government or Scottish statutory agencies are made pursuant to the EU Directive on Public Access to Environmental Information as enacted in Scots law by the Environmental Information (Scotland) Regulations 2004.

Public access to information - subject to legitimate exceptions - is almost universally seen as being in the public interest.

The Scottish Information Commissioner has described how:

“freedom of information is essential for all of us if our public authorities including our government are to be open and accountable to all the people they serve”1

A MORI poll survey conducted by the Scottish Information Commissioner in 2011 showed that 91% of the Scottish public view freedom of information as an important way to hold public bodies to account for their spending decisions and over 80% wanted freedom of information extended to cover other bodies that provide public services2.

All Scottish public authorities and departments of Scottish Government to which requests have been made pursuant to Scots law on freedom of information have, without exception, been very helpful and prompt in dealing with the requests made by me on behalf of the Salmon & Trout Association Scotland.

These bodies include Marine Scotland Science, the Scottish Environment Protection Agency, the Crown Estate, Scottish Natural Heritage and relevant local authorities’ planning departments on the west coast and in the islands and the Salmon & Trout

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1 Scottish Information Commissioner (2013) “Your Right To Know - a guide to freedom of information law in Scotland”
2 Scottish Information Commissioner (2011) Press Release 16th December 2011
Association Scotland is grateful to the efforts their respective staff make in response to the requests made.

The suggestion by the SSPO that the Salmon & Trout Association Scotland’s use of freedom of information requests and campaigning is aimed at undermining the role and authority of the Scottish Government and Scottish regulatory agencies is nonsense.

On the contrary, the aim of most similar campaigns run by environmental or conservation NGOs, including that being run by the Salmon & Trout Association Scotland here, is to strengthen the hand of regulatory authorities in their control and oversight of environmental impacts by whichever sector is involved.

By way of comparison - and when considering what, if anything, is aimed at undermining the role and authority of the Scottish Government and Scottish regulatory agencies - the Committee should be reminded of the SSPO’s own view of Marine Scotland from the SSPO’s response to the Scottish Government’s pre-Bill consultation,

“the consultation presents an image of Marine Scotland as totalitarian in approach and hostile to business….”

“Marine Scotland is widely regarded as narrowly focussed, bureaucratic, lacking in clear sense of its wider purpose and under-performing in respect of its stated remit”3.

The Salmon & Trout Association Scotland and many other bodies believe - and the flow of fisheries science supports this – that in certain circumstances and in certain locations on the west coast and in western isles, open-cage salmon farming can and does have a significant negative impact upon wild fish populations and wild fish conservation.

The campaign run by the Salmon & Trout Association Scotland, drawing on information obtained pursuant to legal rights given to the public by the Aarhus Convention and the EU Directive, is aimed at promulgating that message.

The Salmon & Trout Association Scotland is grateful to the Committee for accepting both written and oral evidence on this subject.

3 SSPO (2012) Aquaculture and Fisheries Bill Consultation Response 2-3-12.
On resuming—

Aquaculture and Fisheries (Scotland) Bill: Stage 1

The Convener: Agenda item 3 is our third evidence-taking session on the Aquaculture and Fisheries (Scotland) Bill. Today, we will hear from two panels of witnesses on different elements of part 2 of the bill. Panel 1 will concentrate on the state of wild salmon and sea trout stocks and conservation measures; the second panel will focus on the details of part 2.

I welcome our first panel of witnesses: Dr Colin Bean, science and policy adviser at Scottish Natural Heritage; Callum Sinclair, director of the Rivers & Fisheries Trusts of Scotland; and Dr John Armstrong, fisheries team and programme leader for Marine Scotland, the Scottish Government. I remind the witnesses that the broadcasting staff control the buttons for their microphones.

What are the current trends as regards the state of wild salmon and sea trout stocks in Scotland? Are there different trends in different areas and between different species? If so, what are the reasons for the differences?

10:30

Dr John Armstrong (Scottish Government): It may be worth giving a bit of background on how we measure trends with regard to salmon and sea trout. By their nature, fish are extremely difficult to count but we have some facilities in Scotland where we have fish counters that can detect individual fish moving across them. On the River North Esk, for example, a carefully validated counter monitors the number of adult salmon and sea trout coming up the river. We can therefore get quite an accurate picture from that site, which we call an index site. That feeds into work in the International Council for the Exploration of the Sea, where a number of index sites from around the North Atlantic are compiled to get a precise idea of changes in fish coming into the river.

Those data can be combined with data on catches in the coastal nets and the in-river nets and catches by anglers to build up a bigger picture of numbers so that we can come up with a model of the number of fish that leave and the number of fish that come back to rivers. Those are quite precise data, in that they are based on actual counts of fish. They are supplemented by one or two fish traps where we can have the fish in the hand so that we have a good idea of what is going on.
At another level, we have rod catches and net catches. That is important information because it can enable us to look at trends. However, we have to be careful because a number of factors can affect catches beyond the number of fish that are there to be caught. If there are changes in water flow, for example, the fish might be more—or less—catchable. The number of fish that are caught also depends on the number of anglers who are trying to catch them.

A broad but fuzzy picture is given by the rod and net catches. That is what is reported annually. If we look at those catches, in Scotland in 2011 the total number of sea trout caught and retained and also released was 23,324 and the total number of salmon was 87,915. For salmon, that is the sixth highest rod catch in our records. Superficially, that might give the impression of quite a rosy picture. Indeed, in terms of the overall fishery in Scotland that is a good situation. However, one reason for such good rod catches is the dramatic decline in coastal net catches over the past couple of decades. That decline is because mortality of fish at sea has progressively increased so fewer fish are now returning to Scottish waters. However, because fewer fish are being caught in the coastal nets, the number of fish that are coming into the rivers and being caught are being maintained or are increasing slightly.

The overall, broad conservation picture is quite healthy but there is not much scope for further reductions in net fisheries, for example, should there be further increases in mortality at sea. The good news is that in recent years, the number of fish returning to the coast has at least maintained at a steady level, if not increased slightly. That is the broad picture.

Callum Sinclair (Rivers & Fisheries Trusts of Scotland): We would generally concur with John Armstrong’s analysis of how we catch and how we measure the healthiness of the catch, and with the qualifications that he has given around those points.

Another issue of interest in terms of the bill is whether there are regional differences in catch. RAFTS has undertaken analysis, which is on our website. It is broadly concurrent with a parallel analysis that was undertaken by Marine Scotland science, which identified a difference between the east coast catch and the west coast catch and sought to relate that to the aquaculture industry. I know that that has been a part of the contention in the discussion. We entirely endorse the general health of the position as described by John Armstrong, but we would expect—and there are—local differences in a number of rivers and catchments associated with a number of pressures on the environment, not just that particular pressure. We believe that there is a regional dichotomy.

Dr Colin Bean (Scottish Natural Heritage): It is important to remember that the Scottish salmon population is among the most diverse within the species range. That is particularly important from a fisheries perspective, because adult fish are returning to Scottish rivers throughout the year.

I agree totally with everything that John Armstrong said about the general trends, but there are a number of other stock components to that. We have fish that come back as grilse—after one winter at sea—of course, and multi-sea winter fish that will come back at other times of the year. If we look at the longer-term trend of spring fish, for example, we will see a longer decline of the spring stock component. That seems to have stabilised recently, but it is still an issue of some concern in respect of the overall salmon components.

Callum Sinclair was absolutely right, too. There is a slight increase in the number of salmon across the national picture. John Armstrong has rightly told the committee why that is the case. However, there can be differences at smaller geographical scales. There may be issues in some areas of Scotland that are masked by the national picture.

Alex Fergusson: Good morning, gentlemen. Dr Armstrong mentioned the 2011 sea trout catch. I read an article recently that stated bluntly that the sea trout catch on the east coast of Scotland in 2011 was the highest since records began and that the sea trout catch on the west coast of Scotland was the lowest since records began. Can you confirm whether that is the case? If it is, will you speculate on why that is?

Dr Armstrong: The matter is a little bit more complicated than that. There are regional differences in sea trout trends on the east coast. The Tweed, for example, had a really good year, but I think that the Moray Firth had its second-poorest catch on record. Therefore, there are factors that vary between regions which are affecting sea trout. On the west coast in general, catches remain at a low level if we consider the historical records, but they are quite healthy in the Hebrides.

Alex Fergusson: I want to tie that up. At the end of the article, there is speculation that the basic reason is that there is a preponderance of fish farms on the west coast, but they do not exist on the east coast. What you have just said blows a few holes in that particular argument.

Dr Armstrong: Many factors affect the survival of sea trout at sea, and trying to tease out different factors simply from catch statistics will always be very difficult, given the complexity of the situation. I return to what I mentioned earlier. Changes in
the fishing effort, for example, will affect catches. One can go so far with catch data, but only so far.

Alex Fergusson: Thank you. That is useful.

Nigel Don (Angus North and Mearns) (SNP): Good morning, gentlemen. I understand what Dr Armstrong has just said about there being many factors, and I would dearly love to understand those factors a bit more. I am concerned that, at the end of today’s evidence session, as at the end of other evidence sessions, lots of people might have told us that there are lots of issues and factors, but nobody will have told us on the record which of those are the most important. I respectfully put my question to you gentlemen, as you know far more about fish than I will ever know about them.

Could you give me some views on how significant the issues of effort, available food at sea, the impact of lice or anything else that is detrimental might be? I know that the nature of science is such that it is difficult to be precise, but we—or, at least, I—would quite like to hear your opinions on that.

Dr Bean: It is important to know a little bit about the ecology of the animal. Essentially, sea trout are just brown trout that go to sea. They spend the marine phase of their life in estuarine and coastal areas; they are not particularly wide ranging.

As far as the wider context is concerned, Mr Fergusson spoke about the difference between the east coast and the west coast, but there are sea trout projects going on in other parts of the United Kingdom—for example, the Celtic sea trout project and the Moray Firth sea trout project. Those projects were set up because sea trout were in decline in parts of the UK other than the north-west of Scotland. It is true that the number of sea trout off the west of Scotland has declined, and people are looking for a cause-and-effect relationship between aquaculture and that decline. Aquaculture—through sea lice numbers—undoubtedly has an impact on sea trout.

However, there are other factors that we must consider. Climate change is one such factor. Changes in hydrological conditions could result in redd washout—the washout of the egg nests of sea trout. In addition, there is a lack of understanding of what makes a sea trout go to sea in the first place. A survey of trout in any stream on the west coast of Scotland will show that those populations are dominated by adults, because the females tend to go to sea. There is an energetics element to that, as well as a genetics element, which relates to quantitative threshold traits.

I will not bore you with all that gubbins. Suffice it to say that it is an extremely complex situation. I hope that I have added to your knowledge of sea trout; I have probably not done so to the extent that you would like.

Callum Sinclair: Sometimes we get hung up on what fishery management is about. In general, fishery management is environmental management. Colin Bean’s reflections on the options that a sea trout has in its life cycle are pertinent here. Where I am from—the Solway—the sea trout populations used to be rather healthier than they are at the moment. As Colin described, in general sea trout remain local to their natal rivers to a greater extent than salmon, which migrate to the Atlantic. That means that the area of search for problems to do with sea trout is often much more local. All the sea trout projects that Colin mentioned have targeted a range of improvement measures, which relate mostly to the physical environment in the river and the control of pollution, agricultural practice and so on in the catchments. The premise is that if we support and better manage the environment in which the fish live, they will do rather better.

There is a level of complexity there. All the environmental pressures that are reflected in the water framework directive and the river basin management plans are pertinent. Environmental prevention of pollution, water quality controls and habitat restoration are all part of the parcel. The salmon situation is similar, although salmon migrate a long distance away from their natal rivers. The significant issue with salmon is marine survival. Currently, smolt returns are circa 5 per cent. Historically, they were at four times that level. We have a very different perspective on the things that we can manage and alter. The focus of fishery managers will always be on the proportions on which we can have an influence, which tend to be catchment based.

Jim Hume: Mention has been made of data and how it is collected. Data is obtained from rod and net catches and from counters. Rod and net catch data relies on people going out to fish, which may vary according to all sorts of things, such as the weather—mind you, most fishermen seem to go out when it is really wet. I am aware that the south of Scotland has quite a few counters, but how well covered is Scotland with counters? In my view, they might provide more accurate data on salmon and trout numbers.

10:45

Dr Armstrong: There are few well-validated counters in Scotland, particularly in strategic locations. There is a big opportunity for fisheries management to increase that network. Once we have counters with absolute data, we can start to calibrate some of our other data sources, such as catch data. There is big potential for increasing the
numbers of counters to improve our understanding of fish stocks.

Jim Hume: Do you feel that we are not covered enough to get decent data from counters alone in Scotland?

Dr Armstrong: At present, we are probably not.

Jim Hume: To clarify that further, where there are counters and rod catching data, do those correlate well together?

Dr Armstrong: The data correlate, but there is a lot of unexplained variation, too. The local variation is often quite important. For example, there might not be a simple linear correlation between counts and rod catches. If a particular fishery is starting to perform very well, a lot more people will fish on it than would otherwise be the case, and the effort increases. Such effects are quite important with regard to using the rod catch data in a broader context by calibrating it more effectively.

The Convener: We move on to the state of the rivers, and favourable conditions and so on.

Graeme Dey (Angus South) (SNP): Good morning, gentlemen. We read that nine out of the 11 rivers that are designated as special areas of conservation in relation to salmon stocks are classified as unfavourable-recovering. It would be helpful if you could define that categorisation, explain what lies behind the stocks being in that condition and advise us of the presence of any salmon farms in those particular river systems.

Dr Bean: That is probably a question for me. There are actually 17 SACs for salmon, not 11. We go through a process called site condition monitoring, which requires us to report to Europe on the condition of sites. For Atlantic salmon, we look at a number of different indicators in those sites. One such indicator is the production of juveniles, while others relate to the number of returning adults and water quality and quantity.

We have gone through two cycles of site condition monitoring. The first cycle was carried out in 2003-04, and to some extent it was a scene setter because that type of activity had not taken place before. We were developing a methodology and using it as a baseline for reporting. We were using a very short time series of data, because we were looking at the condition of the site from the day on which it was classified to the date of the first cycle, which was not very long. That meant that there was a degree of latitude in the assessment. Only two sites were found to be in a favourable condition. Others were classified as unfavourable-recovering, which means that the sites are not getting any worse, and that things such as improvements in access to fish through the removal of barriers and in water quality and so on are progressing.

The second cycle is much more robust. The report from that has just come in, and it includes data for a longer time period. When we looked at adult numbers in the first cycle, the study encompassed one of the wettest years and one of the driest years on record. For the reasons that John Armstrong just outlined, the data on fishing effort, which is the data that is used for adults, was relatively unsafe. This time, we are using a longer data set, so the data is much more reliable. As part of that, there is every indication that a good number of those sites will be moved into favourable condition.

I think that Mr Dey was referring to an article that appeared in the press recently about the performance of SACs. In fact, most of the SACs that were mentioned in that article are doing very well, and only two may fall into the unfavourable category. We are peer reviewing and quality assuring that particular report and data, so we will have a clearer picture in the near future, but the SACs are doing okay. That goes back to the first question that John Armstrong was asked about the overall performance of salmon in Scotland and the increase since 1952 when the records were first collected. Of course, there are concerns about the performance of some of the stock components at some sites. I will stop short of saying that the picture is rosy, but it is not bad.

Graeme Dey: One presumes that you will learn lessons from that fresh and more substantive data and that best practice will be implemented on the two sites that are lagging behind.

Dr Bean: Absolutely. We want best practice at all sites, regardless of whether they are in favourable or unfavourable condition. There are always improvements to be made. We are moving down that road with colleagues and other agencies. For example, through SEPA’s habitat restoration programmes, the removal of in-stream barriers and the opening up of areas that have not been accessible to spawning for many years mean that such areas are becoming more accessible. Improvements in water quality are being made through the water framework directive, too.

We are getting there and we are looking for better performances from those who manage the resource. It is not only Government agencies that are responsible; district salmon fishery boards have a duty to maintain and manage salmon stocks.

Callum Sinclair: I pretty much agree with Dr Bean. A key point is the more inclusive engagement in what fisheries management is all about and whose responsibility that is. Sometimes in the past that has been a rather polarised issue,
with salmon being seen as the sole responsibility of the district salmon fishery board. With things such as the water framework directive, there is a broader recognition of the range of mechanisms by which the environmental management—and therefore the effects on fisheries—can be improved. Dr Bean mentioned the removal of barriers to fish passage in which fisheries trusts and district salmon fishery boards are engaged in partnership with SEPA. That achieves objectives not only for the water framework directive, but for fisheries.

The other issue associated with the press article to which I think that Mr Dey was referring is how the fishery boards are discharging their duties to conserve fish in sensitive situations. The voluntary take-up of catch and release over a generation in Scotland has been quite fantastic to watch. The total figure for catch in the round of all fish in Scotland is 73 per cent. The voluntary figure for catch and release of all spring fish, which people are particularly concerned about, is 91 per cent. In the SACs, a total of 6,116 spring fish were caught last year, of which 5,554 were returned and 562 were killed. That equates to less than 300 fish of the spring-run take-in for each SAC. There are clearly opportunities to improve practice and to apply and require catch and release more widely. We must recognise the extent to which that has been taken up voluntarily, but clearly that may not be sufficient on all occasions and we need to move beyond that.

The Convener: Quite a number of the 17 areas are in my constituency. Will you remind the committee how many of those are on the east, north and west coasts?

Dr Bean: When we selected SACs in the late 1990s, the first three rivers were selected to maximise the largest populations in the Scottish suite. That encompassed the Tweed, the Tay and the Spey, which accounted for about 31 per cent of the total.

Four out of the next 15 in size were then selected, which included those that had an additional qualifying interest such as brook lamprey, river lamprey, sea lamprey, otters and freshwater pearl mussels. Those included the South Esk, the Dee, the Oykel and the Teith, which contributed a further 7 per cent of the total salmon numbers.

At the next stage, we looked at the naturalness of salmon—those sites that had a good representation of all life history types and the habitats that contributed to them. That added a number of small to medium-sized rivers, some of which are in the west, on the north coast and in Lewis and Harris—the Langavat system or Grimersta system, as it was known then. In the west mainland, they included the Little Gruinard and the Endrick Water; in the south, they included the Bladnoch; and on the north coast, they included the Thurso, the Berriedale-Langwell system, the Borgie and the Naver. That contributed a further 3.5 per cent of the Scottish total. That adds up to 17 sites.

People focus on the east coast sites because they tend to be the largest rivers. The big four are there: the Spey, the Tay, the Tweed and, er—

The Convener: The Dee.

Dr Bean: The Dee—thank you. There are a few on the west coast, however, including in the Western Isles and Wester Ross, as well as in the central belt, such as the Endrick, and further south in the Solway, such as the Bladnoch.

The Convener: I am interested in why Helmsdale and the Strath of Kildonan are not among them.

Dr Bean: The list predates me—but I am still a young lad. Not every site could be selected as an SAC; there had to be some rationale, and the criteria for selecting SACs are clearly set out in annex 3 of the habitats directive. Using the criteria of population size and density, conservation of habitat, isolation and range, and the global assessment, those were the sites that were selected. They were not selected simply by SNH at the time; there was a wider consultation. There are plenty of rivers that are equally as good as some of the SACs in that suite, but they are not included.

The Convener: Thank you. That leads us to questions on the conservation of wild salmon and sea trout.

Margaret McDougall (West Scotland) (Lab): Good morning, gentlemen. We touched on conservation a little when Mr Sinclair mentioned the voluntary methods that are being used. Is all that could be done being done to manage the impact of rod-and-line fisheries? For example, why not make catch and release mandatory in all rivers or set longer close seasons for rod-and-line fishing, especially in the spring? What evidence is available of how many salmon survive being caught and released?

Callum Sinclair: I do not know where to start. No one would ever say that we are doing all that we could on all occasions. I agree with the premise of the question. We could always do more.

The question is whether the exploitation of the resource by angling is part of the problem or potentially part of the solution. We should think about angling in all sorts of different ways. First, there is an economic benefit through the sustainable and iconic use of Scotland’s resources. Catch and release is one of the main
conservation tools of choice in angling, and it is very effective. I am sure that John Armstrong or Colin Bean would be able to give robust statistics on its effectiveness in terms of whether the fish survive. There are many instances of fish surviving very well and being caught on multiple occasions, so I am not sure that there is evidence that the act of catching the fish causes an impact.

The fishery board on the Dee rather infamously set an almost total catch and release policy and has a robust system that is in rude health. The angling lets are as strong as they have ever been. I am sure that Colin Bean would not mind my saying that the Dee is one of the SACs that are coming out with a favourable status.

If all the fish that are caught do not survive, the fishery will not be sustainable, because the impact will quickly become apparent. Since 2000, the catch and release rate on the Dee has been 93 per cent across all aspects of the fishery. I am not convinced that the act of catching and releasing a fish causes an impact in itself—I am sure that colleagues could confirm that.

11:00

Another question is whether, if things are so bad, further restrictions should be placed on how we exploit the resource. If things are so bad, we should—absolutely—consider such mechanisms. However, we must consider the continuum of measures before thinking about closing a fishery, because closing a fishery equals loss of economic value and removing the whole ethos by which income is generated and recycled into managing the resource.

When evidence shows that the stock is under particular stress or is in decline, mandatory catch and release could be entirely justifiable. That would be eminently preferable to draconian closures of rivers or fisheries.

Dr Armstrong: In relation to salmon, we are referring to spring fish, whose stocks have been weaker and the number of catches of which has been lower than it has been historically. They have bucked the trend.

I will paint a slightly broader picture. One reason why fewer fish have returned to Scotland is changes in the marine climate. There are changes on the high seas—for example, fish probably have to go to different places to feed. We are not entirely sure whether the spring fish that are not returning are returning later in the year. It is entirely plausible that migration routes have changed as the food supply has changed.

We need to get under the bonnet, if you like, and find out where the spring fish in a catchment come from and what the state of the spawning stock in an area is. Does the area have sufficient spawners to lay enough eggs and maximise the next generation that comes out? That process is called establishing the conservation limits—the numbers of fish that are needed to saturate the habitat fully. In areas that have weak stocks, we would strongly recommend getting in and having a good look at what is going on, which gives one the information that enables coherent management.

Margaret McDougall: I do not know whether you answered fully the question whether there are any figures on the number of fish that survive after being released. I take it that there are no figures.

Dr Bean: Such a question was asked in the mid-1990s, when catch and release applied to about 1 per cent of fish that were caught. As Callum Sinclair said, we have moved up to rates of 91 per cent for spring fish and about 73 per cent overall.

It has been recognised that handling fish has or could have an impact on them. A code of practice, which has been widely promulgated throughout the angling sector, concerns issues such as how to handle fish, the use of knotless nets and not bringing fish out of the water. It is recognised that fish can be mishandled and we must acknowledge that some anglers mishandle fish—everyone likes a picture and all that sort of stuff. There is no doubt that some mortalities will be associated with catch and release.

I fully support what John Armstrong and Callum Sinclair said. Large multi-sea winter fish that occur in rivers at other times of the year—the big trophy fish, if you like—and not just spring fish are the animals that are probably most likely to be handled and potentially mishandled. Callum Sinclair is absolutely correct—we might well want to look at mandatory catch and release in areas where stocks are particularly weak. That would obviously have to be informed by greater scientific understanding of what is happening to stocks and whether what is affecting multi-sea winter fish is happening in the river or at sea.

Margaret McDougall: Would it be fair to say that you would support a longer close season for rod-and-line fishing? Would you support 100 per cent catch and release being made mandatory?

Dr Bean: I think that we have to look at close seasons because, for example, climate change may mean that fish are on spawning areas at later times of the year than they would have been previously. Some salmon seasons start very early in the year, in January, when fish are still in the redds, so there may well be a case for amending the start and end of seasons. There is a good biological reason for doing that in some circumstances.
Callum Sinclair: Perhaps I might clarify for Ms McDougall that we do not support a general change in the close season across the board, but if evidence identifies that a change is required and justified, clearly we should always have that option available if we are serious about conservation and better management.

The take-up of catch and release on a voluntary basis—across all salmon caught in Scotland, 73 per cent were voluntarily returned across all stock components in spring, summer and autumn, and 91 per cent of the most sensitive spring fish were returned—indicates that making catch and release mandatory would be of only marginal benefit. If evidence identifies that mandatory catch and release is required, the DSFBs already have the power to seek approval from ministers for an order to require catch and release in certain parts of the season. Clearly, if that is not happening, there might be a benefit from giving ministers or others the power to require it.

Margaret McDougall: Is it possible that catch and release gives an inflated perception of abundance, with fish being caught multiple times? How could multiple catching of the same fish by rod and line be recorded? Would any legislative change be needed to introduce such a practice?

Dr Armstrong: My understanding is that rod catch statistics are widely used as a best indicator of what might be happening in fisheries. The problem is that fish that are captured and released might be captured again, which could inflate the rod catch. We are aware of that, and an adjustment can be made with some assumptions. It is important to understand that only a small percentage of those fish that come into a river are actually captured. Typically, throughout the year perhaps 10 per cent of salmon coming into a river might be captured by rods. For spring fish, the proportion is a bit higher and might be up at 20 per cent. If a fish is captured and released, it still has a one in 10 chance of being captured again, so the level of inflation is actually rather low. We have made adjustments to our trend figures to account for that inflation, but they do not make a difference to the general trends that we report.

Margaret McDougall: So we already have that adjustment in the figures.

Dr Armstrong: We can do that.

Margaret McDougall: You can do that, or you already do that?

Dr Armstrong: We do not routinely make an adjustment in the reported rod catch figures, but such adjustments are made in the information that we look at with ICES that feeds into the North Atlantic Salmon Conservation Organization.

The Convener: Does the panel support the Royal Society of Edinburgh’s suggestion that there should be mandatory reporting of rod-and-line fishing effort for salmon and sea trout? You may give yes or no answers, if you like.

Dr Bean: Yes.

Callum Sinclair: Yes, if someone could come up with an effective way of assessing rod catch effort. The Marine Scotland science statements that I have read seem to confirm that no satisfactory practical means has been devised to obtain meaningful information. If someone could come up with a way in which we could have meaningful and useful information, I would say yes.

Dr Armstrong: I can hardly give a yes or no answer after Callum Sinclair’s comment. It depends, I am afraid, on what sort of effort is being measured and how useful the information would be. If we spent a lot of money collecting data on effort that do not really help, we might be better putting in some counters or getting alternative information.

Jim Hume: The bill proposes new powers for ministers to be able to change annual close times. Seemingly, ministers have not been able to do that in the past. Do the witnesses have any examples of rivers that would have benefited from ministers having the power to change annual close times in the past?

Dr Bean: The only experience that we have of that is when district salmon fishery boards have requested it themselves, rather than the Government or ministers suggesting it. We know that some rivers, such as the Tay and the Dee, have looked to amend the start and close times of their seasons simply for the biological reasons that I explained earlier. I do not know whether anyone else has an answer.

The Convener: You do not have to answer.

Callum Sinclair: I do not think that we have any specific rivers in mind, which I think was Mr Hume’s question. If there is an evidence base for such an intervention, it would need to be very strong because of the potential consequences for the management system and how it is sustained.

Dr Armstrong: Looking forward, I think that it would be sensible to be cautious. Spring stocks have been in serious decline and we need to be able to take action if there is clear evidence that it is necessary.

Jim Hume: At present, it would be for the fishery boards to decide whether to change annual close times at the local level. Is that the existing mechanism?
Dr Bean: The existing mechanism is that boards can apply to change annual close times, but Scottish ministers cannot impose a change. John Armstrong’s point is sensible and correct in that we do not have a crystal ball and there might well be situations in future in which ministers might want to be able to do that purely for conservation reasons.

The Convener: Alex Fergusson wants to ask about the release of salmon for restocking.

Alex Fergusson: I think that I am right to say that the power over the release of salmon for restocking largely lies with district salmon fishery boards but Scottish ministers have the right to issue the necessary regulations when there is no district salmon fishery board. The bill proposes to change that and give ministers the right to introduce regulations to authorise the release of salmon for restocking. What is wrong with the present system, if you think that it needs to be changed?

Dr Bean: That is probably a question for me because we look after the SACs. District salmon fishery boards are the regulator, if you like, for their own stocking activities. That does not preclude them from applying to Scottish ministers to collect brood stock out of season. Obviously, the brood stock is needed to supply the hatcheries for restocking.

As Alex Fergusson has rightly pointed out, the current situation is that Marine Scotland has the licensing responsibility for all fish other than salmon in Scotland, but it also has the licensing responsibility for salmon in areas in which there is no district salmon fishery board. The district salmon fishery board is the competent authority under the habitats directive in an SAC, for example, and I will talk about SACs because that is where my locus is.

Essentially, SACs self-regulate, which is fine. We have district salmon fishery boards that are largely managed by people who are proprietors, but they might not be fishery managers in their own right. There is an increasingly strong link between district salmon fishery boards and fishery trusts so, in many areas, there is ready access to good-quality scientific advice.

The issue is that district salmon fishery boards have to comply with the habitats directive in the same way as everyone else. For SNH, the real issue is that many district salmon fishery boards carry out this type of activity without any recourse to the habitats directive.

11:15

From work that has been carried out in many places but particularly in western Ireland, we know a lot about the impacts of long-term stocking activities on individual and population fitness—or what you might call the genetic impacts. This area of science has expanded significantly over the years and the question now is whether the dependency on stocking that seems to pervade some district salmon fishery boards is scientifically justifiable. A lot of money is spent on stocking—indeed, some of these hatchery operations can run to well over £100,000 per year—but, aside from the value for money element, we need to consider the ecological or biological impact of such activity.

To give members an indication of the number of fish that are stocked out, I should say that, in information that it provided to NASCO as recently as 2010, the Association of Salmon Fishery Boards listed the number of hatcheries that operated in district salmon fishery boards and the number of boards that carried out this activity. According to that information, 25 district salmon fishery boards claim to have carried out stocking operations; at that time—that is, in 2010—those boards planned to put out 12,758,000 salmon and 127,000 sea trout from 42 hatchery units. However, 25 per cent of those fish came from a single district salmon fishery board on an SAC and information about whether that board had gone through the habitats directive appraisal—the three tests that would usually be applied to any activity that might impact on an SAC—is largely missing, which is a concern. Moreover, some boards do not apply to Marine Scotland for a licence to collect fish out of season. District salmon fishery boards have to improve their game with regard not only to best practice in science but to compliance with relevant legislation.

Alex Fergusson: Thank you very much for that explanation. Coming from the south-west, I am aware of a situation in which the district salmon fishery board, as per your point, works very closely with the Galloway Fisheries Trust but conflict has arisen with an angling association which, with the blessing of the district salmon fishery board, is carrying out its own restocking programme. I think that what I am asking is whether you can restock too much—can you put too many fish back into a river?

Dr Bean: Absolutely. I would hate to give members the impression that SNH is anti-stocking—it certainly is not. I think that we would all agree that stocking is a legitimate fisheries management tool that can be used in certain circumstances. If someone wanted to stock fish above a man-made barrier where natural spawning could not occur, such a move would be justifiable if fish had been lost through, for example, a pollution or other natural event. As I have said, we support stocking as a management tool, but district salmon fishery boards and others
quite often look at stocking as the first tool in the box when they should really be trying to address the environmental issues that have led to the reduction in recruitment to stocks by, for example, removing a fish barrier or through some other habitat management prescription.

**Alex Fergusson:** I am sorry to interrupt but, from what you have said, I imagine that the link between the district salmon fishery board and the trust, where it exists, is quite important.

**Dr Bean:** It is extremely important.

**Callum Sinclair:** As the representative of the 25 fishery trusts—and as someone who, as they say, lives in the parish—I know well the example that Mr Fergusson has highlighted. As Colin Bean has pointed out, stocking is very much seen as a first stop when it should be further down the line of fishery management prescriptions. I often describe it as selling hope to optimists. People who want to have more fish think that putting more fish in the river will give them that but they miss various basic start points. The fish that they use to stock the river came from it in the first place; they are not new fish.

The earlier question was about whether the current system works. We are rather less interested in whether the current mechanism works than in how the mechanism should work. There must be a better system for regulating and advising fish stocking operations. Advice must be sought and taken, whether from Marine Scotland scientists—who are well equipped to regulate on the matter—or the district salmon fishery boards. If someone seeks to go against that advice, which is what is happening in the example that Mr Fergusson quotes, they must justify that approach to the boards.

I would like the decision-making process to be more transparent, particularly in cases in which district salmon fishery boards are self-regulating. First, there should be a requirement to seek advice. There should be a management objective for the activity that would stand up to some scrutiny. There should also be an associated monitoring assessment programme and an exit strategy because, as Colin Bean mentioned, stocking is sometimes legitimate for a period to help recovery after an accident or incident. However, that should not mean that it is a recurring intervention.

In the consultation response and in this meeting, we have stated that we would strongly favour some sort of public register of regulatory decisions on stocking so that such decisions on fish movements made by the DSFBs or Marine Scotland are apparent to us all, so that we can see the justification for the action if it is approved and, I guess, so that we can challenge it if we wish. Some of our members have concerns that, when advice is sought, it is not always followed. That is certainly the case in the example in the southwest.

**Alex Fergusson:** I did not mean to highlight an example in my own parish alone. I take it that it is not unique and that such problems exist more widely in Scotland.

**Callum Sinclair:** They may well do. However, the key issue is how we better inform stocking activity if it is to take place and how we better regulate its extent. There is certainly room for improvement in regulatory practice, in where and how advice is given to those who make regulatory decisions and in how visible those decisions are.

When the system works well, it can work very well. One of the major hatching operations that have been undertaken by a fishery board in the past was on the River Spey—that may be the example that Colin Bean hinted at earlier. The fishery board there received informative genetic advice, which allowed it to make significant reductions in the hatchery programme, and it is still considering that evidence further.

It is not reasonable to say that no advice has been sought or acted on, because it has been. However, there is a need to level the pitch a bit and ensure that advice is taken and acted on across the board.

**Alex Fergusson:** Is there any difference between the process or practice in releases that are authorised by the Scottish Government—which would be the case with all releases in future if the bill is enacted—and releases that are authorised by district salmon fishery boards?

**Dr Bean:** We are assured that any release that Marine Scotland authorises will be done on the basis of the best scientific advice. That is fine.

If a district salmon fishery board has access to a fishery trust biologist, it has advice. The Association of Salmon Fishery Boards gives some guidance and has an excellent code of practice. Of course, not all district salmon fishery boards may follow that advice.

Our knowledge of salmon populations has increased substantially over the past few years. In fact, a project that RAFTS has run in association with Marine Scotland called focusing Atlantic salmon management on populations, or FASMOP, has highlighted the fact that salmon populations are genetically discrete—there are many of them. In the past, we would have said that salmon from the Tay are different from salmon from the Tweed, which are different from salmon from the Dee. That was accepted and that understanding has been around for a long time. However, we now realise that there are a number of populations...
within individual rivers. The question is how those populations are managed. It is not simply a case of catching brood stock in an area that is easily accessible for someone to go and net them and then stocking those fish elsewhere, because that may have an impact on the smaller populations.

The question is whether the scientific expertise exists within the district salmon fishery boards to carry out stocking activity effectively and in accordance with what we would regard as best scientific practice.

Nigel Don: I want to carry on the questioning about the different populations and their DNA. Earlier, we spoke about spring salmon and later salmon. Is there a genetic difference that explains when they come back or is there some other factor?

Dr Bean: We believe that there is a genetic difference. There are different life history types, of course. There are fish that go to sea for a year and come back and there are fish that spend more than one year at sea and come back. They may also come back at different times of the year. There is a belief that the multi-sea winter fish, which are known as spring fish, tend to spawn higher up in the catchments and are spatially separated from other stock components. That is a very simplistic way of putting it. Our gaining of understanding of the genetics is an on-going science.

I am sure that John Armstrong has more to add, because he has done a lot more work on spring salmon than I have. There is certainly a genetic element, which must be brought into focus.

Dr Armstrong: Some experiments have been conducted at the fisheries laboratory on the River Tay; fish have been stripped from upper and lower tributaries and the offspring have been reared in a middle tributary. When those fish grow up, they retain characteristics that are associated with where they came from. Those that came originally from the upper tributaries leave earlier as smolts than those from the lower tributaries. Similarly, they come back at different times. In effect, the fish in the upper tributaries are programmed to leave earlier so that they will arrive at the sea at about the same time, which is quite remarkable. If everything is mixed up in a hatchery, all that beautiful evolution goes back to square 1.

The Convener: We have two or three more important questions to ask you, and we face something of a time limit. The next question—question 9—concerns mixed-stock fisheries and the impacts thereon of netting. Does Alex Fergusson wish to take that question?

Alex Fergusson: I beg your pardon, convener. I am sure that I do—if I can find it.

This is a question on mixed-stock fisheries. How many such fisheries are there? Is that easy to answer?

Dr Armstrong: It depends on how a mixed-stock fishery is defined. The nearer a fishery is to a river, the less mixed-stock it is likely to be, but it is possible to have mixed-stock fisheries even within a river. For example, we know that some fish that go into the River Conon stay there during the summer and then leave it in the autumn to go and spawn in the Alness and other rivers. In a sense, those fish will be exploited by the rod fishery in the River Conon. I am sure that there are lots of other rivers that are similar but, in general, the further a fishery is from a river, the more mixed-stock it is likely to be.

Alex Fergusson: I like to think that I know a little about river fishing, but I know nothing about netting. To avoid netting having an impact on mixed fisheries, is it possible to move the netting operation closer to the mouth of a river to make it more specific, or is that not how things work?

Dr Armstrong: I would be surprised if we have enough data to answer that with any confidence. As fish look for their home river, it seems that they explore various other rivers on the way back, so there is probably a bit of a highway going up and down the coast, with lots of fish from different rivers moving along it.

Alex Fergusson: So, there is not a simple answer to the question.

Dr Armstrong: I do not think that there is.

Alex Fergusson: That would have been a lot to hope for.

Callum Sinclair: I imagine that there are as many mixed-stock fisheries as you wish to count. It depends on the level to which you want to define the exploitation. There are mixed-stock fisheries within rivers. Colin Bean mentioned the populations in some of the major systems, such as the Tweed and Ettrick Water, which is famous for its spring fish. Ronald Campbell would argue that that major catchment in the Tweed sustains the whole spring fishery of the system.

The key issue is that we are inching towards having technology that will allow us to begin to quantify the extent of mixed-stock fisheries and how they work. One of the proposals relates to the ability to take genetic samples from fisheries.

We certainly welcome that. Some of the ongoing genetics work that is being undertaken by the Rivers and Fisheries Trusts of Scotland and scientific colleagues elsewhere is allowing us increasingly to identify where a fish is going to when it is sampled—at least to the river scale. That is beginning to give us the chance to look at mixed-stock fisheries and see from which rivers
fish are being exploited. Some of the net stations are undoubtedly exploiting fish from multiple catchments and we are now moving closer to being able to quantify that. Once we have done that, we will be able to determine whether those rivers will be able to sustain that harvest.

11:30

The key thing is not that mixed-stock fisheries are somehow in the naughty corner, per se, but that we are now able to quantify their extent and whether rivers of origin of the fish can sustain their exploitation, which is the key question.

Graeme Dey: Should district salmon fishery boards have a pre-emptive right to buy netting rights?

Colin Bean: I do not know the answer to that.

The Convener: Does nobody else have a comment?

Witnesses indicated disagreement.

The Convener: Right. Next question.

Graeme Dey: I would welcome the panel's view on the suggestion that net fisheries should be managed through days at sea under the auspices of inshore fisheries groups rather than by district salmon fishery boards. I am particularly interested in exploring the practical implications of such a move. For example, could the action of nets be appropriately monitored under such a set-up?

John Armstrong: It is not an area that I have given a lot of thought to, to be honest. I suppose that you can see how coastal nets almost fit on the edge of two different systems—there is certainly that aspect. The nets and rods are exploiting the same species, which must have a consequence for management systems, but in rather different terrains. I cannot give a better answer than that.

Callum Sinclair: The key point for us is that the nets are exploiting the same resource, so we need to find a way collectively to manage that resource. We would be concerned if different exploiters of a resource were to be dealt with in different places. We understand, and I am sure that the committee will be familiar with, some of the tensions in the dynamic between netting and angling operations or their proprietors. That tension in itself is unfortunate. A solution to the tension must be found that does not split management of the resource. In essence, they are catching the same fish so it would be unfortunate if we had two separate cycles of consideration of how we manage the system. My preference would be to retain the management in the same place.

Graeme Dey: How could those tensions be resolved?

Callum Sinclair: That is a rather more difficult question. I am not sure what the answer is. At the end of the day, a lot of it is down to personalities and people. Given that people sometimes adopt positions that become entrenched and immoveable, we have to find a way to bring evidence to the table on the issues that we have talked about regarding mixed-stock fisheries. The key to factually driven and informed management decisions is evidence on the extent to which exploitation is happening and on where the fish are coming from and going back to.

We cannot get away from the fact that being concerned about the health of the resource and totality within a catchment means that at some point, we have to think about the level of exploitation of that resource. We discussed the effect of catch and release, which must be a much more effective conservation measure than catch and not release. We have to get to the nub of the issue: if stocks in any system are under threat, we need to think about overall exploitation. There are two sectors that use and exploit that resource, so we need to begin to quantify what those systems can take as a sustainable harvest.

Graeme Dey: In order to resolve those tensions, should there be a mediation mechanism? Is there among the netsmen a sense that they pay dues to the fishery board to fund it—in their view—to harass them? I appreciate that there are difficulties, but if we retain the current arrangement, how will we resolve such disputes?

Callum Sinclair: I am not sure. In the consultation, we supported the idea of a mediation process, which might resolve such disputes. Clearly, the tensions are such that each side would believe that it has a justified position, so we need to find a way to crack that. Just saying “Well, carry on as you are, gentlemen” cannot be the answer. We certainly supported the proposition that there should be some sort of resolution process, but I think that the proposal has not been taken forward.

Dr Bean: If there is an impasse between personalities, there may be a need for conflict resolution and mediation, but that has to be informed by the science. That comes back to John Armstrong’s point, which I think Callum Sinclair agrees with, about the need for a better understanding of what stocks are being exploited. The more important point here is probably the science, which should really drive the mediation.

The Convener: The next question, on the effects of climate change, follows directly on from that.

Claudia Beamish: Good morning to you all. On one of our committee trips, we saw a major programme of planting to provide shade to control
water temperature. Dr Bean stressed earlier that none of us has a crystal ball, but can any of the panel comment on the possible effects of climate change on salmon and freshwater fisheries? How might the law need to change in response to climate change? Do you have any specific ideas about how the bill could be climate proofed? Possible changes in salmon spawning patterns have already been highlighted.

Dr Bean: It is quite clear that climate change is a reality. In the worst-case climate change scenario of a rise of 3°C, we would need to look at how we manage fish across the board—not just Atlantic salmon. We have a number of species in Scotland that are essentially Arctic species—such as Arctic char and powan, which is an iconic species—that are more at home in the Arctic or in Europe’s northern climes. We need to consider not just the impact on salmon but on species of high conservation value across the board.

Unfortunately, we do not work on conservation in aspic; things will change, and we have to prepare for that. For species such as powan, we may need to provide for the establishment of refuge sites that are less likely to be impacted by changes in temperature. For salmon, we have to work from knowledge of the animal’s capacity to adapt to climate change. For example, what impact will a step change in temperature have on things such as the amount of water that is available for salmon to complete their lifecycle? With increased rain discharge at periods of the year when eggs are in gravel and can be washed out, can the fish actually get to those sites in the first place? Will the water temperature rise to a level that has a negative impact on juvenile fish? How can we mitigate that? Planting trees to increase the amount of shade in order to modify or control temperature is a good example of what might be done, but salmon are extensively distributed throughout Scotland and that type of prescription might not be available throughout the range.

You are absolutely correct that we need to prepare for climate change, but we should also remember that these animals have gone through quite a number of changes in temperature over the past 10,000 years since they first arrived in the UK. They are very adaptable—probably more adaptable than we might think—and probably more adaptable than some other species. However, we have to adapt further.

I am not entirely sure what we can do to improve the bill and proof it for climate change—that is a more difficult question. However, allocating powers to the Scottish ministers—for example, to vary close times for seasons—might well be what we will require in the future in order to protect certain life history types or genetic types of animals.

Dr Armstrong: The current situation of higher mortality at sea is probably one of the early signs of climate change. The ability to take appropriate conservation measures where necessary is precisely what is required to combat the effects of climate change. We have touched on maintaining the genetic composition of stocks. It is important that we enable animals to evolve at a pace that allows them to keep up. Therefore, it is important that we look at stocking practices to ensure that we do not mess up the potential for that. Some of the proposals are precisely to deal with that sort of issue.

Callum Sinclair: I concur that it is difficult to provide specific legislation on what to do about climate change, because it requires Wizard of Oz or Harry Potter-esque foresight to see what is going to happen next. The key point is that, as the committee perhaps saw when you visited the Dee, some practical protective measures are rather less sophisticated than might be imagined—for example, planting some trees.

We might be able to detect change coming in lots of ways, whether that is changing run times of fish or different survival rates. Some of the bottom lines are associated with temperature fluctuations and how we smooth them out. However, protective measures can be straightforward. As long as we are not spooked by the complexity of the climate change issue and we allow ourselves to come back to what the measures might be, we have a chance of being able to introduce such measures.

The scheme on the Dee is a good example of that. To me, it is notable that delivery of the scheme will be taken forward as a LIFE+ project, which is headed up by SNH and RAFTS and is related to freshwater pearl mussel and not salmon. There are connections between the species. As long as we keep sight of what the practical measures might be, we will have a chance to respond to the challenges that will undoubtedly come.

The Convener: Is it the case that some salmon fishery boards have in the past cut down trees near river banks?

Dr Bean: That is possibly the case, although I could not point to any specific instances. Certainly under the old forestry practice, trees would have been planted right up to the water’s edge. There can, of course, be too much shade. The sort of planting that Ms Beamish talked about is deciduous woodland, which produces dappled shade. Another product of that type of woodland is that leaf litter goes into the stream, is broken down and eventually ends up as food for fish. There is a
difference between commercial forestry and planting for habitat enhancement.

The Convener: I was really alluding to another aspect, but I think that Callum Sinclair is going to come on to that.

Callum Sinclair: I do not know whether I am. I might, if I get lucky.

Clearly, DSFBs have on occasion removed trees, but so have people in agriculture and land development. Many people have undertaken such activities in the past. There is no such thing as a good or a bad tree, but too many trees can shade out systems and reduce their primary productivity to the detriment of the fish. There are examples in previous commercial forestry where that sort of practice shaded out systems and had other unforeseen consequences, such as the acidification in Dumfries and Galloway. As we better understand the environment, we can respond better. The point is that we are able to respond and we know what we need to do. Trees have been cut down for a long time, and not just by DSFBs, but they can also be planted by lots of people.

Richard Lyle: Good morning, gentlemen. The public like animals—we are a nation of dog lovers and cat lovers. We are also a nation of seal lovers. Will you comment on the reports that more than 240 seals have been shot outside fish farms? Fish farmers dislike seals—I am sure that they regard seals as being like the fox outside the coop. What effects do seal scarers have on seals, whales, dolphins and other animals?

Dr Armstrong: There has been concern that inappropriate seal scarers can damage the hearing of cetaceans and even of seals. If a seal is made deaf, that does not solve the problem; it just no longer hears the seal scarer. Seal scarers emit a loud noise.

Dr Armstrong: There has been concern that inappropriate seal scarers can damage the hearing of cetaceans and even of seals. If a seal is made deaf, that does not solve the problem; it just no longer hears the seal scarer. Seal scarers emit a loud noise.

Dr Armstrong: It is worth adding that, in the past decade, a lot of research—again funded by the Scottish Government—has looked at the relationship between wild fisheries and seals. That has been done more on the east coast than in aquaculture. The research has established that a very small proportion of the overall seal population tends to use rivers. The major conflict between seals and fisheries seems to relate to those individuals.

Research has developed the policy for trying to manage seals much more effectively than in the past. Scarers are being adopted as part of a bigger strategy of reducing shooting, to help seal populations and to create the maximum benefit for fisheries.

Richard Lyle: Should the Scottish ministers have the power to issue licences for killing seals?

Dr Armstrong: Ministers have that power.

Richard Lyle: Should that continue?

Dr Armstrong: That is for ministers to decide.

The Convener: For clarity, what is the total population of the two types of seal that we have in Scotland?

Dr Bean: I am sorry; I do not have that information in front of me, but I could provide it.

The Convener: That information would be useful to our deliberations.

Thank you very much, panel. The session has been wide ranging and useful. It was interesting to have the expert contribution of the witnesses.

Meeting suspended.
Fishery Trust and Cromarty Firth Fishery Board; George Pullar, vice-chair, Salmon Net Fishing Association of Scotland; Ron Woods, policy officer, Scottish Federation for Coarse Angling; and Craig Campbell, chair, migratory fish committee, Scottish Anglers National Association.

I will kick off with a question about the need for discussion on part 2 of the bill. Some stakeholders have suggested that there has not been enough consultation, although the bill team mentioned that further work on freshwater fisheries is planned for after the legislative process. What are the panel’s views on that, given that we know that the salmon strategy task force set out in the late 1990s to think about future structures?

Simon McKelvey (Cromarty Firth Fishery Trust and Cromarty Firth Fishery Board): It would be useful to review some of the output from that freshwater strategy working group and perhaps reconvene some of that working party, because that information could be informative.

The Convener: What in particular would be informative?

Simon McKelvey: One issue that was discussed was structures for fisheries management. At the time, we all agreed that, if we were to design such a structure for Scotland, we would not start where we were, but we have what we have. There was a move towards a unitary body that could cope with all freshwater species and not just salmon. In some areas, where a district salmon fishery board and a fishery trust work closely together, we are getting closer to that. Examples of where that works well include the Dee and the Tweed. There are examples of how fishery management in Scotland is evolving to be much more fit for purpose than it used to be, and it would be good to encourage that process.

George Pullar (Salmon Net Fishing Association of Scotland): Our view—we represent netsmen—is that management is broken and that things must change to bring the management into the 21st century.

Things have changed greatly in the past two or three decades. At one time, there was a balanced representation between upper and lower proprietors or, in other words, netsmen and anglers, or angling proprietors. That has all gone, because the netting industry is so small now. It is time for change. We must find a way forward, so that we can all get a good night’s sleep and not have a continuous battle about fisheries management.

The Convener: I will explore that further.

12:00

Ron Woods (Scottish Federation for Coarse Angling): I share the view that there is a need to review the structures. I was involved in various working groups subsequent to the salmon strategy task force review, none of which came up with an ideal solution, although all of them kicked about the issues and came up with proposals. There would be considerable benefit in doing further work.

From a coarse angling point of view, it would be unfortunate to assume that the simple solution is for boards to assume responsibility for all other species, because there are inherent conflicts of interest. They are not quite the same as those that George Pullar mentioned between the netting and rod proprietors but, nevertheless, they exist and could not be reconciled with a simple takeover. Nonetheless, there is potential for some sort of unified management structure, however it might be composed. Much work has been done, but it is unfortunate that the freshwater fisheries forum, which was working on the issues, has not met for a considerable time.

The Convener: What is the SANA view?

Craig Campbell (Scottish Anglers National Association): I concur with Mr Woods that it seems extraordinary that it is many years since the steering group of the freshwater fisheries forum met. It seems reasonable to take the issues forward through that medium in the first instance. One aspect of the fact that things are being put off to further work that I find disheartening relates to the specific proposals on dispute resolution and mediation.

I served on the working group on mixed-stock fisheries. We are pleased that, as a result of that work, there is much in the bill giving power to ministers to put in train a process that will allow the analysis of stocks of fish, which will determine where the pinchpoints are on threats to fragile stocks. However, the bill takes away the process of doing something about the issue. A range of things can be done about it, but they all involve people’s livelihoods and must be done with great care. Moreover, unlike the situation south of the border, the net fisheries are property entities, so human rights come into the matter.

We need a process to find a fair way of sharing the burden of costs that will arise in tackling the mixed-stock fisheries when we have identified the pinchpoints and the necessary fishery management measures. We do not agree with what the Scottish Government said about that in its response to the results of the earlier consultation. That is an essential part of the process and we are sorry that it is not in the bill.
Graeme Dey: My question is directed mainly at Mr Pullar, although I invite the other witnesses to contribute. What would be the advantages of managing net fisheries through a days at sea approach under the inshore fisheries groups? In practical terms, how would that happen? How could the work of the netsmen be monitored efficiently and appropriately?

George Pullar: Compliance officers already have authority to monitor us, as do the bailiffs in the fisheries district. Therefore, I do not think that compliance would be an issue under a days at sea approach. The operational aspect of days at sea is an important issue for us. We should be able to work round the weather and we should not have to go to sea just because the calendar says that we should.

I take the helm of our boats most of the time. There is an issue. On a Friday or Monday morning, when it comes to putting in leaders or taking them out, the question is whether we go or not. We cannot afford to lose fishing time, so we have the pressure of getting our nets operational again on a Monday, and we have the same situation on a Friday. If the law said that we were not allowed to remove any fish on a Saturday or Sunday and we could not get to sea on a Friday, even if the weather settled down on Saturday or Sunday, we could not take the fish that were caught on the Friday and the salmon would escape from the nets. Therefore, we would lose every way with the proposal.

The problem is that, with climate change, which the committee discussed earlier, the weather patterns have changed a lot in the past few years. We are getting constant low pressure coming over the country, which is giving us all this rain. The job is now difficult because of the constraints of the legislation and the environmental factors. In the past three or four years, we have had a major problem at Montrose with jellyfish. The problem has never been so bad as it is nowadays. The jellyfish clog up the nets—I have lots of photographic evidence of that.

Things have changed. The operational side of a salmon netting station must move forward; we cannot keep it back in 1868, when it all started. Things should change with the times as the circumstances change. For example, the run timings have changed. Most people here will know that grilse are arriving back at the coast later and later. If they arrive back after our season, that is like a farmer being expected to harvest his crop when the crop is not ready. We must work on the basis of environmental factors and nature, and get away from the calendar.

I do not know whether I have answered all your questions.

Graeme Dey: Does anybody else want to contribute?

Simon McKelvey: I agree that there can be problems with checking leaders and bringing in fish over the close time. However, the close time exists for a good purpose and has an important biological role. As the previous panel discussed, the separate populations of fish return back to river systems around the country—and even within river systems—at different times of the year. Having a close time allows some escapement throughout the season. If the close time were done away with, there could be heavy exploitation of some rare stocks that might not withstand that exploitation.

An alternative would be to have the equivalent amount of close time after the weekend. So, if the nets could not be checked over the weekend, they could be closed for Monday and Tuesday to allow that escapement time under the circumstances. At present, if the netsmen in our region do not get out, they phone up and let me know. That works well. In our region, that does not happen often, and certainly not every weekend, although we might be a bit more sheltered than areas further up the coast.

George Pullar: There is an in-built inefficiency in the salmon nets that are still on the go. The drift nets were closed down in Scotland in the 1960s, and I believe that the English are going the same way. It is a completely different type of fishery with an in-built inefficiency. The Government scientists did some research—in the 1970s, I think—that showed that the salmon avoid the nets with no problem whatever. There are now very few salmon nets in Scotland, so the conservation benefits are not the same as they used to be.

Also, as I say, the weather has changed. We call it a keep-in when we cannot get the leaders out. Our nets do not fish when the sea is rough. Are we expected to lose two days of fishing when it is rough on a Saturday and Sunday, as Simon McKelvey suggests, for two days of quiet weather when we can catch fish? Fishing with the salmon nets is not as straightforward as some people think. If, as the ASFB would like, we lost two days during the week, who is to say that we could get the leaders back in again? We could take them out on a Monday, Tuesday or Wednesday and not be able to get them back in on the Thursday. We would be in the same position again of not knowing whether we would be able to go to sea. That is the position that I want to get away from. In this day and age, we should not have to work on the basis of the calendar. There is a safety aspect, too. We have crews’ lives to think about. When I go to sea, I want to be sure that it is for the right reasons and not for economic reasons.
The Convener: Claudia Beamish will explore that matter a little more.

Claudia Beamish: I want to pursue a bit further the close time for fishing. As a complete layperson who has made only two fact-finding visits, I would like you to explain for the committee whether, rather than have a situation in which there are issues about getting the opportunity to take the nets out, there would be sense in having a section within each season—although I know that your season for spring fishing is closed, anyway—that you fished for a certain number of days, which it would be up to you to report. Or would that not be viable?

George Pullar: I do not think that that would be viable. We could stop in the third week of July—or any time—but who is to say that the weather would be bad or good then? We cannot predict what the weather will do. The forecasts are good, but they can be wrong, and sometimes completely wrong. We should just work on the basis of the environmental situation.

Going back to weekly close times, I point out that angling weekly close times have never changed: it is still 24 hours on a Sunday. In 1951, netting close times changed from closure at 6 o'clock on a Saturday to midday on a Saturday. In 1988, the Government of the day changed the times again, against scientific evidence. Without a doubt, that was done only to apply pressure on businesses to fold, as a result of rod angling interests.

A lot of politics is involved in salmon netting, as I am sure you are aware. The weekly close time should never have been moved from Saturday dinner time as it was in 1988. That was done only to the netting fraternity—angling has never taken any pain regarding time periods to fish. The proprietors—even if they are doing catch and release—are still allowed to enjoy their title and even if they are doing catch and release—are still allowed to enjoy their title and earn their living during that period, but the netsmen were stopped from making their living. That was one reason why many netsmen threw in the towel, because they lost 15 to 20 per cent of their livelihoods. For many businesses, that is the difference between a profit and a loss.

The Convener: We will take that on board as evidence. We must move on to the subject of governance and I will bring in Angus MacDonald.

Angus MacDonald (Falkirk East) (SNP): Thank you, convener.

The committee has received varying evidence on the proposed new good governance requirements for boards to act in a way that is consistent with public bodies and in an open, fair and transparent way. The Association of Salmon Fishery Boards stated:

"it is important and legitimate that some aspects of meetings can be held in private".

DSFBs also raised concerns regarding costs associated with holding meetings in public, such as the cost of large venues. Given the concerns about increased costs and implementing the new transparency requirements, what solutions would the witnesses propose to ensure that meetings can occur in public and that all interested parties are aware of them?

Simon McKelvey: I fully welcome the proposal for district fishery board meetings to be conducted with much more of a public element. In our region, we have tried to do that to a large extent. All the minutes—of not only the board meetings but the management committee meetings—are published online and are available to anyone.

One way around the problem would be to advertise that a board meeting is due to take place and invite members of the public to lodge whatever business they would like to bring up and to attend at least a section of the meeting. Within most board meetings, there are probably some things that need to be discussed in private, which is the same for any organisation.

We would certainly welcome a more public-facing way of running board meetings. In our region, we certainly try to be open—SEPA, SNH and other bodies are invited to every one of our meetings—and we have no problem with opening up to more public inspection.

George Pullar: Boards should be more accountable, open and transparent. In my experience, boards are run like cabals. A group on the board runs the show and other board members do not even know what is happening.

I can give you an example. The fishery board that I work with is involved in an on-going legal action—a judicial review. I am a board member and I did not know anything about it. We are representing lower proprietors and I did not know that our fishery board is going to go head to head with the Government and will incur at least £30,000 of legal expenses. As a board member, I should surely have known that. Other proprietors in our district are certainly annoyed about that situation, because the board has been jeopardising their money to go down that road. That is an unacceptable situation: boards have to be more open and transparent.

There are vested interests on boards and there are people who have financial interests. I welcome the part of the bill that deals with information on financial interests being published. For example, the clerk to the fishery board that we are involved with is the salesman for another netting company's fish. That company is only 3 miles away from our
fishery and yet the board has been trying to stop us from fishing through various different means.

Boards must be accountable for what they are doing. They have to be seen to be doing what they are doing without vested interests. The chairman of the fishery board that we are dealing with is also chairman of the Salmon and Trout Association, which has a clear policy of lobbying Government to end netting. How can a chairman who represents our issues and proprietor issues in our area be involved with an angling lobby group that wants to close down our fishery? How can he be the chairman of both groups? It just does not work.

12:15

Angus MacDonald: Does anyone else have a view?

Craig Campbell: I would like to make it quite clear that George Pullar’s experience is of a policy that is inimical to netting to the point of wanting it removed altogether. That is not the policy of the Scottish Anglers National Association. You can draw a clear blue line between us and the Salmon and Trout Association.

On how boards perform in practice, my two years of experience as an angler representative came about through being a nominee of the Crown Estate. I do not recognise the kind of behaviour that George Pullar is reporting from his experience.

The Convener: There are many rivers and many experiences. Does Ron Woods want to say something?

Ron Woods: There is something that I would like to say if you will indulge me, convener, but I am not sure that it bears directly on the question.

As coarse anglers, we have no direct interest in running the boards as they are at the moment. As an individual, one might say that transparency in any body that is exercising such a function has to be a good thing. However, we do have a concern about the powers and remit of boards in statute.

Our concern might be addressed through future management structures, but it ought to be raised just now. The statutory remit of boards is to “do such acts, execute such works and incur such expenses as may appear to them expedient” with the aim of protecting and improving the migratory fisheries or increasing the salmon population. That is, doubtless, a sensible objective for a district salmon fishery board, but there is no counterbalance in the board’s role. Nothing obliges a board to have any regard to the impact of its activity on other species of fish or on other angling activities in the area. When introducing management measures of any kind, boards should have a statutory obligation to consider and consult those who have an interest in the other species in the district.

Angus MacDonald: I just want to pick up on Mr Pullar’s comments about vested interests. We received a submission from Beauly DSFB, which believes that it would be impractical to prevent members of the board who have financial interests in a matter from participating in decisions since “As proprietors, members by definition have a potential pecuniary interest in the decisions of the Board.”

However, the Royal Society of Edinburgh supports the proposal in the bill and believes that it should go further. How can more information be made available about DSFB members’ interests while ensuring that their own financial concerns do not influence DSFB decisions?

George Pullar: It is very important for people to know about DSFB members’ financial interests if they are affecting the management of the board. Everyone has a vested interest to some degree because everyone wants to catch the same fish. There are also financial interests. As I said, our chairman wears two hats. It is important that people know that such members have an interest, which does not necessarily have to be financial.

It is a difficult question because, as I said, everyone has a financial interest in the fish, but we need to decide where the line is drawn. It is unacceptable to be in the position that we are in when the clerk of the fishery board is the salesman for another netting company’s fish. Those people are the ones who have to make decisions. However, it is difficult to know where to draw the line.

Simon McKelvey: I should note that the ASFB’s code of good governance contains a section on this issue that makes it clear that any board member with a financial interest in a decision should make it known.

Angus MacDonald: Picking up on a point that you made, Mr Pullar, I recall that when we visited Usan Salmon Fisheries you said that you would prefer management of the fishery to be transferred from the DSFB to a Scottish Government inshore fisheries group. Can you say a bit more about that?

George Pullar: Yes. This comes back to my earlier comment that the people who are currently managing the asset are those who are trying to put us out of business. For example, we found out yesterday that we have been fortunate in being awarded protected geographical indication status for Scottish wild salmon, which is a great accreditation for the industry. However, the ASFB and fishery boards all objected to the move. They are supposed to be representing us, and we give
them revenue every year for that representation. We in Montrose are paying £5,350 per annum to people who are lobbying to put us out of business.

If we were moved over to inshore fisheries the Government would, as ever, look at us impartially and not as a vested interest, and it could liaise with the fishery boards if it so chose. After all, as was said earlier, we are all catching the same stock.

In any case, it is unacceptable that we are being managed basically by amateurs who know nothing about the job we are doing. Comparing angling and netting is like comparing apples and pears; we are completely different. As coastal netsmen, we feel that we are part of the food industry and therefore should be managed by the Scottish Government like any other food fishery, be it cod, haddock or whatever else. Of course, a difficulty will arise with the net-and-cobble fisheries that are found in estuaries. Unfortunately, however, the demarcation line has to be drawn somewhere and I feel that it should be drawn at estuary limits.

Fishery boards themselves have said that they cannot manage us because of the mixed-stock nature of our catches. No one will deny that it is a mixed-stock fishery, and therefore the place for us is the inshore fisheries.

Angus MacDonald: The ASFB has also expressed concern about the provisions for dealing with complaints. Are those provisions proportionate and would a statutory arbitration process help in that respect?

George Pullar: There has to be somewhere for netsmen to go to complain. As far as I can see, fishery boards are answerable to no one apart from the proprietors who voted them in in the first place. Given that no one governs them at the moment, it is important that the bill contains something to ensure that they are answerable.

Simon McKelvey: An awful lot of these problems seem to relate directly to the problems that George Pullar faces in his own area, and I just do not think that the same is the case at a national level. I am not sure that we will get good legislation by dealing with an issue that has arisen in one area instead of dealing with the situation in the whole country.

The Convener: Jim Hume has some questions on governance.

Jim Hume: Thank you, convener. I will ask my questions in a slightly different order.


Jim Hume: I just think that it will allow my line of questioning to flow more naturally from Angus MacDonald’s questions.

With regard to the district salmon fishery boards, I think that George Pullar has made very clear his response to the question whether netsmen’s interests have been taken enough into account in management decisions. I want to spread out consideration of the issue to include, say, coarse angling interests, other interests with regard to freshwater species, and the wider environment. Does the panel think that the district salmon fishery boards are taking all the other interests into account across Scotland?

Simon McKelvey: I will say how we do that in our region.

We have a district salmon fishery board and a fishery trust that work together to manage all fish species. To do that, we used funding that was supplied by the Scottish Government to draw up a fishery management plan for the region, which covers all fish species—it is not just a salmon plan. It sets out a five-year prioritised programme of works. A draft was sent to all the local bodies, local anglers, SNH, SEPA and Marine Scotland for consultation. We got some useful feedback, which was incorporated into the final version of the plan.

That is the programme that our board and trust work to in delivering fishery management for all species. As a model, it works very well. The fishery management plan is up on the website for public inspection, so anyone can look at it. Monthly progress reports are provided that say how we are delivering against the plan’s aims and objectives. As a model for the management of all freshwater species, I think that that is a sensible way forward.

Craig Campbell: It is already common practice for anglers to be co-opted on to district salmon fishery boards. I have had no complaints about that process.

Ron Woods: I would have to differ on this. I recognise that the fishery management planning initiative that Simon McKelvey described is a positive step. However, I may be incorrect, but I do not recall the Scottish Federation for Coarse Angling, as the national governing body, or any of our individual member clubs having been consulted on fishery management plans in any of their areas. I may not be fully informed on that.

The Tweed body has been held up as an example of a long-standing body with responsibility for all species. I am not criticising it, but I draw to the committee’s attention the fact that there have been population crashes in a couple of the coarse fish species in the Tweed. To the best of my knowledge, there has been no investigation of that and no remedial work has been contemplated.

It must also be said that a great proportion of the coarse fish in Scotland live in still waters rather
than running water and that salmon fishery boards tend not to take any interest in still waters, except when they are part of the spawning run of a river.

As I said earlier, I think that there is scope for boards to have a duty to consider the impact of their activities on other species and for a greater degree of representation and dialogue with angling interests.

**The Convener:** Could you check whether the SFCA has been consulted?

**Ron Woods:** I will.

**The Convener:** You could let us know in writing.

**Ron Woods:** Yes.

**Jim Hume:** I want to explore the SFCA's views on the existing legislation. Are there any changes to the law that you would like to see implemented in the bill?

**Ron Woods:** I have to say that I do not think that the bill does anything for coarse fishing or coarse fish. We raised a number of issues in our response to the consultation, none of which has been taken up in the bill, as yet. It is possible that they will be taken up in the next round of consideration of freshwater fishing management issues, although in our view there is actually a need for legislative change.

I will briefly run through the issues that we raised. Currently, proprietors are not subject to any restriction or regulation with regard to the netting or trapping of coarse fish. Despite it being a criminal offence to be in unauthorised possession of salmon or trout, there is no corresponding offence in relation to coarse fish.

I cannot speak for other angling interests, but one issue that we have encountered affects them. People who manage water bodies, such as reservoirs, where the water level can be varied by human intervention are under no obligation to notify, consult or have regard to those who have an interest in the fish populations in them. We have a small number of examples of cases in which reservoirs have been virtually drained, resulting in fairly high mortality. There is no recourse to compensation and no obligation on Scottish Water or whoever operates the reservoir to control such activities.

We have put forward proposals in which we have said that such matters ought to be dealt with in legislation. To the best of my knowledge, the bill does not address them. With the greatest respect, the bill is something of a disappointment from our point of view.

**Jim Hume:** I would be interested to hear the panel's views on how district salmon fishery boards should be funded. There has been a suggestion that they should be funded from retained catch, which might not please everyone.

**Simon McKelvey:** We might have to consider the funding of fishery management in the round, rather than just boards. There is more to fishery management than just what the boards do when they exercise their statutory powers.

The three principles of fishery management are: to protect the returning stock; to allow access to the natural range of the returning stock within the catchment; and to manage the habitat.

The fishery protection element of that is, typically, carried out by the boards in fresh water areas and in the coastal zone. Increasingly, however, more and more of the work that fishery boards and trusts, working together, carry out involves the management of the habitat. In our region, around two thirds of the board’s staff time is spent managing habitat and removing non-native species. In one river system in our area, rhododendron is being removed from an entire catchment by the fishery board bailiffs, with funding from SEPA.

A lot of what the boards are now doing is carried out alongside the fishery trusts and, increasingly, SEPA, and it involves work to deliver water framework directive aims and much wider conservation aims. To manage a fishery effectively, the whole habitat has to be managed, not just a single species.

It is not just salmon that benefit from good fishery management; it is the entire environment. That is increasingly the case across Scotland. I think that the committee went to see some work on the Dee. That is typical of other work that is going on around the country.

**George Pullar:** From a netsman’s point of view, I think that the funding that we give to the fishery board should be given to the Scottish Government, which could allocate it where it thought it would produce the most benefit.

**Craig Campbell:** In our submission, we have said that we are satisfied with the current method of funding district salmon fishery boards. We did that in the context of some rather odd replies to the Government’s consultation and the perceived unintended effect of part 5 of the bill of creating rod licensing. Since then, you have had a letter from Mr Cowan, which has been published, and we are satisfied that this is not a hazard.

**The Convener:** Dick Lyle has a question about carcass tagging.
Richard Lyle: Several witnesses have supported the introduction of a carcass tagging scheme but stated that the details of the scheme should be included in the bill rather than introduced through secondary legislation. Those groups also want the scheme to involve numbered and recorded tags.

I note that it is illegal to sell rod-caught fish but it is not illegal to purchase rod-caught fish. Do you agree that there should be more detail on the tagging scheme included in the bill, rather than in secondary legislation, and should there be a requirement to tag rod-caught and net-caught fish? What is your view on barcode tagging?

Simon McKelvey: I fully support a carcass tagging scheme, which needs to be backed up by numbered and recorded tags. I agree that it should be for nets and for rods. To that end, within the Cromarty Firth region, we introduced a rod and line carcass tagging scheme last year. Initially, there was quite a bit of opposition from local angling clubs but, after one year of the trial, we have overall support from the angling clubs. One club has seen a doubling in the number of fish that are returned by the end of the season.

The scheme has allowed there to be some variation in conservation policies between various angling users in the region, but it is underpinned by the total number of fish that can be killed by one angler. There is a clear benefit for rod and line fishing. There is also a clear benefit for the netting industry, because a scheme gives the stock traceability, which gives the fish added value. Any fish that is caught can be traced back to a fishery so, when it is sold, its status, quality and provenance can be guaranteed.

A tagging scheme would bring us into line with the rest of the UK—such schemes are now in place in England and Wales—and with Ireland. A cross-border problem is that untagged fish that may be of dubious origin are being sold in England and Wales as Scottish fish.

Richard Lyle: I see that George Pullar has some tags. I hope that he is not trying to tag me.

George Pullar: I promise that it is not electronic tagging. [Laughter.]

Richard Lyle: Many people have tried to stop me in the past, but I do not think that you are up to that.

Will you explain the tags that you have just given me?

George Pullar: I have given you the carcass tags that we use—we are in the third year of operating a pilot project in conjunction with the Scottish Government. We are absolutely delighted with the tags because they provide traceability, although that does not go right to the end user because, as soon as a fish’s head is cut off, that is the end of the traceability.

The tags have appeared in Sweden. A lady phoned my brother to say that a tag had washed up on a beach in Ireland—the tag had been on a fish whose head had been disposed of, and it was found by a gentleman and his grandson. After one of our tags was found on a beach in Ireland, a project was done on Usan Salmon Fisheries in a school there. The tags provide good traceability.

The great thing about the tags is that they have an address and they promote Scotland’s product—the saltire is on the tags. As far as we are concerned, that is all that is required. Given that the English, Irish and Welsh have schemes, if a salmon turns up at market without a tag on it, the onus of proof should be on people to show that that is not unlawful. I have described all that is required for carcass tagging, which we are delighted to use.

Richard Lyle: That is excellent. I am glad that you brought along the tags. What about the possibility of putting a barcode on tags? Do you know what I am talking about?

George Pullar: Yes—as in Tesco.

Richard Lyle: Yes—as in Asda, Tesco or whatever. I am sure that the information that is on the tag could wash off.

George Pullar: No—it does not. I think that the tags came from a company in Malaysia. They are security tags—they are basically unbreakable. Anything can be cut, and I suppose that the Chinese could copy anything if they wanted to, but the tags are the most secure that we could find. We put a lot of thought into getting them. They look relatively simple, but they are certainly effective.

Richard Lyle: The tags are certainly impressive.

Graeme Dey: Do you have a problem with numbered tagging or are you comfortable with it?

George Pullar: I am not comfortable with numbered tagging. It is unnecessary and it would be more work for netsmen. We have limited time to do anything during the season—we are running about and we are very busy. Numbered tags would be unnecessary.

As I said, tags provide traceability right back to the station. We have a heritable right in Scotland, which is different from the English and Irish fisheries, which are all Government owned. People in England and Ireland fish over a fair enough area, whereas the areas in which we operate are specific.

Any legislation that is brought in must not be too burdensome for us. There are only so many hours...
in the day, and we have to do the job of operating netting stations and of changing and repairing nets. What we can do is limited. The existing tag has all that is required.

Graeme Dey: In what way would numbered tagging be burdensome? What would it add to your work?

George Pullar: If records and logbooks had to be kept, that would take more time. We are dealing with salmon—it is a fish. I know of no other fish, apart from perhaps the odd sea bass, that has to be tagged. Going down the road of numbered tags would be over the top and unnecessary, because traceability back to where we are fishing is already available.

Records of each number would have to be kept. Members will see when they come out on the boat in the summer that, when we are on the boat, we take the fish out of the net, bleed them and tag them straight away. Sometimes, we do not know where the fish will go until they are on the vehicle—they could change direction and go to another buyer. The fish are all mixed up. A numbered tagging system would be impossible for us to operate. I know that the English operate a system with logbooks, but that would be totally unnecessary for us.

Craig Campbell: As an angler, I have experience of tagging because I have been a holder of a permit from Stirling Council. Tagging has been done, it works and none of us has found any great problem with it.

As regards numbered tags, if we do not number the tags, how will we confirm the catch data? If we do not number the tags, how will we prevent illegal sales of English-caught fish through Scottish markets?

My final comment is that the Scottish livestock industry deals with an awful lot more tags than netsmen ever would and it has not had any great problem with it.

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The Convener: Let us move on—

George Pullar: Convener, may I just say one thing very briefly? Our catch details are verified, so there is no question about underdeclaring, as some people might try to make out.

The Convener: We must move on to the issues of fish sampling, close times and conservation measures, on which there is quite a bit of evidence and which we have already partly discussed.

Will the new powers to allow Scottish ministers to sample fish and carry out investigations into salmon and freshwater fisheries pose any problems for you?

Simon McKelvey: No.
Margaret McDougall: Sorry, can you just repeat what you said there? I did not understand.

Simon McKelvey: We have been given information that fish are going on to the market from some small netting stations that, to the best of everyone’s knowledge, have not been used for a number of years. I am sure that we could provide more information on that.

The Convener: Surely tagging would take care of that.

Simon McKelvey: Yes, a carcass tagging scheme would deal with that, too.

12:45

The Convener: I did not ask this question earlier, but I should ask it now. Can we assure the success of special areas of conservation under the habitats directive if there are no powers for the Government to intervene by itself, rather than just at the behest of or in consultation with salmon fishery boards?

Simon McKelvey: It really depends on the ways in which SACs might fail, as a number of remedial actions might need to be taken. Close times are one issue that might need to be looked at. The bigger management issues are probably outside the legislation’s scope.

The Convener: That is helpful.

Graeme Dey was going to ask another question.

Alex Fergusson: I think I was due to ask that question, but I am happy that we have covered it already.

The Convener: If you are happy with that, we will move on.

Nigel Don: The witnesses probably heard the previous panel’s comments on the management of fish stock introductions to rivers. The same question applies: should that be in the hands of ministers or is the current system okay?

Simon McKelvey: I agree that the whole system could be improved and that there needs to be more consultation between Government and fishery trusts. Sound evidence and biological information need to be involved in any stocking or introduction programme.

The Convener: Angus MacDonald has a question about charging.

Angus MacDonald: It is more a point of clarification. SANA had some concerns regarding rod licensing in relation to section 50, which is on charging. Have those concerns been allayed? The Cabinet Secretary for Rural Affairs and the Environment announced last night that “there is no national rod licensing system in Scotland that a charge could be introduced for in the first place—and we have no current plans to introduce such a regime.”

Is SANA content with that?

Craig Campbell: Our concern did not arise from the initial consultation. When we read the initial consultation, we did not think that rod licensing was a possibility, but some of the other people who read it made that interpretation and liked it. We felt obliged to counter it, and the reassurances that we have had—particularly in the letter that you have received—have completely reassured us.

The Convener: If anyone has any final points to make, they must be very brief.

George Pullar: I want to make just one very brief point about salmon fishery board governance. Until the beginning of 2011, it was part of the ASFB’s constitution to invite a member of the Salmon Net Fishing Association to be on its council. Since then, it has changed its constitution and removed that invitation. It invites the Atlantic Salmon Trust and the Salmon and Trout Association, so quite clearly it is nothing more than an angling lobby group now, as opposed to a group that represents all interests. I say “quite clearly” because it has removed the invitation to us from its constitution.

The Convener: I missed out Ron Woods when he wanted to say something at one point.

Ron Woods: I cannot recall that. Sorry.

The Convener: Good. I am glad.

Ron Woods: However, I want to say that we do not share SANA’s outright aversion to rod licensing. That is not to say that we favour rod licensing, but we believe that more money needs to be invested in fisheries management for freshwater species. We believe that it is not unreasonable that some of that money should be raised from anglers, although—I would say this, of course—we believe that some more public money would be useful. We think that how that money is raised should be a completely open question and that rod licensing should not be removed from the options at the outset. It is not necessarily the case that we favour it or would wish it to happen, but we do not share the deep-rooted aversion that SANA expresses.

The Convener: Thank you very much.

I think that SANA wishes to reply.

Craig Campbell: No, I do not. I wish to raise an entirely different matter.

The question whether there had been any research on mortality rates following catch and release came up in the session with the previous
panel. I will send the committee a note, if I may, because I know of some such research.

**The Convener:** That would be very helpful indeed.

The panel has been most interesting. You have provided us with lots more questions to ask people in future, including the ministers. You have strong views, which you have expressed clearly. We welcome that in our consideration of the bill. We want the process that we undertake to be transparent and open, just as we want the whole fisheries process to be transparent and open in the future. Thank you very much.
Supplementary written evidence from Dr Colin Bean, SNH

Aquaculture and Fisheries (Scotland) Bill – follow up from stage 1 evidence session: Wednesday 12 December 2012.

Following my attendance at Committee this week, I undertook to provide additional data relating to the numbers of seals recorded in Scottish waters. I also provide additional data to inform the Committee of the legislative measures that are in place to protect seals in Scotland, to supplement the answer provided to Richard Lyle MSP.

Seal species in Scotland

Two species of seal live and breed in UK waters. These are grey seals (*Halichoerus grypus*) and harbour (also called common) seals (*Phoca vitulina*). Grey seals only occur in the North Atlantic, Barents and Baltic Sea with their main concentrations on the east coast of Canada and United States of America and in north-west Europe. Harbour seals have a circumpolar distribution in the Northern Hemisphere and are divided into five sub-species. The population in European waters represents one subspecies (*Phoca vitulina vitulina*).

Current status of Harbour seals in Scotland

The estimated total harbour seal population in the UK is 36,050, accounting for ~30% of the European total. This proportion has declined from the estimated proportion of 40% recorded in 2002. Harbour seals are widespread around the west coast of Scotland and throughout the Hebrides and Northern Isles. On the east coast of Scotland, their distribution is more restricted, with the highest concentrations being found in the major estuaries of the Firth of Tay and the Moray Firth. Scotland holds approximately 79% of the UK harbour seal population.

Compared with survey data available for the mid-1990s, some populations have declined sharply. These declines have been observed in Shetland (50%), Orkney (68%), Outer Hebrides (35%), and the Firth of Tay (85%). Other populations, by contrast, have exhibited no signs of significant decline. For example, in Strathclyde harbour seal numbers appear to have declined slightly after an apparent increase around 2000. Harbour seal numbers in the west coast of Highland region appear to be stable. The Moray Firth count declined by 50% before 2005, remained reasonably stable for four years, then increased by 40% in 2010.

The declines detailed above are not thought to be linked to the 2002 outbreak of the Phocine Distemper Virus (PDV) that badly affected seal production in other parts of the UK.

Current status of Grey seals in Scotland

Approximately 38% of the world’s grey seals breed in the UK and 88% of these breed at colonies in Scotland. The main concentrations of grey seals in Scotland occur in the Outer Hebrides and in Orkney. Breeding colonies are also found in Shetland and on the north and east coasts of mainland Britain. Although the number of pups throughout Britain has grown steadily since the 1960s when records began,
there is clear evidence that this increase is now levelling off. The number of pups born in the Hebrides has remained approximately constant since 1992, although growth has also been levelling off in Orkney and possibly at some colonies in the northern North Sea.

Unlike Harbour seals, pup production is used to estimate the total size of the grey seal population. Pup production can be used to estimate total population size with appropriate estimates of pup survival and age-specific fecundity rates.

In 2010 the UK grey seal pup production was estimated to be 50,174. Survey data collected in 2010 indicated that grey seal pup production had remained stable in the Inner and Outer Hebrides, but had increased by 6% in Orkney. Population size continues to increase rapidly in the North Sea. The total UK grey seal population at the start of the 2010 breeding season is estimated to range between 90,100 - 137,700.

These data, along with further contextual information relating to the status of seal populations within the UK can be obtained from the 2011 report produced by the Natural Environment Research Committee (NERC) Special Committee on Seals (SCOS). A link to the report is provided here: [http://www.smru.st-andrews.ac.uk/pageset.aspx?psr=411](http://www.smru.st-andrews.ac.uk/pageset.aspx?psr=411)

**Seal protection in Scotland**

Until recently, UK seals were protected under the Conservation of Seals Act 1970. In Scotland, the legislation has now been superseded by the new Marine (Scotland) Act 2010.

Section 6 of the Marine (Scotland) Act 2010 prohibits the taking of seals except under licence. Licences can be granted for the protection of fisheries, for scientific and welfare reasons and for the protection of aquaculture activities. Licences are assessed against a Potential Biological Removal (a number of animals calculated annually by the Sea Mammal Research Unit that can be removed from the population in each of seven seal Management Areas as a result of all anthropological activities without effecting the population numbers). Marine Scotland is in the process of designating seal haul-out sites where it will be an offense to “(recklessly or intentionally) harass seals” under the Marine Act. In addition Marine Scotland can also designate “seal conservation areas”. Four such seal conservation areas exist currently. The Seal Conservation Orders covering the Moray Firth, the Northern Isles and the Firth of Tay were converted to seal conservation areas on the introduction of the Marine Act and the Western Isles seal conservation area was also created at this time. NERC provides advice on all licence applications and haul-out designations via SMRU in Scotland.

Both grey and harbour seals are listed in Annex II of the EU Habitats Directive, requiring specific areas to be designated for their protection. To date, 15 Special Areas of Conservation (SACs) have been designated specifically for seals in Scotland (eight for harbour seals and seven for grey seals). One of these grey seal sites (Berwick and North Northumberland Coast SAC) is shared between Scotland and England.
Supplementary written evidence from Dr. Colin Bean, Science and Policy Adviser, Scottish Natural Heritage

Follow up from stage 1 evidence session (Wednesday 12 December 2012) and supplementary evidence supplied by the ASFB.

During the oral evidence session on 12 December 2012, I provided the Committee with an overview of the stocking activities of District Salmon Fishery Boards. I also spoke about the need for Boards, particularly in their role as a Competent Authority (as defined in The Conservation (Natural Habitats, &c.) Regulations 1994 as amended) to adhere to the requirements of this legislation. These responsibilities are clearly set out in Regulation 3(3) which states that Competent Authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions. More specific provision exists in Regulations 47 and 48 which set out the procedural requirements for Competent Authorities as provided in the Habitats Directive.

I also expressed the view that not all DSFBs who operate hatcheries apply for a licence (under Section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) if they wish to catch broodstock outwith the salmon angling season, from Marine Scotland. This may be due, at least in part, to the wording contained in Section 45 of The Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003, which states that: A District Salmon Fishery Board may do such acts, execute such works and incur such expenses as may appear to them expedient for - (a) the protection or improvement of the fisheries within their district; (b) the increase of salmon; or (c) the stocking of the waters of the district with salmon. This may, in good faith, have led some DSFBs to believe that a licence is not required.

In supplementary evidence supplied to the Committee on 18 December 2012, the ASFB rightly commented that some Boards may obtain broodstock without the need for a licence if these are obtained by rod and line whilst the angling season is still open.

It is the SNH view that, whilst the capture and retention of fish during this time is perfectly legitimate, if these retained fish are then utilised as the central component of a wider hatchery operation, then this activity should be subject to the Habitats Regulations assessment process by the relevant District Salmon Fishery Board in their capacity as a Competent Authority.

To be clear, stocking (which includes both broodstock collection and the introduction of hatchery-reared fish at all stages) is an activity which is considered to be a plan or project under Article 6.3 of the Habitats Directive. Under Regulation 48 of the Habitats Regulations, this means that the competent authority has a duty to:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
make an appropriate assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

Competent Authorities may only grant consent if they have made certain that the plan or project will not adversely affect the integrity of a European site or sites (subject to derogation in exceptional circumstances). That is the case where no reasonable scientific doubt remains as to the absence of such effects.

The key conservation objective for Atlantic salmon in this regard is to maintain, in the long term, the population of the species (including the full range of genetic types) as a viable component of the site.

In the evidence session on 12 December 2012 witnesses informed the Committee of the complex genetic structuring which exists within Atlantic salmon populations in individual river catchments. We added that our knowledge in this area has been greatly enhanced by the RAFTS-led FASMOP (Focussing Atlantic Salmon Management On Populations) project. It is considered that these individual populations are highly adapted to their natal river, or part thereof, and it is important therefore to maintain the genetic integrity of each if stock resilience is to be maintained. If broodstock are collected in areas outwith their final spawning destination (either through angling or other means of capture), then it follows that the natal population of each captured fish will be unknown. The current scientific view indicates that this could have negative biological implications for both the original parental population (through the loss of recruitment potential), and for salmon in areas where these fish are subsequently introduced. The habitats Regulations Assessment procedure serves to ensure that any such implications are identified before potentially damaging plans or projects take place.

The purpose of this note is to inform the Committee that, regardless of the method of capture, the collection of broodstock for stocking purposes and the eventual introduction of these fish to locations within a Special Area of Conservation should be assessed, either together or in isolation, in accordance with the requirements of the Habitats Regulations. The need to assess the impact of this activity applies not only to the Atlantic salmon, but also to those other species for which the site has been classified.
Supplementary written evidence from the Association of Salmon Fishery Boards

Introduction

At the meeting of the RACCE Committee on the 5th December, the panel members were invited to submit further supplementary evidence. ASFB would like to pick up on a few issues raised during that meeting and the subsequent meeting on the 12th December.

Sea Lice

- Professor Thomas stated that ‘for many fish farmers, the most problematic issue is when a run of mature wild fish come in, as they bring in sea lice—there is a sea lice strike on farms. In that situation, there can be rapid increases in sea lice numbers’. He then stated that, ‘the difficulty is that, when wild runs of salmon come in from the sea with heavy infestations of lice, the transfer of lice from the wild salmon to the farmed salmon tends to be a mixture of lice of different stages, including lice that are quite close to mature as well as lice that are at the free-swimming stage’. There is no evidence to substantiate this claim, particularly with regard to the most common species of sea louse (L. salmonis) – as confirmed by Professor Richards fish are infested by juvenile sea lice, which then grow through several life stages to become adult lice. This prolonged life cycle gives fish farmers the ability to respond and react accordingly. However, even if sea lice could transfer from wild to farmed fish at the adult stages, the inference that sea lice infestations on farmed fish arise only from wild fish is flawed. If, for example, an average fish farm contains 300,000 fish, it would require at least 150,000 adult sea lice to reach the treatment threshold in the spring of 0.5 adult lice per fish (or 300,000 lice for the rest of the year). Even if we assume that all adult fish returning to west coast rivers carried 100 adult lice each, and that all of those lice transferred onto farmed fish in preference to their wild hosts, this would require 1500-3000 returning fish per farm. There simply are not the numbers of fish returning to the West Coast to make such a scenario a reality. Despite conceding ‘that the predominant route of transfer is through the free-swimming stage’, Professor Thomas continued to make reference to ‘a strike of sea lice coming in from the wild’ particularly in justification for why sea lice data should not be published at an individual farm level.

- Professor Thomas also stated that ‘the treatment strategy that the industry has adopted since the early 1990s has been geared towards counting sea lice on farmed fish and treating them before that shedding stage—treating adults to prevent the shedding’. Whilst we accept that this is the basis of the National Treatment Strategy for sea lice, as set out by the industry code of good practice, it is the outcome of that treatment strategy that is important in practice. Steve Bracken highlighted that Marine Harvest publish sea lice numbers in Scotland (although this is on a company-wide basis, not a farm by farm basis)

strategy, there have been mature female sea lice (which release juvenile sea lice into the water column) present on Marine Harvest farms throughout the last two years (see graph below). We do not highlight this in order to criticise Marine Harvest, but rather to highlight that the assertion by Professor Thomas is not borne out in practice. This also highlights the need to understand, at a local level, where there are sea lice issues and to be assured that those issues are being well managed. This cannot be achieved in the absence of sea lice data, published weekly, on a farm by farm basis.

![MH SCOTLAND MEAN NUMBER OF SEA LICE 2009–2011](image)

- Alex Adrian raised a scenario in which one farm manages to keep its lice levels just below an agreed threshold whilst another manages to keep its lice levels almost to zero but breaches the threshold on one or two occasions. In his view, no one really knows which scenario is worse and which has a greater effect on the local interests. This is correct. However, in the absence of sea lice data published at an individual farm level, we will be unable to determine which scenario is worse and more importantly we will be unable to tailor the management regime appropriately.

- Alex Adrian made reference to the need for different sea lice thresholds in different areas. We entirely agree and a recent paper from Norway\(^2\) emphasises the importance of such an approach. The paper states, ‘With a continued increase in the density of farmed salmon, our analyses suggest that the current management regime will lead to increasing sea lice infection pressure in fish farms, as well as increasing efforts of chemotherapeutic control and hence the risk of development and the spread of treatment resistance. To counter this development, we believe regulations will need to go from a threshold defined for the average infection per fish to a threshold based on a measure of the spatial sea lice density.’

**Escapes**

- At the evidence session on 28 November, Willie Cowan stated that ‘the impact of escaped farm salmon on wild stocks has recently been the subject of a study,

\(^2\) Jansen et al. (2012) Sea lice as a density-dependent constraint to salmonid farming. *Proceedings of the Royal Society B.*
which found no evidence of a substantial impact of one on the other'. We are not clear which study Mr Cowan was referring to, but a recent study in Norway\(^3\) demonstrated that although generally, escaped farmed salmon have had poor to moderate success in the wild, some highly significant changes were observed in 4 populations due to genetic introgression of farmed fish. A further study in Scotland recently looked at the effects of escapes on catches, but this did not investigate genetic introgression or other ecological effects.

- The Convenor also made reference to anecdotal evidence from a netsman on the north coast who in the past year has caught in the region of 100 salmon that were originally from an aquaculture source. A similar situation has arisen at the Cuil Bay netting station in Loch Linne, which in 2012 caught 96 fish that were originally from an aquaculture source. We don't yet have the total catch figures for that netting station, but this figure could represent as much as one third of the total catch for that netting station in 2012.

- It is important to emphasise that genetic introgression is only one consequence of escapes. Even in the absence of cross breeding between wild and farmed fish there are a number of wider ecological effects such as the potential for such fish to out-compete wild fish in fresh water, in the short term, through sheer force of numbers and larger body size.

- The Convenor raised concerns about the relative merits of hatcheries raising smolts for fish farming and for wild fisheries, specifically with reference to comments relating to a specific situation on Loch Shin. It is important to emphasise that all hatcheries raising wild fish for stocking do so under closed containment and in most instances the output from such hatcheries are stocked into rivers either as eggs or fry. The majority of smolts for the aquaculture industry are now also raised under closed containment in facilities such as the Lochailort hatchery. However, significant numbers are also transferred to freshwater cages to be raised to the smolt stage. The only situation that we are aware of in Scotland where wild fish are raised in freshwater cages is in Lochaber and in that situation they are raised in partnership with Marine Harvest. No wild smolts are held in cages on Loch Shin.

**Biomass Control**

- Councillor Farlow and Douglas Sinclair made reference to the fact that in some cases fish farms hold more fish than they can effectively provide therapeutic treatments for. Douglas Sinclair stated that it was up to the farm in question to ensure that they did not hold more biomass than they could treat. We accept that some sites will be more problematic than others due to prevailing physical conditions at the site and that other management measures such as wrasse may allow such a strategy to be maintained without significant sea lice problems. However, in the light of these comments by SEPA, we would re-emphasise that we do not support a power to allow Scottish Ministers to instruct SEPA to vary (increase) CAR licenses where there is a need to treat fish, above and beyond an

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\(^3\)Glover et al. (2012) Three decades of farmed escapes in the wild: A spatio-temporal analysis of Atlantic salmon population genetic structure throughout Norway. PLOS one 7(8).
existing consent. Such a power would simply allow operators to hold more biomass than is sustainable.

- The paper by Jansen *et al.* (quoted above), makes clear that there is a link between the biomass of farmed fish in an area and the number of sea lice released into the environment. We would therefore emphasise that there is a need for Scottish Ministers to have a power to reduce biomass where necessary to reduce the effects of sea lice on wild fish. We await confirmation from Marine Scotland that this can be achieved under existing powers.

**Farm management**

- In reference to FMAgs and FMSs being publically available, Professor Thomas stated that ‘agreements are live documents. They will change regularly, depending on what the farms do to vary their production cycles and so on’. However, just as publication of sea lice data at an appropriate resolution will allow the industry to demonstrate their management response to sea lice infestation, publication of such agreements will demonstrate the overall strategy for such management. Publication on a website would not carry any significant cost and would allow such live documents to be regularly updated. If the industry is unwilling to publish such information, it simply enhances the view that there is something to hide and that this issue is not being addressed seriously.

**Salmon Fisheries**

- Several references were made to the efficacy of catch and release. We include some further information in Annex 1, which we hope demonstrates the extremely high survival of released fish. We have also produced guidance for anglers on catch and release[^4] in partnership with other bodies which has been widely disseminated.

- According to NASCO, Mixed Stock Fisheries (MSFs) are fisheries that exploit a significant number of salmon from two or more river stocks. Under this definition, and given the high levels of catch and release in Scotland it is unlikely that any rod fishery could be considered to be a mixed stock fishery.

- Margaret McDougall questioned whether catch and release might give inflated perception of abundance. Work on the Rivers Tweed, Dee and Spey has demonstrated that the rate of recapture of released fish is very low, and indeed the longer a fish spends in freshwater the less likely it is to be caught. Between 2000 and 2002 the rate of recapture of released fish on the River Tweed was 2.64%. It is estimated that recaptures on the River Dee were up to 6.1% in 2004. Between 2000 and 2002 the overall recapture rate on the River Spey for spring salmon was 10%. Summer salmon and grilse recapture rates were considerably lower at 0.4%. In addition, there were no recaptures of radio tagged fish on either the River Conon or River Dee (Annex 1).

There was discussion in both sessions about the management of coastal nets and tensions between netsmen and anglers. We maintain that it does not make sense, and would be counter to sound management, to separate the management of a migratory species between the freshwater and coastal parts of the life cycle. We would point out that the Bill already contains provision to deal with two areas of contention – carcass tagging and genetic sampling to allow the understanding of the mixed stock nature of the catch. The other, more recent, issue of contention is the issue of fishing during the weekly close time and both ASFB and SNFAS have suggested solutions to this problem. Whilst there will be tensions around levels of exploitation (and it is worth noting that these tensions also exist within the rod fishery) we do not agree that there is an inherent conflict of interest within Boards. The vast majority of the work that fishery boards and trusts undertake (habitat improvement, removal of barriers, removal of non-natives etc.) is to the benefit of both sectors. None of the current issues will disappear simply by moving the management of the fisheries elsewhere.

Colin Bean mentioned that some boards do not apply to Marine Scotland for a licence to collect fish out of season. However, in some cases broodstock are collected by rod and line, within the season, and therefore no license is required.

Simon McKelvey made reference to the fishery management planning process in relation to the Cromarty Board area. We would emphasise that 25 such plans, which are all publically available, have been produced across Scotland, covering a large proportion of the country. This was an outcome of the strategic framework process and we would concur with the view that it is unfortunate that that process, which had buy-in from a wide range of stakeholders, was not utilised to inform the current legislation.

George Pullar expressed concern about the additional burden of recording tag numbers in a log book. Similar concerns were voiced in England and Wales prior to the introduction of statutory carcass tagging. However, in 2009 36,500 fish were successfully tagged and recorded in England and Wales, of which 30,668 were caught in the North East of England. Any scheme which does not use individually numbered, recorded tags will not be consistent with the situation in the rest of the UK and will do nothing to prevent the illegal taking and selling of fish – a wildlife crime. The very fact that Mr Puller distributed tags around the Committee room demonstrates the inherent flaw in a non-numbered tagging system. Following such distribution, Usan Salmon Fisheries has no control over those tags or how they might subsequently be used. The system used in the rest of the UK requires that all tags are accounted for and any unused tags must be returned at the end of the season.

ASFB have no difficulty with a register of interests – as indicated by Simon McKelvey, this already forms part of our Code of Good Practice. Given that most Board members are fishery proprietors we would not envisage that such proprietorial interests would need to be disclosed – rather it would be interests out with the fishery, which may impact upon the decision making of Board members, which would be registered. We will clarify this issue with the Scottish Government and the Beauly DSFB.
George Pullar made reference to the ASFB Constitution\(^5\) preventing SNFAS from attending ASFB meetings. Our constitution makes no such statement - rather it allows members to vote to propose and co-opt other bodies at the AGM. These bodies are proposed and co-opted on an annual basis.

Annex 1
Further information on the success of Catch and Release

**River Conon: Cromarty DSFB\(^6\)**

In the spring of 2003 a radio-tracking project was carried out on the River Conon to investigate the migration of spring salmon within the system. Twenty salmon were caught on rod and line, held in a keep net, anaesthetised and then fitted with an internal radio tag as well as an external Floy tag. This process is much more invasive and likely to be stressful to the fish than a normal catch and release procedure.

Of the twenty salmon tagged none were recaptured by anglers, two subsequently dropped downstream out of the study area and may have gone to other rivers. One was killed, probably by an otter at Rogie falls, the remaining 17 were tracked upstream and most of them were located at spawning sites in the autumn.

The report stated, ‘This study suggests that the majority of salmon released by anglers will survive until the spawning period. It is also apposite to note that salmon utilised in this project were subjected to increased handling due to tagging procedures in addition to levels associated with capture by anglers. The summer of 2003 was also notable for an extended period of drought and high water temperatures. Fish kills as a result of the latter were evident on a number of Scottish river systems. The upstream movement of the majority of fish tracked in this project during the spawning period should thus be seen as a positive for those who consider catch and release of spring salmon as a useful tool in the conservation of this component of the stock.’

**River Dee (Aberdeenshire)**

The (Aberdeenshire) River Dee has a voluntary total catch and release policy for salmon and sea trout. As part of a three-year study to investigate the released salmon’s ability to survive and migrate to spawning grounds as a result of extending the angling season by two weeks into October, 140 salmon were radio tagged by the River Dee Trust between 2008 and 2010. All 140 salmon were caught by paying anglers who were fishing in the autumn period (mid Sep – mid Oct), i.e. they were the regular clientele of the river. This was a necessity of the study as we needed to mimic the ‘normal’ fishery to assess potential effects of angling on the fish. Once caught, the fish were put into keep nets and held in the river until staff arrived to tag the fish. The fish that were tagged were not selected for and so represented the typical rod catch on the river, with the exceptions that: (1) fish showing signs of significant damage were excluded and (2) fish under 55 cm length were excluded.


The latter was to avoid any harm to the fish when inserting the radio tag (the tag length was 5 cm and was pushed into the fish’s stomach).

118 (84%) of the fish were tracked through their spawning period (late Nov – Jan), which contributed to the study’s conclusion that catching and releasing salmon in October made no difference to the fish’s ability to survive to spawn compared to catching and releasing fish in September (full reports can be viewed at [www.riverdee.org.uk](http://www.riverdee.org.uk)). Of the 22 fish that it was not possible to track through their full spawning migrations, 16 of these fish were tracked moving upstream (minimum of 1 km, average 12 km) and were all tracked for a minimum of 22 days (average 46 d). This confirms that these fish survived being caught and released. A further six fish were tracked for a period of 27 – 75 days after they were captured and released but during that time only migrated downstream. This downstream migration behaviour was considered ‘normal’ because over the three years an additional 15 fish showed only downstream migration but remained in the river throughout the spawning period, suggesting that some fish originally migrate above their intended spawning grounds. It was concluded that these six fish also survived capture, tagging and release.

All of the remaining 22 (16%) salmon were therefore accounted for after they were released and so it was concluded that survival release post-release was 100%. In addition though, there were a total of eight fish (5.7%) which although they were tracked throughout the study, showed no movement. It is thought that in all of these cases the tag was regurgitated and remained on the river bed through the tracking period. This is surmised because no carcasses were found or reported and if a fish had died then the carcass would eventually be washed downstream and tracking would have detected this movement. In addition, a study by Environment Agency (Gowans 2004⁷) found a regurgitation rate of 9% in 302 salmon that were radio tagged, which is in line with our estimate of 5.7%.

Gowans (2004) estimated that 2.4% of salmon (five out of 208 tagged fish) caught by anglers died immediately from the effect of capture trauma and a further 2.4% died soon after being tagged and released. In the last four years, 98% of salmon caught on the Dee have been released for the whole angling season. The retained 2% is mostly explained by mortality during capture/handling of the fish, which is in line with the estimate of Gowans (2004). For the Dee, a mortality of 2% of the total rod catch in the last four years equates to an average of 160 salmon per year. In 2004 it was estimated that angling tourism brings in £11.5 million each year to the Deeside economy (Radford et al 2004⁸).

The River Dee was one of the first rivers in the UK to introduce catch and release (in 1994) and in 1996 the survival of these released fish was assessed by Webb (1998)⁹. In this study, 25 salmon that were caught by anglers between March and

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June 1996 were radio tagged. Of these 25 fish, 21 were successfully tracked until spawning at the end of the year. A further two fish were lost from the study, after being tracked for 83 and 90 d and showing upstream migration of 7 – 37 km. One fish was recaptured 69 d later and killed by the angler. The remaining one fish died 31 d after release with evidence of disease. As it cannot be ruled out that angling contributed to this disease, the study shows a maximum mortality relating to angling of 4%.

Norway


Electronic tracking studies have recently focused on the potential negative effects of catch-and-release (C&R) angling in Atlantic salmon (*Salmo salar* L). Common for these studies is that the fish were tagged between C&R and the effects of C&R can thus not be separated from the extra handling effects associated with the tagging procedure. In addition reference groups and information on the behaviour prior to C&R is not available. In this study 95 homing multi-sea-winter Atlantic salmon were tagged with radio transmitters in the fjord before entering the River Alta, Northern Norway and thereafter manually tracked until the spawning period. *Ten of these salmon were caught and released by anglers in the river.* All ten fish survived the angling event and nine were observed in known spawning areas during the spawning. *No difference in migratory behaviour prior to or after C&R was observed between caught and released fish and a reference group.* Individuals both among the C&R fish and the reference group showed downstream movements and migratory stops associated with C&R in previous studies. In spite of making studies logistically more challenging and expensive, the use of reference groups is important when assessing natural versus non-natural behaviour and to separate C&R effects from tagging effects.


Eighteen Atlantic salmon (*Salmo salar*) (total body length 58-110 cm) were radio tagged following angling and then released in the lower reaches of the River Alta, Northern Norway. The aim was to compare the long-term effects of catch-and-release angling on newly ascended salmon (assumed < 1 week in freshwater) with salmon from a previous study that were released in the upper reaches of the river at the end of their upstream migration (assumed > 1 month in freshwater, n = 44, total body length 53-122 cm). *All 18 salmon survived the catch-and-release angling event and were recorded in known spawning areas during the spawning period, except one individual not found in the river after 15 August (42 days after tagging).* There was no difference in survival rate between salmon caught-and-released in lower (17 of 18, 94%) and upper reaches (43 of 44, 98%), nor in the proportion
recorded in known spawning areas (17 of 18, 94%, from lower reaches and 42 of 44, 95% from upper reaches). During the spawning period, four salmon (24%) were recorded downstream of the catch-and-release site (mean 2.3 km, range 0.3-5.7), whereas 13 (76%) salmon were upstream of the catch-and-release site (mean 10.1 km, range 1.9-24.0). Catch-and-release angling may result in a delay in the upstream migration, as the 13 fish recorded upstream of the catch-and-release site during spawning, spent on average 34 days (range 0-94) before they were recorded more than 1 km upstream from the catch-and-release site. This is a longer delay than expected for natural resting periods during upstream migration. In addition, at least 31% (n = 4) of the 13 fish recorded upstream of the catch-and-release site during spawning showed an unusual downstream movement immediately after catch-and-release angling.


The purpose of the study was to collect information on angling procedures and the effects of hook and release on Atlantic salmon in the River Alta, northern Norway, covering both grilse and multi-sea-winter salmon in a non-artificial setting with real anglers. Information on the angling procedure, handling of the fish and the condition of the fish at release was collected for individual salmon in catch logs (n = 543, mean body length 82 cm), whereas physiological stress was studied in a sub-sample (n = 15, mean body length 77 cm). To study post-release behaviour, survival and recapture rates, salmon were tagged with radio transmitters (n = 30, mean body length 83 cm) and anchor T-tags (n = 353, mean body length 79 cm). To evaluate the effects of the hook and release programme on the salmon population, number of spawning redds were recorded from a helicopter in 6 years during 1989-2000. The results showed that at water temperatures 10.0-14.5 degrees C, a high proportion of the radio tagged salmon (97%) survived hook and release and stayed in known spawning areas during the spawning period. However, the behaviour after release seemed to be affected by hook and release. Only a small proportion (4%) of the anchor T-tagged salmon was caught more than once within the same season. Increased playing time, increased number of runs during the angling event, hooking in the throat, bleeding at the hook wound, increased handling time, air exposure and water temperature were factors that affected hooked and released Atlantic salmon negatively, either indicated by a poor condition at release, increased stress levels or unnatural behaviour after release. Number of spawning redds were more than doubled after the introduction of compulsory release of all angled salmon in Sautso (the upper 16% of the watershed inhabited by salmon) in 1998, which indicates that hook and release can be an effective management tool to enhance declining Atlantic salmon populations.
Aquaculture and Fisheries (Scotland) Bill: Stage 1

10:03

The Convener: Agenda item 3 is the Aquaculture and Fisheries (Scotland) Bill. This is our fourth evidence session on the bill. Today, we will have a round-table discussion about parts 3 and 4, which relate to sea fisheries and shellfish.

Our witnesses have joined us. We will introduce ourselves around the table.

Jayne Baxter is the first MSP there.

Craig Burton (Seafish): I am from the Seafish industry authority.

Claudia Beamish: I am Claudia Beamish MSP.

Stephen Cameron (Scottish Shellfish Marketing Group): I am the managing director of the Scottish Shellfish Marketing Group.

Richard Lyle (Central Scotland) (SNP): I am Richard Lyle MSP.

Jennifer Howie (Food Standards Agency Scotland): I am from the Food Standards Agency Scotland.

Nigel Don (Angus North and Mearns) (SNP): I am Nigel Don MSP.

Walter Speirs (Association of Scottish Shellfish Growers): I am currently chairman of the Association of Scottish Shellfish Growers and chair of the Scottish Government shellfish forum. I have a mussel farm in Loch Etive, which you have heard about previously with regard to Mytilus trossulus.

Alex Fergusson (Galloway and West Dumfries) (Con): I am Alex Fergusson MSP.

Peter Pollard (Scottish Environment Protection Agency): I am from the Scottish Environment Protection Agency.

Jim Hume (South Scotland) (LD): I am Jim Hume MSP.

David McCallum (Dumfries and Galloway Constabulary): I am from Dumfries and Galloway Constabulary.

Angus MacDonald (Falkirk East) (SNP): I am Angus MacDonald MSP.

Graeme Dey (Angus South) (SNP): I am Graeme Dey MSP.

The Convener: I am the convener of the committee.

In order that the discussion flows and everyone is able to contribute, witnesses and members should indicate to me when they wish to speak, and everyone should make an effort to keep their contributions as concise as possible, please.

We will begin with questions about the consultation on the bill and the Scottish Government’s response. A lot of issues were raised in the consultation document that some of the witnesses might have liked to see in the bill but which were not included. What are those issues? Will they be taken forward in other ways?

Walter Speirs: I very much welcome the provision in the bill to protect shellfish-growing waters, but we need to ensure that the detail in the bill follows through on the general spirit.

The Convener: Do you have any particular points to make?

Walter Speirs: I am thinking of the specifics of the biological standards or the microbiological standards for shellfish-growing waters. Our desire is to protect the waters, but we need to know exactly what the standards will be.

The Convener: Does anyone else want to comment? If not, that is okay. We have made a start on looking at issues that might be taken forward. After the committee has gathered information, we will make recommendations in our stage 1 report, which will be produced after we complete evidence taking and which will give our overall view.

Jim Hume: Section 34 will give enforcement officers powers to inspect and seize objects that are connected with commercial sea fisheries. Seafish has said that the conduct of research should provide an exemption. Has any panel member raised that with the Government? If so, what was the Government’s response?

The Convener: My goodness, we are having a quiet session.

Craig Burton: We conduct real-time research on commercial vessels using gear that may or may not be legal under current requirements. We raised the issue because we are keen for the matter to be clarified before the bill proceeds further, so that there is no ambiguity for enforcement officers.

Jim Hume: Have you had a response from the Government?

Craig Burton: We have heard nothing from it.

Jim Hume: Does any other panel guest have comments on the proposed new powers on inspections and seizures in section 34? Perhaps the police might be interested in that.

David McCallum: I do not think that the police would exercise such powers in relation to boats. We do not have the capacity or capability to
examine boats, so it would be difficult for us to deal with that aspect of sea fishing.

The Convener: We move on to the modification of the Fisheries Act 1981 in relation to enforcement of European Union rules.

Graeme Dey: In accepting that the Scottish Government plans a minor amendment to the bill to take in shore-based trades, does any witness foresee practical problems in implementing the planned changes?

The Convener: Nobody seems to have a problem with that.

Right. Perhaps we will have more help with our questions on shellfish. We are always keen to hear from people if they have second thoughts later, although I am sure that the witnesses will have plenty to say about the next issue.

Richard Lyle: Good morning, ladies and gentlemen. Are there any practical difficulties integrating the designation and de-designation of shellfish areas with the river basin management plan process? Do you see any dangers in moving from a three-year to a six-year cycle?

Walter Speirs: The main thing is that we have the protection in place. The protection that we want is non-deterioration; therefore, as long as the waters are monitored and any deterioration dealt with, I do not see any problem in changing the cycle time.

The Convener: Does SEPA have a view?

Peter Pollard: Moving to a planning cycle that aligns with how we manage the water environment as a whole makes a lot of sense to us because we can co-ordinate our investment and planning processes to deliver the protection that the shellfish sector needs. The other part of that is that we assess risk of deterioration case by case, when applications are made—for example, when there is a discharge.

Stephen Cameron: I want to reiterate Walter Speirs's and Peter Pollard's point from a commercial angle. The continued striving to have grade-A waters for growing shellfish is very important for our industry and, although that classification is subject to interpretation of European Union legislation, we must ensure that we protect the commercial status of grade-A water.

Claudia Beamish: I want to take that line of discussion a little further. Are there circumstances under which SEPA might decide that protection of an area was not commercially justified? We have had evidence about that. My other question, which is to open the discussion up to other panel members, is to ask whether that could have a detrimental effect on smaller shellfish cultivators.

Peter Pollard: The main thrust of the proposal to replace the shellfish waters directive provisions is to give flexibility to decide when investment and improvement are proportionate. It is a risk-based approach to deciding which action is proportionate, taking account of costs and benefits. Safeguarding the areas from deterioration is fine, but ensuring that we have flexibility to consider costs and benefits—there are big costs in bringing polluted water up to class A—needs to be factored into decision making. That greater flexibility is important.

Walter Speirs: We are not clear about who will make the judgment on the cost benefit analysis. In the extreme case, we would accept that to spend millions of pounds upgrading a sewage plant for a small output shellfish farm would not make sense. However, we are certainly not clear about how that judgment would be made and who we would work with or negotiate that through; how that will be managed is a little vague.

There are areas that are currently suitable for shellfish cultivation but which are not being used. Protecting those areas from deterioration is one of our main drivers. Cleaning up of areas should all be part of the river basin management plan and the on-going drive. It is about non-deterioration and continuous improvement.

Jennifer Howie: From the data that we collect for our on-going monitoring of classified shellfish production areas, we see that the waters in Scotland are of a good standard, which is seen by the number of A-class waters that we have. The margins between A-class waters and B-class waters are small. We have lochs where there are no waste water treatment works, but which are not A-class waters all year round simply because of the nature of the loch and the usage around it, including declared and non-declared sceptic tanks and leisure uses. You cannot guarantee absolutely that you will get an A-class water just because investment has been made, whatever amount is spent. For example, there could be unusual weather events—they are becoming less unusual—and exceptionally high run-off from the land into the water. I doubt that one could categorically guarantee class-A water under any circumstances.

10:15

The Convener: We hoped to have Scottish Water here today, but that was not possible. We will alert it to that evidence and seek its views.

Walter Speirs: The shellfish sector has to adhere to the growing waters directive, which will be replaced by the new bill, and the shellfish harvesting waters directive, which is used by the Food Standards Agency. The main point is that a
shellfish farmer should be able to place the product on the market, so we must comply with the harvesting waters directive. The bringing into line of those two standards will be tremendously helpful for us, because we will base the quality of the shellfish on the quality of the environment from which it comes. That link has not been made before; there has been a disconnect between water quality and shellfish quality when they are actually one and the same thing.

Stephen Cameron: I also want to follow on from what Jennifer Howie said, and probably add a bit to what has been said. The industry would accept her point on grade-A classification for a number of non-pollutant events or controlled pollutant events. I do not know how relevant this is to the current discussion, but there is a lot to do with interpretation of EU legislation that impinges commercially on water classification grade-A status in Scotland. I am not sure how relevant that is to the bill, but it certainly has impacted on and is relevant to grade-A classification.

Jayne Baxter: Do the witnesses agree with Scottish Water’s evidence that it has done much work to resolve water-quality problems that have originated from its network, and that diffuse agricultural pollution might be responsible? How will the bill help to resolve that?

Walter Speirs: I will go first on that. We obviously have many interesting debates with Scottish Water. One of the things that I have found to be strange in evidence on the bill is the amount of money that has been allocated against sewage-related sources but some other source, so if we want our management to be effective, we need to work out where the system has been trialled it seems to be laid at our door exclusively. We have a few issues with that.

On diffuse pollution, Scottish Water has control over certain assets of its own, and it looks to SEPA on those things over which it does not have control. Septic tanks were mentioned; they are nothing to do with Scottish Water. There is, I think, another piece of legislation coming up to catch up with and pick up unregulated or unlicensed discharges.

We cannot be too hard on Scottish Water in some respects because, in the natural environment, our classifications are based on E coli measurements, and E coli which comes from any warm-blooded mammal. The whole sampling process is not really perfect. Something as simple as a seagull passing when a sample is being taken can have an impact. There is a balance to be struck.

We want to work more closely with Scottish Water. It would be helpful to get out of the defensive and argumentative situations in which we sometimes find ourselves and instead to work more pragmatically together for a practical solution.

Peter Pollard: There are two sides to thinking about what we do for shellfish waters. On one side, we try to ensure that environmental conditions are suitable for shellfish growth, which protects the shellfish themselves. The second side—the one in which the industry is most interested—is about managing indicators of faecal contamination because of the marketing issues around that. Faecal contamination does not damage the shellfish but it is an issue for the marketing of shellfish. All our shellfish waters across Scotland are in a good state in relation to the growth of shellfish and the ecological quality of the water.

The problem is faecal coliforms, which, as Jennifer Howie has pointed out, can get into the water not just from sewage-related sources but from agricultural activities. For example, they might come from a river that drains into the sea after going through an intensively farmed bit of agricultural land or even an extensively farmed area with lots of sheep droppings. Seal haul-out areas and rafts of seagulls can also be sources and the first step in determining where and what action is needed is to establish where the problem is coming from and work out the sources that are contributing to it. It might not be Scottish Water assets but some other source, so if we want our management to be effective, we need to work out what that source is. That is how we should manage such areas as we move forward.

Craig Burton: It might assist the committee to know that Seafish is working with the water industry in England on a text-alert system. In the event of, say, a discharge from a water treatment works, a text message is sent to shellfish growers in the area to alert them to the possibility of having to step up their testing of the standard of their end products. Scottish growers are certainly interested in the system, and it might be helpful to have good dialogue with Scottish Water on how that might be developed. Of course, it is still early days, but where the system has been trialled it seems to have had a very good reception and things so far look positive.

Graeme Dey: On Walter Spiers’s reference to the situation with Scottish Water, is the problem lack of engagement or the nature of the engagement?

Walter Speirs: It is the latter. To be perfectly frank, I think that Scottish Water does not want to be as open as it could be, just in case someone comes after it for compensation, and we really
have to move on from that position. I suppose that if Scottish Water were to alert a shellfish farmer that there had been a spill and if, as a result, the farm could not sell its produce, the door would be left open to the farmer making a claim against the loss of sales. If we can get that scenario out of the way and work together more productively, I think that Scottish Water can do a lot of positive things to help us to move forward jointly. It would be helpful to have a more open discussion without the fear of litigation.

Jennifer Howie: On a general point and leaving to one side the commercial marketing issue—which is of course of keen interest to the industry—I point out that there is absolutely nothing wrong with shellfish from class-B waters. In fact, from a public health perspective, whatever comes from class-B water has an additional public health control, which does not necessarily ensure anything but provides an additional public health safeguard that shellfish from class-A waters do not have to get. If anything, there is much more of an onus on producers from class-A shellfish waters to demonstrate that their product is compliant, given that shellfish from such areas do not have undergone any absolute control before they can be marketed. In short, there is nothing wrong with class-B waters and shellfish from them.

Stephen Cameron: I agree about the process of depuration or cooking that Jenny Howie mentioned. Commercially, however, the perception is that class A is better than class B, and others in the EU work very hard to maintain class-A status.

Jenny Howie is correct to say that our class-B waters are probably cleaner and safer than class A, but the perception that I have mentioned exists and is not helpful to the industry. We can try to deal with the matter in another forum or area—indeed, I know that other forums are looking at it— but that is the view of science and the industry.

The Convener: Will the FSA and SEPA monitoring and inspection regimes be fully aligned under the new process?

Jennifer Howie: This is taking the discussion outwith the scope of the bill to an extent but, as the committee might be aware, the FSA in Scotland will become something else in a few years’ time and the Scottish Government will launch a consultation on the exact roles and responsibilities of the new food body and what it will have within its remit. That will provide another avenue for looking at the overlaps between the FSA and other bits of Government.

Peter Pollard: We are working together closely already. In fact, a lot of SEPA’s classifications of shellfish-growing areas rely on data provided by the FSA from their sampling and harvesting areas.

We supplement that where there are gaps, for example if there is no harvesting area at the time. We are already working that way and I see that continuing.

Jennifer Howie: I would like to echo those sentiments: we work well together. Forums such as the shellfish forum have benefited the regulators in our dealings with industry by providing a quarterly regimented meeting where we can catch up on relevant points.

The Convener: The need for a definition of “shellfish waters” has been discussed. How does that relate to the fish farm management areas that are talked about in other parts of the bill and, indeed, marine protected areas, which are not within the mischief of the bill but are something that will be overarching? Do any of the witnesses have views on that?

Walter Speirs: I am involved in the debate on marine protected areas. There are a lot of pressures on marine protected areas. There are pressures from the effects of aquaculture, but sewage also causes damage to those areas. Therefore, these things are aligned and I am quite glad to see that in there—it does help.

Our concerns, which have not been fully resolved, are about what activities will be permitted in marine protected areas. We hope that something such as shellfish farming, which is pretty benign, would be permitted in a marine protected area.

Part of the important thing about our shellfish-growing waters being designated with a capital D, if you like, is that it means that they will already be designated areas. If an area is to be considered for becoming a marine protected area, the fact that the area is already designated as a shellfish-growing water will have to be taken into account. We are keen to keep the designation of the shellfish-growing waters in the shape that it has been.

Craig Burton: We have been putting together a sort of toolkit for marine protected areas that will help the industry to gather its own data in support of its case for continuing activity or moving into new areas and new activities by doing environmental assessments and helping with appropriate assessments. We are keen to see a decision-making process that allows such assessments to be submitted in support of an application.

There is a general view that if data is industry data, it cannot be right and an external consultant should be employed for quite a lot of money to do the same thing in less time and with less thoroughness. The industry is there, day in and day out; it knows its environment; and it knows
what it is doing. It is a very good source of this sort of information.

On the farm management agreement, there is no requirement in the bill for shellfish farms to be part of an area management agreement or farm management agreement. The system is aimed solely at the fish farming industry. There is a slight concern that some of the minority fish species that we farm, such as halibut, cod—perhaps, if it returns to Scottish waters—and even turbot, which makes a guest appearance every now and then, goes to Spain and comes back again, could be caught up and that there could be unintended consequences if the agreements are not actually spelled out.

We can understand why farm management agreements are there. They make a lot of sense for the salmon industry and—to a certain extent—the sea trout farming industry. They might be of less importance for some of the other species, but it would be good to ensure that those are not caught because of an unintended consequence.

10:30

Peter Pollard: I have an additional point. One of the benefits of highlighting areas that are important for shellfish or marine conservation reasons is that that helps us to prioritise our efforts. We have to manage the whole of Scotland’s water environment, but we must put more effort into the areas where more improvement is necessary. Identifying what is important to a country helps us to manage the water environment and to direct our efforts appropriately.

The Convener: In your case, that is out to 3 miles from the shore.

Peter Pollard: That is correct.

The Convener: As there could be much larger marine protected areas, there is an overlap there. I thought that it was worth exploring that.

I have a specific question for Walter Speirs that relates to chapter 3 of part 1 of the bill, which is on commercially damaging species. You said that your farm had been affected by Mytilus trossulus, Mr Speirs. Will you expand on that?

Walter Speirs: I am happy to do so. Loch Etive was Scotland’s most productive shellfish loch. When the problem hit us, we were producing 800 to 1,000 tonnes. We noticed that something had changed—the mussels had a very thin shell and a very small meat content. At first, we thought that there was an environmental factor. The first line that we pursued was whether there were too many shellfish in the water and not enough nutrients. Completely by chance, we had some visitors from Canada, who quickly identified that the mussels in question were another species. We now know that that species is Mytilus trossulus.

I read in the Scottish Parliament information centre briefing that Mytilus trossulus was decided to be a native species. That is probably not correct. It may have been a native species here during the ice age, but no evidence of it has been found since, other than on mussel farms, so I do not agree that it is a native species.

At one point, we tried to have Mytilus trossulus classed as an invasive non-native species—an INNS—but it cannot be classed as such, because it is not displacing a native species and it is not destroying a habitat. We are left with something that does not fit into any category, which there are no mechanisms to control. I would be happy if someone in the Scottish Government or SEPA had the ability to take action to deal with a problem that will continue to spread unless it is dealt with.

We have learned a lot from what has happened in Loch Etive. I hope that we are learning how to manage the species. I am glad that powers are to be introduced, which, if they had been in place sooner, would have assisted us in our attempts to eradicate it from Loch Etive.

The Convener: Would anyone else like to comment?

As no one has any further comments on that issue, we will move on to shellfish orders and cockle fishing in the Solway, et cetera. I invite Alex Fergusson, as the local member, to begin the questioning.

Alex Fergusson: As the member for Galloway and West Dumfries, this is a big issue for me. There are two South Scotland members on the committee, who I am sure will also be keen to ask questions.

Before we come to the specifics of the Solway, the bill intends to make changes to the way in which several and regulating orders are put in place—I think that it intends to simplify the process a bit. Do the witnesses think that that is a good idea? If so, are there further changes that they would like to see? The current process is a lengthy one. Would anyone like to comment on the changes that are proposed?

Craig Burton: Anything that simplifies the process, speeds it up and reduces the cost to an applicant must be a positive measure. I understand the reluctance of the catching sector, which is inherently reluctant to consider such fishery orders, because they see them as landlordism of the sea.

Granting a right of several fishery or regulated fishery to take a named species in a named area could be regarded as a bit of landlordism. However, on a practical basis, someone who is
looking to cultivate a species, use the natural environment and so on needs a level of protection, given what they are putting in. The approach works for oysters and mussels, and it can work for cockles and razorfish; for anything like that, there is a built-in mechanism to ensure that the stock is improved and not just pillaged and taken out. The mechanism is very good, and the legislation was extended to include crustaceans, such as lobsters and crabs. If someone is going to have a lobster hatchery and stock an area, they need a mechanism to control who can go in and take stock out, because they are making a considerable investment. Anything that helps to simplify and cheapen the process while speeding things up must be good.

Alex Fergusson: Does anyone else want to comment on that, before I move on?

The Convener: I do not think so. Please continue.

Alex Fergusson: I am sure that most people around this table are aware of the difficulties that the Solway cockle fishery has faced in the past few years. Whatever the differences of opinion have been about how the fishery has been run, no one wanted an unregulated fishery—that is for sure. The Government intends to lodge amendments to the bill to make provision for changes to the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967, to alter the circumstances that the court can take into account when considering a prosecution for illegal cockle gathering. That has been a huge issue locally since the Solway Shellfish Management Association ceased to function.

I am keen to know whether witnesses, in particular the enforcement agencies, think that the changes that the Government is proposing will be effective in stopping the illegal fishing that is going on. Although there was a big success recently in the west of the region, with the seizure of a great deal of gear, which I hope will lead to prosecutions, I have it on good authority that 4 tonnes of illegally poached cockles left Kirkcudbright harbour this week, under various documentation.

Some months ago in Dumfries, I attended a meeting of all the enforcement agencies, at which it became obvious that there is a lack of interagency working to tackle the problem. There is potentially a big food safety issue if illegally fished cockles are going into the food chain. Is there room for better interagency working to tackle the problem?

David McCallum: I support the Government’s proposed approach. Indeed, I would probably take things a stage further and make provision in two parts, in the way that the Civic Government (Scotland) Act 1982 does. Section 57 of the 1982 act deals with a person who is found in circumstances in which it is reasonable to suspect that they intended to commit theft, and section 58 covers known thieves who are found with tools, from the possession of which it can “reasonably be inferred” that they intended to commit a crime.

I would apply the section 57 approach to cockle beds in the bill, because we find that people discard the equipment that they use for cockling and simply come ashore in their clothing, maybe with a headlamp if they are working at night, so they do not have the nets, tamps—which are boards—and bags that would indicate what they were about. However, someone with expert knowledge would be able to infer that they were there for that purpose.

The section 58 approach speaks for itself, so if someone is found in possession of accoutrements and paraphernalia that suggest that they have been or are about to go cockling, an offence is committed. Such an approach would give a much more realistic opportunity of getting a conviction in the courts.

On interagency working, I agree that in the early stages of the process there was a lack of understanding of people’s roles and responsibilities under the legislation. We have moved on since then. A number of meetings have taken place, and memorandums of understanding and information-sharing protocols are now in place between us—the police—and Marine Scotland, environmental health and the Food Standards Agency to ensure that any information that we receive is turned around quickly and shared with the other partners so that they can take enforcement action and respond to public concerns.

Alex Fergusson: At the meeting in Dumfries that I referred to, SEPA was quite open about the fact that there was perhaps more that it could do to track down and monitor movements of shellfish and identify what was not legally caught. Perhaps you would comment on that.

Jennifer Howie: The Food Standards Agency rather than SEPA?

Alex Fergusson: Sorry, I meant the Food Standards Agency.

Jennifer Howie: Interagency working is key. Since that meeting, I have had many discussions—discussions that I had not had previously—with various parties and other enforcement authorities on providing clarity under food law about what we require, and therefore what others should look for if they happen upon activity that they might suspect to be illegal. That has borne fruit.
On the requirements under food law, and tracking and confirmation, if what is on the registration document—which is a requirement—is accurately and honestly filled in, it provides all the necessary information about the shellfish in the back of someone’s truck. It is down to trust whether the paperwork is enough and whether, in this modern digital age, we should move to other requirements. Other fishery sectors have global positioning systems tracking. It would not be beyond the wit of agencies and fishermen in cockle fisheries to keep track of where they have been. Using smart phones and GPS would help to fulfil the registration requirements, because it would identify the bed that the fishermen have taken the fish from.

However, as it falls a little outwith the Food Standards Agency’s direct remit to monitor the movements of fishermen generally, we would probably fall on the side of more interagency work, more intelligence sharing—

**Alex Fergusson:** If you will forgive me, it is not so much about the movement of fishermen; it is more about the movement of the product once it has been landed.

**Jennifer Howie:** I apologise. It is not about the movement of the people but about where the product is from. If you are hand gathering somewhere, at a certain time, the easiest way to track exactly where you have been is probably to switch on your GPS. It would be quite easy to do that and then you would be able to demonstrate where the product came from—you would not have to do any other work. It would be easy nowadays to do that.

**Alex Fergusson:** But a paper trail has to follow any product—

**Jennifer Howie:** It is an old-fashioned paper trail under food hygiene regulations.

**Alex Fergusson:** And it is your agency’s responsibility to monitor that.

**Jennifer Howie:** Yes, although other paper trails in other agencies must be followed for sustainability reasons and so on.

An original of that document must accompany the batch at all times. Local authorities have limited enforcement capacity. They have other priorities as well so it becomes an issue of striking while the iron is hot with the best intelligence gathered from all agencies.

**Craig Burton:** I have a quick comment on tracking folk on the ground and tracking where fisheries are being exploited. There are some good systems available that use mobile phone technologies, such as vessel monitoring systems, or VMS. We are conducting trials in Scotland on some small inshore vessels. In the current system, though, there is no reason why you cannot bolt VMS to a quad bike, or even a pushbike. It is tamper-proof and tracks a vehicle or vessel’s position and what it is doing, and uploads the information every two seconds. We can provide more information about it if members are interested.

**The Convener:** Are there any further points on that?

**David McCallum:** At a meeting on 18 October, which I think Alex Fergusson attended, there was a multi-agency discussion about how we can promote best practice on the cockle beds. There were boat fishermen from the Thames estuary at the meeting, who spoke about having equipment on their boats to track where the cockles were coming from. There are good examples out there that could be developed in Scotland if we wanted to go down that road.

10:45

**Jim Hume:** Jennifer Howie mentioned that there is a paper trail that can be policed but that local authorities do not have the resources to do that—I presume that it is a matter for trading standards. Who is policing the movement of shellfish, cockles or whatever at the moment? For example, there are 4 tonnes of illegal cockles from Kirkcudbright—

**Alex Fergusson:** Allegedly.

**Jim Hume:** Allegedly. Is there any intelligence on how those are being marketed?

**Jennifer Howie:** The registration documentation requirements come from enforcement of the food hygiene side of things, and local authorities are the competent authority. They have the resources to deal with all food issues; whether they can devote resources to a particular alleged crime under the hygiene regulations at any one point might just be a case of prioritisation.

Sorry—what was your second point?

**Jim Hume:** It was maybe not for you; it was about what intelligence there is on where the illegal cockles are going. We are talking about fairly large tonnages. Have there been any prosecutions in the past, or is it very difficult to prosecute? How could we help with that? That is maybe a question for somebody else.

**Stephen Cameron:** I suggest that the material will end up on the continent. There is not a tremendous United Kingdom market for those volumes of cockles.

**Jennifer Howie:** Under food hygiene law, the product must be placed on the market at an approved premises. Although it can be moved to
the continent, it would have to move to an approved premises—unless that is not happening or somebody in an approved premises is covering up the documentary trail.

We have had quite interesting discussions about the point at which enforcement agencies should follow up allegations. Approved premises are fixed, land-based organisations. If there is a suggestion that cockles are being lifted and moved via a premises, there are premises that might know where they are going. It is easier to go to the fixed, land-based premises than to fishermen at night, who are difficult to track.

Stephen Cameron: I agree with that. Land-based facilities such as those that we occupy are manageable. However, there are countless trucks that just go back and forth 24 hours a day, in this case under the cover of darkness. It would be extremely difficult for anybody to try to police or manage that.

Jim Hume: I would like to finish the point on what you said about traceability. In the agricultural world, that has been electronicised—is that a word? No, that is not a word. Never mind. You know what I mean—digitised. Jennifer Howie mentioned the paper trail. Would the industry prefer an electronic system in which it was all done electronically and people did not have to fill in paperwork for the supply chain?

Stephen Cameron: Yes. If we could get there, the holy grail for everybody would be for us to spend less time on paperwork. To be fair, I believe that the vast majority of businesses are law-abiding and upstanding. The paperwork trail and the systems that they have in place work pretty well to regulate our industry.

To make a slight digression, our industry is predominantly UK retail, so we are dealing with like-minded people. I assure the committee that the traceability requirements are extremely onerous and the system works for people who are not trying to work outside it.

David McCallum: I back up Mr Hume’s concerns about traceability. As an example, only this week a significant quantity of cockles was stolen from a fisherman’s shed in Stranraer. Those cockles must have gone into the market at some point and I do not know how they could be quality assured or how the risk can be reduced for the public who might buy them. There is a significant concern about where those cockles have gone and one can only assume that they have gone to the black market where nothing will allow them to be traced. We definitely have to have proper procedures in place to trace the movement of cockles in particular.

Mr Hume also asked about prosecutions. Last week, we worked with Marine Scotland on a case at Powfoot near Annan, which is another of the cockle beds that have had problems in the past. In fact, the individual who allowed us to access the land is probably the gentleman who is referred to in annex 1 to the papers that the clerks gave us. We were able to secure the cockles and the evidence that will allow Marine Scotland to prosecute.

We are also working closely with the Gangmasters Licensing Authority on a problem with an individual from Dumfries and his involvement in the cockle beds, particularly around the Sandgreen area. My understanding is that the Gangmasters Licensing Authority is working with the dedicated wildlife prosecutor at the procurator fiscal’s office in Dumfries to bring a case against that individual.

Good collaborative work is being done that will, I hope, lead to the prosecutions for illegal activity that we are looking for.

The Convener: Graeme Dey has a supplementary on that point.

Graeme Dey: The question that I was going to ask has been partially answered. A number of members around the table do not represent areas in which this is a particularly big issue so, for our benefit, it would be interesting to hear about the practical problems that you encounter in catching such people in the act. Presumably, that is quite a resource-intensive activity for the police and Marine Scotland. How much help do you get from other sources, such as the legal shellfish industry and members of the public? What are the practicalities?

David McCallum: We have excellent support from communities right around the Solway. People report what they suspect to be illegal activity. Members might not be aware of it, but the beds in the Solway are currently closed, yet handgathering continues. That is the predominant method of taking cockles, although they can also be extracted with boats, and that has happened in the past.

The Solway is an extremely dangerous estuary with fast-moving tides and unpredictable sands. To put officers out on to the cockle beds would be difficult in terms of health and safety. We do not have the skills and knowledge that would allow us to go out there. That makes it very difficult, especially when the beds are open and people need to be found taking the fish at source rather than being found with them on the land.

It would also be difficult for the police to do any enforcement from boats, because we do not have the equipment that would allow us to go out and do the checks. That is why enforcement principally lies with Marine Scotland, supported by the police,
because it has the equipment and the expertise to carry out enforcement.

The potential risks to personnel mean that it can be very difficult to catch people in illegal acts. We get support from the community that allows us to gather evidence on shore that we then supply to Marine Scotland to allow it to prosecute.

Craig Burton: I want to widen things out a little bit. Although I understand the emphasis on cockles in the Solway—it is a particularly intractable problem—the illegal gathering of other shellfish species such as native oysters and winkles is taking place elsewhere in Scotland. Such activities are unregulated, small and highly mobile and the population involved is quite often itinerant, so it is all very difficult to police. These shellfish make their way into the marketplace with a little bit of—shall we say—creative paperwork to legalise them. My point is that it is not only cockles but other species in other areas that are being gathered illegally.

David McCallum: I support those comments. We are seeing problems with razorfish. The issue is the point at which the fish are taken and where the offence is committed; again, the activity is boat based and, because of the lack of such skills and abilities in our organisation, we struggle to do anything about it.

Stephen Cameron: Coming back to David McCallum’s very first point, I note that the regulated industry works extremely hard all year to avoid any potential food safety issues. It is a difficult enough marketplace to operate in and the risk of unregulated and perhaps toxic or contaminated shellfish getting to market is potentially damaging to the 99 per cent of the industry that works very hard to follow regulations and ensure that safe shellfish get to the marketplace.

Richard Lyle: I find this discussion very interesting. It all sounds like something from American prohibition.

I have a question for Jennifer Howie. If I want a driving licence, I cannot steal one; I could get a fake, but I am sure that the police would spot it. If there is regulation and paperwork—and I am sure that we could include digital or whatever—how can an established trader falsify paperwork?

Jennifer Howie: The first thing is to have the paperwork and then you have to take the bold step of falsifying it. In a great many cases—I am sorry, but I am going off your specific point for the moment—

Richard Lyle: In that case, can I draw you back to the point that I am trying to make? There are established traders in Scottish cockles—which I am sure are the best in the world—and there are gangsters or others who are not established. How do they get or falsify the paperwork?

Jennifer Howie: Under the regulation, the food business is legally required to provide the registration document with the details that are outlined in legislation filled in. In practice, local authorities largely issue registration documents. They tend not to do so individually, just because of the amount of paperwork, the to-ing and fro-ing and the cost involved. Legitimate businessmen and fishermen will be issued with—

Richard Lyle: A pad.

Jennifer Howie: Yes, in certain cases.

As for falsifying information, I will use the razorfish example. When we classify an area for razorfish, we define an area of sea and award it a specific classification. If someone fished somewhere else and wished to falsify paperwork, they could fill in the document and claim that their catch came from the classified area. Unless we have people watching what is going on or there are other witnesses to the act of taking shellfish from other places, we will find this sort of thing exceptionally difficult to prove.

Richard Lyle: So we need some sort of regulation or some other way of solving what is certainly a problem.

The Convener: We will reflect on the matter for sure.

I believe that Alex Fergusson has a follow-up question.

Alex Fergusson: My very brief question is on a similar theme and stems from Jennifer Howie’s earlier comment that it is much easier to police and monitor land-based operations than shore-based or sea-based ones. That might sound obvious, but I think that it is very relevant.

The fact is—David McCallum is quite right on this—that much of the onus falls on Marine Scotland, which it is worth noting is not based locally. We have a local police force, but we do not have a local Marine Scotland, which is based a long way away, although it is stepping up its local activities. It strikes me that, as we go through the bill, the committee might want to look at how we better police and monitor the land-based activities because the fact is that, as has become very obvious around the table today, illegal product is getting into the food chain. As Jim Hume pointed out, anyone who tried to do that in the agricultural world would face considerable difficulties, yet it seems to be quite possible in the world of shellfish. That cannot be right, and I simply say that we need to look at the issue a bit further.
Walter Speirs: We need to be careful that we do not have, as an unintended consequence, more regulation falling on the good guys. In tightening up, that is a clear danger. For example, our sector technically falls within the remit of the gangmasters legislation, and we are trying hard to get out of that because we do not think that we should fall within that remit. We have to work with Westminster on that—it is UK legislation—but an unintended consequence of people illegally gathering cockles brought the threat of more regulation on the marine sector.

Craig Burton: It may be easy to police home-based industries and land-based facilities, but most of those are operating legally. We know of instances where illegally gathered product has made it all the way to places as far away as Italy before someone has spotted that the product does not have the right paperwork. If people want to operate under the radar, they do not go anywhere near declaring paperwork in the UK but just send it out in a wagon. For the Italians to pick that up is actually pretty good, because they are not necessarily noted for their paperwork trails. However, illegal product can make it all that way.

The Convener: That is an interesting point.

David McCallum: To pick up on Craig Burton’s point, I know that in the south of Scotland, for example, there is an Irish producer who leaves refrigerated lorries sitting at the side of the road, where the fishermen can deposit their catch for him to take to Ireland. If we look just at boat-based activities in the Solway, the boats there can land their catches in Scotland, England, Northern Ireland or the Republic of Ireland. To manage and control those activities, we need joined-up working to ensure the safety of product.

Claudia Beamish: On that point, what interagency working is there with Her Majesty’s Revenue and Customs?

David McCallum: We have a strong relationship with HMRC, but the issue is what role it should play in the management of shellfish—to be honest, I do not know the answer to that. We have information-sharing protocols with HMRC, which was also a partner organisation in our efforts over recent weeks to tackle the ill-treatment of fishermen foreign nationals—it was part of the enforcement group that targeted that particular facet of the fishing industry—so there are working relationships. However, on where HMRC sits in terms of cockle fishing, I could not give an answer.

Claudia Beamish: Perhaps the point of interest is what paperwork needs to be shown if product is being sent out of the country. I am not necessarily asking for the answer from you, but it would be useful to have clarification on that.

David McCallum: I should probably refer you back to Jennifer Howie of the Food Standards Agency, which might deal with the paperwork—that would not be dealt with by the police. Marine Scotland, as the principal enforcement agency, might also be able to answer.

Jennifer Howie: In the past couple of weeks, HMRC has been in touch with us on that issue. We will be having a meeting in the new year on what paperwork it should look for from a food-hygiene perspective.

The Convener: Thank you. We have had a good round-table discussion on that, which we can reflect on in due course. We will now move on to fixed-penalty notices.

Angus MacDonald: In a way, this question ties into the previous discussion. Members of the panel will be aware that section 51 of the bill will amend section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the cases in which Marine Scotland can issue fixed-penalty notices. Basically, the section extends the provisions to all marine and freshwater fisheries-related offences, which are the responsibility of Marine Scotland. Do members of the panel have concerns about the section on charging or the introduction of fixed-penalty notices as far as they could relate to shellfish farming and sea fisheries?

Craig Burton: Obviously, concerns were raised with us by the industry about the provision in section 50 to introduce charging for the provision of fisheries and aquaculture services—however you wish to put it. We appreciate that this is an enabling piece of legislation, but the problem from a business point of view is that you are almost asking for a blank cheque—no one is saying how much will be charged or what mechanism will be put in place for establishing what will be charged for. Will there just be cost recovery? Will there be cost-plus? What mechanisms will be used?

Admittedly, compared with the situation in other countries, the situation in Scotland and the UK is atypical, because we provide the services under the public remit whereas, elsewhere, if you want to land a box of fish, you are charged for landing that box of fish, and for getting it certified and so on.

From a business point of view, signing up to the provision brings uncertainty, as we do not know what it means.

Walter Speirs: The situation is a bit vague. Marine Scotland carries out certain duties in relation to EU legislation—things that are not of any benefit to us but which we have to do. I think that the Food Standards Agency is in a similar position. If those charges were passed back to industry, that could be disproportionate in terms of the profit margins of some small businesses. We have to be careful that we do not pass non-
specific charges back to small businesses from large organisations, as that could cripple them.

Angus MacDonald: Clearly, greater clarity is required. We can address that in our report.

Nigel Don: Is there a case for different regulations for different species of shellfish? Does anyone feel that we should not be taking a one-size-fits-all approach? Do we want to distinguish between oysters and cockles?

Walter Speirs: The difference that we have at the moment is cultivated versus wild. Cockles are a fishery, so they are not part of my remit. Most shellfish production in Scotland from aquaculture is quite tightly regulated. Most of the problems come from fisheries rather than aquaculture.

Sometimes, oysters and mussels are classed together in food standards terms, as they are both bivalve molluscs. That can be a bit challenging, but that is probably not part of this bill.

Nigel Don: But if it is close to this bill, it may be an issue that we can consider.

The lack of response suggests to me that there are no overwhelming concerns on the issue.

The Convener: Craig Gibson might have a response.

Craig Burton: There are times when the legislation—I am thinking more of EU legislation than Scottish legislation—causes problems. The scallop cultivators have a particular problem at the moment in so far as the premium for them lies in putting a live, in-shell product on to the market, which is extremely difficult to do under the current legislation around biotoxins. If you mince up the whole animal and test for biotoxin levels, the chances are that—for most of the year—you will find that it will be over the permitted levels for some biotoxins. However, if you break the animal down into the parts that people actually eat—particularly the white adductor muscle and/or the gonad—you will probably find that those parts are well under any permitted biotoxin levels, for virtually the whole year. That is certainly true of the white adductor muscle, although there might be periods when the gonad is above permitted levels—it is a simple matter to remove the gonad if it is above.

I make the analogy that, if you wanted to put a whole sheep on the market and had to mince up the whole sheep and test it to see whether it complied with food legislation, the chances are that it would fail.

The problem is an intractable one, and concerns EU regulations on biotoxins. However, it takes away the premium that scallop cultivators rely on. If you put the product on to the general shucking market, that premium vanishes and the margin takes a nosedive.

Jennifer Howie: There are issues about different species and how things are monitored in that regard, but I do not have any comments about the bill’s impact on that. I think that food hygiene legislation is more relevant to that. The FSA has made a commitment to undertake a policy review on the sale of whole scallops. That will take place in the new year.

The Convener: I thank our witnesses for what has been a thorough session. The area might be less contentious than others, but it raises many issues for us to report on. We will consider further the consequences, intended and otherwise, that we have heard about today.

As noted earlier, this is the committee’s last meeting in 2012. The next meeting will take place on 9 January 2013, when the committee will take evidence on the bill from the minister.

I take this opportunity to thank everyone who has played a part in the committee’s business during the year. On behalf of the members, I wish everyone all the best for Christmas and the new year. In particular, I thank Katrina Marsden from SPICe, who has provided us with many briefings but is going off to pastures new.
Aquaculture and Fisheries (Scotland) Bill: Stage 1

10:05

The Convener: Agenda item 2 is our final evidence session on the bill. We will hear from the minister on all aspects of the bill—when I say all, it means just about that. I welcome the Minister for Environment and Climate Change, Paul Wheelhouse—good morning.

The Minister for Environment and Climate Change (Paul Wheelhouse): Good morning, convener.

The Convener: I welcome from the Scottish Government Willie Cowan, deputy director of performance, aquaculture and recreational fisheries, and Lindsay Anderson, solicitor, head of branch. Good morning to you.

I do not suppose that the minister particularly wants to say anything in introduction.

Paul Wheelhouse: If you do not mind, I would like to make a short statement.

The Convener: Okay.

Paul Wheelhouse: I appreciate that you are busy and I do not want to take too much of your time, but an introduction would help to set the scene.

Thank you for the opportunity to reiterate the Scottish Government's thinking behind the bill and to begin to respond to issues that arose in the written and oral evidence that the committee received before the festive break. It is important to acknowledge that the bill's primary purpose is to ensure that farmed and wild fisheries—and their interactions with each other—continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth while still giving due regard to the wider marine environment.

That significant statement of intent was crafted in the knowledge that the range of stakeholders are not often in agreement—more often, their views differ. Reaching some consensus among the many and varied environmental, animal protection, business, sporting and other interests presents many challenges, but I am optimistic that we now have a number of effective platforms to enable us to move forward.

The Scottish Government supports the aquaculture industry in its ambitious targets for growth by 2020. Members will be aware that we said in the policy memorandum that the targets translate to a 50 per cent increase, against a 2009 baseline, in marine fin-fish production. As of today, that equates to a 32 per cent increase. For shellfish production and particularly mussels, the target is a 100 per cent increase from the baseline.

I will put those figures in context. From 2005 to 2011, the value of aquaculture doubled—it grew from £289 million to £585 million, so it was up 102 per cent. The farm-gate value of the aquaculture sector—that means salmon, trout and shellfish—was £609 million in Scotland in 2011. That was a 9 per cent increase on the value in 2010, which was £563 million. Those figures are clearly important, but I must emphasise that the bill is not a blueprint for assured growth; rather, it is designed to ensure that there is an effective and proportionate regulatory framework in place that facilitates sustainable growth while taking account of the needs and concerns of all who use Scotland's marine environment.

We recognise that, for sustainable growth, it is essential to have in place an effective regulatory framework that safeguards the interests of the wider marine environment and those who benefit from it. To that end, the bill aligns well with the overarching aims, by providing new legal measures for fish-farm operators; moves to improve the management and governance of district salmon fishery boards; safeguards for the shellfish industry, with measures to ensure that shellfish waters continue to be protected from pollution after the EU shellfish waters directive is repealed this year; powers to impose charges; and additional enforcement powers to support sea fisheries officers.

The bill represents the first step in our commitment to modernising and improving arrangements for the management of Scotland's salmon and freshwater fisheries. It takes forward our policy objectives through provisions to secure good governance by district salmon fishery boards and enhanced management of salmon and freshwater fisheries. My officials are undertaking further work to consider the most appropriate governance structures and responsibilities to complement the bill. We would be happy to say more about that, if that was helpful.

Not everything requires primary legislation. We will take forward work on additional areas outwith primary legislation, which includes using existing powers in the Aquaculture and Fisheries (Scotland) Act 2007 or using voluntary means whenever possible. Members will be aware of the recent initiative by the Scottish Salmon Producers' Organisation on sea lice reporting, following discussions with the Association of Salmon Fishery Boards, which the SSPO considers will provide much greater understanding of that aspect of fish health management in areas where salmon farms and wild salmon runs coexist. The Scottish
Government greatly welcomes that development and supports its aims. Like many others, we will watch it closely to ensure that it is fit for purpose. If it is not, we will act appropriately. Of course, we retain the ability to progress secondary legislation if the need arises, but our presumption is not to legislate unless absolutely necessary.

The bill establishes a framework within which growth can take place sustainably. Through the bill, we seek to ensure that the marine environment is protected while we realise the benefits of a successful and growing aquaculture industry that develops side-by-side with the wild salmon and recreational fisheries in Scotland.

I have already advised the committee of amendments that I intend to lodge at stage 2 in relation to cockle fishing in the Solway Firth, and I anticipate a number of others. We have already received suggestions from stakeholders, including the SSPO and the ASFB, and we are considering the extent to which those suggestions would be of benefit. However, at this stage, the proposals are not firm enough to allow me to say more.

On that and on any other aspect of the bill, I am happy to answer questions from the committee as best I can.

The Convener: I think that I am now the only member of the committee who was involved in the committee stages of the 2007 act. What assessment have you made of the success of the 2007 act? For example, how well is the industry complying with the code of good practice?

Paul Wheelhouse: One reason why we do not propose at this time to introduce additional legislation on, for example, sea lice data monitoring—which I am sure we will come on to—is that we believe that there is scope for voluntary action on that front. It is certainly important that we will allow for that before we legislate, and we feel that the sector is making progress in many respects. The number of escapes has reduced and adoption of improved netting and various other technological advances has increased.

We believe that the 2007 act has set a good foundation on which we can build. It is part of the suite of legislation that will cover the interests that I described in my opening statement. However, we feel that action is required in some areas. Although, under the code of good practice, the take-up of farm management agreements or, alternatively, farm management statements is good—we estimate that 98 per cent of areas are covered—that still leaves a gap, which means that we need additional provisions to ensure that the whole of Scotland is covered.

With your permission, convener, I ask Willie Cowan, who has been in his role for longer than I have been in mine, to comment on his perception of how the 2007 act has been implemented.

Willie Cowan (Scottish Government): The 2007 act has been implemented and the management regimes undertaken by the fish health inspectorate are working well. As the committee will be aware, the code of good practice is a substantial document, running to more than 100 pages, that was prepared by a committee on behalf of the industry. It includes guidance on statutory responsibilities, but probably has more guidance on the day-to-day operational responsibilities of running a fish farm. The code of good practice is independently audited. I believe that, across the industry, the compliance rate with the code is in excess of 90 per cent, although I will get back to the committee to confirm that.

The Convener: From what the minister said in his introduction, the Government continues to maintain the approach of encouraging voluntary action where possible. Given that Mr Cowan has just suggested that there is a high rate of compliance with the code of good practice, why have you decided to give it statutory underpinning in the bill?

Paul Wheelhouse: My understanding on the code of good practice is that, on some issues, such as FMAs and farm management statements, we need to include provisions in the 2007 act to ensure that there is 100 per cent coverage of Scotland. Also, we need to future proof the sector, because new operators might spring up across Scotland. The growth that we expect in the sector could involve existing companies, but new operators could also come on board and they could have a different view from others. Shellfish production is expected to increase, too, so it is important that we have 100 per cent coverage and that we have that degree of collaboration and information sharing across the sector through the FMAs.

We want to avoid the situation whereby the code of good practice becomes the property of Government and is given statutory force in its entirety, because that would mean that we would have to come back to the committee constantly for on-going revisions. It is better that we leave it to industry and science to develop approaches but that we set the framework in which the code of good practice sits. We have covered specific issues such as the provision of FMAs and FMSs by setting up a relationship between the regulatory framework and the code of good practice.

10:15

The Convener: I will bring in Jim Hume next because he has a question that relates to how the code is applied and to the environmental
pressures, which is quite important in understanding the background to the new legislation.

**Jim Hume (South Scotland) (LD):** Good morning and happy new year. An important point that has been covered in our discussions with stakeholders on all sides is the need to balance any environmental impacts with the need for an aquaculture industry that is competitive. How does the Scottish Government’s approach balance those needs?

**Paul Wheelhouse:** That is an important part of the reason for the legislation. Obviously a number of interests sometimes butt against each other and a degree of tension arises because of that—between wild fisheries and fin-fish farming and also in other areas of the sector such as sport fishing.

We have a duty to consider the interests of all those groups; the essence of our role is to strike a balance. We need to allow the sector to grow and not constrain it, as long as it is complying with environmental directives and regulations. We need to ensure that it is doing a responsible job of delivering economic activity in fragile parts of Scotland’s economy but doing so in a way that pays adequate regard to safeguarding the local environment. We should facilitate that.

On one of my recent visits to the committee, we talked about the balance of work that we are doing and about trying to facilitate sustainable growth through our budget. We are continuing that approach through our regulatory engagement with sectors across Scotland, to ensure that we allow them to grow but in a way that is sustainable for the longer term. Probably only Government could fulfil the role of balancing the interests, because historically there have been tensions between some of the different partners around the table.

On all sides, there has been a good degree of progress on engaging in the discussions around the bill and I am confident that, once the bill—I hope—progresses through Parliament, structures such as the ministerial group on aquaculture will allow that dialogue to continue and will help with implementation of the bill. The interaction stream of that ministerial group on aquaculture will allow that dialogue to continue and will help with implementation of the bill. The interaction stream of that ministerial group on aquaculture will allow the different, sometimes competing, interests to be worked through, and can cover the joint development of technical standards and understanding what netting, seal deterrent devices and various other things are needed. More importantly, the group will look at capacity to see what level of sustainable growth we can expect in the sector in Scotland, taking into account the different interests. Balancing those interests and taking an overview of what is required is an important role for any Government to play in such a situation.

**Jim Hume:** There is a perception that I am sure is true—Marine Harvest mentioned it in evidence, as did Professor Thomas, I think—that the aquaculture industry is quite heavily audited. Is the Government able to gather and analyse all the data from the various bodies that those audits generate and, through that, look at ways to avoid duplication of information gathering in the future to get a more streamlined bureaucracy rather than piles and piles of red tape?

**Paul Wheelhouse:** I am aware that the United Kingdom Government has a bonfire of regulation going on. In Scotland, we are taking a slightly different approach. We are trying to focus on ensuring that the regulation that exists is better. It is a case of not necessarily ditching regulation but ensuring that there is clarity around it—that it is easier to follow and easier to comply with. As I have said to the committee before in respect of the roles of agencies such as the Scottish Environment Protection Agency, Scottish Natural Heritage and, indeed, Marine Scotland, it is about trying to ensure compliance rather than punishing failure. It is about trying to help businesses to comply.

Putting the regulatory framework in place, through the bill, will be an important step in enabling a level playing field across the various sectors that the bill covers and in enabling a greater degree of clarity about roles and responsibilities. However, if the committee requires more information about what audit is already taking place and what impact the bill will have on that, I am happy to come back to the committee with our assessment in that regard.

**Jim Hume:** On the issue of audited information, is all of that available to the Government or is some of it perhaps not available?

**Paul Wheelhouse:** Outwith the bill, on the issue of sea lice data—which is a key area that I am sure we will come back to, perhaps extensively—we are looking for voluntary action from the sector to enable us to interact with the industry to bear down on that problem.

I will ask my colleague Willie Cowan to respond on the availability of information.

**Willie Cowan:** We do not have routine access to the audits of the industry that are undertaken outwith Government, such as by the supermarket suppliers and so on, but there is no reason why we should not get them. We are in continuing discussions with the industry about the best way of utilising all the audit information that is available so that we have a complete picture of compliance levels across the industry. That is something that we want to look at.

In addition, on the regulatory side, we are in discussions with all the Government agencies that
have an interest in the industry to ensure that we collectively manage and enforce the regulation of the industry at an appropriate level. We want both to reduce duplication where it happens and to increase efficiency across all our operations. For all sorts of reasons, we are very interested in pursuing that issue.

Claudia Beamish (South Scotland) (Lab): Good morning, minister, and happy new year. Can I take you back to the 50 per cent target? In your opening remarks, you focused on the fact that due regard must be taken of the wider marine environment. As you will know, the Scottish Wildlife Trust asked what modelling was done of the carrying capacity of the marine environment before the 50 per cent target was adopted. The SWT also highlighted concerns that the target was set before the final marine plan was in existence, although we all know that the plan has gone through many of its stages. Are you content that the provisions in the bill are sufficient to deal with the 50 per cent increase in fish-farming activity? What analysis has been carried out of the environmental impacts of a 50 per cent increase in such activity?

Paul Wheelhouse: On the 50 per cent target—it will be 32 per cent from the current point according to the latest data—SEPA has helped to develop tools such as autoDEPOMOD, which I mentioned at a previous committee meeting, to enhance our modelling capability. Certainly from this point forward, if I may start with that, we have the modelling capability to understand what impact particular site applications around Scotland might have on the biomass level that can be sustained locally, so we are certainly in a much better place now to understand what impact any application will have on the local environment. I hope that that gives some confidence to the Scottish Wildlife Trust and others that we at least have the analytical ability to understand what the impact would be.

I might ask Willie Cowan to respond to the question about interaction with the marine plan.

My understanding of the position now is that, although perhaps not in the format that the industry would like, we have sufficient consents granted for us to have, broadly speaking, the increase of 50 per cent from the initial date, which would be a 32 per cent increase from now. The problem is that many of those consents are in places where perhaps the industry would not want them any more or are for sites that might be too small in scale to meet modern standards, economies of scale and so forth. Obviously, the Scottish Environment Protection Agency, as one of the regulators, would look at any revised proposals, for example to have a site somewhere else or to amalgamate consents. However, the consents have been granted, and if they were all taken up, we would probably get to the figure that has been referred to. Some of the consents are historical, in that they were granted some time ago and are renewed on the usual cycle. Whenever they come up for renewal or an alternative is proposed, the Government, through SEPA, is able to assess their impact on the local environment.

I ask Willie Cowan to address the point about Marine Scotland and the interactions with the marine plan.

Willie Cowan: One of the purposes of the marine plan is to be aspirational across the types of activity that might take place in the environment. The pre-consultation draft marine plan supported the targets that the minister has outlined. The forthcoming draft, which is due out in the summer, will continue to support those aspirations.

Certainly on the fin-fish side, the aspirations are for about a 4 per cent increase in production year on year, which is maybe the equivalent of three or four new farms a year across the whole of Scotland. The west coast and the islands are therefore not being blanketed with fish farms; the increase is incremental. The existing regulatory framework and the bill, along with the research and the modelling improvements that the minister touched on, help us to work towards the target incrementally. However, as the minister said in his opening statement, the bill is not indicating what will happen; it is saying that what is proposed will provide us with a framework to get there incrementally, if the environmental sustainability, through the modelling, the discharge consents and all the rest of it enable it to happen.

Clearly, one of the things that we want to do is to move beyond considering fish farms on a site-by-site basis to perhaps consider them on a water-body basis and, indeed, across Scotland. We have a considerable amount of research on the go just now and are improving modelling capacity to enable us to be better at managing existing sites and giving consent to new sites.

The existing framework and what we have put before the committee today are therefore about providing a framework that will allow us to get there incrementally, if the environmental considerations are met.

Paul Wheelhouse: I will just add a brief point to that. I referred earlier to the ministerial group on aquaculture. The capacity strand of that, which I referred to earlier, will specifically involve looking at the sector’s ability to deliver the target in a sustainable way. Obviously, the likes of Scottish Environment LINK will be represented on the group, so I trust that people’s legitimate environmental concerns about growth in sensitive environments will be taken into account when
advice to ministers on the sector’s ability to grow and on the planning and regulatory issues that need to be resolved in that respect is considered.

The Convener: Thank you. We move on to a couple of environmental issues relating to aquaculture that are not covered by the bill.

Alex Fergusson (Galloway and West Dumfries) (Con): Good morning, gentlemen. I, too, wish you a happy new year.

As the minister said, we were inevitably going to come on to the issue of sea lice at some stage, and this seems to be as good a time as any. I find it difficult to talk about the biomass increase that is obviously related to the increase in aquaculture output without mentioning the subject of sea lice. I am sure that the minister is aware of the study of the Norwegian aquaculture industry by Jansen et al, which was published fairly recently and which concludes that there is a real relationship between local fish density and lice infection pressure.

One of the things that struck me, which relates to a lot of the evidence that we have been given, was that the analysis was possible only because the Norwegians insist on farm-by-farm data collection on sea lice. That brings me back to what the minister—or it might have been Mr Cowan—said about our having the analytical ability to deal with the biomass increase. Why does the Scottish Government seem so reluctant to go down the route of farm-by-farm data collection on sea lice? We have had a lot of conflicting evidence on the issue and I have not made up my mind on it yet.

10:30

Paul Wheelhouse: It is not that farm-by-farm data on sea lice are not being collected; the issue is more to do with publication. We have tried to take an approach that strikes a balance between respecting and giving due regard to commercial sensitivities and allowing us, through the Scottish Environment Protection Agency and fish health staff, to have access to the data, so that where the proposed granularity of data might not allow an individual site’s performance in relation to sea lice to be seen, we will—I hope—have access to that information.

The issue has been part of our discussions about the voluntary arrangements that the sector offered in its letter to the convener. There is a certain granularity in relation to publication, but we would have access to data, so that we could understand where sea lice were found locally.

I appreciate that that is not the same thing as allowing the data to be used for research. However, I stress that a strand of the ministerial group on aquaculture’s work will be about identifying gaps in the research and trying to increase collaboration between the academic community, the industry and people who are involved in commercial research. I hope and expect the MGA to work to ensure that gaps are filled, by prioritising research in areas in which we need information.

An interesting point about the study to which you referred and the work of the University of St Andrews in the area is that the data come largely from Norway and Ireland. We realise that we do not have a comparable study in Scotland, and I look to the MGA to consider what we can do to fill that significant gap. We need to work with the industry to find a mechanism by which we can build on the data that are collected at farm-by-farm level, for research purposes. It is important that the industry is involved with the MGA’s research strand so that it can facilitate such research.

I hope that my answer was helpful. Willie Cowan might want to add something.

Willie Cowan: There is a question about what the data would be published for. Ministers are seeking to take an approach that provides reassurance to the public about the aquaculture industry’s performance on sea lice over what are now 30 areas.

Individual fish farms and farm areas are already interacting with local fishery managers—that is happening, and we expect the situation to improve. Local farm managers have had access to the data and we expect them to have access to them in future. Data are available at two levels: in relation to public reassurance, and in relation to the management of fisheries at the local level, so there is real interaction between farmers and local fish managers on the detail, farm by farm. That has been the approach so far.

Alex Fergusson: Thank you. Sorry, minister, you were quite right: I should have said that the issue is the publication of farm-by-farm sea lice data. We received a great deal of evidence on that.

I think that I am right in saying that, under the Aquaculture and Fisheries (Scotland) Act 2007, the Scottish ministers have the power to require fish farmers to provide them with individual farm data. Would those powers also allow for publication of the data in certain circumstances?

Paul Wheelhouse: I will check with Willie Cowan, but my understanding is that we have powers under the 2007 act to require the data to be collected, and we could publish that information.

Willie Cowan: If there were a statutory order requiring the collection of the data, by extension, the data would have to be published. The freedom of information regime makes that inevitable.
Alex Fergusson: Has that power ever been used?

Paul Wheelhouse: No, not to date. As I say, we have legislation that gives us an enabling power and we could develop a proposal for secondary legislation. However, we are trying to work with the industry, recognising some of the legitimate concerns that it has while ensuring that the wider interests have confidence that the tier of data that Willie Cowan referred to will enable them to see at a glance whether there is a problem and trust that the regulators, such as SEPA and the fish health inspectors, are doing that work at the lower level of granularity and are looking at what is actually happening on the ground. As Willie Cowan said, that is why we are including in the bill the requirement to increase the coverage of farm management agreements across Scotland. That will ensure that there is the required degree of collaboration and information sharing, which means that, if there is a sea lice problem in one part of a catchment, the other operators are aware of it and are discussing the issues and collaborating to reduce the impact on the sector and wider marine environmental interests.

Nigel Don (Angus North and Mearns) (SNP): A representative from SEPA told us that SEPA licenses the biomass of a fish farm but that Marine Scotland licenses the level of medicine that can be used in relation to that biomass, which means that a fish farm could be licensed to have 1,000 tonnes of biomass but might have protective medicines for only 800 tonnes. Do you and your officials recognise that as an issue? Do you believe that you have powers to deal with it? If not, do you believe that you should?

Willie Cowan: It is SEPA, through the controlled activities regulations regime, that specifies the medicines that can be discharged into the environment. If you have planning permission for a 1,000 tonne site, SEPA, through its consenting regime, might say that the medicines that you can use at that site equate to 700 tonnes. It is for the industry to manage matters within those two consents. It is SEPA, not the Scottish Government, that manages the discharge into the marine environment.

Paul Wheelhouse: It is important to realise that one of the advantages of having tools such as autoDEPOMOD is that they allow us to better understand what biomass might be required and the scale of medicine use that should be allowed.

Nigel Don: Do you believe that the bill gives you the necessary powers in that regard? My reading of it is that it does not. I recognise that you are trying to do a lot of things with the industry by consent, which is a good way of running most things on this planet. However, we are interested in whether you have the powers that you might need.

Paul Wheelhouse: I ask Willie Cowan to say whether we have those powers, whether in the 2007 act or in other pieces of legislation.

Willie Cowan: SEPA already has powers to require a reduction in biomass in relation to managing discharges to the marine environment. We are in discussion with SEPA in relation to biomass reductions for reasons other than those that come under its traditional environmental role. The minister can direct SEPA to undertake certain functions, so we do not need legislation for that. The minister can direct SEPA to reduce biomass under certain conditions that go beyond the powers that it has traditionally used to reduce biomass in relation to managing discharges to the marine environment. We believe that ministers already have the power by direction to do what Mr Don is asking about.

The Convener: Could you send us in writing an idea of the conditions that might lead you to ask SEPA to take such action? That might be helpful.

Willie Cowan: Yes.

Paul Wheelhouse: We are happy to give that undertaking.

The Convener: Thank you. I return to the bill’s provisions on farm management agreements and statements. What proportion of fish farms are not part of agreements at present?

Paul Wheelhouse: I will come back to you to clarify the position if this is incorrect, but my understanding is that fish farms that are not covered by agreements represent only 2 per cent by volume, and the number is in single figures.

The Convener: Okay. How will the boundaries for area management agreements be set and changed?

Paul Wheelhouse: We continue to believe that the salmon farming industry is best placed to determine the areas and to make decisions for itself. However, the bill provides a backstop for ministers to step in should the system fail and problems be identified. If we feel that important areas are not being covered, the bill will provide us with the ability to step in and make adjustments.

As I said, we welcome the SSPO’s proposal to publish sea lice data. Although we will not
necessarily control the areas—unless we have to fill a gap that is identified, using the provision that we have put in the bill—we take the view that the industry will work with us on determining sensible FMAs that work well with the publication of the data.

The Convener: It concerns me that, although we are to have marine protected areas and management areas as well, the tripartite working group, which involved wild fish interests in the drawing up of agreements with fish farms, will not be involved in the farm management agreements that are produced under the code of practice. Why will it not be involved?

Paul Wheelhouse: With apologies to Willie Cowan, I ask him to deal with that.

Willie Cowan: The farm management agreement is essentially an operational agreement. When a consent has been given and a farm management area has been established, operators in the area will be required to have a farm management agreement. It is an operational matter. I am not clear why the group that you refer to would have an interest at that stage.

The expectation is that the industry will liaise with local farm managers on a farm-by-farm basis and, as production cycles complete, there will be a review of what happened in an individual farm. If it is agreed that something else should happen for the following production cycle, that can be reflected in the subsequent farm management agreement. There is scope for day-to-day interaction on particular issues between farmers and local managers, and that interaction can then be reflected in an agreement.

10:45

Paul Wheelhouse: As Willie Cowan said, we are trying to encourage the sector to work more at a catchment level—that is, to work more sensibly on areas that are naturally defined by a river and a particular catchment—so that there is logic to the boundaries. We hope that that will match up better to the wider marine planning environment and areas that are defined elsewhere in legislation. We are trying to get to a point at which, with voluntary action from the industry, a bit of common sense is applied to the areas that the industry defines in consultation with others.

The Convener: I hear what you say, but the tripartite working group has a particular role to play. In the interests of clarity and dispelling questions about openness, it would be good if you could give a clearer picture of how the group will work with the farm management agreements and the people who make them.

Paul Wheelhouse: If it would be helpful, I would be happy to write to the committee following the meeting with some further thoughts about that and to set out how we think that that process might be improved.

Claudia Beamish: I am sorry to go back briefly to sea lice, minister, but, on reflection, I was not clear about your position on some aspects of the matter. Will you clarify what commercial sensitivities or privacy requirements companies would need to have to prevent the publication of farm-by-farm sea lice data? Willie Cowan highlighted the reasons why publication would be necessary, but in evidence to the committee, some organisations have said that publication would be helpful for work with wild salmon fisheries and might help better understanding of how sea lice on a particular farm had been treated and whether that treatment was effective. As in any industry, there may be good working practices and—to be blunt—not-so-good working practices, and publication of farm-by-farm data might open up those practices to public scrutiny.

Paul Wheelhouse: Claudia Beamish is correct to identify the need to roll out best practice across the sector. I expect that the interaction strand of the MGA will work to understand the interaction between the wild fisheries interests and the salmon farming industry and consider the degree to which the industry can share information and advise colleagues with wild fisheries interests that there are problems in a locality so that they can work on them together.

I also hope and expect that the research strand of the MGA’s work will deliver information sharing and make people aware of which techniques to control sea lice numbers work. Sea lice are a naturally occurring species. They come into fish farms and, potentially, go back out into the wider environment, so we need to understand how we can control that process better.

On commercial sensitivities and the publication of data, the key point is to understand that, because of the nature of the retail market in the UK and elsewhere, there are huge sensitivities about sea lice. In the public discourse about the issue, there is often frenetic debate.

Every fish farm probably has some sea lice—I would be amazed if there was a farm that had none—just as sea lice infest wild salmon irrespective of whether the industry operates in the locality. We need to give operators the opportunity to flag up problems to the industry internally and to the officials who regulate the sector. They will have to publish data that perhaps will not give the degree of granularity that is being suggested but which will enable communication at the necessary level so that we can step in, determine whether
measures are being taken and, if they are not, take regulatory action.

Operators should be given sufficient time to pull themselves round and deal with the problem without the risk of losing an entire company-wide contract on the basis of what has happened at one site. There are sensitivities. If a particular operator has multiple sites, one of which has a sea lice problem, that has the potential to impact on its entire contract with a major retailer, with huge implications for local jobs.

We recognise the genuine public desire to know where problems are happening and that those problems are being tackled. As long as we have confidence that, as a regulator of the sector, we have access to the data and can take appropriate action to ensure that problems are addressed, we feel that the level of granularity that we can work with in relation to publication is sufficient at this stage to give other people confidence that there are no problems, as Willie Cowan said. When no problems are reported across the 30 areas, we can see that that can give confidence to the wider stakeholder community. However, we have access to a higher level of granularity, should we need it, to take the appropriate action and give an operator time to pull a site around rather than lose its entire custom. It is not in an operator's interest to sell poor-quality stock to a retailer, and we are confident that that will not happen. It is about giving people time to deal with a sea lice problem as it occurs on a particular site. We can then give people confidence that that problem has been addressed.

Willie Cowan may have views on that.

Willie Cowan: There is a difference between the publication of a data set for general knowledge and knowledge of data for local management. As I said, the clear expectation is that, at the local level, the local fish farmer will engage with local fishery managers on the management of particular sites and what is happening in relation to sea lice and treatments. There is an issue to do with what is published for public consumption and what is available for management, which need not necessarily be published for public consumption.

The Convener: Okay. To return to farm management agreements, which you are including in the bill, what is the process by which disputes can be resolved if fish farmers fail to agree?

Paul Wheelhouse: We have looked at the potential role of arbitration. Obviously, there may be situations—we hope that they do not occur—in which companies cannot agree on the content of a farm management agreement. We believe that independent arbitration would be appropriate at that point. It may also be appropriate when agreements that are in operation are not being followed or are not achieving their agreed objectives. Obviously, given the nature of the areas concerned, more than one operator might be involved, or there might be dissatisfaction that a particular operator is not fulfilling its obligations, and an independent arbitrator could be brought in to help to resolve the tension. That is where we think things may go. We hope that things do not come to that, but we believe that there is scope to bring that role into play.

The Convener: Are you assuming that there will be very few disagreements about farm management agreements?

Paul Wheelhouse: I would not like to say that that is an expectation, but I hope that there will be very few disagreements. We expect that, by bringing in a more robust framework for the sector, particularly in areas such as improving technical standards and netting standards and controlling the potential for escapes and various other risks to the sector locally, that will have an impact in dampening down the potential for disagreements. However, I cannot go stronger than that.

My colleague Willie Cowan may have views on the experience to date of the operation of FMAs and how often there have been such tensions. Perhaps he can help.

Willie Cowan: I do not have the numbers. Part of the SSPO’s role is to mediate between companies if such issues arise. We are talking about 98 per cent of volume being produced by SSPO members, who are all signed up to the same code of practice. The expectation is that there should not be many areas in which there is a disagreement that is not resolvable.

The Convener: We are aware that such agreements are published and available in the code of good practice audit and the Marine Scotland Science fish health inspectorate inspections.

Can a third party object to an agreement? If so, what happens if objections are raised?

Paul Wheelhouse: In the interests of brevity I direct that to Willie Cowan.

Willie Cowan: No, third parties cannot object. The farm management agreement is a matter for the operators in a particular area. It takes account of their statutory and code of practice responsibilities. It is an operational agreement and there is no scope for any official complaints regime to enable someone outwith the companies concerned to have an input.

The Convener: Thank you. Are members all right on those points?

Alex Fergusson: I have a brief supplementary. It has been suggested to us in supplementary
evidence from Professor Brian Austin, director of the institute of aquaculture at the University of Stirling, that in some respects the agreements are not flexible enough to allow for a rapid response in any given changing situation. Will you comment on that?

Professor Austin also suggested that to be fully functional, it would be better if FMAs and FMSs applied to all aquaculture across Scotland. What are your views on that criticism?

Paul Wheelhouse: On the latter point, although Willie Cowan is quite correct that 98 per cent of the salmon farming industry is covered by the SSPO, clearly we are trying to encourage through the bill’s provisions the universal coverage of such interests in Scotland under FMAs.

Can you remind me of your first point?

Alex Fergusson: The agreements are perhaps not flexible enough to allow for a rapid response in any given emergency situation. The suggestion is that a little more flexibility should be introduced through the bill.

Paul Wheelhouse: Unless Willie Cowan has any particular view, we could perhaps write to the committee about how we might work through the likes of the ministerial group on aquaculture to encourage that issue to be taken on board by the sector so that, when they are developed, local agreements build in some flexibility, or at least make provision for unexpected circumstances. Willie Cowan may have something to add to that.

Willie Cowan: I am not sure that I agree with the point. Under the bill, the farm management area is there to bring in a minimum set of standards that the Government believes needs to be taken account of. In operational terms, it will do nothing to restrict individual farms or farmers in an area taking immediate action to resolve a specific emergency issue. There is nothing in the bill to restrict that type of action.

Alex Fergusson: Right—that is fine.

Paul Wheelhouse: I know that you are conscious of time, convener, but I want briefly to add that we are taking a conscious decision in that regard. We recognise that such agreements are best developed by the sector itself. We do not want to get into the business of the Government micromanaging what happens with the FMAs at the local level, but we can certainly ask the industry, through the likes of the MGA, to reflect on such issues. Willie Cowan makes very valid points.

The Convener: Thank you very much.

I hope that the next section, on tagging farmed fish and tracing escapes, will be slightly more straightforward.

Gil Paterson: I am a former angler—and not a very good one, at that. When I was an angler the chats were always about this particular issue, which I know is high up the agenda for the sports fishermen’s chattering classes. How will the approach that is taken in the bill improve the tracing of the source of escapes of farmed fish?

Paul Wheelhouse: In the informal discussions that I have had with the local fisheries board managers, there seems to be strong support for and confidence in traceability. Tracing provides the opportunity to better understand what activity is taking place, but it provides confidence to consumers, too. Obviously, we are not talking about fish necessarily being sold. An angler will catch a fish and, if they do not release it, it will be for personal consumption rather than for sale. Tracing provides a better understanding of where fish have escaped from and who is catching them.

11:00

Willie Cowan: The key issue is that inspectors are allowed to take a sample only where they know that there has been an escape. Under the bill, if farm fish are found in a water body but there has been no report of an escape, inspectors would be able to go to the farms within that water body and take a sample to identify where the fish in the wild environment had come from. At the moment, action is quite restricted—we can do something only if we know that there has been an escape.

Gil Paterson: In evidence to the committee, the Atlantic Salmon Trust suggested that farmed fish should be tagged. What is the Government’s view on that? Should farm fish be tagged or marked in some way to serve the same purpose?

Paul Wheelhouse: First, you must understand whether there is a problem of significant scale. The ability to genetically test fish in a fish farm so that we understand whether they match up with fish that are being found in the wild environment is important. From a practical point of view, if we have large concentrations of fish, that might be difficult and not the easiest thing to implement. I know that sampling is done for health reasons and fish can be inspected in the channels that they go through to see whether they have any visible signs of disease.

I do not know whether Willie Cowan has had any discussions with industry about that proposal.

Willie Cowan: As the minister says, from a purely practical point of view, we could be talking about hundreds of millions of individual fish. To date, tagging has simply not been practicable, from either a practical or a technological point of view. As ever, technology moves on and investigations are going on in other parts of the world, which suggests that other people are
looking at that as a possibility. Whether tagging ever becomes practicable is a different issue. However, technology advances and some of the genetics firms are looking at farmed fish that simply will not attract lice and at the possibility of a triploid farmed fish that is sterile and cannot breed. There are a whole range of issues relating to managing the interactions with the wild environment and the potential mitigation of escapes. Tagging is one measure, but there are others and there will continue to be developments.

Jim Hume: Willie Cowan mentioned triploids, which I believe are widely used at rainbow trout fish farms. Is there a technical reason why that has not been the case with salmon fish in aquaculture?

Paul Wheelhouse: We will perhaps need to write to the committee with a response on the science behind that.

Willie Cowan: We know that the industry is looking at all aspects of production and how to mitigate potential impacts. Triploids are being looked at and we can certainly write to the committee with a scientific and technological update about them.

The Convener: We move on to training and the use of fish-farm equipment, on which Nigel Don has a question.

Nigel Don: As you know, section 3 effectively and for various reasons gives the Government a power to define technical requirements for certain pieces of equipment. However, the industry has told the committee that most escapes are perhaps the consequence of human error rather than anything to do with equipment. Should the bill contain a requirement for training? Obviously training is a good thing but should it be verifiable?

Paul Wheelhouse: It is a fair question. The fact is that there is variation in the sector. Not all operators are in a uniform place with regard to adopting technical standards or addressing the supporting human resource aspects to ensure that their staff are trained. At the other end of the spectrum, certain operators might not be in a great place with regard to moving forward with the kind of technological measures that we might expect the industry itself to develop.

There could come a time when training might become an issue but it would be difficult for us to specify that at this stage. It is up to the industry to determine its requirements, but we can certainly consider human resource implications through the MGA’s technical standards strand. I am absolutely certain that the situation will vary from one company to the next, because I know some operators that are well ahead of the curve in their early adoption of technology to try to reduce escapes, and of techniques for improving much more capital intensive or at least technical aspects such as fish health, recirculation and so on, and others that are in a more difficult position.

I am aware of the concerns that many of the issues are down to human error. From my discussions with some of the key figures in the industry, I know that when we looked at the issues that might come up they said, “Well, that shouldn’t be happening in our company. If someone commits a particular offence, it would be a disciplinary matter.” They would say that it is less a corporate issue than a matter of a member of staff failing to deliver what is expected of them.

I ask Willie Cowan to comment on whether there have been any discussions about training requirements in the technical standards strand.

Willie Cowan: Not as such. However, I would suggest that, in the past couple of decades, the industry has moved on in leaps and bounds and has become very advanced. It has apprenticeships and training programmes that cover people from the lowest level—deckhand labourers, say—up to farm managers. The infrastructure exists in these companies, which are major international players.

That said, we must appreciate the environment within which some of the operations take place. We are not talking about clinical laboratories. It does not matter whether someone is trained to a gold standard; if they slip and something happens, that is what happens.

Nigel Don: The former factory engineer in me feels the need to disagree slightly with you. Yes, if someone slips, they slip; however, the consequences of such a slip can be mitigated if the possibility of its happening has been thought about beforehand. It will not happen, of course, but the net result of that slip might be that a net’s worth of fish is lost. I am partly hoping that you can reassure me that we are pushing the industry in the direction of considering problems beforehand to ensure that other huge problems do not emerge.

Paul Wheelhouse: I fully accept the point, but we have to remember that technical standards are being developed and adopted in the context of the wider regulatory framework. If a breach—if you like—or failure to maintain its operations within the expected technical standards leads to a company breaching the regulations and therefore puts it at risk of a fixed-penalty notice, the prospect of that kind of financial impact will provide an incentive for it to ensure that its staff are trained. The issue should not be seen in isolation; it is part of the wider regulatory framework.

I totally accept your point that we should not just accept that things happen and say that that is the end of it. If an issue is serious, it should be seen
as leading to a company putting itself at risk of receiving a fixed-penalty notice or a more severe sanction. That should be remembered. We have the ability to engage with companies through our regulatory function; we can say, “This isn’t good enough—we need to see a concerted effort to ensure that escapes do not happen.”

The Convener: We move on to another area where things can happen—on wellboats.

Graeme Dey (Angus South) (SNP): Good morning, minister. SEPA suggested simplifying the consenting regime for the use of wellboats so that SEPA, rather than Marine Scotland, was responsible for licensing discharges. How do you view that proposal? If you view it favourably, would an amendment to the bill be required to facilitate it?

Paul Wheelhouse: We referred to the work that is going on in the Government to co-ordinate better the delivery and audit of regulation by SEPA and other agencies, such as Marine Scotland. I agree that the proposal would be worth looking at in that context. Our view is that the process as it stands works reasonably well. We are discussing the issue with SEPA and with Marine Scotland’s licensing operations team, which licenses the discharge from wellboats. Perhaps we can come back with more substantive information about those discussions.

I do not know whether Willie Cowan has any points to add.

Willie Cowan: As I said, we work closely with regulatory colleagues in the field to improve how we manage the regulatory framework and to improve it for the industry, which is on the receiving end of it. Across the regulatory organisations, we are happy to look at what works best and whether a change would be better. We can certainly consider the proposal.

Paul Wheelhouse: I ask Lindsay Anderson to clarify whether the bill contains any provision on the issue and whether an amendment would be needed.

Lindsay Anderson (Scottish Government): Any amendment would probably not be to the bill. The deposit of substances from wellboats is dealt with under the marine licensing regime in the Marine (Scotland) Act 2010. If an amendment was required, it might be made via a bill such as this, but I think that it would be to the 2010 act.

Graeme Dey: The proposal strikes me as sensible, given that it would reduce bureaucracy and could reduce the costs that fish farmers bear.

Paul Wheelhouse: As long as the regulation is being properly policed and monitored—I put in that proviso—it is at least in principle good to rationalise the cost to the operator and simplify how we operate. I have no doubt that SEPA would do a good job. We would need to write to the committee about how far we have got in the discussions and whether we can say anything concrete.

Graeme Dey: Has the SSPO raised concerns with you or your officials about the definition of a wellboat being too broad? If so, what is your response to that?

Paul Wheelhouse: Willie Cowan has looked at the issue.

Willie Cowan: Through our stakeholder engagement group, we have been in discussion with the SSPO and others. The definition is one issue that has been raised with us and we are looking at it.

Gil Paterson: At the aquaculture round table, Alex Kinninmonth of the Scottish Wildlife Trust said that the bill’s definition of a species as commercially damaging includes the proviso that the species “is itself of little or no commercial value.”

He argued that account should also be taken of the ecological value of a species and that there should be a requirement to consult Scottish Natural Heritage before defining a species as commercially damaging. Do you agree? If so, do you intend to include such a requirement in the bill?

11:15

Paul Wheelhouse: On taking into account the wider environmental value of a species, I clearly do not want to put at risk any species that is an important part of the ecosystem and a native species that has a right to be there, if you like, and which has its own intrinsic value as part of its environment. I take the legitimate point that you have made about ecological value and the fact that a species may be just not commercially viable.

Willie Cowan is keen to come in on your point about the role of SNH.

Willie Cowan: As part of ministers’ consideration of whether to go back to Parliament with an order specifying a commercially damaging species, we would take advice from advisers such as SNH to get to the position in which we could provide reasons for saying whether a species was commercially damaging. As part of my responsibility to advise the minister, I would consult bodies such as SNH in the first instance. In the second instance, if we were to propose a species as being commercially damaging, the order would be subject to a consultation exercise as well. There would therefore be internal
consultation within the regulatory field and public consultation before we brought an order to Parliament.

Paul Wheelhouse: Marine Scotland already has a role to advise us of the conservation value of species that might be considered for the list in the bill. I guess that there is a clear role for SNH to make similar assessments for freshwater environments. I am certainly happy with the principle as outlined by Gil Paterson.

Alex Fergusson: Is it possible to give an example for salmon aquaculture of a commercially damaging species as defined in the bill? Is that definition designed to include parasites and pathogens?

Paul Wheelhouse: A species that we propose to specify as commercially damaging—forgive my pronunciation if it is not correct—is Mytilus trossulus, which is a type of mussel that does not have a particularly thick shell, so the quality of product would not necessarily be attractive for commercial operation. We have already proposed that species for the list of those that might be deemed commercially damaging. However, as Willie Cowan said, we would need to consult on such species and ensure that we took on board interested views in that regard.

Mytilus trossulus has been proposed for the list because of its potential impact on the shellfish sector. The sector has a relatively modest turnover at the moment of about £10 million a year, but we believe that it has great potential for expansion.

Willie Cowan will address the point about pathogens and pests.

Willie Cowan: The short answer to Mr Fergusson’s question is no, simply because it would be impossible to eradicate parasites and pathogens from the marine environment.

Alex Fergusson: I just wanted to clarify that. Thank you.

The Convener: I want to ask you about a subject that has been referred to in part already. It relates to the development of outline approval by the United States Food and Drug Administration of a genetically modified salmonid. We have discussed previously the potential development of farmed fish that could be sterile and the question of the guarantee of 100 per cent sterility and the development of GM salmon that could escape and become a commercially damaging species. Has any account been taken of the development in the USA in recent weeks to which I referred?

Paul Wheelhouse: I do not have a definitive answer on that issue, but I would be happy to write to you with one. I am sure that you are well aware of the Government’s view on GM products and our desire, from the perspective of both domestic consumption and export value, to keep our food chain and our much-valued food products protected against any damage arising from their being perceived as GM sourced. I am sure that, within that context, we would give detailed scrutiny to the issue to which the convener referred. If I may, I will come back to the committee with a detailed answer to the convener’s question and give a definitive position.

The Convener: I put it on the record that I have been approached by both fish-farming interests and wild salmon interests on the matter, so it is becoming current.

We will take a strict five-minute comfort break and return at 25 past 11 to consider part 2 of the Aquaculture and Fisheries (Scotland) Bill.

11:20
Meeting suspended.

11:26
On resuming—

The Convener: We will make a start on part 2 of the bill. Jim Hume will lead on governance issues.

Jim Hume: There has been a long debate on district salmon fishery boards that goes back at least to the Hunter committee of 1965, which of course we can all remember. The bill does not propose dramatic changes to the salmon fishery boards but, interestingly, on 28 November, the Government bill team said that, during the passage of the bill, it planned to scope out a review and introduce further legislation in the current session of Parliament. Why has the debate on the salmon fishery board structure been such a long-running one? What potential changes are needed? Do we need larger boards so that they can manage all the extra duties, or do we need smaller fishery boards so that we can keep them local and in the community?

Paul Wheelhouse: I recognise the point about the historical situation, although I apologise that I am not as familiar with it as Jim Hume is, as my knowledge does not go back to the 1960s. Because many boards have developed in an organic fashion and as a result of local circumstances, we have a mixture of large boards and small ones, with different levels of resource in each. That means that, if we get into a position in which we place requirements on boards, there are potential challenges relating to the ability of smaller boards to adopt those measures and to cope with the additional bureaucratic elements, such as audit and the provision of information. We must be cognisant that there are a variety of boards across Scotland.
In my discussions with the managers of larger fishery boards, I have found that they recognise that situation and have sought to collaborate with smaller boards to provide them with a bit of expertise and support, where that is practical. Obviously, that cannot be done ad infinitum, because supporting the smaller boards has a financial implication for the larger ones, but a degree of collaboration is taking place between colleagues in the fisheries community to help smaller boards to adopt best practice and take things forward.

Jim Hume raises an important point about the review of where we stand. The policy memorandum signals that we are committed to carrying out further work to modernise the management structure for salmon and freshwater fisheries during the current session of Parliament. The bill is the first step, but not the final one, in taking forward our manifesto commitment on the issue.

We have asked officials to draw up proposals for the scope of that further work and we will be in a position to announce our next steps once we have considered that advice. The intention is to establish a baseline review of where we sit so that, as minister, I have an understanding of the mix of the boards that we have and of their capabilities, size and coverage before we move on to develop options, if there are options for further review. Any measures that are proposed would be consulted on fully—there would not be a precipitate change in arrangements—but I would not want to prejudge any review of the governance arrangements, which would be undertaken independently of ministers, because that would be prejudicial to the report. I would like to see what the industry and stakeholders think is the best configuration to deliver the right result for the sector.

Willie Cowan might like to make some brief comments on that.

11:30

Willie Cowan: Mr Hume’s reference to the Hunter report was interesting. When I found out about the Hunter report, I thought that it could be only 10 or 15 years old, but it is not. However, it is still thought to have reasonable currency, and there have been several reports since then. We can speculate on why nothing fundamental has happened in the interim period. I think that that reflects the complexity of the issues involved.

As the minister said, we are commissioning a baseline report. Essentially, we are asking for a position paper on where we are. As part of that process, a desktop review will be carried out to establish what the reviews that have been done to date have said and to get an indication of why progress was not made as a result of those reviews. Once we have that, we will be able to put forward options for a review that could consider the type of issues that Mr Hume has raised but, as the minister said, we would not want to prejudge anything at this stage.

Jim Hume: You talk about commissioning a review, waiting for that review to report, going out to consultation and then looking at the options and bringing forward proposals. The Government’s bill team has already stated that it wants to do that during the passage of the bill. Surely that process would take some time.

Willie Cowan: No. We hope to establish the baseline review within the timetable for the bill. Our intention is to use the evidence that has been brought forward during the bill process to inform the options appraisal for undertaking the review. We intend to have the baseline report completed within the timetable for the bill, but not the whole review.

Paul Wheelhouse: There is significant interest in consultation on any proposals that we produce. Therefore, there will be a lengthy process before we reach any conclusions.

Jim Hume: I seek further clarification. You talk about having the review done within the timescale for the bill, but it would not be part of the bill process.

Paul Wheelhouse: It is not tied to the bill; it is just concurrent with the bill.

Jim Hume: Okay. Thanks.

Jayne Baxter (Mid Scotland and Fife) (Lab): Good morning. I am new to the committee and I am new to the bill. As part of my research, I have learned that proposals for the bill were developed by the freshwater fisheries forum. I looked at the Scottish Government’s website, which says that it last met on 30 April 2009. Why has the forum not met for such a long time? Will it be reconstituted so that it can work with the Government on future structures for managing freshwater fisheries?

Paul Wheelhouse: That is a valid point. Welcome to the committee and, indeed, the Parliament, Jayne.

As you rightly identified, the forum, which was established in 2004, carried out a range of good work during its lifetime, including influencing and monitoring the delivery of the strategic framework for freshwater fisheries.

You made a fair point about the forum’s future role. As we look to consider in detail the management structures for salmon and freshwater fisheries, this is probably the right time to consider the forum’s role in the broader context. I retain an open mind on the matter. If we think that the forum
can play an important role in informing the discussion about structure and governance arrangements, I will be happy to look at how we reinvigorate the process, so that we get the stakeholder engagement in developing proposals that we need, to ensure that there is buy-in. There might be different consequences for different boards, given the variety of boards, so we would not necessarily want a one-size-fits-all approach, but a degree of commonality is useful, where possible, albeit that we will try to be flexible. I am open to using the forum as a vehicle for building in the sector’s views.

**Jayne Baxter:** The committee received evidence that there was an unsatisfactory level of consultation on part 2 of the bill. The Association of Salmon Fishery Boards expressed that view. How do you respond to the suggestion that there was insufficient consultation?

**Paul Wheelhouse:** Did the ASFB refer to a specific issue in that context?

**Jayne Baxter:** The ASFB said:

“We do not believe that some aspects included in Part 2 of the Bill were specifically consulted on.”

**Paul Wheelhouse:** I defer to Willie Cowan on the process. He was in post at the time of the consultation—I was not party to that. I can say that I am happy with our engagement with the ASFB about its concerns in the time that I have been a minister. We have tried to reflect on the association’s concerns about the process of the bill and specific measures in it, and I hope that we have reached a greater degree of consensus with the ASFB and other stakeholders, such as the Scottish Salmon Producers’ Organisation. There might be concern about process, but outwith the consultation process we have moved forward significantly in our discussions with the ASFB.

**Willie Cowan:** The consultation on part 2 fell into two parts: one was about improved management, the proposals on which largely came out of the recommendations of the Scottish mixed stock salmon fisheries working group; the other was about improving governance.

We consulted in general terms on improving governance in the fishery boards, but we did not go into the detail and say, “Good governance means X, Y, and Z.” However, as I said to the committee in a previous meeting, everything that is in the bill is pretty much what would be expected of a public body. There is nothing in there that we would not ask other public bodies to undertake. We might not have said that better governance means X, Y, and Z, but it would be hard to argue against what is in the bill.

**Alex Fergusson:** Minister, you said that the structure and workings of district salmon fishery boards will be returned to during the lifetime of the Government and I think that you said that there is huge interest among stakeholders in taking part in the consultation. There is obviously a lot of interest in what the Government is seeking to do. Given the amount of work that is still to come, why is it necessary to address the structure of salmon fishery boards at all in the bill? Are we in danger of putting the cart before the horse?

**Paul Wheelhouse:** We are not dealing with the detail of such proposals in the bill. The issue takes us back to Jim Hume’s point about finding a balance. The Government has a duty to look at things in the round and strike a balance between the desire for sustainable growth in important sectors such as fin-fish and shellfish farming, the desire to protect biodiversity in wild fisheries and to support the angling community to continue its activities in a sustainable way, and the desire to protect the environment as a whole. We have a unique role—not necessarily in a global sense, but in a Scottish context—in managing those interests in the best interests of Scotland. It is important that we reflect the fact that various agents are involved, including the salmon fishery boards and the aquaculture sector. Having a bill that did not in some way reflect that situation would be a mistake.

I will ask Willie Cowan to address the history of how we came to the point at which we are having the review of the governance arrangements in the fishery boards.

**Willie Cowan:** The key point is that work had been done under the mixed-stock fisheries working group, which provided ministers with recommendations. The bill gave us an opportunity to implement those recommendations. The work had been completed and there was a sound basis on which to introduce propositions to Parliament.

On good governance, the key point is that the bill proposes to bring fishery boards into line with the expectations on other public bodies. The issue is not specifically about the workings of the fishery boards; it is about the workings of the fishery boards as a pseudo-public body. The parts of the bill that are about good governance will translate quite readily into whatever propositions are ultimately brought forward for our management structure. Clearly, we do not expect the good governance provisions in the bill to fall over as a result of the review that is to come. The bill essentially sets up the cultural changes in what the expectations on public bodies should be with regard to good governance.

**Alex Fergusson:** I appreciate the explanation.

As the minister said, there are large boards, small boards and medium-sized boards. District salmon fishery boards cover a variety of
memberships and structure sizes. One thing that they share is that membership of them is almost entirely voluntary. If all the proposed changes go through, there will be an increased workload for the boards. Have you taken into account the fact that that might impact on the time of those who currently give their time and expertise voluntarily, to the extent that they might be less willing to do so?

Paul Wheelhouse: As in any change of this nature, that is a risk. That is why consultation is crucial. We need to understand the extent to which we might lose expertise through people being less willing to give their time voluntarily. I do not have a prescriptive view of what will emerge in terms of the governance structures and the way in which the boards deliver their core responsibilities. It might be better to address the point that Jim Hume and I discussed earlier, with regard to mergers and so on. We are not saying that there have to be mergers, but there might be opportunities for collaboration between smaller boards, with one person providing data to more than one board.

We need to understand what the financial and other implications of the proposals might be. That is why the review is important. We need to understand where we are and where we might go to and consult on the options before deciding what path to take with regard to the smaller boards in Dumfries and Galloway and the larger ones, such as the Dee and the Don boards. We will take on board the results of that consultation before we develop any firm proposals. I do not want to be prescriptive at this point.

As Jayne Baxter said, we need to engage with the sector and ensure that it can live with anything that we come up with and that it understands where we are coming from with our requirement to improve the governance and ensure that the delivery of policy is optimised, while taking account of local circumstances, where we can.

11:45

Alex Fergusson: And to take full account of those local circumstances—an aim that I entirely agree with you about—you would not necessarily disregard the effectiveness or efficiency of small boards at this stage.

Paul Wheelhouse: Absolutely. It is the same with any organisational structure; in local government, for example, we can have extremely efficient small local councils. We do not necessarily need a one-size-fits-all approach—it depends on what suits local circumstances. I undertake to look at those issues and ensure that we reflect them and do not come up with some overly prescriptive approach that might stifle good practice at a lower geographical level. We must ensure that the functions are delivered without being too prescriptive about how that delivery might be achieved.

Alex Fergusson: Thank you for those quite reassuring comments, minister.

Finally, has the Government given any thought to introducing a statutory code of practices to cover DSFBs?

Paul Wheelhouse: I have not taken a view on that and do not know whether historically my predecessor had any position on it.

Willie Cowan: No. Like the SSPO, the ASFB has a code of practice and we have no plans to introduce a statutory code.

Paul Wheelhouse: It would present the same problems that we highlighted in our discussion about a code of practice for fin-fish farming. The degree of micromanagement implied in such a move would mean that we would be constantly coming back to the committee to give updates and seek approvals for anything of a statutory nature, and that might stifle the very flexibility that you referred to with regard to FMAs and the adoption of new technologies and technological advances as they happen.

Alex Fergusson: Thank you very much.

The Convener: Graeme Dey has a question on the same subject.

Graeme Dey: The committee has heard witnesses talk at some length about the conflict between netsmen and DSFBs in one or two parts of the country. In your experience, is that an accurate reflection of the scale of the issue, or is it more widespread? Regardless of how frequently or infrequently such problems arise, do you think that a statutory dispute resolution process should be established to tackle them?

Paul Wheelhouse: Although I am aware of some local tensions, I do not have the impression that such conflicts are widespread or that a constant stream of such issues involving netsmen is being presented. About 95 per cent of netting activity has been decommissioned across Scotland, and only a relatively small number of sites and businesses are undertaking it. Clearly there are issues with regard to the governance of these activities, and we expect the review that we have just discussed to take into account the future governance arrangements of netting activity and the work of netsmen.

It might be worth looking at the potential for some form of mediation. I know that there are tensions in particular areas—indeed, I know that the member has a constituency interest in that respect and that the issue might also butt up against Nigel Don’s constituency. Given that
issues arise from time to time, a vehicle for having a degree of negotiation on such matters might be worth considering in the review that we have outlined.

Graeme Dey: Thank you for that.

On the theme of governance, it was suggested to the committee that the management of netting should be changed with the activities of netsmen overseen by inshore fisheries groups and conducted under a days-at-sea regime. How do you view such a proposal? It strikes me that, if nothing else, it will in practice be very difficult to police a days-at-sea arrangement.

Paul Wheelhouse: Indeed. As you know, we get satellite monitoring information on fishing vessels through the vessel monitoring system and the fleet is increasingly adopting e-logs. As a result, we have detailed means of monitoring what is happening in our fishing fleet. The picture for netting activity is quite different; although drift netting has been banned for a long time in Scotland, we still have static nets. I understand the principle behind the netting community’s suggestion of a days-at-sea regime—after all, it regards itself as a sea rather than a freshwater fishery—but the issue could be considered in proposals outwith this bill and the governance review could examine the interaction with, for example, Marine Scotland.

With your permission, convener, I ask Willie Cowan to address the specific days-at-sea issue.

Willie Cowan: I have little to add to the minister’s comments, except to say that the forthcoming review will clearly need to look at the relationship between the netsmen and the local fishery boards and, following that consideration, the question of what an appropriate management regime for the netsmen might be.

Graeme Dey: With the convener’s indulgence, I will take that a little bit further. The Association of Salmon Fishery Boards has advanced the idea that DSFBs should be granted the right of first refusal to either purchase or lease existing netting operations at the market rate. Might that be considered?

Paul Wheelhouse: We would want to avoid a situation in which any new market would be created for the sites that have been decommissioned. Our overarching aim is for those sites to continue to be discontinued—if I can put it in those terms—rather than promoting the creation of a market value for something that has not historically had much value because it has been a heritable right and has not been traded. I am willing to take a more considered view on that to satisfy the committee and the member in that area, which I know is of substantial interest.

I do not know whether Willie Cowan has a view on anything that has been done to consider that in the past, which might inform the discussion.

Willie Cowan: We have not looked at the issue in any great detail, and it was not part of the consultation. The issue is so substantive that there would be risks in lodging amendments to enable such a change to happen without properly considering the implications.

The Convener: Carcass tagging is an issue that has been raised in evidence, and the use of numbered and recorded tags has been suggested, although that has been rebuffed by certain netsmen. Should tags be numbered?

Paul Wheelhouse: I understand some of the concerns that have been raised with regard to the difficulty in scanning tags while boats are out doing their work. We see no reason why, when a boat docks or comes to shore, there should not be scope for it to scan the tags at that point. In principle, I and the Government believe that there is no technical reason why that could not be undertaken. I will ask Willie Cowan to explain whether any efforts have been made to address that concern to date.

Willie Cowan: Again, it is a key operational issue. Ministers are seeking, through the bill, the power to introduce a carcass-tagging regime by order. Prior to that order, there would be a consultation exercise that would focus specifically on the pros and cons of a numbered scheme versus a non-numbered scheme. We will come back and look at the issue in detail, but we recognise that it is a key issue for both sides.

Paul Wheelhouse: As we understand it, there is certainly no technical reason why that could not be possible, but we have to take account of the practicalities of it to a degree.

The Convener: It is illegal to sell rod-caught fish. Would compulsory tagging apply to rod and line-caught salmon and sea trout?

Paul Wheelhouse: As I understand it, although it will be an offence under carcass-tagging regulations to be in possession of a fish that is not tagged in accordance with regulations—which will aid the enforcement of fisheries legislation—there is no proposal of the type to which you are referring.

Willie Cowan: Essentially, under these proposals, a fish would have to be tagged to enable it to enter the market. If it was not tagged, it could not enter the market. There would be some particular issues with regard to the convener’s question—essentially, we would have to run a dual scheme with two tagging programmes to enable that to happen.
The Convener: We would be interested to follow that up. If selling a rod-caught fish is illegal, have you any intention to make the purchase of such fish illegal if a tagging scheme is introduced?

Paul Wheelhouse: It would be best to address the question of what the implications of that would be and whether it would even be possible to implement in our consolidated response to the committee—if that is acceptable to you, convener.

The Convener: The matter is of considerable interest to us given the evidence that we have about the number of salmon and sea trout that are caught and the questions about how accurate the figures are, not just for the caught and released ones but for the caught and killed ones. It is important for us to know whether you are going to take steps to ensure that we have more accurate figures. That is what the tagging is all about.

Paul Wheelhouse: I am happy to confirm that I agree with you that it is important that we have accurate data. Given the importance of understanding the impact on our wild stocks and the need to get a better understanding of trends as they occur, it is important that we have comfort that the figures are accurate. I am certainly willing to come back to you on what is required for that.

Willie Cowan: I think that the issue falls neatly—dare I say it?—into the forthcoming review, which is all about how to improve fisheries management. Having a detailed knowledge of the populations in the water and what is extracted from it is a key part of that.

Paul Wheelhouse: We can learn from experience elsewhere. I understand that, in the Republic of Ireland and Northern Ireland, rod-caught and net-caught salmon are already tagged. We are not the first part of the world to be considering the matter, so we can learn from our colleagues elsewhere who are implementing such measures and see whether it is feasible to improve the quality of the data as you suggest, convener.

The Convener: We move on to conservation measures. The bill gives Scottish ministers new powers to change annual close times at their own hand. SNH believes that those powers will be useful, but witnesses were unable to give examples of rivers where the powers should have been used. Are there examples of rivers where Scottish ministers would have liked to change close times but could not do so?

Paul Wheelhouse: I am not aware of any specific examples. With your permission, I ask Willie Cowan whether there have been any historical attempts to change close times in respect of specific rivers.

Willie Cowan: We will write to the committee once I have consulted my scientific advisers on the specific question.

One purpose that the power could be used for, as an example, is simply to reflect the changing environment, potentially through climate change. We might traditionally have expected a spring run in a river to happen in a particular month, but evidence might show that it is now happening two, four or six weeks later. If that continues, it would make sense to change the timings to reflect the actuality of what is happening on the ground or, I should say, in the river.

Paul Wheelhouse: You make a legitimate point, convener. A number of our major salmon fishing rivers have conservation status for salmon, so we have to keep a constant eye on the matter to see whether there are situations in which fishing levels become unsustainable and, if so, to take appropriate action. At this point, I am not aware of any particular cases in which that has been considered, but the point has been made that, for the committee’s benefit, we will come back to you with any comments from the science advisers on whether there have been situations in which that has been considered.

The Convener: On some rivers in the far north, which I represent, the position on what can be killed in terms of the spring salmon run is not yet in line with practice in some of the major boards. I am not saying that it is good or bad, but that is related to the close time issue. We need some clarity from you on that.

Paul Wheelhouse: Again, prudence and governance will ensure that fisheries boards take those matters into account in future where that is not happening. I am confident that many boards are operating responsibly, but there might be others that I am not yet aware of specifically that are not doing that.

The Convener: Thank you. I hand over the convenership to Graeme Dey.

The Deputy Convener (Graeme Dey): We move on to the subject of introductions. Jim Hume has some questions on that.

Jim Hume: Concerns have been expressed, specifically by Dr Bean of SNH, about introductions and whether fisheries boards are going through all due process regarding habitats directive appraisal. Dr Bean said that, in 2010, nearly 13,000,000 salmon and sea trout were to be released, and he reckoned that about a quarter of those came from a single special area of conservation—a single river.

Does the minister think that an independent advising body and, perhaps, a public register of stocking decisions should be introduced in the bill?
If so, would amendments need to be lodged by the Government or others to provide for that?

12:00

Paul Wheelhouse: In a minute, I will invite Lindsay Anderson to comment on whether any amendment would be required and what act would require to be amended.

Fish introductions are an important matter. The division of responsibilities for consenting them means that there is no national picture of stocking practices. You are right to refer to the need for a register or some sort of monitoring of stocking practices. Currently, that does not happen.

We seek to develop a consenting regime that ensures that stocking practice is in line with good practice guidelines to take account of possible concerns about its implementation, particularly when it butts up against conservation areas and particular local conservation issues, and that appropriate record keeping and monitoring take place consistently throughout Scotland.

To date, I have not picked up any issues regarding publication. I ask Willie Cowan to say whether that has been considered and disregarded or whether we have not considered it yet.

Willie Cowan: We seek to do exactly what Jim Hume outlined: to address the lack of a clear picture of stocking practices throughout the country and the reasons for the stocking. We are trying, yet again, to improve the transparency of the picture throughout the country and to get a more granular understanding of why decisions to stock are taken.

We want boards to state what fish from what source they want to stock, in what area for what purpose, and what outcomes they expect from that. To complete the loop, we want them to come back at whatever time period is appropriate and inform us that the outcome of the stocking exercise was that the fishery was or was not improved.

We are trying to do exactly what Jim Hume suggests: improve transparency throughout the country and locally.

Paul Wheelhouse: I invite Lindsay Anderson to comment on the enabling powers and other powers that might be required to facilitate that.

Lindsay Anderson: Jim Hume asked about the creation of a body that might monitor stocking activity and about a register. There is nothing in the bill about either of those, so an amendment would be necessary.

To give a typical lawyer's answer, I suppose that what amendments would be necessary would depend on the policy that was introduced. However, the approach in the bill has been to amend the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, so that would be one option, but the bill could amend other primary legislation or, equally, contain freestanding provisions. That decision would be driven by policy considerations and what would be easiest.

Paul Wheelhouse: Earlier in the meeting, we had a lot of discussion about the difficulties with the publication of sea lice data. If we proposed to introduce a published stocking register, it would probably invite quite a lot of robust views from different parties. Therefore, proper scrutiny of the proposal, and sufficient time to consult on its implementation, would be needed. At this stage, one concern that I would have about any such amendment would be whether there had been sufficient consultation with the parties.

Willie Cowan: No additional body is required because Marine Scotland does the consenting, so we already know the consents that are being made. The bill seeks to understand the concerns that DSFBs are making at their own hand. An infrastructure is in place to enable what Jim Hume suggests to happen.

Jim Hume: Lindsay Anderson suggested that it could be done, but that it would be a matter of policy, which puts the matter back into the minister's court. Does the minister feel that enough scoping has been done at this stage to make a decision, or is he suggesting that the matter will be scoped and acted on after the bill is enacted, as with the approach on the fishery boards?

Paul Wheelhouse: On sea lice data, we have reached a position in which we have a provision to ensure that data is collected. That is perhaps unlike the issue that we are discussing, but I would not want to diminish its importance, as it has an enabling role in providing the feedstock for any subsequent discussion about what is happening nationally. It fills an information gap.

At this stage, I would like to explore whether we can reach another voluntary agreement and avoid having to legislate if at all possible. We will try to get the fishery boards and other colleagues in the sector to engage with us on the issue and perhaps provide a degree of transparency, without our forcing them to do that, in the same way as we have engaged positively with the SSPO on the provision of data on fin-fish farming.

Jim Hume: That is useful.

The Deputy Convener: We move on to related issues, some of which are not included in the bill. Jayne Baxter has questions on data on wild salmon and sea trout stocks.
Jayne Baxter: I want to continue on the theme of how we gather data and use it to inform decision making. I understand that the data on wild salmon and sea trout are collected through a combination of fish counters, fish traps and catch data. How might the quality of data on wild salmon and sea trout be improved? Are more salmon counters needed? Should effort data be collected for rod and line fisheries?

Paul Wheelhouse: There is certainly significant interest in the national media whenever data are published, and I see the Twitter feeds thereafter, with challenges to the data or to the understanding of what they imply. One issue is that we need to estimate the degree to which the same fish are being caught more than once, because of catch and release. As we try to encourage all fishery boards and anglers to adopt that approach, which those in the angling community deem to be good practice, the risk of fish being caught more than once will obviously increase across the country. We must control for such matters through the science. I have visited colleagues at the marine lab in Aberdeen to discuss the difficulties that they have in addressing such issues, and I will go to the lab at Faskally soon.

An important bit of work that can be done outwith the bill, through the ministerial group on aquaculture, is to try to hone down the science to ensure less duplication of effort and to focus what is a relatively constrained amount of money through Government funding to the sector. We need to fill some of the gaps and improve our understanding of what is happening. It is important that we try to understand exactly what is happening with wild stocks.

The issues that affect the health of those stocks are multifactorial. There has been discourse and public debate about the role of fin-fish farming, and there might be an issue there, but there are many other factors, not least of which is climate change, to which Willie Cowan referred. We know that river temperatures are rising, which in many cases is causing damage to wild stocks. There are a number of influences. We have a genuine interest in improving the quality of the data. That comes back to the issue that the convener raised before he left about understanding exactly what is happening and getting better quality data.

I invite Willie Cowan to comment on whether we could do anything of a technical nature to improve the data that we currently receive from wild fisheries.

Willie Cowan: There is an ongoing debate about the usefulness of collecting data on effort. For example, every couple of years, my son and I take a fishing rod out of the garage and never catch anything, but we could spend all day fishing. I could spend eight hours on the river bank and catch nothing, but my colleague, who is a fisherman, can spend an hour on the bank and catch two or three fish.

All those issues about effort come back to the review that we are beginning to scope out. The key question for the review is what gaps exist in our ability to ensure sound populations of wild fishery stocks and how we best manage those. One question that we will need to answer is: what data do we have, where do the data fall short and what are the mechanisms by which we can get the data that we need? Issues such as whether we need more fish counters are bound to come into that consideration.

Jayne Baxter: What would be the options for funding any additional measures?

Paul Wheelhouse: Under the MGA’s science or research strand, we hope that industry and academia will work together to minimise duplication of effort so that we can ensure that resources are used as efficiently as possible. The case has been made that we have small pockets of research that are important in their own right—I would not want to give the impression that they are not important—but our research may need to take a more strategic view to ensure that it has the greatest impact on improving our understanding and informing industry so that we better understand where effort should be made.

I would like to think that, by providing more strategic research, we can attract new funding because the research will be seen to be more valuable to a greater number of people rather than have a niche function. I am not at the stage where I have an understanding of that, but as we gain a greater understanding of the issue from the ministerial group on aquaculture—it will meet shortly, in February I think—I will be more than happy to ask that the committee is given feedback, at a subsequent committee meeting or in writing, on what might be possible.

You raise an important point because things such as satellite tagging of salmon are very expensive, although they provide great data and have been very instructive in telling us where salmon migrate to. However, such initiatives are relatively limited in scope at the moment because of the very high cost per fish of satellite tagging of salmon.

The Deputy Convener: I want to move on to look at issues surrounding the salmon spring run. Do you feel that the existing conservation measures are sufficient to allow for recovery of the spring salmon run? Rivers and Fisheries Trusts of Scotland told us that only 9 per cent of last year’s spring stock catch—562 fish, as I recall—was retained. Against that backdrop, should ministers
consider making catch and release mandatory in the spring?

Paul Wheelhouse: Certainly, the recognised trend is that fish become more difficult to catch throughout the year. I should stress that I am not a fisherman myself—

The Deputy Convener: Nor am I.

Paul Wheelhouse: So I talk from little experience—I have even less capability than Willie Cowan, who seems not to have a high degree of expertise in this subject either—but I understand that the fish are easier to catch in the early part of the year. Perhaps Gil Paterson will confirm that, given that he sounds like a better fisherman than Willie Cowan.

Gil Paterson: From great experience, I can say that fishing is hard all the time.

Paul Wheelhouse: As we go through the season, the individual fish become harder to catch. I am not sure that I fully understand why that is, but I know that the spring catch, when people are obviously catching fish before they have had a chance to spawn, is particularly important for conservation reasons.

I am not as au fait with the figures as Willie Cowan might be, so with the convener’s permission, I will ask Willie Cowan to address the points about governance issues, how many fishery boards throughout the country have taken the decision to take more rigorous action in respect of the spring catch and whether there is a problem there.

Willie Cowan: The spring runs are certainly an issue, although they are more of an issue in some areas than in others. A key point that we do not understand is why some rivers do reasonably well in the spring while others, which may even be in relatively close geographical proximity to them, do not. The issue is hugely complex. However, the bill will provide ministers with an order making power to introduce regulations for a national interest, which would have the potential to override local fishery board interests. Powers within the bill would enable ministers, if it were thought necessary, to introduce national overriding regulations that would apply to all fisheries.

12:15

The Deputy Convener: Willie Cowan made a point about the variations in the decline of spring stock across different rivers and earlier he touched on the suggestion that some fish are returning later in the year. Given those points, do we need to carry out greater research into this subject?

Paul Wheelhouse: That is a very fair point. One of the things that has struck me throughout much of the debate has been the availability of studies in countries such as Norway and Ireland. I know that there are data issues, which Alex Fergusson has highlighted, but we need to get to a point at which we have an understanding that is more relevant to the particular contexts of our rivers and our fish—not that our fish have passports, but I mean the fish that return to our rivers—so that we know what environmental and human influences there are on our fisheries stocks. I support that in principle.

I would like to invite the MGA to give me a steer on what it thinks are the most important priorities. I would be happy to feed in to the MGA any ideas that the committee has as a result of its deliberations with the various interests and say, “These are issues that have been raised by my parliamentary colleagues. Can you give us some feedback on what might be possible?”

You are absolutely right: we need to have a better understanding because of the dynamics of things such as climate change. We have very little control of what happens elsewhere in the lifecycle of a salmon—for example when a salmon goes up to Greenland and areas far away from Scotland—but we need to understand what happens while salmon are in our territorial waters and our rivers so that we can better understand how we can protect our stocks and work with our stakeholders.

The Deputy Convener: Thank you, minister.

What further conservation measures could be considered to tackle decline in sea trout? What detail can you provide on research into that subject, for example the Moray Firth sea trout project?

Paul Wheelhouse: Although we have very little direct relevant research on sea lice impact on salmon, we have a clear understanding that there appears to be some impact on sea trout, which is an example of where we have a bit more information. I confess that I am not familiar with the Moray study, so I ask Willie Cowan to address that question.

Willie Cowan: I will neatly pass the question on to my scientific advisers and I will write to you, as I do not know the detail of it. We will come back to you with the detail of what we know and what we are doing.

The Deputy Convener: That will be fine, thank you. Alex Fergusson has a question on other stocks.

Alex Fergusson: The bill is concerned primarily with salmon fishing, with regard to freshwater fisheries, but obviously freshwater fisheries are not confined to salmon, sea trout and brown trout. We took evidence from the Scottish Federation for Coarse Angling, which was a little bit disappointed
that some of its concerns had not been included in the bill.

In particular, the federation had hoped for some restrictions on the netting and trapping of coarse fish. It had also been keen to see some regulation of those responsible for the management of reservoirs, with regard to taking into account the wellbeing of coarse fish stocks in the management of their reservoirs—presumably when they are altering the water levels.

Given the evidence that we have taken, what are the minister’s views on that aspect of fisheries and does he have any ideas about introducing measures to address those concerns?

Paul Wheelhouse: We do not have any specific measures in mind that I am aware of, but perhaps we could go away and look at the evidence that was presented by those who represent coarse fishing interests and write to the committee with a view on how either the governance review or other measures might take on board those concerns?

Alex Fergusson: Before Mr Cowan replies, maybe you could address this question as well, for the sake of time. Could the management of other species be brought within the auspices of the district salmon fisheries boards, for example?

Willie Cowan: That is exactly what I was going to say. The forthcoming review is not a review of salmon and trout; it is a review of fisheries management. We will not go into specific species. The review will look at the management of Scottish fisheries, not the management of salmon and trout.

Paul Wheelhouse: If there is environmental concern about the health of those stocks and it becomes relevant to the management of fisheries, we will see that those are managed appropriately through governance.

The Deputy Convener: Part 4 of the bill concerns shellfish. To what extent is Scottish Water responsible for shellfish waters failing to meet class A and class B standards at the moment? How do we ensure that Scottish Water engages well with agencies and stakeholders, and, just as important, informs them promptly when a pollution incident occurs, for example?

Paul Wheelhouse: We are certainly aware that there are risks. A shellfish site may be consented and then, because of the nature of the regulatory environment, it is possible for Scottish Water to be charged with affecting the quality of the water by downgrading it from class A to class B or class C. Scottish Water clearly has a role in that. I am conscious that Scottish Water was not able to take part in this meeting for whatever reason—we will engage with it to find out why it could not engage with the committee. I do not, therefore, have a definitive view on Scottish Water’s perspective on its role in shellfish production.

The class A standard means that the product can be marketed directly to retail outlets and consumers and if there is a risk that the water can be downgraded to a class C, that is a major concern for shellfish production.

Willie Cowan might have had more contact with Scottish Water on this subject.

Willie Cowan: We operate a shellfish forum that meets quarterly and brings together all the players: the industry, the regulators, and Scottish Water.

One issue is the impact on waters that are protected under the European directive and will be protected under the proposed legislation, and how we might expand the waters within which class A product can be grown. The subject is complicated, as these things are, but Scottish Water is engaged with the shellfish forum. One of the practical things that we are trying to get is a real-time notification when there has been, for example, a sewage spillage as a result of a heavy storm. We are trying to set up some kind of red light or red flag system so that Scottish shellfish growers can be notified very quickly when an incident has happened in an area so that they can manage their business around it.

The Deputy Convener: Can you briefly define “quickly” and the kind of timescale that you are talking about?

Willie Cowan: We hope that the notification would be given within a day or two of the incident happening.

The Deputy Convener: Could it not be any sooner than that?

Willie Cowan: The shellfish forum and Scottish Water are discussing how quickly it could be done and the mechanisms by which it could be done.

Paul Wheelhouse: I have heard directly from Walter Speirs and through stakeholder engagement that the sector is very supportive of what the bill proposes. The sector has not raised any concerns about these issues. Clearly, consumers will find it valuable to understand what the notification process will be for safety reasons, and I absolutely agree with that, but the shellfish producers are very happy with what we are proposing.

The Deputy Convener: Moving on, Jayne Baxter has a question on the subject of shellfish and shellfish orders.

Alex Fergusson: That is my question, deputy convener.
The Deputy Convener: I am sorry; Alex Fergusson has a question.

Alex Fergusson: I am not quite sure how you can get me and Jayne Baxter muddled up, convener. We will move swiftly on.

I am delighted to welcome the Government’s recognition of the cockle-fishing problems—particularly illegal cockle fishing—on the Solway coast, and I am delighted that it has seen fit to draft amendments that address what is a serious local problem. I do not want to go into too much detail for time reasons, but one problem that the enforcing agencies have raised is the fact that the offence, as it stands, relates to somebody being found actively harvesting cockles on the foreshore. Health and safety reasons dictate that enforcement personnel do not go on to the foreshore, which is quite understandable when you think of Morecambe bay.

One new power that will, I hope, be given, is that persons found in possession of the apparatus and paraphernalia associated with cockle fishing could be subject to court proceedings. Gangs of illegal cockle fishermen go out on to the foreshore and do what they do. When they come back on to dry land, they are not necessarily in possession of that paraphernalia or, indeed, the harvested cockles, which can be left to one side. Is there anything that the minister can add that might address that situation? At a meeting arranged by Marine Scotland in Dumfries to address the situation, an assurance was given to look at the possibility of powers of arrest if people were deemed to be acting suspiciously in a way that allowed others to think that they might be engaged in illegal activity. I am not sure that that is addressed by the proposed amendment, but can it be?

Paul Wheelhouse: A lot of the measures may be determined by how the regulation is policed. I am aware that concern has been expressed about what rigour there will be because Marine Scotland does not have a team permanently based in the area. I want to give some assurance on that. We know that, because of the nature of the activity in a tidal area, the activity will occur at low tide. Resources can be targeted to investigate activities at those times. When we know that there will be a high tide, there is no point in having teams in place to survey activities that will not be taking place. We can be a bit more sophisticated about how we target resources to detect what is happening.

I appreciate Mr Fergusson’s concerns about the safety of those who are doing the inspections, but we can take a risk-based approach. We know how to focus our efforts on where and when the activity may happen and ensure that resources are in place, which will, I hope, help to detect the activity. Mr Fergusson also makes a fair point that, if people are parted from their paraphernalia and equipment, it is more difficulty to prove their involvement in the activity.

I am not sure whether we have the time to discuss the issue further, so I could write to the committee with more detail. However, I invite Lindsay Anderson to say what powers are in the bill in that respect.

Lindsay Anderson: We are still considering the amendments that are to be lodged, so I do not want to stray into a policy issue. However, there are issues about evidence, burdens of proof and how attempts at illegal cockle fishing can be proven. Relevance is certainly the aspect of the offence that we would be considering. That comes down to how evidence is gathered and proven. Those are things that we are certainly aware of and they are being fed into the policy process.

Alex Fergusson: I am quite happy with that, and I look forward to seeing the detail of the amendment when it is lodged.

The fact is that, over the past few years and, as far as I understand it, on a continuing basis, illegally fished cockles are getting into the food chain somehow. Therefore, as we have heard in a lot of evidence—we have had some good evidence on this—there is a traceability issue. What that evidence seemed to come down to is that the various responsible agencies could be considerably improved. We were certainly given evidence that the situation is improving, but what steps are being undertaken?

12:30

Paul Wheelhouse: I am conscious of the time, so I will be as brief as I can be.

Your statement has some merit with regard to past behaviour and indeed is why Richard Lochhead asked Marine Scotland to hold in August 2012 a meeting that the member himself attended and which brought together all the public bodies with a regulatory and enforcement role in illegal cockle fishing. I am pleased to report to the committee that we now have a much more joined-up approach to the enforcement of the law against illegal cockling and that most, if not all, of the relevant bodies have now put in place formal memorandums of understanding and data-sharing agreements. I hope that this is an important step in understanding the scale of the problem, that it will inform future targeting of resources and effort on tackling it and that, when we have the detail of the amendments, they will inform the “how” in how we will go about this.

Alex Fergusson: Thank you very much.
The Deputy Convener: I think that we are entering the home straight of this evidence session.

I believe that, this time, Jayne Baxter has a question, which is on charging.

Jayne Baxter: I believe that a number of witnesses have raised concerns about when Marine Scotland would apply charges. What type of charges are being considered under the section in question?

Paul Wheelhouse: As you will appreciate, the bill does not contain specific details on the powers that we are seeking. As Willie Cowan said in relation to other aspects that are not yet specified in the bill, we will make the committee aware of such matters and consult both it and the wider stakeholder community on any detailed proposals before we make further regulations.

The general principle is that Marine Scotland provides a number of services free of charge or, at best, at less than full cost; however, given the demands of the growing marine industry sector and the public finances themselves, such a principle is no longer sustainable. The primary purpose of charging is to promote the efficient use of resources. Indeed, there are compelling arguments for charging where public services are provided in competition with those in the private sector, where a direct economic benefit accrues to the user or, where practicable, to recover the costs of regulating commercial activities.

At the moment we have no detailed proposals to give to the committee. There are some things that in the discourse on Twitter, in our letter to the committee and by various other means we have ruled out in a practical sense—for example, we have no plans to introduce rod licences in the foreseeable future—but, aside from that one proviso, we do not want to bind our hands with regard to the specific charges that we are ruling in or ruling out. In other words, there is nothing to apply charges to yet—if that makes sense. We are keeping our options open about the detailed charges that might be introduced.

Jayne Baxter: That is helpful.

The Deputy Convener: Claudia Beamish has a question on sustainable development and the policy memorandum.

Claudia Beamish: As we near the end of the evidence session, minister, I want to ask you about the assessment of sustainable development in the policy memorandum. Professor Colin Reid of Dundee University has expressed concern in that respect, stating:

"the assessment of the impact of the Bill for sustainable development ... is woefully inadequate."

Of course that is only one view but I wonder whether you can reassure the committee by giving us your views on the matter and explaining how sustainable development was assessed in relation to the environmental, economic and social impacts of the bill’s provisions and possible alternatives. What steps were taken to assess such impacts? If the assessment showed any negative impacts, were any trade-offs identified? How has the assessment informed or shaped developments or changes as the bill has progressed?

Paul Wheelhouse: I will start off, although I might well bring in Willie Cowan later.

We believe that the bill is underpinned by good understanding of the science, which we think is key to the matter. The work will continue through initiatives such as autoDEPOMOD, which I mentioned earlier and which will look at the sector’s future sustainable growth to facilitate a greater understanding of what can be sustained at a local level and to consider what constitutes sustainable development when a planning application is submitted for additional biomass in a particular location.

I recognise that sustainable development encompasses a number of facets—economic, environmental and social. That is foremost in our minds and is part of the balancing exercise in a bill such as we are considering, in which we must take account of the legitimate aspirations of a sector to grow, ensuring that that happens in a framework that means that the breadth of civic Scotland can be confident that growth is sustainable. That approach is reflected in the provisions in the bill. The clear message is that growth must be sustainable.

We have been attacked from both sides of the debate, by wild fisheries interests—although not everyone—and aquaculture interests. We have taken on board points where we could do, but we have charted a course that enables me to be satisfied that we have struck a good balance.

I will ask Willie Cowan to comment—briefly; I am conscious of the time—on the detail of what was done in relation to consideration of the sustainability aspects of the bill.

Willie Cowan: Given the complexity of the subject, it might be better to respond in writing, if that is okay with Ms Beamish.

The Deputy Convener: Are you happy with that, Ms Beamish?

Claudia Beamish: That would be helpful. Detail of the assessment that was undertaken during the bill’s development would be helpful and would reassure the different interests that are involved, from a commercial and an environmental
perspective, and the fragile rural communities that are affected.

Paul Wheelhouse: There are areas of the Scottish economy in which there is much better understanding of the economic impact and full supply chain than is the case in the aquaculture sector. The Scotch whisky sector is an example in that regard. Of course, the whisky industry has an interest in doing the work, to promote its activities and influence tax policy, but the spin-off is that we have greater understanding of the sector’s impact on various bits of the economy. We are evolving our understanding of what happens in aquaculture, but we are not quite there. That could be worked on in future.

Claudia Beamish: The minister and his officials highlighted issues to do with climate change and we had some discussion about the issue this morning. Are you satisfied, as the minister with responsibility in that regard, that the Government has all the powers that it needs to ensure that there is sufficient flexibility to respond to the effects of climate change on salmon and freshwater fisheries?

Paul Wheelhouse: You are right to identify climate change as a major, major issue. My discussions with fisheries managers suggest to me that river temperatures and the health of our wild fish stocks are a significant problem. I am not a scientist in that respect, but I understand that there is already a gap between recorded river temperatures in summer and the ideal temperature for fish stocks, and that the problem is getting worse, partly because of the removal of trees along river banks, which has reduced cooling capacity for waters, but mainly because of the environmental impact of climate change.

I will consider the matter and in our consolidated written response to the committee I will say whether we are satisfied that the bill covers those aspects. I take on board your point. As I think I said in a previous meeting, there is an overriding business imperative for many businesses, particularly in the aquaculture sector, to do things that are consistent with resource efficiency. The farm that the committee visited at Lochailort, which uses recirculation, is a good example of that. The approach has a business benefit in that it reduces the risk of infections in fish, and it reduces the water abstraction rate and the risk of environmental pollution. There are positive economic and environmental spin-offs.

The Deputy Convener: The final question concerns seal scarer devices. We were advised that the Scottish Government funded the University of St Andrews to develop a new, less damaging scarer. Perhaps in due course you could write to the committee with an update on progress that has been made on that, because the devices that are used have been raised with us. How do you feel about the need to regulate the use of those devices?

Paul Wheelhouse: The issue is important. We receive a lot of correspondence about the licensing of the shooting of seals. That should happen only as a last resort, so we need to explore non-lethal alternatives to allow seal populations to coexist—perhaps not always happily, but generally speaking happily—with the aquaculture sector. I take seriously our obligations in that respect.

About 20 per cent of farms use anti-predator nets; there are also scarers, which try to deter seals from coming to an area. If it was acceptable to the committee, it would be sensible for us to write with a detailed response about work that we have funded on the issue, about how we see the role of seal deterrents and about whether regulating the matter would have value.

The Deputy Convener: As members have no more questions, I thank the minister and his officials for their attendance. It has been something of a marathon session, but that was entirely appropriate, given the subject’s importance and the committee’s responsibility. You and your officials have undertaken to write to the committee on a number of topics. I ask for that to be done as soon as possible, because we are working to fairly tight timescales. If we could get the majority of the responses by this time next week, that would help us.

Paul Wheelhouse: I am happy to undertake to provide as much as we possibly can on that timescale. I cannot think of any items that would require us to go out for further information, so that timescale should be possible.

The Deputy Convener: Thank you for your time.
Supplementary written evidence from the Scottish Salmon Producers’ Organisation

Having attended the recent hearings of the RACCE over the last couple of weeks, I felt this was an important time to write to you expressing my industry’s position with regard to the Aquaculture and Fisheries Bill and in particular the persistent issue of sea lice reporting.

Although from the outset, we had concerns regarding the Bill’s capacity to enable the industry to develop, we have recognised there are some pragmatic proposals which can be usefully implemented in the legislation. The subject of sea lice reporting seems to be dominant in both the written and oral evidence and I would like to clarify exactly what the industry is proposing to further develop its already established, publicly available reporting system. Industry, through SSPO, will launch an enhanced information system, reporting across approximately 30 areas from January 2013 which updates the existing reporting system which has been active for the past two years. This will enable those who desire more information to achieve a much greater understanding of this aspect of fish health management in local areas where salmon farms and wild salmon runs co-exist. Scottish Government officials have been advised of our proposal and are fully supportive of it. The question which has not been asked is “what do anglers propose to do with the information they seek on specific sea lice numbers”. To date, no-one has stated their reasons for requiring this. In truth, if the anglers’ demand for more information is borne from a genuine desire to have a complete informed picture of the total interaction between wild and farmed fish then the angling groups would offer reciprocal information on various aspects relating to wild fish exploitation. We, in the industry, are genuinely interested in establishing a comprehensive fisheries management area system. Our 30 carefully selected areas will bring a plethora of information on fish farms to the public domain, but we have yet to see any concrete proposals from the wild sector to populate and supplement this databank.

In my capacity as Chair of the Better Image and Improved Reputation sub-committee of the previous MGA, I noted that attitudinal research on Scotland’s aquaculture industry showed quite clearly that there is very little public interest in, or appetite for, information on this issue, unless it is pro-actively raised through negative campaigning against the industry. The industry is concerned that raw data on its own will be used by those with an agenda against the industry to mount negative campaigns which will result in exaggerated and unfounded press coverage and commercial impacts. The truth in this is that all sea lice information is available to Fish Health Inspectors at any time under existing legislation. Existing access to this information provides ample opportunity for FHI to assess whether or not our farm managers and their professionally qualified vets are taking the right approach to the management and control of sea lice. Unfortunately, the wild fish lobby, becoming privy to such information, will use it to seek to undermine the probity of the Fish Health Inspectorate and Marine Scotland by proclaiming reported farm number counts as damaging to their sector. Their track record on this to date confirms this and exposes their preferred solution to have fish farms removed from the shared water bodies of north west Scotland.

1 [http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/marketing/CraggRossDawson](http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/marketing/CraggRossDawson)
Indeed, salmon farmers and their vets have legal responsibilities to ensure high standards of welfare for fish in their care. A side benefit from this is that all necessary steps are taken to ensure not only high welfare standards, but also minimum impact on the local environment and therefore the wild fish in the vicinity of farms.

I ask you and your fellow Committee members to consider the above points.
Supplementary written evidence from Callander McDowell

After consideration of the evidence gathering sessions held in December, Callander McDowell wishes to submit the following supplementary evidence to the Committee.

In order to protect and conserve stocks of wild Atlantic salmon:

The Annual Close Time for every fishery district of not less than 168 days, as laid out in the Salmon & Freshwater Fisheries (Scotland)(Consolidation) Act 2003, should apply to every mode of fishing for and taking of salmon including the taking of salmon by rod and line.

The fishing season for salmon by rod and line should begin and end on the same dates every year. This would establish a fixed angling season and a fixed close season that applies to all salmon rivers in Scotland.

Mandatory catch and release should apply to all salmon rivers in Scotland. There is no justification for killing any wild salmon in the pursuit of sport fishing.
17 January 2013

Dear Rob

AQUACULTURE AND FISHERIES (SCOTLAND) BILL: FOLLOW UP TO EVIDENCE SESSION ON 9 JANUARY 2013

During my evidence session on 9 January I undertook to write to the Committee with further information on a number of points.

Ministerial Group on Aquaculture / Tripartite Working Group / Freshwater Fisheries Forum

You will recall that during the evidence session I made a number of references to the refreshed Ministerial Group on Aquaculture (MGA), whose membership includes representatives from the wild fish and environmental interests. I also indicated that “...once the Bill progresses through Parliament structures such as the MGA will allow dialogue to continue...”. I have tasked the MGA to look in the round at what needs to be done to ensure sustainable growth within Scottish aquaculture in the context of the 2020 objectives, and that includes issues of capacity, interactions, science and potential information gaps.

We discussed both the Tripartite Working Group (TWG) and the Freshwater Fisheries Forum Steering Group – the former was disbanded following a determination that it was no longer the most effective mechanism to address these issues, and the latter has not met for a considerable period of time. While the MGA is an appropriate forum for discussing cross-cutting issues, it has always been the intention to consider separately what refreshed stakeholder arrangements need to be put in place to take forward specific salmon and freshwater fisheries management issues. We will consider how best to engage at a strategic level as part of the wider plans to review the management arrangements for salmon and freshwater fisheries, for which, as I advised the committee, we are currently developing a baseline report on the current position which will in turn inform the scoping exercise for the review.
So, whilst I inadvertently mentioned the MGA in relation to the discussion on Part 2 of the Bill, the clear intention is that a similar type of arrangement will be put in place to take forward specific salmon and freshwater fisheries management issues. I hope that puts my comments at Committee into context to ensure clarity on that important area.

**Training on a statutory basis**

The committee expressed an interest in whether the bill should contain a requirement for training. The Finfish Code of Good Practice makes specific reference to this issue, making it plain that ‘training should be an integral part of the operation of all finfish aquaculture business, with programmes and plans relevant to the various activities being documented. Documented evidence of training of individuals in relevant areas should be maintained.’

It will not surprise the Committee that as part of the wider auditing of the Scottish Aquaculture industry, a number of bodies include training within their assessment criteria. On balance, we believe this is sufficient.

We plan to work with industry to ensure staff are appropriately trained building on the best practice workshops that industry has already introduced.

**Confirmation of aquaculture industry compliance with the Finfish Code of Good Practice**

When providing evidence to the Committee, Professor Thomas from the SSPO confirmed that ‘98% of producers are in the SSPO and it is not possible for a producer to be an SSPO member unless they are signed up to the code of good practice’. Professor Thomas also confirmed my previous understanding that the compliance levels were in the high 90%’s.

The objective remains to have every finfish aquaculture farm in Scotland operating in accordance with CoGP principles and standards.

**Details on the conditions in which the Minister could direct SEPA to reduce biomass of a particular farm.**

As I explained, we do not believe that further powers are required to reduce biomass. We consider it to be within the powers of Ministerial Direction to ask SEPA to do this for purposes other than environmental pollution - for example if persistent sea lice issue were unable to be managed appropriately within the available medicine discharge limits.

**Further information on the Tri-Partite Working Group initiative and how it brings farms, rivers and other wild salmon interests into agreements – why wild fish interests are not involved in FMAgs**

There is already provision within the Finfish Code of Good Practice as part of its guiding principles that indicates that individuals, farmers and organisations involved in the industry should ‘consult and collaborate with Scottish, UK and European authorities and relevant stakeholders in the development and implementation of future policies, practices and regulations to enhance the achievement of economic, environmental and social sustainability of the aquaculture production sector’. So whilst wild fishery interests will have no direct involvement in drawing up Farm Management Agreements, which are properly operational agreements between finfish farmers, they do have the ability to influence their initial and ongoing development through regular engagement and discussion with farmers in their area.
Why triploid salmon are not used in salmon aquaculture in Scotland

Triploid salmon were found to experience higher mortality, increased susceptibility to stress, physical deformities and poor growth. Thus, for mainly welfare reasons, they are not used.

Update on the discussions with SEPA regarding its proposals for simplifying the controls over the licensing of discharges from wellboats.

Discussions are planned for later this month. I will provide a written update thereafter to inform committee of the outcome of these discussions.

Information on the issue of GM salmon in the USA, raised by the Convener – and whether these could be defined as commercially damaging if necessary

The use of genetically modified organisms is highly regulated in Europe and Scotland. The Committee may be aware that regulation on the use of GM organisms in Scotland is described at:

http://www.scotland.gov.uk/Topics/farmingrural/Agriculture/Environment/15159/legislation

It is illegal to hold or release GM animals without approval (such approval would include assessment of potential for detrimental effects). In effect, I can’t envisage a scenario where having approved a GM product through one regulation, that it would then meet the criteria of commercially damaging through another.

Whether there are plans to make the purchasing of rod caught fish illegal, rather than just the sale of such fish?

The Bill contains enabling powers for Ministers to create, by regulations, a carcass tagging scheme. The provision enables the creation of a scheme applicable to both rod caught and/or net caught salmon; we have made no decisions about the type and coverage of scheme we wish to see introduced in Scotland and will consult on the issue in due course. On their commencement, it will be an offence for a person to have in their possession any salmon not tagged, in accordance with the carcass tagging regulations. As such, we do not consider it necessary to create a specific offence for purchase of rod caught salmon.

Whether there are examples of rivers where Scottish Ministers would have liked to change close times but could not

The driver for seeking Ministerial power to make annual close time orders comes not from current or previous failure of local management but from a need to future proof the fisheries legislation in response to issues such as climate change. I consider it necessary for Ministers to have access to the full suite of fisheries management measures in order that they are able to act in cases of national interest or importance. In addition, Ministers should be able to propose amendment to a close time where there is no DSFB, or there is failure at a local level, or where there is a cross-boundary issue that arises and boards cannot reach agreement on necessary action.
Options for improving the quality of data available on wild salmon and sea trout

Scotland collects detailed information on numbers and biological characteristics of salmon at a small number of index sites. These data, together with fisheries catches collected under the 2003 Act (which are of lower quality but provide wide spatial coverage) comprise a valuable resource for national assessment. The Bill includes provision to enable Ministers to collect information on salmon fisheries that is additional to that currently provided under the 2003 Act. This power complements the principles of openness and transparency and responds to widespread calls for greater information sharing among parties. The policy memorandum outlines the Government's intention to consider the need for a national data collection workstream to consider the most efficient collection and use of information and statistics on fish and fisheries. This work will involve stakeholders from across the sector, and we will consider the most appropriate forum for discussion.

The Moray Firth Sea Trout project

This was initially a three year collaborative project combining the efforts of District Salmon Fisheries Boards, Fisheries Trusts and Angling Associations around the Moray Firth to address the imbalance in sea trout management, collate existing information on sea trout stocks and identify where further data is required to facilitate improved management practice. The management area extended from the River Deveron in the East right round to the Kyle system in the North and took in all rivers and coastal streams round the coast.

The project ran from March 2008 – January 2011. A link to their report is provided below:


Coarse fishing sector's views on the Bill

Stakeholders had suggested to the Committee a number of potential issues relating to freshwater fisheries (which include coarse fish), which might have been considered by the Bill. These will helpfully inform the scoping of the Governance Review of salmon and freshwater fisheries management and will be considered in this context.

Cockle fishing stage 2 amendment – ensuring that those engaged in illegal activity but not caught in the act or caught with paraphernalia could be pursued

The ability to pursue persons suspected of being involved in illegal fishing for cockles will depend, of course, on the availability of evidence that proves the commission of that offence. As my officials indicated during the evidence session the Government led proposal for Stage 2 is still under development. The intention is that it will seek to alter existing offence provisions in a way that will better allow the courts to infer that an accused was a person concerned in the illegal fishing for cockles from circumstantial evidence. Each individual case will, of course, need to be considered on its merits and it will be a matter for the courts to determine whether the accused should be convicted on the available evidence. The proposals are currently being discussed and developed with Crown Office.
Comment on the Bill’s contribution to sustainable development

I am aware of the comments made by Professor Colin Reid in relation to the Policy Memorandum and its commentary on the sustainable development question. However, the Bill and all of the accompanying documents have been written based on the principle of sustainable growth. I concur with Professor Reid’s point that sustainable development encompasses a number of facets – both economic, environmental and social – and that is foremost in our mind. I believe that is reflected in the provisions within the Bill, and by the clear message that growth must be sustainable.

As I have made clear the Scottish Government wants to encourage a sustainable, growing industry that minimises its impact on the broader marine environment. In previous evidence it was made clear that the forthcoming National Marine Plan will ultimately set the baseline for development in the marine environment, of which aquaculture and wild fisheries are component parts. The Bill, taken together with the existing regulatory framework, will provide the basis for incremental sustainable growth – but as I said in my opening statement, it is not a guarantee of growth. If at any point it is evident that there are concerns with the sustainability of growth in any particular area, there will be the ability to intervene and take appropriate action.

The Bill’s contribution/effect on climate change mitigation

A number of the salmon fisheries provisions are driven by the challenges posed by climate change. Collection of further information on fisheries and the ability to take genetic samples can aid measurement of and, where possible, inform action to mitigate the potential changes which might be brought about through - for example - increases in water temperature or changes in marine feeding grounds. I have already referred to climate change as a key driver of the annual close time provisions; in addition, the provisions on introductions will introduce an element of flexibility to the consenting process should it be required.

Should seal scarers be regulated?

There are a range of views on the effectiveness of currently available non-lethal deterrents used for seals management, including ADDs (acoustic deterrent device) which pose a risk to other species such as cetaceans, and to date none have entirely removed the risk of seal predation. That is why the Scottish Government is funding research into best practice in using non-lethal measures in order to be able to identify effective technology, which does not cause harm to other marine species. The intention is that this should, in the future, inform the requirement of the seal licensing system on non-lethal alternatives, including best practice and minimum standards.

With respect to the cetacean friendly ADD which has been mentioned to the committee, I believe the University of St Andrews does now have an investor for advancement of commercialisation of this device. I understand that they signed a technology licence for commercialisation of the devices only last month. A Scottish Government sponsored research project showed, through captive experiments, that seals can be deterred by many sounds but that this effect can gradually disappear over time. The new acoustic deterrent involves a ‘startle stimulus’ which appears to continue to work over time.
We have no plans to regulate the use of seal scarers at this time.

I hope the Committee finds these comments helpful and as I indicated earlier, I will write to the committee following the discussions due later this month with SEPA on licensing of discharges from well boats.

Kind regards

PAUL WHEELHOUSE
Written submission from Animal Concern and the Save Our Seals Fund

This submission is made on behalf of the pressure group Animal Concern and the charity Save Our Seals Fund. We give permission for the Parliament to publish and distribute this submission as it sees fit.

We are extremely concerned that the proposed Aquaculture and Fisheries (Scotland) Act will not do nearly enough to protect the already over-exploited fish stocks targeted by the Scottish fishing fleets. From our reading of the Bill it will also continue to allow pollution, environmental damage and persecution of native wildlife by fishery and aquacultural interests.

Forgive me for taking up your time but I think it is important that I outline why I have concerns about how the Scottish Government intends to govern the fishing and aquaculture industries.

Over recent years we have been dismayed to see various Scottish Government Ministers, including the First Minister and more than one holder of the office of Cabinet Secretary for Rural Affairs and the Environment, spend an inordinate amount of time promoting commercial fishing and aquaculture and very little time addressing the perhaps terminal decline of over-exploited fish stocks and the damage done to the aquatic environment, both marine and freshwater, by industrial scale intensive fish farming.

It has been galling to see our First Minister participating in numerous promotional photo calls at north-east fishing ports and our Cabinet Secretary for Rural Affairs and the Environment lobbying at the E.U. for increased catch quotas for a fishing industry which in the last two years has seen a steady stream of Scottish skippers, many of whom were once industry leaders and spokesmen for different sectors of the Scottish fishing fleet, being convicted for their part in two of the largest and most lucrative organised crime syndicates ever to have operated in the United Kingdom. Not only did these skippers make over a hundred million pounds in illegal earnings, they systematically and knowingly broke fishery conservation quotas by tens of millions of tonnes of fish. Instead of protecting our marine environment our Cabinet Secretary for the Environment has been more active on behalf of an industry which has deliberately caused what may well be irreparable damage to that environment.

On June 7th 2012 a Government circular issued by Marine Scotland gave a link to a speech made by Alex Salmond to congratulate Marine Harvest on their huge expansion plans for salmon farming in Scotland. In his speech Mr. Salmond referred to “a vibrant, sustainable salmon farming industry”.

In a press statement issued on 15th November 2012 the current Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP, speaking from Shanghai where he was on a trade mission with Seafood Scotland, Scottish Quality Salmon and the Scottish Salmon Producers’ Organisation, welcomed the winning of a new contract to promote Scottish farmed salmon and wild-caught langoustine by stating; “…… our seafood is fresh, healthy and sustainably sourced……”.


In October 2012 Richard Lochhead wrote to another Government Minister on the subject of salmon farms and seal killing. In his letter he stated; "**The non-lethal measure that is generally accepted to be most effective against seals is tensioned nets, which although designed to keep fish contained also help to keep seals out. Almost all fish farms seeking a seal licence have such nets installed.**"

This statement indicates that the Cabinet Secretary has a lack of basic knowledge of the subject, or perhaps to be more accurate, has received very poor advice from his advisors. The nets he is describing are current industry standard cage nets and do not give farmed salmon the protection from predators they are legally entitled to under the Animal Health & Welfare (Scotland) Act 2006.

Later in the same letter Mr. Lochhead claims that a fifth of salmon farms applying for licences to shoot seals “**use anti-predator nets**”. That statement is untrue and Mr. Lochhead should know that. At the beginning of the year I submitted an FOI request asking how many salmon farms applying for licences to shoot seals used predator exclusion nets. Marine Scotland later revealed that 20% of the farms had anti-predator nets. However, on September 10th 2012, in response to an FOI response review, wrote to of wrote to His reply contained this information; "**A total of 13% of fish farms actively use anti-predator nets and a further 7% have anti-predator nets in storage.**"

In other words 20% of the farms may own the nets but only 13% use them.

Given the current situation where only 13% of salmon farms are using predator exclusion nets it is totally misleading for Government representatives and others to claim that the shooting of seals is only permitted and carried out as a last resort.

It has also emerged from correspondence with Marine Scotland that the Scottish Governments knowledge of anti-predator nets is mainly based on what they have been told about them by the salmon farming industry.

It greatly concerns us that the First Minister and his Cabinet Secretary for Rural Affairs and the Environment are both making extremely misleading statements regarding salmon farming. As far as we are aware there is no such thing as a sustainable salmon farming industry anywhere in the world. You still have to catch anything up to four tonnes of wild fish to produce each tonne of farmed product. Just because the species of wild fish which are turned into food pellets are often not fish which would be caught for direct human consumption does not make this sustainable. Industrial fishing to produce food pellets for salmon disrupts the marine food chain and may be hastening the dramatic decline of many marine species.

We are also extremely worried at the additional damage which could be caused by the massive increase in salmon farming in Scotland to exploit the new market in China. Our politicians have been pushing the industry into the Chinese market without a thought to the damage the current massive and rapid expansion of salmon farming will cause to our marine ecosystem and the creatures which inhabit it.
Doubling or trebling salmon output will result in greatly increased problems with sea lice, increased use of toxic pesticides and a multiplication of the levels of faecal and other effluent from the fish cages. We could poison our sea lochs for the sake of a couple of years profit and then see the industry collapse when the Chinese Government, which stopped buying salmon from Norway after Norway awarded the 2010 Nobel Peace Prize to Chinese dissident Liu Xiaobo, either start producing their own salmon or realising that most salmon farms in Scotland are owned by Norwegians and take their business elsewhere.

In many areas of Scotland seal numbers are in decline. Issuing Government licenses to shoot seals is ludicrous, especially when, in the case of salmon farming, such shooting is carried out mainly for economic reasons. Our Government refuses to insist that salmon farmers use external predator exclusion nets to keep seals away from the inner cage nets holding the salmon.

The main reason for not insisting on the use of these nets is because salmon farmers say they entangle and drown seals and other wildlife and become clogged with weed thus reducing water and oxygen flow through the inner cage nets. This is indeed the case if exclusion nets are not designed and installed properly and regularly cleaned and maintained. In the past it was alleged that some salmon farmers deliberately set loose predator “exclusion” nets to entangle and drown seals. A forthcoming court case may prove such deliberate drowning of seals is not confined to the past.

The fact of the matter is that it costs a lot of money to install and maintain predator exclusion nets and farm owners would have to invest some of their profits and create some new long-term jobs to do this properly.

It should also be noted that the main reason for giving salmon farmers licences to shoot seals is to meet their legal requirement under the Animal Health & Welfare (Scotland) Act 2006 to protect their stock from the attention of predators. The 2006 Act does not simply require that salmon farmers protect their fish from physical injury from seal attacks but also from the fear, stress and suffering caused by seals getting close enough to panic the fish. This quite simply cannot be achieved by shooting as, unless you can find a marksman who can shoot in adverse weather conditions including fog and mist, it is impossible to shoot every seal that gets close to the cage nets.

When it comes to protecting salmon from harassment by seals the Government seal shooting licences are not fit for purpose. The only way a marine salmon farmer can meet his or her legal obligations under the Animal Health & Welfare (Scotland) Act 2006 is to install and maintain high-strength, high-tension predator exclusion nets at a distance from the cage nets which prevents seals presenting even a visual threat to the salmon.

Acoustic Deterrent Devices are routinely used at many salmon farms. A manager of a farm situated close to a known common seal haul-out site informed me that he ran his ADDs “24/7”. This is not use but abuse of acoustic scarers and can result in denying seals access to traditional haul-out, breeding and feeding sites which they have used for tens of thousands of years.
The adverse effect acoustic scaring devices can have on cetaceans in Scottish waters is largely unknown but common sense would suggest they are not good news for animals which rely on sonar and sonic communication over large distances. In the last two or three years there have been several cases of large pods of cetaceans becoming disorientated, with some being stranded, in areas with numbers of salmon farms.

If there is to be a fishing and aquaculture industry in Scotland in the long term then any Aquaculture and Fisheries Act needs to be designed to stop the suicidal decline of a sector which seems determined to put itself out of business. All commercial fishing efforts need to be restricted and capped at levels which allow fish stocks to recover and reach and maintain sustainable levels. This may well include setting limitations on the size and number of vessels in the fleet and the compulsory introduction of fishing gear which avoids by-catch and sea bed damage.

For decades we have promoted the idea of confiscating the vessels of skippers convicted of black fish landings, draining them of fuel, stripping them of anything toxic and giving them to the navy or air force for target practise. Sunk in a suitable area they would provide an artificial reef where trawling would be impossible and fish could breed undisturbed. Even without the benefit of an artificial reef, extensive no-fishing zones would be an excellent conservation measure and, if possible, should be provided for in any new legislation.

Commercial netting of wild salmon should be brought to a complete end. Apart from the damage done to wild salmon and seatrout stocks, salmon netsmen take a considerable toll in seals which they continue to shoot under Government Licence.

No salmon farm should be allowed to operate without installing and maintaining high-strength, high-tension predator exclusion nets at a distance from the cage nets which prevents seals presenting even a visual threat to the salmon. The use of ADDs should be greatly restricted to minimise the adverse effect they have on a variety of marine mammals.

Ideally the proposed Aquaculture and Fisheries (Scotland) Act should set out high minimum standards for all forms of aquaculture to minimise or eliminate any adverse environmental effects. These standards should address the fashion for making marine farms as unobtrusive as possible to avoid visual impact. If it is necessary to protect wildlife and/or aid safe navigation then fish farms should be compelled to employ highly visual safety equipment including bright, day-glo top nets to stop birds becoming entangled.

No salmon farm should be allowed within 3 miles of the mouth of any river which has runs of seatrout and wild salmon. Salmon farms should not be permitted within 3 miles of known seal haul-out sites and known sites used by breeding colonies.

Prior to the creation of an Aquaculture and Fisheries (Scotland) Act work needs to be done to pull together existing research to help fully evaluate the current and predicted impact of aquaculture and commercial fishing on the marine ecosystem. If that research causes a delay in creating the new Act then it would be worth waiting a bit longer in the hope of producing better legislation.
In the meantime the Scottish Government should introduce a total and immediate halt to the expansion of salmon farming at least until a full assessment has been made of the environmental consequences of any expansion.

There should be environmental impact studies on all forms of aquaculture, including shellfish farming, to see what impact they have on the marine environment and the creatures which inhabit that environment. In particular it should be ascertained what impact predator control methods have on mammals and birds at fresh water smolt farms and marine salmon and mussel farms.

It is also vital that the Scottish Government drop the naive practise of taking and acting on the word of the fishing and aquaculture industries. It is ludicrous to simply accept it as fact when a fish farmer says predator exclusion nets don’t work or that they only shot X number of seals over a given period or that only a certain number of morts occurred on the farm or a certain quantity of pesticide was used over a certain period. These farms should be given a set standard of predator exclusion net to install and maintain, be subject to unannounced visits and externally audited to see how many bullets and how many barrels of pesticide they buy and use. Stock levels should be monitored and the number of morts and the methods of disposal monitored.

As for the commercial fishing industry we suggest following the maxim of taking fishermen’s tales with a large pinch of salt – the Scottish black fish scandals made the MPs expenses fiasco look like a petty cash error.

We hope that the time is taken to draft an Aquaculture and Fisheries (Scotland) Act which is fit for purpose and provides for the control and policing of industries which, without strong external intervention, will not only bring about their own demise but lay waste much of our marine ecosystem in the process.
Written submission from the Atlantic Salmon Trust

The Atlantic Salmon Trust is an independent charity financed by private donations and public sector grants. AST is the only independent organisation that devotes all its resources solely to the conservation of wild Atlantic salmon and sea trout. AST policy is based on advice from a distinguished group of scientists who, under the chairmanship of the Trust’s Research Director, comprise the Honorary Scientific Advisory Panel.

We welcome this opportunity to comment on the Aquaculture and Fisheries (Scotland) Bill introduced to Parliament on 3 October 2012.

General comments in response to the Bill

While AST avoids direct involvement in governance or fishery management matters, we do have a concern that there has been some unexplained slippage between the consultation stage and the contents of the Bill. In particular we note that some matters contained in the consultation document have been dropped, without reasonable explanation, prior to publication of the Bill.

We also note that the Summary Consultation Analysis portrays, in our view unnecessarily, and even perhaps divisively, comments on many of the proposals as being divided along ‘salmon farming industry versus wild salmonids lobby’ lines. We feel that this is an inaccurate picture. Responses to the consultation represent a broad cross-section, and in many instances views expressed by wild fish interests were echoed by different interest groups. We feel that the Bill provides an opportunity to demonstrate Government commitment to resolving difficulties in the relationship between the salmon aquaculture industry and wild salmonids interests, exemplified by the current dispute between SSPO and the University of St Andrews following publication by the Royal Society of a paper on the causes of marine mortality of wild Atlantic salmon.

We also find some of the assumptions made in the analysis puzzling. For instance, on the question of mandatory FMAs, the document states: “Although the concept of FMAs was generally supported by the aquaculture industry, they significantly opposed the proposal to make FMAs a legal requirement. This was supported by the wider campaign responses.”

We believe this would lead the reader to believe that the wider group backed the industry’s opposition to mandatory FMAs. The analysis shows that 86 responses were in favour of mandatory FMAs, while 26 were not.

Policy Memorandum

We note that within the Policy Memorandum accompanying the Bill, the use of the term ‘sustainability’ appears to refer only to economic sustainability, when, in the case of wild salmon stocks the main issues are environmental. While economic sustainability is important, we hope that the Memorandum’s over-emphasis on economic issues does not reflect a narrow focus on that aspect alone, when, in the context of Scotland’s natural resources, environmental, social and cultural issues are also important.
We note that the Policy Memorandum states that the questions posed in the pre-consultation document were not intended to delineate proposed elements of the Bill, but to explore effective use of existing enabling powers, to see if some of the aims could be achieved without further legislation. We find few grounds for comfort here. It seems to us that this is a tacit admission that the powers available under the 2007 Act have not been used effectively. There is no reason at present to believe that this situation will improve under any new Act.

Clause 8 of the overview of the objectives of the proposed legislation (contained in SP Bill 17-PM) states that: “The Scottish Government is committed to the support and protection of the country’s famous and valuable salmon and freshwater fisheries.”

AST believes that the first sentence should include the words ‘vulnerable’ or ‘fragile’. In the context of ICES data and the Scottish Government’s own analyses we know that returns of adult salmon to Scottish rivers, have suffered serious declines over the past 30 years. Numbers of sea trout returning to fresh water throughout Scotland, but especially on the West Coast, have also declined alarmingly. Policies aimed at supporting and protecting these valuable wild stocks must be based on risk analysis methodology predicated on scientific data. Regulation of salmon aquaculture is an example of a new industry whose impacts on the marine environment and other species are not yet fully understood. While this uncertainty continues, supported as it is by justified concerns based on scientific data, we must at the very least adopt a precautionary approach.

The SPICE briefing on the Bill

We note that paragraph 44 of the SPICE briefing document states that “Sea lice data is publically available on an area basis.” We would ask:

- Where, in November 2012, is such data ‘publically available’?
- Publication of aggregated figures, controlled by the SSPO, on a delayed basis, is unacceptable in the 21st century for an industry which claims to ‘have nothing to hide’. We need data on a ‘real time’ basis to allow mitigation measures to be put in place at the time of crisis, rather than reflecting on a disaster after it has occurred.
- Why can Scotland not have a similar level of transparency from the largely Norwegian-owned operators to that which they are obliged to comply with in their home country?

The Bill

The issue of transparency

We see serious disparities between Parts 1 and 2 of the Bill in terms of the demand for, or absence of, accountability. The principle of transparency which the Bill proposes on those who manage salmon fisheries does not appear to be applied with equal force to those who manage salmon farms. Indeed, the provisions for management of salmon fisheries introduce prescriptive demands which are entirely absent from those for salmon farms. Such disproportionate treatment is not conducive to an improved relationship between the managers of wild salmonids
fisheries and the salmon farming sector. As stated in paragraph 2 above (under 'general comments') we feel that such different treatment of the two sectors can only exacerbate a difficult relationship at a time when the Bill could take this opportunity of demonstrating a fair commitment to both.

Part 1: Aquaculture

Our comments on the Aquaculture chapters of the Bill relate, unfortunately, as much to what was left out (following the pre-consultation) as to what remains.

We feel that Marine Scotland’s response to the consultation fails to adequately explain why some of the proposals that were consulted on, particularly those relating to aquaculture, have not been taken forward in this Bill, despite the fact that they were supported by a wide cross-section of stakeholders. We are not reassured by the contention that there are alternative mechanisms for taking forward these proposals. Indeed, there appears to be a tacit acceptance of the fact that elements of the 2007 Act have not been adequately enforced. AST seeks assurance that these proposals which have been omitted from the Bill will be acted upon. We would also wish to see a clearly defined timetable for such action. Failing this, we would seek to have a number of those proposals included within the Bill.

Although respondents overwhelmingly supported the concept of a much higher level of transparency of data on fish mortalities, movements, disease and production, the Bill does nothing to take forward the concept of disclosure. This leaves Scotland far behind other salmon farming countries in respect of transparency of reporting, and open to EU and international criticism of neglecting its valuable natural resources.

- The publication of sea lice data at an appropriate resolution is one of the key issues for all organisations representing wild salmonids fisheries. The absence of such transparency in regard to sea lice data places insuperable barriers in the way of effective and long-lasting collaboration between wild fisheries and salmon farmers in assessing, at a local level, the success or otherwise of treatment strategies. It is also essential that fishery managers can be confident that in instances where farm treatment strategies have failed to control lice levels, there will be a requirement to adjust sea lice management and control strategies to ensure that lice levels can be controlled within the accepted parameters in future.

- Publication of sea lice data at a meaningful level of resolution would bring Scotland into line with other countries where salmon farming is carried out. It would also give an objective basis for assessing whether or not the salmon aquaculture industry is able to manage sea lice levels within acceptable parameters.

- Experience over the period since the 2007 Act has demonstrated that there is an unwillingness to put in place such a voluntary and timely reporting obligation. There is a similar reluctance to engage in transparent reporting of information on fish mortality, movements, disease, treatment and production.

- The impression given by this secretive culture within the sector is potentially immensely damaging to the interests of Scottish salmon farming and lays the
industry open to speculation and criticism of its practices, whether they are well founded or otherwise. AST is absolutely clear on this point: there is no advantage to the industry in continuing to conceal data which should be in the public domain. We believe that a successful salmon farming industry should be no less accountable to the consumer than the beef industry is.

- **Summary.** The Bill does not address the issue of transparent reporting sufficiently. By failing to do so, and not taking note of global developments in aquaculture which embrace new technologies and methods of production, the Bill may inadvertently put the Scottish salmon farming industry into a weak position to defend or promote its products. We believe that a modern industry should be no different from terrestrial farm production in terms of accountability for product treatment and origin. If we fail to do that, we will find that the global consumer will make that decision for us, with inevitable consequences for the industry and Scottish employment.

**Powers to revoke consents** for fish farms are crucial to the operation of a sustainable salmon aquaculture industry, as well as to fair and equal treatment of the interests of that industry, and of wild salmon and sea trout fisheries. Our understanding of the interactions between the aquaculture industry and wild salmonids is improving, but it is far from complete. At present it is therefore not possible to predict the effect of a particular farm site on wild fish. There are also gaps in our understanding of how cumulative impacts of farms can be accurately assessed.

Most fish farm developments currently receive permanent planning consent. The lack of powers to revoke consents is a cause for concern, because, in the context of climate change and the various biological, meteorological and oceanographic changes that are affecting the fauna and flora of the marine environment, no legislation should support permanent rights.

We note that 71% of the substantive responses to the consultation question were in favour of such a power. This is possibly the single most serious omission in the Bill.

We also note that, despite strong support for the proposal to give Scottish Ministers powers to reduce biomass on farm sites, in particular to ensure effective treatment of sea lice and reduction of benthic pollution, this is absent from the Bill. The same applies to the proposal that Scottish Ministers should be given powers to determine a lower threshold above which remedial action needs to be taken. We believe that powers to require SEPA to reduce biomass consents should have been included in the Bill. SEPA’s ‘consideration of applications for biomass consents’ are limited to ‘discharges’ such as fish waste and sea lice treatments. It has long been a contentious issue that SEPA is not required to include sea lice larvae produced on salmon farms as a ‘discharge’. We would contend that these are an industrial discharge, and should be treated as such. In the absence of powers for SEPA to treat lice as a discharge, it is appropriate for Scottish Ministers to have the power to reduce biomass consents where such action is required for the welfare of wild fish.
Marine Scotland Science confirms that the industry’s Code of Good Practice takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. Given the growing body of knowledge on cumulative impacts of potential discharges of sea lice larvae on farms, we believe that there is no fail-safe mechanism in place to prevent significant numbers of larval lice being shed into the environment, thus posing an unacceptable risk to wild salmon and sea trout. This is true both in the case of Management Areas containing a large number of smaller individual farms, and of the larger farms which are currently being consented.

We also note that SEPA appear to have only used their existing powers to reduce biomass on a handful of occasions, on the basis of benthic surveys, despite 44% of monitoring surveys between 2009 and March 2012 being deemed by SEPA to be “unsatisfactory”.

In terms of threshold levels for sea lice on farmed fish, above which remedial action needs to be taken, we would contend that the current levels, which are related to the number of lice per farmed fish, are inadequate in dealing with cumulative impacts. The absolute number of sea lice larvae released from a farm is the significant figure. We therefore believe that threshold lice levels should be changed to take into account the cumulative biomass in the local area in order to minimise risks to wild fish.

This is another significant omission from the Bill, given the apparent commitment of Scottish Ministers to protect both the salmon farming industry and Scotland’s wild salmonids.

The Atlantic Salmon Trust We are also disappointed to note that the Bill does not address the question of phasing-out of open net pen smolt farms in fresh water. The recently-completed WWF Salmon Aquaculture Dialogue produced a standard for farmed salmon which refuses accreditation to fish raised within such pens in countries which have populations of wild migratory salmonids. The Bill thus fails to address a major aspect of salmon farming practice within Scotland which is, according to the views of international experts, unsustainable.

Chapter 1

Section 1

Fish farm management agreements

We support the principle of mandatory membership of a Farm Management Agreement (where this is more than one operator in a Management Area) or provision of a Farm Management Statement where there is a single operator.

FMAs are identified as the vehicles for delivery of effective management of parasites and disease, as well as safe handling and movement of farmed fish. However, since membership of an FMA is restricted to fish farmers, the most valuable feedback loop which Area Management Agreements included is lost.

We are concerned that the Bill makes no provision for involvement of wild salmonids interests in Management Agreements, despite new research which provides strong
evidence for the impact of elevated numbers of sea lice in aquaculture areas on wild salmon (Krkosek, M., Revie, C.W., Gargan, P.G., Skilbrei, O.T., Finstad, B. and Todd, C.D. Impact of parasites on salmon recruitment in the Northeast Atlantic Ocean. Proc R Soc B, November 2012). This paper demonstrated that, in light of the fact that marine mortality of salmon remains very high, even a small improvement in the number killed by parasites would make a large difference to the potential number of returning fish. The evidence of adverse impacts of farm-produced lice on sea trout has existed for many years (see A Review of the Impacts of the Salmon Louse, Lepeophtheirus salmonis (Krøyer, 1837) on Wild Salmonids Prof. Ken Whelan Research Director, Atlantic Salmon Trust, August 2010. http://www.atlanticsalmontrust.org/assets/ast-sea-lice-impacts-review.pdf)

We note that, while there was no consensus in responses to the question of whether or not salmon farm operators should be allowed to define management areas, the Bill maintains the status quo in this respect.

- This means that Management Areas are still defined by operators alone, and delineated within the voluntary and solely industry-mediated Code of Good Practice.

- We note that Management Areas are extremely variable in size, and we believe that in some cases the current Management Area boundaries are based on operational expediency rather than robust data on biosecurity and control of sea lice and disease.

- Work on fully understanding the relationship between fish farm sites and the wider environment in still incomplete. This is particularly the case in understanding of the dynamics of sea lice larvae dispersal, and disease transmission.

- On that basis we supported the consultation proposal that Scottish Ministers should have powers to specify Management Area boundaries. We would therefore seek reassurance that Scottish Ministers will be able to specify FMA boundaries where necessary, in light of new knowledge.

Section 4B

Inspection

We find it indefensible that provisions for inspection of fish farm records are worded in such a way as to ensure that interested parties can still be prevented from obtaining data under Freedom of Information legislation, for instance sea lice counts on farms.

We welcome the fact that the Bill makes provision for Scottish Ministers to specify technical standards for fish farming equipment.

- To the best of our knowledge, there have been no prosecutions or enforcement notices issued under the 2007 Act in respect of escapes of farmed fish, despite the fact that the Scottish Government’s published statistics on farm escapes
show that a very significant proportion of escapes in each year are due to human error rather than equipment failure or acts of God.

- There is therefore an urgent need to include in Section 3 a requirement for mandatory training of fish farm operatives in effective use of all equipment, in particular the management and maintenance of nets and moorings, and safe use of workboats. Such training should be delivered by accredited trainers, and all fish farm personnel should be required to demonstrate competence in use of equipment. We remain to be convinced of substantial advantage in the legislation presently proposed in relation to containment of fish, since the provisions of the 2007 Act do not appear to have been effectively enforced.

We are disappointed to note that the proposal to introduce something similar to Norway’s Nytek standard has been rejected on grounds of cost. The specification of such standards has been proposed for many years. The Bill would offer an ideal arena for the introduction of a firm timeline towards such a national standard and in the long term it would reinforce the industry within the market and thereby protect the Scottish industry and jobs.

AST welcomes the provisions for increased regulation of wellboat operations, and the recognition that wellboat operation constitutes an area of risk in relation to spread of diseases and parasites.

We are puzzled by the fact that whereas the Bill recognises these risks in respect of wellboats, it does not appear to acknowledge similar risks, or propose similar controls, in respect of the farming of salmon in open net pens.

**Part 2: Salmon Fisheries etc**

The proposed amendments to the 2003 Act are mainly about governance. AST broadly supports the direction of development towards good practice, with greater transparency and accountability. We note that Scotland benefits from the devolved structure of its river boards in a way that England and Wales, with the centralised execution of powers by the Environment Agency, does not.

AST agrees with the Bill’s proposition that boards: a) should act fairly and transparently b) that there should be a Code of Good Practice for wild salmon and freshwater fisheries. Ideally, good practice, as set out in the ASFB’s CGP, should be spread evenly across all fishery boards, but the reality is that only those boards, with the resources to ensure that good practice standards are met, can do so. The best of Scottish Fishery Boards at least meet international standards of management, and in some cases exceed them.

- In general we note that many points raised by Part 2 of the Bill were not referred to in the consultation. For example, the principle of open meetings and availability of information is clearly correct in the spirit of open democratic government. We feel that this spirit of openness should be consistent throughout the two parts of the Bill, and they are not in certain sections of Part 1 Aquaculture.
- We make the point that it is not possible to manage natural resources without access to the fullest information available. However, we do acknowledge that
certain aspects of commercial activity and physical security may need to be treated in confidence.

- In general we agree that Board meetings should be held in public, although there may be good reason on occasions for certain aspects of the work of boards to be discussed *in camera*. Examples might include security or counter poaching matters, which could be dealt with at sub-board or management level.

- Governance of Boards does need to be more transparent and consistent in terms of good practice, but it is important that by implementing such standards we do not throw the baby out with the bath water. Local involvement is, in the view of AST, the key to good fisheries management, but only if there are inbuilt assurances of good governance and standards of delivery. Local involvement on a catchment basis ensures that knowledge on all aspects of human activity within a river catchment, some of which may impinge on fisheries, is shared in a convivial forum for discussion.

- Section 20 proposes the introduction of increased powers for Scottish Ministers to modify the good governance requirements by order. The question is whether a centralised and controlling set of powers at Holyrood will result in better management and husbandry in each river catchment. We doubt whether there is a need for this change, beyond the powers already held by Ministers under the 2003 Act, but we do recognise that the governance of the Boards needs to be seen to include local interests far more reliably and consistently than at present. We feel that the issue of competence is a matter for ASFB as the overarching representative body for Scottish Fishery Boards.

- The most cogent reason for wider stakeholder involvement on a catchment basis is the need for everyone involved with land or river management within a catchment to prepare for the effects of climate change, including invasive species, new diseases (e.g. Ash die-back), extremes of weather, and higher temperatures. There is an obvious need at catchment level for such stakeholder inclusion on a catchment basis, an inevitable consequence of which should be to make boards accountable and inclusive, and, importantly, to reduce a narrow focus or ‘silo mentality’. There are examples of such partnerships in the Aberdeenshire Dee and Angus South Esk catchments.

- AST therefore believes that Catchment partnerships, as exist in some areas already, should in our view become a mandatory part of governance, with central involvement of fishery boards and trusts. Only through such wider involvement can holistic management of river habitats and the species that depend on them be achieved.

- AST also supports ASFB’s welcome for the inclusion of a power to introduce a carcass tagging system in Scotland. Carcass tagging was a clear recommendation of the mixed stock fisheries working group (in which the AST was a participant) and there was overwhelming support for this provision in the consultation. Carcass tagging will bring the traceability of farmed salmon into line with other agricultural products and make a clear statement about Scotland’s respect for its global customers.

- AST welcomes the inclusion of a power to take fish or samples for analysis. Genetic analysis is a key tool in modern fisheries management and will enable rational management decisions to be made. Genetic mapping and attribution of salmon populations to regional or, in some cases, catchment...
salmon stocks, is in an early stage of development and is likely to become a vital tool in wild salmon and sea trout fisheries management.

**Other issues**

- Purchase of rod caught fish: It is illegal to sell rod caught fish but it is not illegal to purchase rod caught fish. This is clearly an anomaly: it should be illegal to both sell and purchase an untagged fish.

- for it has long been recognised that mixed stocks coastal netting is bad fishery management practice. Both ASFB and AST participated in the Mixed Stocks Working Group and our responses on this issue are identical: “The weekly close times were put in place for sound conservation reasons and were designed to allow a proportion of the salmon run to have free passage into their natal rivers throughout the season. Therefore we believe that, where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity.

- The North Atlantic Salmon Conversation Organisation\(^1\) has successfully negotiated reductions in salmon fisheries in their marine feeding grounds in the North Atlantic. Mixed Stock Fisheries are now under international scrutiny in the context of tight restrictions of traditional high seas MSFs near Greenland and the Faroes.

- The operation of MSFs is contrary to internationally accepted best practice because they prevent management of the resource on an individual catchment basis. At a time of increasing pressure on wild Atlantic salmon throughout their range, it is reckless to continue the practice, especially in coastal areas where it is known that populations from catchments affected by that form of lethal exploitation are thought to be fragile, or are known to be below their conservation level (CL).

- AST has made it clear to ministers in other parts of the UK that new licences for MSF netting operations should not be issued. In Scotland we share ASFB’s view that, “when a netting station is put up for sale, or is to be leased to a third party, the relevant DSFB should, in the interests of salmon conservation, have a statutory right of first refusal to purchase (or lease) that netting operation before any proposed sale (or lease) could proceed".

- The need for the equitable burden of conservation was recognised by the Mixed Stock Working Group, on which AST sat. If the real conservation value of every surviving salmon migrating back to Scotland were recognised, and a conservation levy imposed for every fish killed the burden would be shared more equitably. AST respectfully points out that the favourable terms for contributions made by commercial netting interests is a historical relic and does not reflect the true value of each fish, nor the fragile condition of stocks.

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\(^1\) NASCO: Established under the Convention for the Conservation of Salmon in the North Atlantic Ocean in October 1983
Our final comment concerns climate change. The work done by AST and its international analogues and partners, including Scotland’s Ocean Institute and Marine Scotland, shows that the Atlantic Ocean is warming, and that the effects of this warming are advancing north at an average rate of 23kms each year. Warmer seas bring extreme weather, huge variances in pressure and massive changes to the pelagic layer of the ocean. The traditional feeding areas of Atlantic salmon are being squeezed and some places where Scottish salmon go to feed at sea are currently very poor in terms of prey species. New species, such as Gilt head bream and sea bass are arriving off the Scottish coast, some of which are predators of our migrating salmon smolts. The freshwater environment is also under pressure from flood, drought and temperature extremes. In this context we believe that we cannot continue to exploit salmon and sea trout as we have done in the past.

This Bill provides an opportunity to prepare for the inevitable changes that climate change will bring and to mitigate for changes that have already occurred.
Supplementary written evidence from Professor Brian Austin, Director, Institute of Aquaculture, University of Stirling

Overview

The Institute of Aquaculture is one of the largest academic organisations dedicated to the study of aquaculture, worldwide. The Institute carries out world-class research, and provides advise to governments, public bodies and industry. The Institute recognises the growing importance of aquaculture in many countries, and is fully supportive of the Government’s aim of increasing aquacultural production in Scotland. However, I am not convinced that the Aquaculture and Fisheries Scotland Bill will achieve its goals. I believe that certain parts of the Bill would benefit from revision. Principally:

1. As a general comment, the Bill is vague and lacks specifics. One concern is about who has the responsibility for providing the detail, for example, deciding which comprise commercially damaging species [Chapter 3]. If the detail is to be delegated, what controls will be put into place to overseas such delegated powers?

2. Fish farm management agreements and statements [Sections 1, 4A and 4B]. These need to apply to all coastal aquaculture in Scotland, and must be flexible thereby permit rapid responses to the changing situations as might apply to any farming activity.

3. Escapes [Sections 2 and 5A]. This is an emotive issue, and if I understand the narrative correctly escapes would trigger a response across the whole industry. This is an excessive use of resources, and would be better restricted to sampling fish farms within specified and defined areas. I am curious [Section 5A] as to the meaning of “material from fish” – “fish tissues” should suffice. However, the reasons for collecting tissues need to be controlled and restricted to the investigation into a specified event.

4. Technical requirements for equipment used in fish farming [Chapter 2, Section 3]. What equipment [paragraph 1A]? This needs to be made more specific otherwise interpretation is going to cause unending problems. Is “fish farming” intended to be restricted to salmon or does fish include shellfish?

5. Commercially Damaging Species [Chapter 3]. This part of the Bill gives me the greatest concern, and I am unclear about what exactly is a commercially damaging species in terms of salmon aquaculture unless it is the intention of the authors to include pathogens and parasites that could affect health. However in terms of shellfish culture, I am aware of the damaging effect of predation such as by crabs. In short, this section needs more work.

6. Fixed Penalty Notices [FPN]. I could foresee FPNs causing issue with the aquaculture industry. Are they really needed and will they achieve their aim?

We have an excellent product in Scottish salmon, which is well known and respected in an increasing number of countries. There is increasing demand from the Far East, which I hope the aquaculture industry will be able to fulfil. Let us not discourage the development of this Scottish agricultural success story.
Written submission from Beauly District Fishery Board

We refer to the request for written evidence to be submitted to the Committee in relation to the above Bill. The Beauly District Fishery Board would wish to endorse paragraphs 12-23 of the submission made by the Association of Salmon Fishery Boards (ASFB).

In addition, we would also wish to query the stipulation regarding declaration of Members' financial interests. Whilst we understand the principles behind this, if is not clear how this can work as defined in the Bill given that Board members are elected from amongst the proprietors of fishing rights in any given District. The definition given in the Bill: "means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member’s view on any matter being considered by the board" would on face value prevent the Board making any decisions that affect the District fishery. As proprietors, members by definition have a potential pecuniary interest in the decisions of the Board.

The ASFB response as endorsed by Beauly District Fishery Board is given below.

Section 20: Section 20 includes a number of amendments to the 2003 Act in relation to good governance. Whilst many of these provisions look reasonable, we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation. The consultation asked three questions in relation to these issues: *Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?*; *Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?*; *If yes, do you think such a Code of Good Practice should be statutory or non-statutory?*

We have no difficulty with the principle of publishing annual reports and audited accounts and indeed we encourage our members to do so via the DSFB’s Code of Good Practice. We would note that whilst we have no difficulty with providing copies of these documents to Scottish Ministers, this aspect was not consulted on.

Whilst we have no difficulty with the principle of open meetings, it is important and legitimate that some aspects of meetings can be held in private (e.g. when discussing deployment of bailiffs, CCTV cameras, staff wages etc.). It is also important that DSFBs are able to raise contentious ideas, which may never be taken forward, without concern that these would be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting. Without clear guidance about what it is acceptable to discuss in private, this provision could have the result of inhibiting discussion within meetings. Ultimately, potential Board members in districts in which there are particularly contentious issues to be faced may even be put off from volunteering and giving up their time. We are aware that this is already an issue in some districts. The RACCE Committee will discuss its Stage 1 report in private but we are not aware that the Committee operates under a requirement to state their reasons for meeting in private as is set out in the Bill for DSFBs. We would again note that, although the consultation document stated that a Code of Good practice could include recommendations for Boards to hold meetings in public, there was no consultation on a legal requirement to do so. The cost of moving these meetings to a venue with sufficient capacity for members of the public,
would involve a significant expense, which may prove disproportionate for many of the smaller DSFBs. In addition, some DSFBs operate over considerable geographical areas. For example, if the Argyll DSFB (total income through privately-funded levy system - £58,000) was required to advertise 4 meetings a year in all three local papers within that district, the annual cost of such advertisement would be £3,200. We would therefore seek clarity on exactly how such meetings should be publicised. A partial solution would be that the annual meeting should be a public meeting, and that there should be an opportunity for the public to attend part of all other meetings and submit proposals to be considered.

If necessary ASFB will work with Marine Scotland to help DSFBs set up a formal complaints procedure, where such a procedure is not already in operation. However, it should be noted that the processing of such complaints will usually be undertaken by the clerk. In the case of smaller boards, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue ‘campaigns’) becomes arduous, this will result in resources being diverted from other areas of operation. It is worth noting however, that this provision was not consulted on, or even mentioned in the consultation document, and indeed, there is a fundamental question as to why such a statutory provision is necessary. Should such a procedure be deemed necessary, we are not aware of any public bodies operating under a requirement to publish the number of complaints and a statement of the nature of each complaint and how it was disposed of. This aspect of the proposal appears to be unnecessarily prescriptive.

Section 20 includes an open-ended power for Scottish Ministers to modify the good governance requirements by order. We do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny. If, for example, this power is used to prescribe DSFB functions in legislation, DSFB donations to Fishery Trusts (which totalled £610K in 2010) would have to be linked to specific services and therefore subject to VAT. This, coupled with the potential additional costs outlined above, could have a significant negative effect on the core funding of fishery trusts across Scotland.

The Aquaculture and Fisheries (Scotland) Act 2007 contains a provision that Scottish Ministers may by order approve any code of practice issued for the aquaculture industry. In our consultation response, we supported a similar approach being adopted towards the DSFB Code of Good Practice, and indeed this approach was specifically highlighted by Marine Scotland in the consultation. In the interests of fairness and equality between the two sectors, we would therefore suggest that this approach would be more proportionate and would allow us to deal with some of the issues highlighted above. We would of course be very happy to work with Marine Scotland officials to ensure that the ASFB Code is consistent with the principles outlined in the Bill. We would be content for the Ministerial Power to dissolve the committee constituting a board to remain, in an amended form, to reflect the above approach.

Section 21 includes a duty to consult and report before making certain applications. We have no difficulty with this provision.
We welcome the inclusion of a power to introduce a carcass tagging system in Scotland but we believe that this provision should be delivered in primary legislation. Carcass tagging was a clear recommendation of the mixed stock fisheries working group and there was overwhelming support for this provision in the consultation. Whether delivered via primary or secondary legislation, we would seek a clear assurance that a statutory system, using individually numbered, recorded tags, will be in place in time for the 2014 salmon fishing season. Any system which does not use numbered tags would not allow verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act). Equally, DSFBs are strongly in support of a national carcass tagging system for all rod caught fish not returned to the river. We believe that carcass tagging of rod caught fish would be a useful tool to aid DSFBs in ensuring compliance with their conservation policies.

We welcome the inclusion of a power to take fish or samples for analysis. Genetic analysis is a key tool in modern fisheries management and will enable rational management decisions to be made. We believe that genetic samples can be taken without killing the fish in question but where such sampling would be likely to involve killing fish we consider that the local DSFB should be fully consulted prior to sampling taking place.

Section 25 provides that Scottish Ministers can impose requirements on DSFBs and proprietors in relation to the monitoring of certain orders. We believe that monitoring of such orders is consistent with evidence-based management and on that basis we are supportive of this in principle. However, this section also makes failure to monitor and evaluate the effects of an order a criminal offence, on which a DSFB may be convicted on the evidence of one witness. This appears to be totally disproportionate, and again, may result in potential Board members being put off from volunteering and giving up their time. We understand that the inclusion of the provision that the Board may be convicted on the evidence of one witness is a drafting error, but we would highlight again that this is disproportionate in the case of a Board failing to meet a monitoring requirement. Finally, we believe that there would need to be a degree of proportionality in placing monitoring requirements on a DSFB, due to the potential expense and/or expertise required to carry out such monitoring, particularly in the case of smaller Boards. We would be concerned if Scottish Ministers were to take out an order at their own initiative, and then impose a legally binding requirement to monitor such an order on that Board. We therefore believe that s25 should only apply where a DSFB or proprietors have applied to Scottish Ministers for such an order.

Section 26 includes an open-ended power for Scottish Ministers to vary the procedures for various orders. As we stated earlier, we do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny.

Section 28 includes a power for Scottish Ministers to modify DSFBs functions with respect to consent of introductions (stocking). Such regulations may specify
circumstances or cases where the consenting function is to be exercised by Scottish Ministers (as is currently the case for all other freshwater fish species) or when applications for consent should be referred to them. We note that Scottish Ministers already have jurisdiction over fish introductions in those parts of Scotland which are not covered by DSFBs. In addition, Scottish Ministers have jurisdiction over introductions of other freshwater species throughout Scotland. However, we are not aware of any evidence to suggest that the use of such regulatory powers is significantly better in those areas of Scotland under the jurisdiction of Scottish Ministers. Indeed, we would argue that some of the most concerning examples of questionable practice occur in these areas. We therefore believe that, should this power be exercised, that all decisions on stocking (all species) should be considered by a panel of independent stakeholders, prior to the granting of consent.
Written submission from the British Trout Association (BTA)

The BTA thank the Rural Affairs, Climate Change and Environment Committee for this opportunity to submit written evidence concerning the Aquaculture and Fisheries (Scotland) Bill.

Background

The BTA are the representative trade association for the UK trout farming industry with a membership accounting for approximately 90% of all domestic trout production. Brown trout and, predominantly, rainbow trout are farmed in Scotland for both the table market (direct human consumption) and the restocking market (trout farmed for live stocking either into enclosed Stillwater fisheries or certain open waters for the purposes of recreational angling).

- Scotland currently accounts for slightly less than 50% of UK farmed freshwater trout production and 100% of large trout production, that is, rainbow trout farmed in brackish or salt water.
- Approximately 60% of table trout farmed in the UK is currently processed in Scotland.
- For several years, production of farmed trout in Scotland has been in decline. Whilst recent falling tonnage figures may be attributed to a variety of factors, BTA remain extremely concerned at any unnecessary regulatory burden that may further limit or adversely affect production, or place the Scottish production industry at a further competitive disadvantage.
- Of the 23 registered trout aquaculture production businesses in Scotland, all are privately owned, with 22 being classed SME producers, and at that micro to small production businesses.
- 2 trout farming businesses operating in Scotland farm sites in both fresh and saltwater.

General Comments

Most of the aspects of this Bill that relate to aquaculture, along with the justification for and preparatory work leading up to the publication of this Bill, appear designed to address issues, either perceived or actual, relating to salmon farming. Scottish aquaculture is not exclusively salmon farming, and it is important that in the passage of this Bill the ramifications for non-salmon aquaculture production are taken into account. Not only does this include shellfish, but also those sites which produce trout, char (farmed either in freshwater or marine waters) and halibut (marine). The potential for the future development of these, and possibly other, species should also be considered in the development of any legislation.

Whilst it is understandable that most attention is paid to the largest industry sector, or to those issues which have attracted most publicity and correspondence, the wider ramifications of proposed legislation must not be overlooked. During the

2. For further information on production tonnage figures and the size, structure and employment provided by trout farming in Scotland see: [http://www.scotland.gov.uk/Topics/marine/science/Publications/stats/FishFarmProductionSurveys](http://www.scotland.gov.uk/Topics/marine/science/Publications/stats/FishFarmProductionSurveys)
passage of this legislation, and any secondary or subordinate legislation, it must be made clear where regulation is intended to relate to all aquaculture, and where it is to be restricted to specific sectors or species.

Committee visits and the SPICe briefing note on the Bill have not considered trout farming and we would welcome the opportunity to provide any further information that might be helpful to the Committee on our sector.

With relation to the Bill we have specific concerns at the application of aspects of Part I and Part 5 to our sector in terms of appropriateness and disproportionate cost burden:

**Part 1**

Part 1, Chapter 1, 1 (5) of the Bill contains inaccuracies relating to the management and operation of the Code of Good Practice for Scottish Finfish Aquaculture (as does the supporting BRIA). However, we would note that officials from Marine Scotland have acknowledged this point and advise that appropriate action will be taken to rectify this during the passage of the Bill through Parliament.

We draw the attention of the Committee to the fact that any fish farm management agreements must remain sufficiently flexible so as to allow for changes of operators and operations within any given area, and not to lead to a situation where various management areas become de facto closed shops, with no scope for new, particularly small scale operators, to become established. To be of any use, farm management agreements will also need to remain flexible, dynamic management tools and should not be thought of as inflexible or overly prescriptive operating protocols.

We remain unclear of the intention regarding proposals contained in section 2, in terms of application to farmed trout. We note that there are discrepancies in the text between the Bill, BRIA and Policy Memorandum, it being unclear if these proposals apply exclusively to farmed salmon or for all farmed fish. More generally, we remain unconvinced of how practical the proposals contained in section 2 are, and whilst there could be situations where such provisions might be useful and lead to conclusive results this is unlikely always to be the case yet might still prove a significant use of resources.

**Part 5**

We appreciate the trend towards cost recovery and the transfer of cost from the public sector to the private sector. However, much of Part 5, 50 of this Bill is of concern to us. Whilst this legislation will only grant the legal basis for certain charging to be introduced at a future point, the Committee will appreciate our concern at the lack of detail provided during consultation on what future charging might look like. We are in no way reassured from the language used in supporting...
documentation (e.g. the BRIA) that charging will be “proportionate”. What is proportionate in the operation of a large scale multinational company or affluent fishery is often not “proportionate” to a small scale or micro business, already operating on tight margins in a highly challenging market. We have experience of the disproportionate costs to our members of other chargeable activity – for example certain SEPA licences – and are extremely concerned that the instigation of further charges applied wholesale to an industry with such disparity as the aquaculture industry will, if not carefully considered, render the smallest operators unviable.

At the point of any future charging scheme or cost recovery exercise being introduced we expect due consideration to be given to SME businesses. We would also expect any chargeable activity to be made available to open competition, and for any cost recovery mechanism to be fully transparent and open to appeal. Current charging schemes that cover other aspects of aquaculture production (e.g. SEPA) are considered to be inflexible with a disproportionate cost impact upon small scale aquaculture businesses.

This situation is further compounded for a Scottish trout farming industry that is in direct competition with businesses farming in England, Wales and Northern Ireland, where the regulatory landscape is significantly different to Scotland. Similar proposals as those outlined in this Bill are not under consideration elsewhere in the UK, nor indeed are we advised that they are likely to be. The Committee will appreciate the concern of Scottish farmers that they are to operate under a potentially higher cost burden than their competitors. It would also be detrimental to the Scottish industry were business development and expansion to take place at sites and locations elsewhere in the UK, to avoid the higher cost of production incurred in farming in Scotland. There is already significant cross border movement of trout, both in the table and restocking markets, and Scottish Government must consider the ramifications of any actions which make farming in Scotland a less desirable option to farming elsewhere in the UK.

**Concluding Remarks**

Although not relating to the actual text of the Bill, we retain concerns that the passage of this legislation will do little to address many of the criticisms which are directed at Scottish aquaculture. As important as any legislation is the need for Scottish Ministers to engage in an ongoing consultative process with all those interested parties involved in the aquatic environment, and for Scottish Government to develop a better understanding of the issues and motivations relating to aquaculture and fisheries interests. An informed and inclusive discussion process, that is semi-formalised, well resourced and established with the intention of enduring into the future, will better manage conflicts of interest, especially where there is no clear cut single option as to how best to proceed and where many issues at stake are those which cannot easily be resolved through either primary or secondary legislation.
Written submission from Callander McDowell

Whilst the focus of the Rural Affairs, Climate Change and Environment Committee must be on the content of the proposed Aquaculture and Fisheries Bill, it is also important to understand the background to the Bill.

When the Bill was first proposed, the then Minister for the Environment, Stewart Stevenson stated 'We need to ensure that both these sectors - and in particular farmed salmon and wild salmon interests - can continue to develop and coexist harmoniously.' The implication is that the two sectors do not currently coexist in harmony, which is actually a fair assessment. However, the main source of friction comes from the angling fraternity who blame the arrival of salmon farms on the west coast in the 1980s for the demise of local wild salmon populations.

There is no doubt that wild salmon numbers have fallen from a peak value achieved in the late 1970s; this effect has been noted in every ‘salmon country’ bordering the Atlantic. It is also true that salmon farming has developed in the North West coast and islands of Scotland although it did not begin until 1980, a full 10 years after salmon numbers started to decline. Unfortunately, the angling sector is determined to hold and promote the view that the reduction in salmon numbers and the development of fish farming are related and this disagreement is the basis for the absence of harmonious coexistence between the two sectors.

The total catches of salmon by netting and river angling in the areas of Scotland where there is salmon farming and in the areas where there is none have been in parallel since records began in 1952. However, rod angling catches have increased disproportionately on the east coast. Guy Linley Adams, solicitor to the Salmon & Trout Association has written that the only difference between east and west coast rivers is the presence of salmon farms. He is wrong. Firstly, the east coast was historically characterised by a much larger netting industry so when netting declined there was a much greater ‘release’ of fish into the rivers on the east coast than the west. Secondly, there is a huge difference in that east coast rivers tend to be many miles in length whilst the spate rivers on the west coast are very short and can have excessive flows at certain times of the year. During the 1980s, unusually high spates were recorded and these were thought to have washed salmon eggs and fry out of the river disrupting the natural salmon cycle. This took a few years to begin to recover and left a period when recruitment was extremely poor.

At the same time, salmon stocks returning to the rivers disappeared from west coast lochs. Inshore fishing boats aiming to catch mackerel sailed up and down the west coast hoovering up all the fish they found. They undoubtedly caught salmon on their return to the rivers. Salmon did eventually recover but inshore mackerel stocks have never returned. The impact of this inshore fishing was that many of the wild salmon nets were abandoned due to the lack of fish. The salmon netting station in Loch Ewe was closed due to a lack of any wild salmon two years before salmon farming arrived in the loch. Other factors are also said to have influenced the decline in wild salmon.

However, the past declines in wild salmon stocks can be reversed as ably demonstrated by the River Carron Restoration Project that has seen wild salmon catches recover from six fish per year to over two hundred. This is despite the presence of salmon farms in the locality.
Unfortunately, the success of the project has not received the support of the angling sector which prefers to focus their efforts on attacking the salmon farming industry. Over the years, they have continually lobbied the Scottish Government to take stringent action against salmon farms. They were successful in the early 1990s in pressurising the Government to adopt a presumption against farming development outside a limited area in the north west coast and islands, despite the lack of evidence to support this policy. Nonetheless, despite the restrictions, the Scottish salmon farming industry has developed highly responsibly in the areas available and has delivered huge benefits to Scotland’s west coast and islands. However, under the continued pressure of lobbying from the salmon fishery proprietors and occupiers, the Department of Rural Affairs and the Environment appear to have caved in to their demands. The proposed Bill is therefore a consequence of lobbying by the proprietors and occupiers of the fisheries and their industry organisations.

The willingness to listen to the demands of the angling fraternity appears to be reflected in the content of the proposed Aquaculture & Fisheries Bill. Whilst, the Bill aims to impose more stringent controls on the salmon farming industry, those proposed against the proprietors and occupiers of freshwater fisheries seem to be more concerned about the governance of the District Salmon Fishery Boards and the way that they conduct their Annual General Meetings. One columnist, writing in an angling magazine, has suggested that such legislation is totally unnecessary as the District Salmon Fishery Boards are already well-managed and that any proposed changes are simply a concession to the salmon farming industry to demonstrate that the Scottish Government are being equal-handed to both sides.

However, the repeated lobbying against salmon farming have actually deflected attention away from the need for even more stringent control within the freshwater fisheries sector. The sector claims to be irreproachable with regard to the management of wild salmon stocks but not all is what it seems. It would appear that the District Salmon Fishery Boards have abused current legislation aimed at protecting wild salmon stocks for their own advantage and gain. This is perhaps not surprising since their position as the main exploiters of the stock and the legal conservators has an obvious and fundamental conflict of interest.

Section 37 (1) of the Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003 states ‘The annual close time for a salmon fishery district shall be a continuous period of not less than 168 days and shall apply to every mode of fishing for and taking salmon to the extent provision is made for periods within that time during which it is permitted to fish for and take salmon by rod and line’.

These Close Times can only be varied on application to the Scottish Minister by the District Salmon Fishery Boards so if any close time is different to the 168 days as stated in the 2003 Act, then the change has been made at the request of the District Salmon Fishery Board. The significance of the Close Time is that it is the period during which the salmon spawn and therefore should be left undisturbed.
The current Annual Close Times set for the following rivers are:

River Tweed – 62 days
River Tay – 76 days
River Thurso – 98 days
River Naver – 103 days
River South Esk – 108 days
River Dee – 108 days
River Spey – 134 days

These Close Times demonstrate that the District Salmon Fishery Boards appear to be more concerned about providing sport for anglers and increasing the revenue for their members than for the protection of the wild salmon during this important period in their life cycle. These extensions to the angling season, and the resulting reduction in the Close Time, have all been approved by the Scottish Ministers, who have endorsed the applications from the District Salmon Fishery Boards.

The extension of the angling season in these rivers may be more significant than as an illustration of the need for stricter controls on the way that the District Salmon Fishery Boards operate because all the rivers listed above have been designated as ‘Special Areas of Conservation’ under the European Habitats Directive. The Scottish Government has obligations under the Habitats Directive and the way these rivers are currently managed is arguably in breach of the legislation.

When the Habitats Directive was brought into legislation, it was recognised that in some countries, certain protected species were hunted or harvested for food. Article 14 of the Habitats Directive places the onus on Government to change this behaviour and increase the protection of the individual species. This included the implementation of both conservation measures and by encouraging alternative sources of the species to be utilised for example by farming, reducing the need to hunt the species in the wild. As salmon are now widely farmed, there would appear to be no valid reason why wild salmon should now be caught and killed, yet they are in large numbers. In the case of wild salmon fished by rod and line, the primary aim of the hunting process is not for food but for sport which is very difficult to justify under the Habitats Directive or indeed on moral grounds.

Over the past ten years, anglers have been increasingly encouraged to adopt a policy of catch and release whereby the salmon after being landed are not killed but unhooked and returned to the river. Although 24,105 salmon were caught and killed in 2011, 73% of the fish caught were returned to the rivers. The River Dee District Salmon Fishery Board appears more enlightened than others and has adopted a mandatory catch and release policy throughout the whole season. There seems no reason why this should not be applied under the current legislation to all rivers in Scotland.
There is a negative side to catch and release and that is that it distorts the catch statistics. Recent catch data issued by the Scottish Government suggests that the salmon populations are relatively healthy. However, the data cannot distinguish whether a fish caught has already been caught previously. Marking wild salmon caught on the River Carron has shown that some fish can be caught three or four times in the same season. The increasing use of catch and release could be masking any declines in salmon populations in some rivers.

There is especially concern about the state of the Spring stock component of wild salmon populations. This has been in decline for many years and certainly well before the arrival of salmon farms. Marine Scotland has recently suggested that the Spring stock may be showing signs that it is stabilising. However, the supposed improved state of this stock coincides with the increased adoption of catch and release, especially during the spring months. The Spring stock remains at a historic low and it is difficult to comprehend why fishing is not only allowed to continue to this endangered stock, but some District Salmon Fishery Boards still allow salmon from this stock to be killed.

The Rivers & Fisheries Trusts of Scotland has advocated that a precautionary approach be adopted for any form of salmon exploitation. Spring stocks of wild salmon seem to be the ideal candidate and thus rod and line angling for salmon during the Spring run should be prohibited until recovery of the stock is apparent.

If the Scottish Government should adopt a more stringent approach to freshwater fisheries management there will be no doubt be a major outcry from the fisheries proprietors and occupiers and from anglers but their arguments are weak against the objectives of better protecting this iconic species.

As highlighted at the beginning of this document, there is more than one explanation for some of the claims made by the angling sector. Indeed some of their claims have already been found to be lacking. For example, they claim that escaped farmed salmon dilute the genetic integrity of distinct wild salmon stocks. However, the £1 million FASMOP project was unable to distinguish any genetic differences between different wild salmon stocks suggesting that these differences are more perceived than real. Clearly further thought is required on these issues for they will not be solved by this proposed Bill.

Stewart Stevenson, a past Minister, expressed hope that this Bill would enable those involved in both salmon farming and salmon angling to coexist harmoniously. The Bill has already failed in this aim and seems unlikely to lead to that end so long as salmon angling interests continuous campaign aggressively against fish farming – which represents the only sustainable solution for future fish supplies.
Written submission from The Crown Estate

Introduction

The Crown Estate welcomes the opportunity to contribute to the Rural Affairs, Climate Change and Environment Committee’s consultation on the Aquaculture and Fisheries (Scotland) Bill.

The Crown Estate is a public body and in Scotland has ownership rights to and manages approximately 50% of the foreshore and beds of tidal rivers together with virtually the entire territorial seabed out to 12 nautical miles, with renewable energy and (non-hydrocarbon) mineral rights out to 200 nautical miles.

The Crown Estate has played a central role in the development of Scottish aquaculture over the past 30 years, and is proud of this long association with an industry of national socio-economic importance, currently administering leases for over 850 aquaculture sites. We continue to invest in and recognise the importance of the continued prosperity and sustainability of this industry and its value to communities in Scotland.

Similarly The Crown Estate manages salmon fishing rights across Scotland which remain with the Crown as part of the hereditary possessions of the sovereign. There are 140 tenancies for rod and line fishing granted by the Crown Estate, a third of which are let to local angling associations providing public access to salmon fishing at reasonable cost for local anglers. The Crown Estate’s rural estates also include salmon and freshwater fishing rights on rivers such as the Spey and the Annan and these are let to a combination of local angling associations and managed syndicates. We have a relationship with the Fishery Board in each district where we have salmon fishing rights either being directly represented or through our tenants as our local mandates. The Crown Estate supports the work of the Boards and Trusts to create the environment in which sustainable fisheries for salmon and sea trout can be enjoyed.

The Crown Estate also has 48 remaining coastal netting stations, all retained in hand and non-operational as a matter of policy.

Response

Overview

The Crown Estate has no role or remit in sea fisheries matters and therefore our response deals solely with the aquaculture and salmon fisheries aspects of the Aquaculture & Fisheries (Scotland) Bill.

We see the Bill as essentially providing a legislative safety net for the aquaculture industry particularly, and this could be said to extend to the wild fisheries sector too. Much of what is being legislated for will already be practiced by most already, to acknowledged standards. Given the shared nature of the marine environment and the associated overlap of interests in question however, poor practice at any scale is to be avoided. We see this Bill as a means of achieving this. What we find encouraging in respect of aquaculture and salmon fisheries is that the Bill’s
intentions appear about ensuring the rudiments of productive relationships and management within and between these sectors and their stakeholders, through co-operation, best practice and transparency.

The inshore areas largely constitute a single space with respect to the overlapping extent of different interests. The measures proposed in the Bill appear broadly supportive of means whereby these are accommodated.

**Part 1: Aquaculture**

The scope of proposals in the Bill for the aquaculture industry, primarily the finfish sector, is broadly apposite in our view. While it has been stated that the Bill seeks chiefly through these to address interactions between producers of farmed salmon and wild salmon and sea trout interests, we think they can and do equally address those interactions between producers within the farmed sector itself. We see this latter aspect as key to the industry’s ability to achieve and demonstrate greater sustainability, both environmental and economic, and in seeking to ensure standards reflected in the industry’s Code of Practice, the Bill we feel will support this ambition.

It has long been held that, on the whole, control of sea-lice and successful risk management of other bio-security matters has been more fruitfully realised for the farmed salmon sector in circumstances where site operators are coordinating their activities strategically along the lines of Farm or (Tripartite Working Group) Area Management Agreement aims. It is in the spirit of such aims that responsible practices with respect to well-boat operation, stock containment and measures to address commercially damaging species might also be reasonably expected to be undertaken. Their inclusion as separate elements within this part of the Bill presumably reflects their wider potential significance across management area boundaries. In our opinion these all serve as the constituent parts of a responsible and collaborative farming whole, the absence of which in even small part, temporally or spatially, potentially puts wider industry and stakeholder interests at risk, notwithstanding responsible practices on their part. Having statutory powers available to avoid such instances would seem sensible, particularly where any potential new entrants are not necessarily signed up the industry’s Code of Practice or members of the Producers Organisation. We have seen spells of increased profitability in the finfish sector attracting somewhat speculative interest in development, not all of which will necessarily prove unsuccessful.

We consider that a mandatory requirement for Farm Management Agreements and Statements will assist and encourage industry to define appropriate management areas to further both the protection afforded existing farm developments and thereby, wild fishery stakeholder interests in turn. Co-operative relationships arising would, we hope, help to identify additional opportunities for development too.

We would however urge that implementation of these proposals, within the framework outlined in the Bill and the industry’s Code of Practice, should not be overly prescriptive and allow sufficient flexibility for agreements and statements to address local circumstances with appropriate terms. The strength offered by such agreements is their ability to address local problems with local solutions, and any inhibition of this will only serve to diminish their potential.
Apart from the requirement for Farm Management Agreements and Statements in Chapter 1, we have no further substantive comments on the proposals for equipment requirements, well-boat operation and controls for commercially damaging species other than as already mentioned that, with the obvious exception of legislative control measures listed, these could well conform with principles and practices that may be expected of signatories to a Farm Management Agreement anyway.

Part 2 Salmon Fisheries, etc

Governance and management proposals contained in the Bill would appear to have similar ambitions, namely ensuring best practice and accountability for the stewardship of these fisheries.

Powers to ensure that freshwater salmon fisheries are well managed in the long term and national interest are appropriate in our opinion. These measures complement proposals to address the protection of wild salmon stocks in the marine environment, and improved transparency on their governance should promote a wider understanding, and appreciation, of the efforts associated with it.

We endorse the intended measures for carcass tagging and fish sampling which we feel will benefit and strengthen conservation and management ambitions for this sector. On the whole the Bill’s proposals for management of salmon fisheries can be said to provide the appropriate legislative framework to ensure all fisheries are managed to an acknowledged standard.

Part 4: Shellfish

The Crown Estate agrees entirely with the introduction of provisions to protect shellfish growing waters, to address their continued protection when the Shellfish Waters Directive is repealed in 2013. This is essential support required by Scotland’s shellfish industry.
Written submission from the Dee District Salmon Fishery Board (Dee DSFB)

Introduction

The Dee District Salmon Fishery Board (Dee DSFB) welcomes the opportunity to comment on the general principles of the Aquaculture and Fisheries (Scotland) Bill. The Dee DSFB has restricted comments to Part 2 of the Bill but would support the position of the Association of Salmon Fishery Boards (ASFB) with respect to its comments on Part 1.

Part 2: Salmon Fisheries etc.

Section 20 includes a number of amendments to the 2003 Act in relation to good governance. Whilst many of these provisions look reasonable, we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation. For example the consultation asked three questions in relation to these issues: Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?; Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?; If yes, do you think such a Code of Good Practice should be statutory or non-statutory?

We have no difficulty with the principle of publishing annual reports and audited accounts and indeed subscribe to the ASFB Code of Good Practice.

Whilst we have no difficulty with the principle of open meetings, it is important and legitimate that some aspects of meetings can be held in private (e.g. when discussing deployment of bailiffs, CCTV cameras, staff wages etc.). It is also important that DSFBs are able to raise contentious ideas, which may never be taken forward, without concern that these would be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting. Without clear guidance about what it is acceptable to discuss in private, this provision could have the result of inhibiting discussion within meetings. Ultimately, potential Board members in districts in which there are particularly contentious issues to be faced may even be put off from volunteering and giving up their time. We are aware that this is already an issue in some districts. The RACCE Committee will discuss its Stage 1 report in private but we are not aware that the Committee operates under a requirement to state their reasons for meeting in private as is set out in the Bill for DSFBs. We would again note that, although the consultation document stated that a Code of Good practice could include recommendations for Boards to hold meetings in public, there was no consultation on a legal requirement to do so. The cost of moving these meetings to a venue with sufficient capacity for members of the public, would involve a significant expense, which may prove disproportionate for many of the smaller DSFBs. A partial solution would be that the annual meeting should be a public meeting.

If necessary Dee DSFB will seek support from ASFB to set up a formal complaints procedure. However, it should be noted that the processing of such complaints will usually be undertaken by the clerk. In the case of smaller boards, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue ‘campaigns’) becomes arduous, this will result in resources being diverted from other areas of operation.
Section 20 includes an open-ended power for Scottish Ministers to modify the good governance requirements by order. We do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny. If, for example, this power is used to prescribe DSFB functions in legislation, DSFB donations to Fishery Trusts (which totalled £610K in 2010) would have to be linked to specific services and therefore subject to VAT. This, coupled with the potential additional costs outlined above, could have a significant negative effect on the core funding of fishery trusts across Scotland.

The Aquaculture and Fisheries (Scotland) Act 2007 contains a provision that Scottish Ministers may by order approve any code of practice issued for the aquaculture industry. In our consultation response, we supported a similar approach being adopted towards the DSFB Code of Good Practice, and indeed this approach was specifically highlighted by Marine Scotland in the consultation. In the interests of fairness and equality between the two sectors, we would therefore suggest that this approach would be more proportionate and would allow us to deal with some of the issues highlighted above. We would of course be very happy to work with Marine Scotland and ASFB officials to ensure that the Code is consistent with the principles outlined in the Bill. We would be content for the Ministerial Power to dissolve the committee constituting a board to remain, in an amended form, to reflect the above approach.

Section 21 includes a duty to consult and report before making certain applications. We have no difficulty with this provision.

We welcome the inclusion of a power to introduce a carcass tagging system in Scotland but we believe that this provision should be delivered in primary legislation. Carcass tagging was a clear recommendation of the mixed stock fisheries working group and there was overwhelming support for this provision in the consultation. Whether delivered via primary or secondary legislation, we would seek a clear assurance that a statutory system, using individually numbered, recorded tags, will be in place in time for the 2014 salmon fishing season. Any system which does not use numbered tags would not allow verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act). Equally, DSFBs are strongly in support of a national carcass tagging system for all rod caught fish not returned to the river. We believe that carcass tagging of rod caught fish would be a useful tool to aid DSFBs in ensuring compliance with their conservation policies.

We welcome the inclusion of a power to take fish or samples for analysis. Genetic analysis is a key tool in modern fisheries management and will enable rational management decisions to be made. We believe that genetic samples can be taken without killing the fish in question but where such sampling would be likely to involve killing fish we consider that the local DSFB should be fully consulted prior to sampling taking place.

Section 25 provides that Scottish Ministers can impose requirements on DSFBs and proprietors in relation to the monitoring of certain orders. We believe that monitoring of such orders is consistent with evidence-based management and on that basis we are supportive of this in principle. However, this section also makes failure to monitor and evaluate the effects of an order a criminal offence, on which a DSFB may be convicted.
on the evidence of one witness. This appears to be totally disproportionate, and again, may result in potential Board members being put off from volunteering and giving up their time. Also we believe that Section 25 should only apply where a DSFB or proprietors have applied to Scottish Ministers for such an order.

Section 26 includes an open-ended power for Scottish Ministers to vary the procedures for various orders. As we stated earlier, we do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny.

Other issues

The need for the equitable burden of conservation was recognised by the Mixed Stock Working Group. There is currently an imbalance in that burden between the exploiters of the resource. In 2010, net fisheries accounted for over 45% of the retained catch, but only contributed 1.3% of the total funding raised by DSFBs for fishery management. As a specific example, the RACCE committee has visited both the River Dee, and Usan Salmon Fisheries Ltd. The Dee DSFB operates a policy of 100% catch and release and puts significant investment (both private and public funding) into the health of the river, with significant wider environmental benefits. However, recent work by Marine Scotland Science on the South Esk Fisheries Management Demonstration Project has shown conclusively that a significant proportion of the commercial catch at Usan, originated from the River Dee. Despite this exploitation, the Dee DSFB receives no contribution for fishery or conservation management from this mixed stock fishery.
Written submission from the Esk District Salmon Fishery Board

The Esk Board’s comments are limited to those sections of the Bill dealing with fisheries as there are no significant aquaculture developments within the Esk District

(i) Governance issues

We endorse the concepts of openness and good governance and therefore support the proposals incorporating:

- Codes of practice for good governance
- Public meetings and open Board Meetings
- Publishing Annual Reports and Accounts
- A formal complaints procedure

(ii) Monitoring and changes to orders

We would add that any decisions (orders) which might impact on the status of salmon stocks should be based on appropriate peer-reviewed scientific evidence. If such evidence is not available then the precautionary principle should apply. Monitoring requirements should be proportionate to the expertise and resources available to Boards and agreed in advance with Marine Science Scotland. As advisors to Ministers, Marine Science Scotland should support the task of monitoring with Boards. These points are consistent with evidence–based management which is strongly supported by the Esk Board.

(iii) Carcass tagging

We support the concept of carcass tagging for all salmon killed. A sequentially numbered system is essential to ensure full accountability.

(iv) Board funding;

Current inequalities in respect of the valuation of salmon fisheries should be addressed to ensure a more equitable funding regime for Boards. In particular, a system of assessment with a greater orientation towards catch would be fairer and ensure that those who take most fish contribute proportionately.
Written submission from Europharma Scotland Ltd

Re: Sections 53-57, Policy Memorandum, Aquaculture & Fisheries (Scotland) Bill

I wish to bring to your attention that - contrary to the implications of section 55 of the Policy Memorandum relating to SP Bill 17 (copied below) - in Norway the genotyping methodology for traceability of farm escapes is not the only approach being taken, and recommend that Scotland also evaluate the alternative method being trialled there: physical tagging of fish.

Genotyping is limited as it cannot provide a tool to identify from which individual farm a given fish has escaped, but rather it will only inform which strain - and family within a strain - a fish comes from. Strain/family are not farm-specific, as not only are fish from given families sold by breeders to several hatcheries/producers, but at a given hatchery, the fish are graded into multiple groups several times and then sent to several marine sites, such that a single family will often be split into at least 9 different populations, and with egg production almost year-round now, part of a family may even be released in a different year class/ or generation from the rest.

Given the above Norway is also trialling coded wire tagging, which has been used for many years on many millions of hatchery-released fish in the US Pacific North West as a means of monitoring numbers returning and from which hatchery and population the fish came from. In the context of farmed Atlantic salmon this may be carried out such that all fish in a given population, destined for a particular seasite, are tagged with the same unique code at point of vaccination, i.e. shortly before seawater transfer. The tag is tiny and inserted into the snout of the fish and the suppliers are able to provide an industry-wide database of ID codes for all farms, facilitating instant identification; this is unaffordable and impractical in genotyping, as reflected in section 57 below.

I thus recommend the policy be amended to recognise that tagging is being trialled in Norway, and provision for testing this method be similarly included alongside genotyping in Scotland.

AQUACULTURE AND FISHERIES (SCOTLAND) BILL

Policy Memorandum

October 2012

55. Marine Scotland Science is developing a methodology on the use of forensic tracing of escaped farm salmon in Scotland. A scoping study considered the feasibility of adopting Norwegian fish farm escapee traceability methods and is based on the development of molecular genetic methods for the discrimination of farmed and wild salmon, and for the determination of whether wild caught salmon originate from local farms or have an alternative wild or non-wild origin. The methodology now requires robust field-testing.

56. If the method is proved in a Scottish context, in the absence of other evidence, Marine Scotland may use it to determine which farms are losing fish so that
companies can be notified accordingly to mitigate against further losses. This is likely to result in an investigation at a site where escapes are suspected, but have not been reported. Existing provisions do not permit inspectors to take samples of fish from neighbouring farms upon which future investigations and tracing could be based. The powers proposed will allow for inspectors to take fish from:

- a farm suspected to be the origin of an escape, although that site has not reported an escape;
- a farm which either supplied the ‘escaped’ stock under investigation or a site to which the remainder of the stock was moved for growing-on; or
- a site operating in the vicinity of a suspected escape and which may be the origin of the escape.

57. It is not the intention to undertake universal sampling or to create a national database of genetic samples, as this would be impractical, unaffordable and unnecessary. Powers would be used on a targeted basis when other methods of tracing have proved unsuccessful. Methods employed will not be restricted to genetic testing but may also include taking samples for testing using chemical methods.
Written submission from Andrew Graham-Stewart

I have taken a close interest in, researched and written extensively about Scotland’s salmon netting industry for the last 20 years.

The provision within the Bill for an enabling power for Scottish Ministers to introduce a statutory carcass tagging system by regulations is welcome. Whether this is delivered via primary or secondary legislation, I believe that it is vital that it incorporates individually numbered and recorded tags in line with other parts of the UK.

Such a system is imperative if some anomalies associated with the netting industry are to be addressed (carcass tagging without numbers is no more than a marketing exercise):

1) Under-reporting of catches is widespread in the netting industry. This is exemplified in microcosm by the fact that the official catches (published by Scottish Government) show that the declared net and coble catch for the Cromarty Firth was four salmon and 56 grilse in 2010 and eight salmon and 13 grilse in 2011. In both these years four netting stations, each with crews of three or more, were operating in the firth; in 2011 the average catch per station was just two salmon and three grilse – a pitiful return of half a fish per week for what is for some of them the best part of two months work. On the face of it the nets would appear to run at a considerable loss and yet year after year they continue to ply their trade. This situation is mirrored in other locations.

So far as I am aware there has never ever (since the system of catch returns was introduced in 1952) been a prosecution for falsifying a catch return. The authorities (notably FRS and their successors Marine Scotland) are strangely reluctant to investigate the discrepancies between netting effort (including labour costs) and the income from sales of the declared catch.

Carcass tagging with individual numbers would ensure far more accurate catch returns to Marine Scotland.

2) Carcass tagging with individual numbers will also help to curtail the laundering of fish from England, Wales and Ireland, all of which now operate numbered carcass tagging schemes. In particular there is a problem with spring salmon taken in English nets (which are permitted to kill sea trout but not salmon prior to June 1) being moved to and laundered through Scotland.

3) In addition numbered carcass tagging will make it much more difficult for illegally caught fish (poached in either the marine or freshwater) to find a ready market. This is an absolutely key conservation point. Poaching (a form of wildlife crime) will no longer be such an attractive proposition, given that the only way of procuring tags will be through a legal netting station. Furthermore procurators generally view existing salmon law as too complicated and difficult to achieve convictions on. Carcass tagging will simplify matters. If salmon or sea trout were being sold without a numbered tag, then there is no argument that an offence is being committed.
Usan Salmon submission (as published online by the RACCE Committee)

I note that Usan is advocating that responsibility for policing coastal netting stations be moved from Fishery Boards to the "Inshore Fisheries Team". Leaving aside whether the latter would have the capacity to take on this responsibility, this proposal makes no sense as, in contrast to other fish stocks in inshore waters, salmon and sea trout migrate from and to freshwater and to separate the management of these species in freshwater from that in coastal waters is both naïve and contrary to the best conservation principles.

One can only assume that Usan are seeking to prevent scrutiny by Fishery Boards of what appears to be systematic breaches, at all three coastal districts in which the company currently operates, of the regulations (introduced for conservation reasons) requiring operators of fixed engine nets to lift the leaders (in other words – not be fishing) during the weekend close time between 6 pm on Fridays and 6 am on Mondays.

With Usan, failure to lift the leader at weekends often appears to be the norm rather than the exception. I am not aware of any evidence that coastal sea conditions have deteriorated significantly in the summer months in the last few years. Furthermore it could be argued that Usan should invest in boats that are fit for purpose and able to cope with adverse weather, thus enabling them to operate in line with the regulations.

Aquaculture

With reference to the aquaculture sections of the Bill, I fully endorse the submissions of the Salmon and Trout Association and the Association of Salmon Fishery Boards.
Written submission from the Highland Council

The Highland Council welcomes the opportunity to respond to the call for views on the Aquaculture and Fisheries (Scotland) Bill. The Council contributed a full response to the previous Marine Scotland Consultation on proposals for the Bill.

The Council acknowledges the importance of the Scottish aquaculture industry in a Highland, Scottish and European context. In particular it notes the Scottish Government aspiration of 50% expansion in Salmon production by 2020, as set out in the consultation on the Draft Marine Bill. In supporting the aquaculture industry in Highland the Council also recognises that there may be legitimate environmental concerns regarding the on-going expansion of the industry. These include but are not limited to latent capacity held on sites that are unused. The impact of salmon farming on biodiversity within the environs of the sites, and the landscape impacts of developments which are continuing to increase in scale.

In commenting on the Bill as introduced The Council is pleased to note that it finds the majority of the proposed legislative changes set out in the Bill as introduced to be broadly acceptable in as far as its interests are concerned. It is, however, disappointing that a number of the proposals set out in the consultation have not been carried forward into the Bill as introduced. There is no indication within the consultation analysis whether these aspects will be further considered and we comment on issues of concern in more detail below.

Part 1 – Aquaculture

Chapter 1 – Fish Farm Management - Farm Management Areas

The Council wishes to reiterate its comments regarding the setting of Farm Management Areas. The relationship between the Management Areas advocated by Marine Scotland and the Farm Management Areas as set out in the CoGP remains unclear. Many of the FMAs depicted within the CoGP are very small containing only one farm. This does not, provide for whole loch management.

The Council welcomes legislation proposed to make Farm Management Areas and Farm Management Plans mandatory. It is not, however felt that it is appropriate for these areas to be set and controlled by the industry. This would not in our view allow Local Authorities to effectively consider Farm Management Areas as part of a mitigation package when considering planning applications for Marine Fish Farms. The FMA could potentially change during the life of the site. The Council would favour the establishment of compulsory Farm Management Areas set along similar boundaries to those Management Areas currently set out by Marine Scotland. Once set these boundaries should be fixed to allow them to be effectively utilised in development management. However, it is also felt that wild fisheries interests should be included in the development of Farm Management Plans. We make this comment on the basis of consistent advice from Marine Scotland Science that maintaining sea lice numbers at the levels set within the CoGP may not prevent large numbers of sea lice being discharged from the site and having an impact on wild salmonid populations. In our experience there were considerably fewer differences of opinion between fish farmers and wild fisheries interest in those areas where Area Management Agreements had been set up under the guidance of the
Tripartite Working Group. The Council long expressed the view that the AMA’s should be statutory, and we feel that our concerns in relation to the proposed process are consistent with that view.

**Existing consents**

In drafting the Bill the opportunity has not been taken to resolve the disquiet expressed by many stakeholders regarding the presence of undeveloped sea bed leases previously granted by the Crown Estate.

The Council had every expectation that the Review and Audit of pre April 2007 sites that has been “in process” by Scottish Government since 2007 would have dealt with the serious concerns regarding the presence of undeveloped sea bed leases previously granted by the Crown Estate. Our main concern is that the presence of existing undeveloped capacity forms a constraint to new development in many of Scotland’s sea lochs. For example, it is difficult to support developments for new shellfish farms in lochs where on paper at least there are existing consents for extensive salmon farms.

In practice the Review and Audit has compounded the problem. As part of the process Scottish Government issued a Permitted Development Order in February 2011 granting blanket planning permission for existing sites within named sea lochs. Almost two years later we continue to await vital, yet basic, information from Scottish Government such as the specific sites included in the order, and the site areas. In responding to the consultation the Council suggested that if such information was not available then the Permitted Development Order should be revoked. It has been suggested that this would not be possible as it would remove Planning Permissions and would be open to legal challenge. This response in itself suggests it must be know what has been granted by the order. It is difficult to fathom why Scottish Government is unable to furnish Local Authorities with the appropriate information.

Highland Council would urge Scottish Ministers to consider the role of the 2011 Permitted Development Order and to determine whether or not that Order was fit for purpose and if necessary seek to repeal the Order through the Aquaculture and Fisheries (Scotland) Bill. We consider that clarity regarding which existing developments should be entered into Local Authority Planning registers is vital in ensuring the sustainable development of the industry going forward.

**Time limiting of consents**

The consultation considered the issue of seeking to time limit consents for fish farms. The aquaculture industry has stated that to have a consent granted for a limited period reduces investor confidence. We have some difficulty in accepting that this is the case. If sites are operated in accordance with their planning permissions in compliance with the industry CoGP thereby minimising the impact on the receiving environment there should be no reason why time limited consents would not readily be renewed. In addition time limiting consents provides for the site to become a development opportunity if it is not used. The Council is of the view that over time the ability to time limit consents it would remove the number of dormant sites and latent capacity within the Scottish aquaculture industry.
Chapter 2 – Fish Farming Equipment and Wellboats

The Council welcomes the introduction of enabling legislation related to the implementation of a Scottish technical standard for cage construction. In addition to the stated provisions of regulations the Council is of the view that that there should be provision for cages to be fitted with a manufacturers plate along the lines of those required in the manufacture of boats. This would allow improved traceability. Any technical standard developed and supported by regulations should recognise that there are situations where square cages are preferable to circular ones and a maximum cage size should be specified.

Part 4 - Shellfish

Protection of shellfish waters

The Bill as introduced provides for the designation of shellfish water protected areas. The Council suggests that within these provisions there should be the specific ability to rule a shellfish harvesting area out of designation as a shellfish water protected area in the event that the designation would present a significant constraint to onshore economic development. For example the Shellfish designation may require additional sewage treatment infrastructure to upgrade discharges to the water body. If funds are not available to carry out this upgrade this may lead to developments not being able to proceed due to lack of infrastructure.

There is also a need for consistency in the definition of shellfish. This would avoid potential confusion and provide clarity on the licencing requirements and procedures to be followed for aquaculture development proposals. The Council has a specific concern in relation to the farming of sea urchins. Echinoderms are specifically included within the definition of “shellfish” within the planning acts. They are however ruled out of the definition of shellfish proposed in line 12, page 43 of the Bill as introduced, as they are neither crustaceans nor molluscs.

Orders as to fisheries for shellfish

The point made above in relation to consistency in the definition of shellfish also applies in this section.
Written submission from Marine Concern

Introduction

The Scottish aquaculture industry's credentials have improved greatly during its 40 years of existence, however in order to continue its improvement and in order to overcome the advances versus problems due to its massive, by an order of magnitude in 20 years, expansion it still has to go further; unless this is achieved Scotland has the potential to face problems comparable with the early days of the industry, which is not something that Scotland should be proud off.

Currently the Scottish Parliament and Government appears to be transfixed on the concept that the term 'maximising sustainability' are two words that can comfortably sit together in the same context. The generally accepted understanding of sustainability is one of, - addressing the needs of today's generation without affecting the needs of future generations. In the marine environment our knowledge of ecosystem dynamics is inadequate and as such the Precautionary Principle must be applied when the effects and indeed accumulative effects are unknown or at best poorly understood. This has become even more important with the change in requirements for pollution 'foot-print', and pollutants released into the water column, more so when combined with the prolific expansion of an industry with little to no facility to assess accumulation or even magnification of unwanted by-products.

It is unfortunate that in nearly three years of the Marine (Scotland) Act 2010, the concept of 'real' and 'effective' spatial planning has not filtered down to those responsible. Currently it appears that those with planning powers know little or pay scant regard to the marine environment, especially to the longer term. It appears that the push for salmon farming will go ahead regardless of its surroundings and indeed other industries such as fishing and tourism. The Marine Act covers the management of seals, which generally results in the shooting of the seals. Whereas with proper spatial planning and the use of fully encompassing double skinned anti predator nets of a mesh size so as not to entrap other wildlife would effectively render shooting obsolete. Increasingly we are fed the term 'last resort', with reference to shooting whereas in effect without the use of true double net structures as mentioned above it is in fact a matter of 'first resort'.

Currently this government and its agencies appears hell-bent on promoting the used of acoustic deterrents, even though they are known to have an adverse effect on cetaceans, they have even been recommended deployment in cetacean hot spots. The scientific research is far from conclusive as to the effectiveness of these acoustic deterrents for seals; much of the evidence is anecdotal from fish farm workers, visual surface accounts. With the exception of high up in a river system there is a dearth of robust evidence. The use of acoustic deterrents is another form of pollution with little benefit either to the industry or the environment. Depending upon the source type, i.e. the intensity from either acoustic deterrent devices (ADDS) or acoustic harassment devices (AHDs), and the local morphology and seabed type; sound propagation can affect an area up to 20 Kilometres from the point source.
**Fin Fish Aquaculture**

The Aquaculture and Fisheries Bill has the opportunity to address failings in the Marine Act process by including a containment method that would prevent many of the known problems currently seen in the farming of Salmonids. Two methods are proposed: the first; closed containment (floating and/or onshore), would almost eliminate predation, escapes and pollution (including genetic gene pool of wild salmoids). It could even generate further revenue as a source of fertiliser, therefore off-setting any additional cost.

The second, the fitting of effective, fully encompassing double layer anti predator nets, a relative easy concept with the modern Polar Circle structures, especially when fitted with the well known to the industry, Froyer Ring. In order to avoid further criticism these supplementary nets should be of a mesh size so as not to trap additional wildlife. Such nets would have the ability to contain escapees and reduce other predator attacks such as that from the small percentage of seals that have become 'salmon specialists'.

Both methods might require a slight increase in extra manpower, but as that is being held as one of the industries most important assets that could be a win-win situation.

A reduction in fish stock density is seen as being potentially advantageous for several reasons; better welfare of the fish, reduced disease, and reduced sea lice infestations. All are of benefit to the industry and a secondary benefit to the environment as reduced dosing and treatments could result, with less toxic chemicals being released into the sea.

**Shellfish Aquaculture**

Generally shellfish farming is held as a less environmentally damaging activity than fin fish farming especially that of salmon production. That said, it has the potential to alter enclosed fiordic loch ecosystems; a matter of loch carrying capacity. Currently most farmed shellfish farming utilises species that filter feed, and most species are very efficient at doing just that. They feed on particulates, and that includes anything small enough to be caught, trapped and/or siphoned. These particulates include species lower down in the trophic levels (food chain) including fish larvae. Industrial scale shellfish farms have the ability to prevent even alter the natural balance in relatively enclosed systems.

Netting used by most mussel farms causes by-catch, as the industry increases so does the death toll to surrounding species. As with the potential to alter contained loch systems by-catch also needs to be addressed.

**Poly-Culture**

Scotland has a massive resource available to it along its coastal fringe. In Europe Scotland’ coastline length is second only to Norway, but even this massive resource can and arguably is being miss-managed and abused. Polyculture has the ability to offset many issues identified with current methods of intensive fish farming. The introduction of polyculture could also be seen as an opportunity for further
commercial growth, while at the same time in the case of algae production naturally cleaning up an industry that arguably currently holds 'bad neighbour' status.

**Penalties - Fines**

Much of the industry is self-regulated; self-regulation is known Worldwide not to work. Many accounts have been recorded in Scotland both through the Press and Courts of fish farming companies in breach of their guidelines/laws. In the huge Scottish marine area much of this abuse goes unnoticed, unrecorded. Remote, rural and marine locations combined with the Scottish Law requirement of corroboration makes for gaining evidence increasingly more difficult. During these times of austerity the enforcement agencies are increasingly left stranded, leaving an 'open' situation to any industry wanting or capable to exploit it.

In the past puny punishments mean re-offending, poor/no spot checks mean that few are actually caught. Independent, legal enforcement to the industry is a must, with fines large enough to ensure that even the most unscrupulous conform. In this light, powers must be available for instant access to installations, and penalties should include custodial sentences for the people responsible both 'hands-on' employees/contractors and management.

**Conclusion**

Even in the 21st Century we still have limited knowledge concerning the full effects of marine ecosystems. It is these very same ecosystems that provide for our various industries, including fisheries and tourism. Adverse alterations to these ecosystems can affect both our wellbeing and climate; effectively we are meddling in the dark. While these industries remained relatively small scale the adverse effects had also been relatively low-key; this has now altered big time and the effects have the potential to be magnified in specific locations.

Industry self-regulation does not work; independent checks must be compulsory. Much of this abuse goes unnoticed, unrecorded, especially in remote, rural and marine locations. This is a big profitable industry, fines must be set at a scale that make industry officials and stakeholders aware, wary and abide with legislation.

Smaller scale, environmentally friendly, 'real' sustainable (not sustainable for the industry on a short time scale) industry is the only way to go for the longer term. Large scale intensive farming is problematic on many fronts, so much so that in the case of disease the industry has the potential to collapse as has been seen in regions such as Peru. If the Salmonid industry is to prosper then the sourcing of truly sustainable fish feed needs to be addressed, not adversely affecting Global fisheries and potentially causing famine in Third World Countries especially for what is generally seen as a luxury goods/food item.
There are numerous threads in the arguments for and against salmon aquaculture:

- Landscape modification, neutral or deterioration.
- Local employment, improved or otherwise.
- Local prosperity, enhanced or otherwise.
- National prosperity, enhanced or otherwise.
- Scottish Government treaties and policy re farmed fish production.
- Contradiction of government policies on commerce and conservation.
- Noise and light pollution.
- Fish feed and effluent pollution: dilution and dispersal.
- Chemicals added to the environment.
- Escaping diseased non-native fish species and ‘pollution’ of local wild gene pools.
- Fish/sea lice attacking wild fishes.
- Wild fish population crashes (e.g. salmon, sea trout, cod).
- Ecological effects on the sea bed beneath fish farm.
- Ecological effects beyond the fish farm, nearby and distant. Biodiversity and habitat safety.

This discussion will deal specifically with ecological effects of fish farming on biodiversity and ecology in the Lochs Slapin, Eishort and Scavaig, the south Skye lochs. Meanwhile, the other issues all need to be addressed.

JOINED-UP THINKING NEEDED AT HOLYROOD

“It’s great news for Scottish aquaculture. It’s great news for the salmon industry. [Farmed salmon] is part of the essence of Scotland. Two years ago Scots salmon sales [to China] were zero. Now they’re about fifty million pounds. That's all happened through the work of the [aquaculture] industry and through the work of the Scottish Government, making sure that that great Scottish product is moving into new market places.” – Alex Salmond (Scottish First Minister).

“This study has shown that the salmon farms had demonstrable detrimental effects on the conservation status of the maerl beds studied to

“The waters around Scotland are rich in such fascinating biodiversity and it's our responsibility to protect this fragile environment. That’s why we have ramped up our marine survey work, with plans being prepared for new surveys in 2012 to further our knowledge of what lies beneath Scotland’s seas.” – Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment).

On one hand The Scottish Government seeks to double farmed salmon production so that it may fulfil a trade agreement with the Chinese Government, whilst on the other it is proud of its measures to conserve the marine environment. Scientific research shows that the two are incompatible. To many informed people, no matter what fish farmers claim is their case, salmon fish farming in open waters is an unsustainable procedure that should cease altogether. Moreover, whether or not we agree with a global ban, there are good specific, local reasons to consider south Skye lochs are unsuitable for aquaculture.

Skye has been targeted by multinational companies, mostly of Norwegian origin, for a massive increase in fish farms and aquaculture companies are competing for – cynically, *co-operating to occupy* – positions in all Skye sea lochs. A recent application for planning permission¹ from Marine Harvest² has now passed the public consultation stage (2 November) and we await the outcome. The location of this proposed fish farm is by the coast off the western shore of Siusnish by Loch Slapin (NG 582167).

Public responses were ninety against and one for, statutory consultees’ responses have been far from favourable and Marine Harvest does not hold the lease on the site for which they applied for planning permission. That doesn’t mean that the site is likely to be reprieved, because another Norwegian company called Grieg Seafood Hjaltland UK Ltd³ (Hjaltland) is also looking for options in the exactly same place and it seems they, or perhaps another company, do have the lease (hence suspicions about collaboration). They also seek to install fish farms in another two sites (in Loch Eishort) as well as another three in the Sound of Soay, Loch Scavaig, at the foot of the Cuillin Hills and more besides, outside the south Skye region.

**BIODIVERSITY: UK Biodiversity Action Plan – Skye & Lochalsh Local Biodiversity Action Plan**

The three south Skye lochs under consideration by fish farm companies, Slapin, Eishort and Scavaig, are undeniably a major part of some of the most glorious and underdeveloped scenery in Scotland, places of peace and *spectacle*, much loved by locals and visitors. Views of the area are admired and enjoyed from every angle, from Cuillin summits, from out at sea, from Elgol, Camas Malag, Ord and Tokavaig.

¹ http://wam.highland.gov.uk/wam/applicationDetails.do?activeTab=neighbourComments&keyVal=MAJJ5LIH09500&neighbourCommentsPager.page=1
² http://www.marineharvest.com
³ http://www.shetland-products.com
However, the biology of the three lochs, if less often appreciated than the scenery, is of vital importance. Here are the marine locations of UK Biodiversity Action Plan (BAP) Priority Habitats and Species, key ecological designations that are ostensibly protected by law. Not, it seems, when aquaculture is the political preference, and their underestimated qualities tend to get ‘overlooked’. Whilst he biology of these lochs is of extraordinary ecologically importance, it also informs and educates countless local and visiting naturalists and lay people, not forgetting children.

Therefore, it has become my task as best I can to identify the biota and biomes that live in and around these lochs and, with the help of the community and maybe divers from here and elsewhere, to map and record their locations and extents accurately. The aim of this exercise is to place data previously unavailable, inaccessible or underappreciated before the statutory bodies who will then be obliged to consider them in the light of Scottish and international conservation law.

**MAERL BEDS**

Maerl beds consist of several different calcareous red algae (seaweeds) the presence or absence of which is often related to the salinity of the sea water they live in. The waters of Lochs Slapin and Eishort are, except near the mouths of burns and rivers, more-or-less fully saline and the maerl species in the lochs are predominantly *Phymatolithon calcareum*. Beneath the waves and alive, *P. calcareum* is deep purple-red, whilst dead fragments pile deep on loch shores as the pure white ‘coral’ that makes beaches so attractive to visitors. Both dead and alive, maerl is home to an incredible array of marine species and not only is it considered to create a UK BAP Priority Habitat in its own right, but when occupied by sea/eelgrass *Zostera marina* forming ‘meadows’ or gathered into reefs by horse mussels *Modiolus modiolus* and flame shells *Limaria hians*, maerl is the basis of three other UK BAP Priority Habitats. A fifth UK BAP Priority Habitat is the intertidal boulder beds we find all along these loch shores where numerous unusual and rare creatures are routinely found and a sixth, mud habitats in deep water, is found at the proposed Suisnish fish farm site.

The above named organisms that variously make up the four maerl-based UK BAP Priority Habitats have been recorded in the area of Lochs Slapin and Eishort, yet in most cases their locations have yet to be properly mapped. Once disrupted or eliminated by dredging or eutrophication, slow-growing maerl may take hundreds of years to recover. Therefore, damage to maerl beds is unadvisable if local extinctions and ecological impoverishment are to be avoided. Due mainly to dredging for its lime content, Maerl has long been in decline and recently aquaculture has been recognised as an additional adverse pressure compromising its existence.

The main threat to maerl in the south Skye lochs will be eutrophication, changes (usually increases) in nutrient levels caused by inputs of feed at fish farms, excess feed and excrement. This amounts to many additional tonnes of compounds based on carbon, nitrogen and phosphorus, which unless immediately diluted to extinction, will have profound, perhaps irreversible detrimental effects upon marine ecosystems

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4 A Biome is a large naturally occurring community of flora and fauna (biota) occupying a major habitat.

5 Eutrophic describes the excessive richness of nutrients in a lake or other body of water (or soil). Oligotrophic is the natural, low nutrient state of a habitat and Mesotrophic is in between.
as they drift around the lochs. In the past, such changes have passed unnoticed, because 1. beneath the sea they are unobservable, and 2. Local marine ecosystems have not been fully recorded and understood, if at all, so that past qualities cannot be recognised.

Scientific literature attests to these facts (see References): Grall & Hall-Spencer (2003); Hall-Spencer et al. (2006); Sanz-Lázaro et al. (2011); European Community Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora; Greathead et al. (2012).

Loch Slapin has a maerl bed somewhere not far off Suisnish (persuasive evidence around Kilmarie and by Dun Liath, and to a lesser extent at Torrin where we have also found persuasively significant numbers of seagrass fragments).

Loch Eishort is the jewel in the local lochs crown, with visible and well visited maerl beds and seagrass beds exposed at low spring tides, and records of horse mussel and flame shell reefs, which very much need to be accurately located and recorded.

The four maerl-based habitats, plus intertidal boulder beds and deep water mud, make six UK BAP Priority Habitats in these lochs and the records we have allow only glimpse into which and how many vitally important species are present there. These aspects of natural history have been overlooked or ignored so far by fish farm environmental impact assessments, so it is an aspect of planning that needs to be emphasised, recognised and urgently remedied.

NORTH SLEAT SEASHORES & THEIR THREE LOCHS

The author has visited the north Sleat shore on numerous occasions as well as surveying the entire coastline for a Highland Council publication, assessing the qualities of 46 selected shores known or suspected to be far from ordinary. He is of the opinion that the shores that run from the Point of Sleat to Drumfearn, Broadford to Kyleakin, Plock of Kyle to Fernoig are perhaps the finest in the Highlands (possibly in Britain) for seashore biodiversity, with a few outlying special places including Laide, Balchladdich, Balintore and others.

It should be noted that a common feature of these finest south Skye and western Lochalsh shores is offshore beds of maerl.

For seashore biodiversity, these shores require protection or else their quality is likely to deteriorate, becoming ordinary and of reduced interest to the biologist, as has already happened in other places, e.g. Robin Hood’s Bay in Yorkshire and Millport, location of one of the world’s foremost marine biology institutes. The author witnessed catastrophic ecological declines at these places during over thirty years of visits from the mid 1970s well into the 2000s. There are species in Skye and Lochalsh that are rarely found elsewhere and lots of them, though this unusual richness is recognised by very few people.

Many are highly sensitive to pollution, such as is inevitable in the vicinity of, for example, a sewage outfall, a river that has run through intensively agricultural land or

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a fish farm. It is inevitable that after large quantities of fish food have been poured into cages and later released into the marine environment as excess or fish excrement, that nutrient levels will change locally and certain chemical compounds and sediments, that might detrimentally affect sensitive habitats nearby (or unexpectedly distant) will increase significantly and drift into other areas of the loch system.

It is well known that environmental increases in organic, nitrogenous and phosphoric compounds particularly, as they increase productivity they also suppress biodiversity. In lochs with fish farms toxic algal and cyanobacterial blooms are becoming the norm, even we hear, during the days of fish farming at the head of Loch Eishort, off Heaste in the region being discussed here.

Natural ecosystems thrive on low concentrations of nutrients, parsimoniously recycled via ecological (often symbiotic) networks of their component species. Artificial monocultural systems lack those ecological mechanisms for recycling and, therefore, behave completely differently. Inputs must be set to excess, leading to massive wastage that is detrimental to surrounding land – we plainly see these in agricultural situations – or in the case of fin fish aquaculture, sea waters.

Contrary to the conventional, naïve optimism of politicians and lay persons, natural ecosystems which we cannot fully define – e.g. maerl-based habitats – cannot be restored once degraded. However, what we do know, because statutory Scottish authorities tell us so:

“... evidence suggests that maerl continues to be under threat from damaging human activities, such as fisheries and fish farm operations.”

“Eutrophication is also considered to be an important threat to maerl beds.”

“... the true value of maerl is as a living community, for the many animals that shelter amongst it, and the commercially valuable species it helps support.”

“Protecting living maerl beds is vital to the wise management of Scotland seas.”

“Scotland’s seas provide rich and diverse ecosystems that are home to a wide array of plants and animals, including internationally important species. It’s our duty to protect this precious environment.” – Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

FINALLY

9 ibid.
11 ibid.
12 ibid.
13 ibid. footnote 5 above.
“With many new discoveries 2011 has been an exciting year for everyone involved in the marine surveys around Scotland. Scotland’s seas really are a fantastic asset. The findings from [a series of 15 marine surveys in 2011] will help us to manage them sustainably and ensure future generations can also enjoy the benefits of a healthy and diverse marine environment.” – Susan Davies, director of policy and advice with Scottish Natural Heritage.

Judging by what the author knows of them, Lochs Slapin, Eishort and Scavaig are arguably all equal to any of the 15 sites included in SNH’s 2011 surveys. Their biodiversity should not be compromised by industrial development until suitable marine research proves they would be unharmed by it or – heaven forefend we should take such an attitude, though we frequently do – they are considered expendable, commercial interests allowed to take precedence over the environment we share with our descendants and all other life forms to our multifarious benefit.

At present all indications are that these three lochs are indeed precious and, therefore, their wildlife should be jealously protected. Plans for fish farm developments should be rejected if any doubt remains about environmental safety of surrounding waters.

CONCLUSIONS

All indications from scientific study are that fish farming is harmful to marine biological communities – Q.E.D. Its effects on the health and populations of wild fishes and ecological community structure in the sea are demonstrably unacceptable. Environmental impacts can be profound and recovery an extremely long or – when injurious practices have been allowed to go too far – even impossible process.

Aquaculture of the sort that is being imposed all along the west Highland coast should be modified before being allowed to proceed further. Effluent has to be controlled by containment and if that cannot be achieved in the sea, that means developing land-based methodologies in which aquaculture companies must be obliged to invest. As Charles Clover wrote in the Sunday Times (9/11/12):

“Open-cage salmon farming is highly polluting. And technology has moved on. Closed-containment production in tanks — floating and on land — has been tested and shown to be vastly more environmentally friendly.

“A Norwegian firm, Niri Seafood, has installed tanks on land in Bantry Bay, southwest Ireland, which it says will produce salmon this year at a lower cost than sea cages. The world’s largest salmon farmer, Marine Harvest, is planning a facility there too. Costs are lower because you don’t need boats, or toxic chemicals to make the parasitic sea lice fall off (water is filtered as it enters the tanks to prevent infestation), and the salmon droppings can be siphoned off and used for fertiliser.

“Why does Scotland not spend some of the millions of pounds of EU money it receives for salmon farming on developing cleaner fish-farming technology? The

14 ibid.
only explanation can be that Scotland’s salmon farmers see no need: their “light touch” regulatory system, and cronyism with ministers, has proved highly profitable.

“It is now clear that these profits are made at untold cost to the marine environment. We knew whole river systems had been denuded of sea trout and salmon. We can now see that pollution exists on such a scale that shellfish, fish and other marine life are being poisoned. Expansion of the industry will only make these things worse. Scottish salmon farmers should be told that in five years’ time sea cages will be banned. There should be a deadline, a road map and government help to get from here to there.

CAVEAT: The ecological situation might be even more serious than previously thought:

“The present study demonstrates that fish farming not only influences physico-chemical and biological parameters but also alters the functioning of the ecosystem from a trophic point of view, affecting mainly the grazers and the evenness among the trophic groups. This work shows that the level of fish farm impact on the benthic community might be underestimated if it is assessed by only taking into account data obtained from waste dispersion rates. The unattached coralline algae habitat studied seems to be very sensitive to fish farming compared with other unvegetated benthic habitats.

“Environmental protection agencies should define different aquaculture waste load thresholds for different benthic communities affected by finfish farming, according to their particular degree of sensitivity, in order to maintain natural ecosystem functions.” – Sanz-Lázaro et al. 2011.

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http://www.scotland.gov.uk/Publications/2011/03/16182005/48


Written submission from Professor Colin T. Reid

I am not in a position to make a detailed submission on this Bill, but I would like to draw the Committee’s attention to paragraph 206 of the Policy Memorandum. This purports to be the assessment of the impact of the Bill for sustainable development but is woefully inadequate. Surely many of the Bill’s provisions will have a much more profound economic, social and environmental impact, especially for rural communities? The inadequacy of the consideration of sustainable development is a widespread failing (see below extract) and it does seem a real lost opportunity that the Parliament is not using this device as a means of thinking carefully about what the measures we pass today will mean for the future.


(1) Procedure

The Standing Orders of the Parliament require most Bills to be accompanied by a Policy Memorandum that among other things sets out “an assessment of the effects, if any, of the Bill on … sustainable development”.

This is potentially a strong tool for ensuring that the full implications of proposed legislation are considered across the whole range of elements covered by the concept. However, a study of the first five years of the Parliament by Ross concluded that these memoranda “reveal[ed] no significant pattern and overall, the quality has remained variable”, with “minimal effect on the subsequent parliamentary debates”. An examination of the memoranda for the Bills that became Acts during 2008 and 2009 reveals the same picture.

The recent memoranda continue to show a remarkable lack of consistency in phrasing, focus and depth. On some occasions there is just a simple statement that there will be no, or no direct, or no negative impact on sustainable development, often a somewhat surprising conclusion given the range of social, economic and environmental factors included within sustainable development. Where more is said, on a few occasions there is reference to the wider policy context, on others the

1 Scottish Parliament, Standing Orders (3rd edn 4th rev, June 2009) orders 9.3(3), (3A); Executive Bills must be accompanied by such a memorandum, Committee and Member’s Bills may be accompanied by one, but Budget Bills are exempt (SO 9.16(2)).
3 Policy Memorandum (para 38) on the Health Boards (Membership and Elections) (Scotland) Act 2009, which surely is relevant to governance and social justice issues.
4 Policy Memorandum (para 31) for the Convention Rights Proceedings (Amendment) (Scotland) Act 2009, which again surely has some relevance to social justice.
5 Policy Memorandum (para 178) for the Sexual Offences (Scotland) Act 2009, where the absence of negative effects is only part of the story and there is a contrast with the Memorandum (para 25) on the Offences (Aggravation by Prejudice) (Scotland) Act 2009 where the social benefits of tackling crime are mentioned.
6 E.g. the Policy Memorandum (para 49) for the Scottish Register of Tartans Act 2008 expressly refers to the indicators in the Scottish Government’s template for assessing the sustainable impact of policies and that for the Flood Risk Management (Scotland) Act 2009 (paras 182-187) to the Government’s five Strategic Objectives.
focus is on the operational activities that will flow from the matters dealt with in the Bill, and only occasionally is there substantial consideration of a range of sustainability issues. Legislation has even proceeded where the memorandum has noted adverse environmental consequences, with little by way of counter-argument on other grounds. The memoranda appear not to be fulfilling their potential as a means of ensuring consistent and thorough regard for sustainable development in the legislative work of the Parliament.

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7 E.g. the Policy Memorandum for the Judiciary and Courts (Scotland) Act 2008 (para 149) refers to the Scottish Courts Service carrying out their (sic.) functions with due regard to energy efficiency and sustainable travel plans; similarly the Memorandum for the Glasgow Commonwealth Games Act 2008 (para 81) notes that although the Bill will have no impact on sustainable development, the Games will and then outlines steps being taken to deal with this.

8 E.g. Policy Memoranda for the Climate Change (Scotland) Act 2009 (paras 179-188) and Flood Risk Management (Scotland) Act 2009 (paras 182-187).

9 Policy Memorandum (paras 62-67) for the Abolition of Bridge Tolls (Scotland) Act 2008.
Written submission from The River Annan District Salmon Fisheries Board

The River Annan District Salmon Fisheries Board would like to take this opportunity to submit its opinion on the Aquaculture and Fisheries (Scotland) Bill. In general we do believe that many aspects of this bill are overdue and we can support much of it in principle. We do however have concerns about some sections and would like them to be raised during the committee reading stage. Hopefully many of our concerns can be ironed out.

Part 1 Aquaculture Chapter 1 Fish Farm Management

In general we feel that this section does not truly reflect the weight of responses that the government received during the consultative process. The Annan catchment is a long way from any marine salmon farms but the impact of salmon farming on wild fish is now well established, and proven, and affects many of the rivers in the North West of Scotland.

We do strongly believe that all registrations of fish farms should be in the public domain, along with the data that they must collect. That data must include information about biomass, escapes, percentage mortality and most important lice data. Lice have a huge and proven impact upon the mortality of wild fish and farm operators have been very reluctant to allow this data to enter the public domain. Many countries that have salmon aquaculture have far stronger regulations around this, yet still seem to have a thriving salmon aquaculture industry.

There does not appear to be a fallback position either for ministers to define a management area should the management area described by the fish farm operators be inappropriate. A fish farm management area may, for example seem to be appropriate with our current understanding, but as new evidence comes to light it may be clear that the management area has to be changed.

There should also be a power for SEPA to reduce biomass consents under certain circumstances, perhaps when it appears that the biomass is having a significant ecological impact.

Part 2 Salmon Fisheries

Governance

In general the River Annan DSFB understands the need for strong governance, and in many ways is complying already with the spirit, if not the detail of many of these amendments to The Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003. We do however have concerns about some of the detail in this as we feel that some elements may create an unrealistic burden on Boards, particularly smaller Boards. This may take resource away from the excellent work that is being done in many areas of conservation and fisheries management. Overall we do feel that this section is very poorly drafted and potentially confusing.

The issue about public meetings is fine, however it is unrealistic to expect all meetings to be public, issues affecting commercial confidentiality and staff should not be discussed in a public forum. It is unclear whether or not there is a requirement
to have an annual public meeting and an AGM of qualified proprietors or can this be the same event? Why have two (Annan AGMs are open to the public anyway and advertised in local papers) when one would suffice? The idea that members of the public can submit issues to be discussed at the AGM seems fine in principle but there could be logistical reasons why this may not always be possible. The Boards must be able to filter out ‘malicious’ and inconsequential requests or AGM/annual meetings will lose focus. It is noted that the Parliamentary Committee that will discuss this will hold a number of private sessions and this is funded by public money. Boards are largely privately financed.

The idea that the clerk should contact every angler and tenant netsman in the district is utterly impractical and potentially unachievable; how would we know who they all are! We already have representatives from these groups on the Board and advertisement amongst these groups should suffice.

Members interests needs to be clarified, almost all qualified proprietors have an interest, this is after all why they are qualified. At present we place an onus of Board members to identify when they have an interest in a matter, declare it and then remove themselves from the debate (this is in the ASFB code of practice). This is minuted. This should suffice. Keeping a record of ever changing interests would create an impossible administrative burden as it would be continually going out of date. The onus should be on the Board member to declare an interest when it is relevant. A Board member that fails to do this should be dealt with by the Chairman and this action recorded.

Management

22 Carcass Tagging

The River Annan DSFB strongly supports the principle of carcass tagging, it has been asking for this to be considered for over 20 years. Indeed it supports the principle of tagging all fish, whether caught on rod and line or by a commercial fishery. The Board does however feel that instead of powers being given to the ministers to introduce this by regulation they should do this as part of the primary legislation. There are already working models of carcass tagging in many nations and it should not be difficult to find the model that best fits the Scottish situation. The enforcement of fisheries legislation, particularly the sale of illegal fish would be made much easier by the introduction of this measure. Indeed bona fida commercial fisheries would benefit from this as buyers would have the ability to trace the source of the fish and be comfortable in the notion that the fish came from a regulated source. Illegal, untagged fish, would have no such assurance and markets would be reluctant to offer them for sale, not just because of the risk of prosecution but also because they would have no idea how and when the fish were caught and would have little idea about the safety/freshness of the fish offered for sale.

Another major advantage of carcass tagging is that if it is done correctly we will be able to generate, for the first time ever, a truly honest return on the number of fish killed by legal means. There is quite rightly disquiet at the moment within a number of agencies about the accuracy of the returns currently submitted.
It should be noted at a meeting of the Association of Salmon Fishery Boards held recently where every river Board in Scotland was present that the Annan DSFB led a debate on the issue of carcass tagging of all fish caught, whether it is by rod and line or net. After the debate, on a show of hands, every delegate bar two voted in favour of this.

Section 25 Monitoring and Evaluation of Orders

Of course orders that are made need to be monitored but the potential of criminalizing Boards if they fail to do this seems a bit strong and perhaps less draconian methods could be used. This is particularly relevant as Scottish Ministers have the power to make orders without reference to the Boards yet the onus of monitoring these orders would fall on the Boards. This section needs to be looked at and redrafted with a more common sense approach being adopted.

Missed Opportunities.

There is a nonsense under Scottish legislation that means that Boards cannot undertake activities such as electrofishing outside of the statutory close time, essential for the monitoring of fish stocks and other management functions, without applying to the government for a license. This is a bureaucratic muddle as time is wasted by both the Boards and the Government in issuing these. Boards should be empowered to make these decisions at a local level.

Another area of concern is the growing use of gill nets in many parts of the coast in close proximity to salmon rivers. These nets take a number of salmon and sea trout each year which are often left dead on the beach. The nets have also been known to catch and kill cetaceans and other wildlife. The target species is normally sea bass or mullet but the damage that can be done to salmon and sea trout stocks can be large. This form of indiscriminate gill netting should be outlawed immediately except under license from Scottish Ministers. Useful legislation already exists in England and Wales which controls this type of activity and this could be enshrined within this Bill. Boards should be given the powers to remove these gill nets and water bailiffs the power to arrest and report to the Procurator Fiscal anyone who is using them.
Written submission from the River Tweed Commission

The River Tweed Commission welcomes the opportunity to comment on the draft bill.

The River Tweed Commission (RTC, formerly the River Tweed Commissioners) is charged under The Scotland Act 1998 (River Tweed) Order 2006 with the general preservation and increase of Salmon, Sea-trout, Trout and other freshwater fish in the River Tweed and its Tributaries, and in particular with the regulation of fisheries, the removal of nuisances and obstructions and the prevention of illegal fishing. The area of jurisdiction extends five miles out to sea and includes the coastline between Cockburnspath and Holy Island; it also includes all the waters that drain, or drain to some extent, to the sea in the Tweed District which are both in England and in Scotland. Powers under the above legislation are granted to the Commission to fulfil these duties. The RTC is not a Fishery Board although in many respects it is the equivalent of one for the Tweed District.

The RTC has been in discussion with the Association of Salmon Fishery Boards (ASFB) regarding its response to the draft bill and it strongly associates itself with the response made by the ASFB of which it is a member.

Whilst we understand that much of the proposed bill will not apply to the Commission or the Tweed District we nevertheless wish to comment on some of the detail.

Generally, the RTC is surprised that the draft includes proposals that were not consulted upon and does not contain other proposals that were included in the consultation.

The RTC itself is large and has 81 Commissioners representing proprietors, angling clubs and a wide cross section of the community with many interests mostly, of course, in fisheries. It meets four times a year and at its AGM all fisheries proprietors, not all of whom have a seat on Commission, are invited to come. It is a well attended meeting and is, for all intents and purposes, “public”. Whilst we do not oppose the principle of open meetings we would not like to conduct all our business in public. Indeed we believe such an approach would be counter-productive because it would undermine the strongly collegiate decision making process, emanating from our constitution, that exists on the River. In common with other fishery boards, some of the issues that we deal with are sensitive and are therefore we think that it is best that these are dealt by Commission alone.

The RTC strongly supports powers to introduce carcass tagging for all Salmon that are sold. This should be on a national scale with individually numbered and recorded tags and in concert with the rest of the UK. Any system that falls short of this will not achieve the goal of preventing the sale of illegally taken fish. We further encourage a provision to make the purchase of illegally taken fish an offence.

With respect to Section 25, whilst we generally support the provision to monitor orders we believe that this should only be for orders made on the initiative of the boards themselves; further we do not think it is proportionate to make non-compliance a criminal offence.
The RTC is fortunate in that it manages a river with a large run of Salmon. As such it is able to raise a significant assessment to fund its activities. The Tweed fisheries contribute great value to the local economy which was most recently estimated at £18m and provides almost 500 full time equivalent jobs. Other rivers are similarly important. We emphasise that is achieved at no cost to the Government or the tax payer. Generally we urge the Committee to consider supporting fishery boards, especially smaller ones, who manage a great national asset.
Written submission from Roc Sandford, Gometra

This bill represents a historic opportunity for the Scottish Government to put salmon aquaculture on a sustainable footing and to ensure its viability in the medium term. Currently salmon aquaculture is generating environmental externalities which place it in conflict with other users of the marine environment, are inexpedient for Scotland as a whole and are likely to be proved unlawful when subject to judicial review or when EU environmental legislation is incorporated into Scottish law, or when Scottish environmental and animal welfare law is properly enforced. The bill as drafted does not adequately address these issues, and risks developing into a continuing embarrassment for the industry and the Scottish Government, and an escalating disaster for those in the wild fisheries, angling and eco-tourism sectors, together with all those in the Scottish economy who depend on us.

Sea Lice

‘There is no evidence of an impact of lice from fish farms on wild salmon in Scotland’ (Marine Scotland Science 2010). Even a cursory review of the literature renders this statement acutely embarrassing (most recently see Krkosek 2012, Costello 2009, Ford 2008 and literature referenced therein), which is perhaps why the author has concealed her identity. The hidden premise or sleight of hand is that scientific evidence for causal mechanisms, if conducted outside Scotland, do not apply to Scotland, that the precautionary principal has no application in Scotland, and international and domestic environmental and welfare legislation can be set at nought by Scotland.

The bill can be amended to address this problem by placing real time, disaggregated, independently audited sea lice data in the public domain, and setting an enforceable target of zero ovigerous lice year round, so as to address the impact of lice amplification from salmon farms on populations of wild salmonids and associated welfare abuse which amounts to systematic cruelty under welfare legislation. We believe that there is a regulatory blind spot which needs to be addressed so that sea lice, arguably the most damaging externality of salmon aquaculture, are properly regulated by a body (probably either Marine Scotland Science or Scottish Environmental Protection Agency) whose responsibilities are quantitative, transparent and accountable.

Seals

‘Section 119 of the Marine (Scotland) Act 2010 states that Scottish Ministers must not grant a seal licence authorising the killing or taking of seals in a seal conservation area unless they are satisfied (a) that there is no satisfactory alternative way of achieving the purpose for which the licence is granted, and (b) that the killing or taking authorised by the licence will not be detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1 (e) of the Habitats Directive). While the Scottish Government has come up with reasonably plausible arguments supported by the Sea Mammal Research Unit as to why the number of seals killed in the Western Isles will not be detrimental to the maintenance of the population of the two species, Scottish Ministers must also be satisfied that there is no satisfactory alternative way of achieving the purpose of the licence pursuant to section 119 (a). If
we presume that Scottish Ministers have not acted unlawfully, then they must have satisfied themselves that acoustic deterrents, seal nets etc do not work in the Western Isles for the 30-odd farms concerned. It follows that if they don’t work there, there is no reason to suggest they will work anywhere else.’ (Linley-Adams, 2012)

The bill can be amended to provide a) seal nets must be deployed as a condition of any consent because the issue and use of seal killing licences is otherwise unlawful, b) granted that seal nets are deployed, licences will not be issued to cull those species in decline or outside safe biological limits under the OSPAR and other conventions, or where granting of a licence is likely to give rise to welfare issues associated with wounding rather than killing, and the killing of lactating mothers where it is impossible to guarantee the killing of the pub.

Cetaceans

As part of the predator control plan Acoustic Deterrent Devices (ADDs) are routinely used by the aquaculture industry to harass and disturb seals. These are known to disturb and exclude cetaceans over massive areas of their natural range (E.g. Booth 2010 and papers cited therein). ‘We would expect disturbance, displacement, and behavioural change to occur’ in waters in which ADDs are deployed. (SNH, 2012). The Conservation (Natural Habitats) Regulation 1994 make it an offence to disturb any cetacean without a licence in accordance with the Habitats Directive.

While we are not aware that this has been tested at law, it is our view that it is probable that these licences are being issued unlawfully given that ADDs would be rendered unnecessary by proper predator exclusion nets and these should therefore be made a requirement by the bill of any aquaculture consent within Scottish waters. This issue must be properly addressed in the bill.

Landscape

Salmon aquaculture is the principal driver of the dewilding of the Scottish West Coast. This is subject to a multiplier effect when evidence of associated environmental degradation seeps through to Scotland’s populace and visitors, and salmon farms are coming to be seen as running environmental sores in otherwise pristine landscapes, thus causing disturbance, displacement and exclusion of the visitors on which our economy depends. For example, the seas of the Staffa Archipelago, long canvassed as a Unesco World Heritage site, are facing the rapid proliferation of salmon farms which undermines other economic activities within the region and the employment they generate, at modest and uncertain benefit to the economy of the Archipelago proper. The bill must be amended to address this issue.

Navigation & Crowding out of wild fisheries

Salmon Farms are known to unlawfully impede the public right to navigate and the economic viability of wild fisheries interests. This must be addressed in the bill.

Employment

Sea Cage Salmon Production currently directly employs about 1000 people Scotland wide according to unaudited, industry supplied figures published by the Scottish
Government. Employment fell last year by 5% and the industry has not created a job since 1986, largely due to automation and the substitution of capital for labour. The bill should place a requirement on the Scottish Government to commission an independent audit of the socio-economic costs and benefits of salmon aquaculture, both in terms of employment destroyed in wild fisheries, angling and tourism sectors, and jobs created in the salmon aquaculture sector.

**Sustainability**

The bill should be amended to bring Salmon Aquaculture in line with the Scottish Government's sustainability policies in a properly transparent and verifiable fashion, something which it patently fails to do. To give one example, Scottish farmed salmon feed is sourced from unsustainable wild fisheries world wide.

**Disease**

The bill should provide that diseased salmon should not enter the human food chain, as is present practice industry wide.

**Toxicity**

Continuing fears are raised over elevated levels of toxins in farmed salmon and associated birth defects, elevated cancer risk, diabetes and behavioural change in consumers of even small amounts of Scottish farmed salmon (for instance see the considerable literature surrounding Hites 2004, and for an example of recent concerns which cites various recent papers, Crinnion 2011). The bill should provide for the routine analysis and timely publication of toxin levels in Scottish farmed salmon for the proper protection of the consuming public. Consumption advisories should be adjusted to make it clear that the benefits of oily fish consumption can be obtained while avoiding the toxicity issues surrounding Scottish farmed salmon by eating other sustainably fished oily fish species such as mackerel.

**Incorporation of EU Environmental Legislation into Scottish Law**

This is a matter of urgency. Scotland is developing a reputation as the dirty mature person of Europe when it comes to enforcement of international environmental legislation and its incorporation into domestic law, a reputation we can ill afford given the extent to which our economic interests are bound up in public perception of a pristine marine environment and our iconic wild landscapes. This bill must be tested rigorously in this respect and amended where necessary.

**Conclusion**

The bill as drafted is clearly lobbyist rather than evidence based. A parallel with *An Inspector Calls* (Priestley 1945) is irresistible: salmon aquaculture's cast-list of useful idiots, whose activities mesh to produce an outcome nobody can reasonably either deny or desire, include RSPCA Freedom Foods, Crown Estate, Scottish Natural Heritage, Marine Scotland, Scottish Environmental Protection Agency, Local Authorities and Marine Scotland. Some of these bodies, doubtless, are left limited room for manoeuvre by the Scottish Government, themselves apparently beholden to the Scottish Salmon Producers Organisation, by 'revolting door', concerted PR,
lobbying and whatever hidden means may be employed to generate an environmental tragedy of these proportions for Scotland's marine environment, of benefit only to a small group of insiders and at massive cost to the Scottish public.

References

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Ford et al. 2008 Global Assessment of Salmon Aquaculture Impacts on Wild Salmonids, PLoS Biology


Linley-Adams G 2012 Private Correspondence

MSS (?) 2010 Summary of information relating to impacts of sea lice from fish farms on Scottish sea trout and salmon 05/08/10. [No author is given for this paper, but we believe it is an internal document prepared to guide Scottish Government policy by either SNH or MSS.]

Scottish Government Annual Aquaculture Production Surveys, 2011 and preceding years.

Written submission from the Royal Society of Edinburgh (RSE)

Summary

- The RSE supports the view that aquaculture has a fundamental role to play in meeting the key objective of food security. We welcome the trend towards servicing the increased demand for aquaculture feed while decreasing the level of fishmeal included in feed and substituting it with plant materials. Scotland must encourage sustainable fishing practices elsewhere. It is crucial therefore that efforts to expand Scottish fin-fish farming are achieved by reducing the proportion of fishmeal used still further.

- Scotland is a global leader in aquaculture and continues to require a strong research base. Whilst welcoming industry sponsored research into issues such as a vaccine for sealice, the balance of publicly-funded research should be given further consideration in light of the importance of aquaculture to food security.

- There is an apparent imbalance between the aquaculture section of the Bill and the fisheries section in terms of controls, the former seeming to receive more attention than the latter. We are also struck by the apparent lack of focus on the need for high quality and reliable scientific data pertaining to both sectors that should underpin sound policy development.

- We welcome the stated policy aim in the documentation accompanying the Bill that FMAg and FMS be developed according to the needs and circumstances of the particular farms. It should be recognised on the face of the Bill that FMAg and FMS are production plans, which must necessarily be flexible to meet the needs of different businesses and the day-to-day requirements of farm management. The detail of the plan naturally varies with the business and its requirements.

- We support measures to minimise escapes of farmed fish. We believe that the purposes in section 2 of the Bill for which fish may be sampled should be firmly focused on what appears to be the primary motivation of the provision in the Bill – which is to assist in investigations of escaped fish and the risk of impact of escapes from farms on stocks of fish other than those on farms.

- We are concerned that the only consideration mentioned throughout chapter 3 on commercially damaging species is the economic or commercial impact of the ‘other species’ on the fish farm. There is no mention of whether or not the species having an adverse economic or commercial impact is, for instance, of conservation or ecological importance. It should be made explicit that factors other than simply the commercial operation of the farm will be taken into account.

- There are no matters of principle about charging for services. This procedure is well accepted and in place in a range of properly established government agencies. However, each new ‘service’ for which a charging regime is proposed should be subject to consultation and full Scottish Parliamentary scrutiny through regulations which are subject to the affirmative procedure.
Background

The Royal Society of Edinburgh (RSE), Scotland’s National Academy, is pleased to respond to the Scottish Parliament Rural Affairs, Climate Change and Environment Committee’s call for views on the Aquaculture and Fisheries (Scotland) Bill. These comments have been compiled with the assistance of a number of expert Fellows of the RSE.

This response begins by commenting on a number of broader issues associated with aquaculture in Scotland. While these comments are not directly related to the scrutiny of the present Bill, we believe they will provide Committee members with important contextual information about the operation of the aquaculture industry. The response then addresses those specific parts of the Bill where the RSE has comments to make.

Aquaculture in Scotland

The RSE supports the view that aquaculture has a fundamental role to play in meeting the key objective of food security. With the pressures on wild fish stocks, the unsustainable approach to their exploitation, and growing global demand for fish as a source of high quality protein, the UK, and the world, will become increasingly reliant on aquaculture to meet demand.

The value of the aquaculture industry to the Scottish economy is clearly stated in the documentation accompanying the Bill. It dominates food exports, has an excellent international reputation, and is significant for employment in less favoured areas. Available investment for expansion has increased in line with a dramatic increase in demand for and price of salmon.

The stated primary objective of the legislative proposals is to ensure that farmed and wild fisheries continue to be managed effectively, maximising their combined contributions to supporting sustainable economic growth with due regard to the wider marine environment. In Scotland, fin-fish farming (primarily Salmon farming) depends on the domestic production of aquafeeds, based in part on imported raw materials. The fishmeal and fish oil industry is international in nature and supplies the entire range of domesticated animals, including farmed fish. The marine component of diets used in Scotland is obtained from such sources.

The RSE welcomes the trend towards servicing the increased demand for aquaculture feed while decreasing the level of fishmeal included in feed and substituting it with plant materials. Indeed, with a finite amount of fishmeal available, the IFFO (the International Fishmeal and Fish Oil Organisation) has developed a certification programme to demonstrate the sustainability of its operations. Scotland must encourage sustainable fishing practices elsewhere. It is therefore crucial that efforts to expand Scottish fin-fish farming are achieved by reducing the proportion of fishmeal used still further, and by importing fish meal from certified sustainable industrial fisheries, or from local fishmeal production within the EU under the EU’s existing strict legal controls on persistent organic pollutants (POPs). Scotland had led the way in research and development focused on the substitution of marine ingredients with high quality terrestrial ingredients and it should be recognised that the Scottish salmon industry is now at the cusp of being a net fish protein producer.
With an increased reliance on aquaculture, the issue of the vulnerability of stocks to disease assumes greater importance. Scotland is a global leader in aquaculture and continues to require a strong research base. The funding provided for research in this sector, for example the projects supported through the research institutions and funding bodies such as the Scottish Aquaculture Research Forum (SARF), is welcome, particularly at a time when funding levels elsewhere in the UK, through DEFRA, have declined significantly. However, the levels of spend continue to be modest compared to funding for research in agriculture. Whilst welcoming industry sponsored research into issues such as a vaccine for sealice, and the promotion of research to address industry needs through the MoU on Aquaculture signed by the Scottish and Norwegian Governments, the balance of publicly-funded research should be given further consideration in light of the importance of aquaculture to food security.

Specific comments on the contents of the Bill

There is an apparent imbalance between the aquaculture section of the Bill and the fisheries section in terms of controls, the former seeming to receive more attention than the latter. We are also struck by the apparent lack of focus on the need for high quality and reliable scientific data pertaining to both sectors that should underpin sound policy development. In both cases, policy development should be evidence based.

Part 1: Aquaculture

Chapter 1:

Fish farm management agreements and statements

The Farm Management Area Approach (FMA) and Farm Management Agreements (FMAg) have been fundamental to the development of Scottish salmon farming and have allowed the aquaculture industry to develop effective area management approaches and biosecurity systems. The introduction of Farm Management Statements (FMS) has embedded the FMA approach in single operator areas. We welcome the fact that the vast majority of operators are voluntarily signed-up to either a FMAg or FMS and we support making it a legal requirement for all marine finfish farm operators to operate under the terms of a FMA or FMS. This will help ensure that the industry adheres to the latest and highest environmental and husbandry standards.

We welcome the stated policy aim in the documentation accompanying the Bill that FMAg and FMS be developed according to the needs and circumstances of the particular farms. It should be recognised on the face of the Bill that FMAg and FMS are production plans, which must necessarily be flexible to meet the needs of different businesses and the day-to-day requirements of farm management. The point of statutory assessment is therefore the requirement for an FMAg or FMS to be in place not for a detail-by-detail regulatory approval of the FMA or FMAg itself. The detail of the plan naturally varies with the business and its requirements.
Escapes and obtaining samples from fish farms

The documentation accompanying the Bill indicates that there is evidence that escapes of farm fish are generally declining through increased awareness, significant investment in new equipment by industry and the implementation of best practice training on containment. These ongoing developments, coupled with the proposal to introduce a Scottish Technical Standard, are to be welcomed and we support measures to minimise escapes even further.

Section 2 of the Bill makes provision to enhance the investigation powers currently available to inspectors and to provide inspectors with additional powers to take or require samples of fish from any fish farm in Scotland. We believe that the purposes for which fish may be sampled should be firmly focused on what appears to be the primary motivation of the provision in the Bill – which is to assist in investigations of escaped fish and the risk of impact of escapes from farms on stocks of fish other than those on farms. Care must be taken in respect to making provision for purposes that go beyond this e.g. research. Purposes such as this may give rise to human rights, legal ownership, intellectual property, and commercial competition considerations for businesses both within and beyond fish farming. (For example, details of genetic breeding lines are clearly highly important commercially restricted information for individual breeding companies.)

In relation to the use of forensic tracing as a means of determining the origin of escaped farm salmon in Scotland, this requires further research, including field-testing, before such a system can be introduced which inspires the confidence of all key stakeholders.

On a point of detail, in this section of the Bill there is reference to “fish, or material from fish”. This should be corrected to the biologically precise “fish, or tissues from fish”.

Chapter 2:

Technical requirements for equipment used in fish farming

Section 3 of the Bill relates to the development of Scottish Technical Standards pertaining to improved containment, which is being taken forward by a joint industry and Scottish Government group. The section raises no issues of fundamental principle but there are two important technical aspects which need to be addressed:

a) The reference to ‘technical requirements’ in section 3(1)(a) and elsewhere should be replaced by ‘technical standards’, which is the appropriate point of focus for regulatory control. We note that ‘technical standards’ is the terminology used in the policy memorandum to the Bill.

b) The reference to ‘-- for equipment’ in paragraph 3(1)(a) is too all-embracing and not consistent with the approach to developing standards. It should be replaced by something like ‘---- for specified equipment’. This would then properly reflect the Scottish Technical Standards approach.
Wellboats

The industry recognises the importance of appropriate management of the biosecurity requirements associated with the transportation and transfer of fish, including the use of wellboats. The Code of Good Practice details a cleaning and decontamination regime for wellboats. We welcome the Bill’s provisions that would enable Scottish Ministers to introduce additional requirements in relation to the control and monitoring of the operations of wellboats in Scotland as a means of minimising the risk of the spread of parasites, pathogens or diseases.

We note that section 4 defines “wellboat” as comprising “a vessel that contains a tank or well for holding water…” As stated, this definition would seem to include not only conventional wellboats but almost all small workboats used on fish farms. The Committee should investigate whether this is intended as it could render fish farms almost inoperable depending on the nature of any Scottish Ministerial provision made for the control and monitoring of wellboat operations.

Chapter 3:

Commercially damaging species

Commercially damaging species are defined within the Bill as those that, “if not controlled, would be likely to have significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and is itself of little or no commercial value”.

We are concerned that the only consideration mentioned throughout this chapter is the economic or commercial impact of the 'other species' on the fish farm. There is no mention of whether or not the species having an adverse economic or commercial impact is, for instance, of conservation or ecological importance. As it stands, the Bill would appear to give Ministers the power to licence control measures against, for instance, fish or shellfish predators without any consideration of their wider role or importance in the ecosystem or environment. It should be made explicit that factors other than simply the commercial operation of the farm will be taken into account.

Part 2: Salmon and freshwater fisheries

Enhancing management of salmon fisheries

There is little in this Part of the Bill that could be objected to. We would, however, like to make the following points.

a) Section 20 of the Bill inserts new sections relating to governance and accountability into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. In addition to the provisions in 46E (3) that require a district salmon fishery board to ensure that the register of members’ relevant financial interests is made available for public inspection, there would be substantial public and community benefit from annual publication of a list of salmon fisheries owners and occupiers in Scotland. This would increase
transparency in the system. This is a topic which the Land Reform Review Group may seek to address.

b) The Bill in Section 24(2)(a) “require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably expect”. However, on the face of the Bill there should be a requirement for such persons to provide information on the fishing effort in the rod and line fishery. The absence of this information is drawn attention to in Marine Scotland’s annual salmon fishery statistics. It is difficult to fully interpret the catch statistics without the fishing effort data. In this regard the statistics for England and Wales are more complete compared to those available in Scotland.

c) The annual salmon fishery statistics show that in 2011, 73% of the annual salmon rod catch was released. Given the widespread adoption of catch and release practices across District Salmon Fishery Boards, consideration should be given to the introduction of measures to record multiple catching of the same fish. Without this, the rigour of the catch statistics as a conservation tool is eroded.

d) The proposal to introduce a carcass tagging scheme for wild caught salmon offered for sale to replace the current voluntary scheme is one which we welcome. It should strengthen traceability and support the application for protected food name for Scottish wild salmon currently being considered by the European Commission. We welcome the fact that further consultation with stakeholders is being undertaken to ensure any scheme does not impose a disproportionate financial burden on small businesses.

Part 5: Miscellaneous

Charging

There are no matters of principle about charging for services, other than some potential concerns about interference in the commercial market for service provision. This procedure is well accepted and in place in a range of properly established government agencies. However, each new ‘service’ for which a charging regime is proposed should be subject to consultation and full Scottish Parliamentary scrutiny through regulations which are subject to the affirmative procedure.

Fixed Penalty Notices

We are becoming increasingly concerned that Fixed Penalty Notices (FPNs) are being introduced widely across a vast range of regulatory controls without proper legal or financial justification. There is a concern that FPNs will lead to an erosion of the professional rigour of the process of legal evaluation of non-compliance. There is a need for the Scottish Government to address public concern on this matter and to publish clear information and ‘performance statistics’ for regulatory controls to which FPNs apply.
Written submission from the SaveSeilSound Campaign Group

In our response to the Consultation at the pre-Bill stage we included the following comment,

“It is time for SG (the Scottish Government) to accept what the industry already knows, that fish farming damages the environment. The challenge for those who wish to secure a future for the industry in the longer term is to minimise that damage. The present consultation represents a start, but a number of important issues are missing.”

Regrettably it now seems that we were wrong to concede that there was even a start, as a number of major issues that were canvassed before, some of which received an overwhelming level of support from commenters from outside the industry, have disappeared without trace. This is extremely disheartening for those such as the active contributors to our group, who put a lot of hard work into our submission with the sole aim of helping Scottish Government in what appeared to be an attempt to provide some much-needed protection for our environment. One is left with the disturbing impression that SG have not acted in good faith in inviting comments on topics on which it has had no intention of legislating. What is left in the draft Bill is so limited that there seems little point in engaging in further “consultation”. However in the hope that even at this stage some of these issues can be resuscitated we do offer further comments in relation to fin-fish aquaculture, the area which is of most concern to our supporters.

Power to cancel unused consents

It seemed to us perfectly sensible for SG to have this power, subject to some obvious safeguards which have been discussed before. No reason is given for this proposal being dropped in its entirety and we are left wondering if SG has given in to threats from some of the companies holding these consents to challenge the measure on grounds based on the European Convention on Human Rights if introduced. This could arise as a result of the combination of two factors, (one) the transfer of decision-making from the Crown Estate to the local authorities and (two) the change in practice by the Crown Estate, who now grant long term, renewable and freely transferable leases of the seabed, rather than non-transferrable ones for limited terms. We comment on these aspects in turn.

Transferring decision-making was done for the best of reasons. In a democracy it was absurd that an unelected body of London-based commissioners could decide to confer exclusive rights to areas of seabed without external scrutiny. In doing so they of course denied to the general public our “inalienable” rights to use the surface of the sea for leisure and recreation as well as for navigation and fishing, but that was of no concern when money could be made for the Crown.

Subsequent experience has shown that in practice the transfer was not properly thought through. There is now a regulatory mish-mash, with some matters, such as impacts on the local economy of a proposal, the responsibility of the local authority while others stay with central government bodies, for example pollution stays with SEPA via the CAR licence system and science stays with Marine Scotland. One vital
matter, the impact of sea-lice on wild fish, seems to be the responsibility of no-one in particular but perhaps lands on the local authority by default.

We have great sympathy with the planning officers in the four or five local authorities affected, as they have to wrestle with a totally new concept of offshore planning with no additional resources.

The change from leases of ten years to longer term ones was unheralded and undebated within government. There was very good reason for the time-limiting of the leases, the intention being that at the end of the term the operation would be moved and the seabed allowed to recover. This would have been feasible in the early years, when farms were very small, locally-owned outfits, although in practice it never happened. There is no good science for abandoning the idea, rather government should have grasped the nettle and enforced rotation. Instead the Crown Estate decided to entrench the practice of renewing leases on the same sites by deciding to grant longer term ones.

The effect of these changes, taken together, is that the operators of the present generation of large-scale industrial “farms” will start claiming that their leases are in effect rights of property and that accordingly any restriction would be expropriation. These operators, all of them owned by international shareholders and controlled from locations as diverse as Norway, Poland and Kazakhstan are sophisticated, well-funded and well-advised entities. It has to be assumed that they are more interested in making a profit than in caring for the Scottish environment.

The Committee should ask the Minister if this potential legal threat is the reason that this provision has been dropped. If so we suggest that steps be taken to avoid it becoming a reality, rather than that the issue should simply be ducked.

Power to restrict permitted biomass

Exactly the same “expropriation” argument may be open here as well.

Evidence has recently come into the public domain under FOI, having been known within SEPA for years, that a substantial number of fish farms have been failing to meet pollution standards. Members of the Committee should ask SEPA to provide full information about how it deals with these failings, whether by requesting voluntary reductions in biomass, withdrawing licences or howsoever. On 31 October we requested information from the Crown Office about the number of cases referred to it by SEPA and await the response, which I will forward on receipt.

Sealice, Mortality, Disease and Biosecurity

Those of us learning about the intricacies of the regulation of fin-fish farming have been very surprised to learn that sea-lice are not technically regarded by SEPA as pollution and thus they are not something SEPA tries to regulate. Their concerns are limited to the quantities of organic fish waste, uneaten foodstuffs, poisonous metals and the pesticides used to kill sea-lice. To lay-people like ourselves and perhaps to some members of the Committee this may seem odd, as it is known that plumes of sea-lice larvae are released from fish farms, travelling for many miles in the fast tidal streams along our coasts and surviving for weeks in their search for a host fish.
Even more surprising is that the other agencies of SG, Marine Scotland and SNH, only concern themselves with the effects of sea-lice on the fish actually caged in the farms and will only take action to limit the effects of lice on those fish. The wild salmon and sea trout passing by get no protection. This is wrong and can be corrected by a simple legislative change.

On reporting sea-lice, mortalities and disease the response from Marine Scotland that this should be done by a voluntary system or under some secondary legislation is quite inadequate. The Norwegians found this to their cost and have introduced an effective system of near real-time reporting, as former Environment Minister Stewart Stevenson found when he discussed the problem with his counterpart in Norway, seen on the BBC’s “Fishy Business” documentary. The Committee should ask him to inform them about his impressions from his visit.

**Power to kill non-commercial native species**

When I circulated our comments on the pre-Bill consultation in draft form some of our members could not believe that this wording was correct and asked why a native species should be wiped out to assist a commercial operator? The wording was of course correct and it is sad that this has survived into the draft Bill. Admittedly only a group of mussels is in the sights just now, but this is a bad principle to establish.

**Conclusion**

We are aware that much of the foregoing has been excluded from the Bill as drafted. The pre-Bill Consultation was already a seriously limited piece of work, making no reference to several major issues of public concern, such as seal-shooting and the adverse impacts of acoustic scaring devices on marine mammals. One is forced to conclude that lobbying by a powerful industry enjoying the ear of government, rather than proper concern for our environment, may be the cause. Much of Scotland bears the scars left behind by earlier industries in an age when regulation was non-existent and we carry the cost of this today. The richness of our coastal heritage is a major national asset which should not be lost to serve the short-term interests of multi-nationals, who ironically trade on the healthy reputation of Scotland’s wild fauna the destruction of which is often a by-product of their efforts.
Written submission from the Scottish Anglers National Association (SANA)

Introduction

SANA is the recognised governing body for game angling in Scotland. This submission has been prepared by SANA’s Migratory Fish Committee.

While some game angling is dependent on stocking of waters with fish reared by the aquaculture industry, most game angling in Scotland has quarry species that are wild fish, principally salmon, sea trout\(^1\) and brown trout. Our policy interest is that wild fish populations should provide sustainable fisheries for recreation. To that end, the relevant parts of the Bill’s provisions are 1, 2 and 5.

Part One

Tension between angling and finfish farm aquaculture arises from their distinct interests. Anglers want abundant stocks of wild fish, as quarry species from which they can take a harvest or exploit for recreational purposes, as “catch and release”, or both. Owners and employees of freshwater fisheries depend on sustainable fisheries for their livelihoods. Additionally, there is a multiplier effect in other sectors whose output is purchased by anglers, especially those visiting an area who are normally resident elsewhere.

From an angling perspective, lowest cost farm production of salmon imposes unacceptable burdens on the natural environment which severely damage wild stocks of salmon and sea trout. Because farmers are not charged for their use of the environment and their impact on wild stocks, their perspective must be quite different. Theirs is an industry that competes in world markets against other production sites, which are also not charged for environmental impact. Nonetheless, salmon farms generate employment in rural areas and through their purchases and through processing of the end product contribute to value added in other sectors of the economy as well as their own. Therefore, there is a clear public interest in the continued development of environmentally sustainable aquaculture in Scotland which is as valid as the public interest in sustaining wild fish populations.

The principal negative impact of fish farming is effects on the water environment, both in fresh water, where juvenile fish are produced, and sea water, where fish are grown on to marketable size. The potential pollution burden at production sites is twofold, through water quality (chemical pollution and decay of surplus food and faeces) and through providing an artificial habitat for parasites (eye-fluke, tapeworm and lice) whose population explosions impact on wild fish (salmon, sea trout and trout), particularly on juveniles. The concentration of farmed fish also presents an opportunity for disease hotspots, as with other intensive farming.

Both freshwater and saltwater impacts could be avoided through use of closed production systems, i.e. fish farms separated from natural freshwater and sea water.

\(^{1}\) While sea trout are migratory fish, it should be noted that brown trout and sea trout have not been shown to be genetically distinct. Sea trout are the progeny of trout which may, or may not, have been to sea. Therefore, the issues involved in safeguarding populations of migratory (sea) trout are liable to be also relevant to brown trout, and vice versa.
By abstracting water and treating effluent, these problems would not exist. However, such separation would not be lowest cost production systems.

The saltwater parasite element could be mitigated by rearing fish further offshore, beyond the region in which sea lice concentrations are most likely to be in the routes for migrating smolts and returning adults. Such a move would also aid dispersal of effluent and seems likely to reduce the cost of sea lice treatments. Again, such a solution is unlikely to represent a lowest cost production process.

The balance of public interest between conservation of wild fish and development of the aquaculture industry should be addressed through regulation and, where justified, by financial support of the industry. Overall, the Bill is helpful to our objectives. However, the central purpose should be to encourage the industry to “up its game”, through innovations that mitigate its impact on wild fish. The Bill addresses the regulatory issues (making Farm Management Agreements obligatory and introducing a statutory Scottish Technical Standard for fish farm equipment) but does not provide incentives for innovation by the industry.

To achieve fish farming companies’ improved environmental performance, we recommend that public support be provided for measures which go beyond legal requirements, including those created by this Bill, and/or exceed costs met by equivalent operations in other competitor countries. Closed containment of juvenile and adult fish would be an example of such innovation.

Escaped farmed fish are an additional issue. Farmed fish, which are poorly adapted for long term survival in freshwater and marine environments, can out-compete wild fish in fresh water, in the short term, through sheer force of numbers and larger body size. Also, they can reduce fitness of the remaining population through interbreeding, causing wild populations to decline and naturally selected genetic traits to be extinguished. Genetic sterilisation of farmed fish through triploidy would eliminate interbreeding with wild fish, should escapes occur. Even better, closed containment systems would avoid all of these problems.

From an angling perspective, preventing escapes of farmed fish, both juvenile and adult, is fundamental to minimising impacts on wild fish. A statutory requirement to take remedial action following reporting of escapes to Marine Scotland has been omitted from the Bill.

**Part Two**

The balance of exploitation of migratory fish, as between the commercial fishery (nets) and the recreational fishery, is addressed by the Bill. At issue is whether, or to what extent, netting (a primarily lethal fishery) is impacting on fragile stocks. The general policy framework in the North Atlantic area is that stocks should be managed on a case by case basis and that multi-stock fisheries are inimical to that process and should cease.

This concern was addressed by a Working Group, set up by the Scottish Government. Its recommendations focused on establishing the means whereby multi-stock fisheries could be identified and assessments made of their impact on different stocks. SANA supports the recommendation that there be a statutory
process of arbitration which, amongst other things, would provide fair compensation for curtailment of netting at certain times and/or places.

As drafted, the Bill omits that recommendation from the Group, viz. a statutory process of disputes resolution to deal with salmon conservation, management and any related compensation issues. The Scottish Government response to this issue, raised in the pre-Bill consultation, is: “The Scottish Government notes the mixed reaction to this proposal and will consider the issue as part of further work to modernise management structures for salmon and freshwater fisheries.” On our reading, that statement does not amount to any rebuttal of the case made for this measure in the Working Group’s report.

The recommendation arose from the need to have a process in place when the research on mixed stock fisheries has been completed. The Bill, as drafted, provides for the assessments of fishery impacts to be undertaken but not for a process to take action arising from the results.

At Section 22, the Bill provides powers to Ministers to introduce and operate a system of carcass tagging for wild salmon. Whether or not this applies to anglers as well as to netsmen, SANA supports this measure. However, the provisions are permissive as to what information such tags contain. We recommend that the Scottish Parliament amend this section to oblige individually numbered and recorded tags. Un-numbered tags would not enable verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act).

Part Five

A detail of the Bill that should be addressed is the possibility of rod licensing, created by the proposed powers on charging. The Bill does not exclude rod licensing from the wide ranging powers to implement charging through secondary legislation. We understand that this was not an intention of the drafting and would be grateful for a clear commitment that this is not a purpose of the Bill.

SANA supports the current method of funding District Salmon Fishery Boards and would oppose a direct levy on anglers by central government. Such a levy would be a disincentive to participation in a healthy outdoor recreation which is second only to walking in Scotland. Also, it could be expected to impact seriously on jobs and businesses which are dependent on the many visitors to Scotland whose principal interest is angling.
Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to provide Written Evidence with regard to the above Bill. SEPA welcomes the draft Aquaculture and Fisheries Bill and accompanying documentation and has the following comments on these:

The consultation on proposals for the Aquaculture and Fisheries Bill discussed a number of major areas of particular interest to SEPA. These relate particularly to unused consents, biomass control and the regulation of well-boats. Following discussions with a number of interested parties, SEPA is of the opinion that the former two issues can be satisfactorily dealt with using existing legislative provisions. The issues highlighted by SEPA relating to well-boats appear to remain outstanding and are not addressed by the provisions of the Bill.

The main concerns raised by SEPA around the issue of well-boats relate to the current arrangements whereby release of medicine residues from cages at fish farm premises are regulated by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 but releases of the same residues from well-boats at or around fish farm premises are regulated by Marine Scotland under the Marine (Scotland) Act 2010. These arrangements pose a number of significant problems with regard to regulation and enforcement but are also unnecessarily bureaucratic, costly and burdensome on the aquaculture industry.

The difficulties with regulation and enforcement stem from the problems that either regulator may have in taking action where a breach of the conditions relating to medicine residue releases set out in permits has occurred but there is a lack of clarity over how such releases may have been made. For example, the collection of evidence by inspectors under the powers provided under either the Water Environment (Controlled Activities) (Scotland) Regulations 2011 or the Marine (Scotland) Act 2010 may not be admissible under proceedings taken under the alternative regime making enforcement action more difficult, in what is an already complex regulatory arena.

As far as bureaucracy, administrative burden and costs are concerned, the current approach requires farm operators to have two licences in place for what is essentially the same activity – releasing medicine residues following the treatment of fish.

A Marine Licence for well-boat releases at fish farms costs in excess of £1000 and requires renewal after 1 or 3 years. When issued, the licence contains exactly the same conditions limiting releases from the well-boat as SEPA has derived for cage based releases. Thus fish farm operators are paying for an additional licence and application process with associated consultations and related processes for a permit to undertake an activity which in most cases they are already licensed to undertake under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. The only difference being that the additional licence allows the flexibility of using vessel to undertake the treatment.
The authorisation of such releases under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 could be done as an “administrative” variation to existing licences for a nominal fee. Once integrated into the licence such variations essentially last in perpetuity, avoiding the need for a costly re-application, unless the operator seeks further variation or SEPA chooses to change such licence conditions as a result of periodic review. There is however currently a legislative impediment to SEPA authorising releases from well-boats as activities requiring authorisation under the Marine (Scotland) Act 2010 are specifically excluded from control under the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

The change in legislation required to bring licensing of well-boats within the scope of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 could be achieved through a change to the definition of “licensable activities” set out in the Marine (Scotland) Act 2010 – by amending section 21. A change in the definition of licensable activities could be achieved by Order, (s21 of the Marine Act makes specific provision for this) or by an amendment included in the Aquaculture and Fisheries (Scotland) Act. In either case, the result would be the occlusion of a legislative and enforcement gap, and a simplification of the regulatory landscape and reduction in costs for operators working in the aquaculture sector.

As for the provisions for well-boats that are discussed in the Bill, SEPA is supportive of improved engineering and equipment to reduce the possibility of disease and parasite transmission and allow the monitoring of the activities of these vessels.

A number of further issues were detailed in the Bill consultation that are less directly within SEPA’s role but are nonetheless of interest to the Agency. These include the publication of sea louse data. Although the publication of sea louse data does not feature in the Bill, SEPA retains the view expressed in our consultation response that sea louse data from fish farms should be published, on a site by site basis in as near to real time as practicable. There are various reasons for our belief that this is the correct approach.

There is considerable discussion and anecdotal evidence around the issue of resistance developing in sea lice to some of the products used to deal with them. Clinical decisions as to the appropriate treatment to use on any given occasion should be informed by an awareness of which treatments may or may not have been effective in the vicinity of the farm where treatment is proposed. This can be ascertained by bioassay – testing the sensitivity of the lice on the farm to the available products but also can be informed by the effectiveness of recent treatments undertaken on other sites in the same area or waterbody. Reasonable communication takes place between some but by no means all operators, so having information on the effectiveness of treatments available publically would make treatment decisions easier.

As well as clear clinical reasons, there is a philosophical disconnect in terms of public interest where sea louse data is not published. Sea louse infestations on farmed fish are dissimilar to routine diseases or parasite infestations in terrestrial animals because unlike these afflictions, the presence of lice on farmed salmon is almost ubiquitous and there is a strong likelihood that the sea lice arising from farmed fish may impact upon the interests of others – for example, those who own or
enjoy Scotland’s wild salmonid fisheries. In a general sense, in most other areas and sectors, the impacts of those who benefit from the use of the Scottish environment and whose practices may impinge upon the interests of others are exposed to public scrutiny. There seems to be no coherent reason why sea louse data should be treated any differently. Further, most of the companies operating in Scotland also operate under regimes in foreign countries where publication of such data is routinely required. SEPA therefore continues to support the publication of near real time sea louse data and considers that the lack of proposals in the Bill to address this issue is a significant omission.

SEPA would also support a reporting requirement relating to the numbers of fish mortalities on a farm-by-farm basis. This would allow the FHI to monitor patterns of mortality and respond appropriately.

The sharing of information on fish health issues is an important element in ensuring that sister regulatory agencies work together cooperatively. This might be facilitated either by legislative provisions or through policy development and close liaison between relevant agencies.

We note and welcome, in the Explanatory Notes, as part of the Financial Memorandum at Part 4 on Shellfish, under the Protection of shellfish waters, at paras 318-319, the proposals to continue to protect water quality in designated shellfish waters and to create a legislative framework that enables the continued designation of shellfish water protected areas following the repeal of the Shellfish Waters Directive in 2013. We also note and welcome the proposal at para 322 to align the process of designation and de-designation of shellfish waters with the RBMP timescale (i.e. every 6 years) and to set up a working group to take forward a range of supporting actions.

SEPA hopes the comments above assist in the discussions around the Aquaculture and Fisheries (Scotland) Bill and is content to provide further information, input and clarification as required either by correspondence or before the Rural Affairs, Climate Change and Environment Committee on 5 December.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record.
SNH is the Government agency charged with the conservation and enhancement of Scotland’s habitats, wildlife and landscapes, with facilitating their enjoyment by the public and with increasing the general level of understanding about this resource. Its statutory purposes also include ensuring that the natural heritage is used sustainably.

We welcome the provisions of the Bill, which address a number of aquaculture and fisheries management issues that are of direct interest to SNH. SNH remains supportive of both sectors. We welcome measures geared towards the sustainable management of the aquaculture sector and the good governance of our fish and fisheries resources.

Two of the key themes of the recent consultation were transparency and accountability in the ways in which the aquaculture industry and fishery managers (particularly District Salmon Fishery Boards) operate. In our view better regulation, transparency and good governance will enhance the reputation of these important industries, both nationally and internationally.

Part 1. Aquaculture

We support the measures described in Chapter 1 of the Bill to make the currently non-statutory Farm Management Agreements statutory. This measure will help coordinate management of sea lice numbers between farms to the benefit of farmed salmon and the water environment. The need for single operators to provide a Farm Management Statement is also a step forward since it lets other water users know what management is underway.

Section 1 of the Bill requires Farm Management Statements to reflect (so far as possible) the recommendations in the industry Code of Good Practice. That CoGP makes no reference to sea lice management in relation to wild salmonids, but only in relation to farmed stock. We can see advantages in measures that would integrate the management of farmed and wild fisheries, especially with the advent of marine planning and the development of tools such as the risk/sensitivity model commissioned by Marine Scotland and being developed by the Rivers and Fisheries Trusts of Scotland [RAFTS]. That tool will differentiate between rivers by their fish production, sensitivity, conservation value and risk of impact. That is important from a natural heritage perspective because of the high conservation value of wild salmonids themselves. It also would better reflect the role that wild fish play in the ecology of other species of high conservation value such as fresh water pearl mussels.

We support the inclusion of Section 2 of the Bill which amends the Aquaculture & Fisheries Act 2007 to address the issue of fish farm escapes. The issue of escapes and genetic introgression with wild Atlantic salmon has been a source of concern for many years, although the scale of this issue has never been fully quantified. These powers (to obtain samples of fish from fish farms for tracing purposes), and those proposed in Chapter 2 of the Bill relating to the adoption of strict technical standards for containment structures, will significantly increase confidence in this element of fish farm biosecurity.
**Commercially damaging species**

SNH supports this section of the Bill. The provisions detailed in Sections 8-19 reflect those recently included within the Wildlife & Countryside Act 1981 (as amended) to control non-native species. These provisions, whilst similar in terms of the introduction of control agreements, control orders and emergency action notices, are not identical. One area which may bear greater scrutiny is Section 15. This section sets out the provisions relating to emergency action notices and allows for an appeal to be made. We note that allowing for an appeal process may reduce capacity for rapid action to be taken to deal with a new and sudden outbreak.

**Part 2. Salmon fisheries**

Whilst the Bill does not reform the way that fish and fisheries are managed in Scotland, it promotes greater openness and accountability in the way in which District Salmon Fishery Boards operate. SNH is fully supportive of this.

Section 23 of the Bill providing Scottish Ministers with the powers to take fish or samples of wild fish for tracing purposes or for research to inform management at, both a local and national level, is sensible and reasonable. SNH supports this accordingly. It is unclear in the Bill text whether the term ‘fishery’ also includes hatcheries run by DSFBs or other fishery interests for re-stocking purposes. In our view it should.

The Bill also provides Scottish Ministers with the powers to manage salmon fisheries by allowing them to amend close times, estuary limits and other regulations by their own hand. These are detailed in Section 27 of the Bill. We agree that this is both a sensible and necessary power for Scottish Ministers to have and thereby support its inclusion.

Carcass tagging, introduced in Section 22, is a tool which is widely used elsewhere to measure and control Atlantic salmon exploitation. It is seen as an effective tool in tackling the illegal trade of rod-caught salmon, where traceability is a key issue. The precise detail of how this provision will be delivered will be covered in a separate regulation. We fully support this element of the Bill.

Consenting and licensing the introduction of fish into inland waters was a key feature of the Aquaculture & Fisheries (Scotland) Act 2007. The introduction of that power brought Scotland into line with other parts of the UK, where fish movements have been tightly regulated for many years. We have had some concerns about the introduction of fish, particularly Atlantic salmon, in areas where DSFBs perform a regulatory function. This is particularly problematic when the catchments concerned have been classified as Special Areas of Conservation under the EC Habitats Directive and these activities have not been controlled in a manner which is fully compliant with its requirements. SNH strongly agrees, therefore, with the provisions outlined in Section 28 of the Bill.

**Part 5. Miscellaneous**

Section 50 of the Bill outlines measures to recover costs incurred with the carrying out of certain aquaculture and fishery functions. These have not been identified in detail, but will be specified in regulations. We agree that businesses or sectors which benefit directly from the support provided by the public purse should pay a fair share of the costs incurred. We therefore support the inclusion of this section within the Bill.
Written submission from Scottish Water

Scottish Water would like to thank you for the invitation to comment on the aforementioned consultation paper. Our comments are restricted to the section covering shellfish waters.

PART 4: SHELLFISH, Protection of shellfish waters

Framework of Environmental Objectives

We note that the Water Environment and Water Services (Scotland) Act 2003 (WEWS) will be amended by the Aquaculture and Fisheries (Scotland) Bill (The Bill) to:

- include the protection of shellfish waters
- incorporate the broad principles of the Shellfish Water Directive into the River Basin Management Planning (RBMP)
- develop a framework of environmental objectives

We would like to understand how the framework of environmental objectives will be developed, and whether this will be subject to public consultation? This is important as it may lead to specific actions for Scottish Water that need to fully understood.

Designation

We note the proposed alignment of designation and de-designation of shellfish protected areas from the current two-three year cycles to the minimum 6 yearly cycle in-line with RBMP. On the basis of the information provided we understand that the process will be undertaken during the “current condition and challenges for the future” consultation period of RBMP. We would ask for clarity on the approach taken to achieve alignment, and the year when alignment will be achieved. This is important to Scottish Water to ensure alignment with regulatory investment planning decisions through the Quality and Standards (Q&S) process.

Disproportionate Cost

We welcome that, in considering the continued protection of the shellfish industry, disproportionate costs to other sectors and bodies, such as Scottish Water, will be considered. Scottish Water has already invested substantial sums to enhance assets in the vicinity of shellfish waters and it is important to ensure investment is both proportionate and effective. In many cases Scottish Water may not be the primary cause of water quality problems and we welcome the commitment to address sources of diffuse pollution.
The Scottish Wildlife Trust welcomes the opportunity to provide evidence on the Aquaculture & Fisheries (Scotland) Bill.

Summary

- We welcome new statutory measures to underpin the management of fish farming in Scotland. However, these must be complemented by timely Government action on those proposals consulted on but not addressed in the Bill.
- We welcome new powers that modernise and strengthen the management of salmon and sea trout fisheries in Scotland. In particular, the introduction of mandatory carcass tagging to reduce illegal and unreported catch.
- Full availability of data is required to fully assess strategies for the control of sea lice and disease and gain a broader understanding of the impacts on wild fish. The reporting of such data should be a statutory requirement.

Introduction

Wild Atlantic salmon are vulnerable to human pressures, with many stocks across the whole of its range in a depleted state. International efforts to reduce exploitation have been undertaken but many factors, including climate change, are thought to be contributing to declines. Given the status\(^1\) and iconic standing of salmon, it is vital that those activities under our control are managed to improve the situation and that every effort is taken to regulate appropriately for its conservation.

The Scottish public has a strong connection to our native wildlife and habitats and there is clear support for their continued protection. When asked in a 2011 survey by Scottish Natural Heritage\(^2\) about the importance of protecting the quality of places for future generations the results revealed that rivers and lochs are most highly valued, followed by coast and beaches. When asked about the importance of different aspects of the natural environment and its management, high water quality around the coast came out on top, with continuing to have wild salmon in Scotland’s rivers, at number four. Both aquaculture and freshwater fisheries have a strong impact on these areas of importance.

Our response to the consultation\(^3\) outlined our general support for many of the proposals contained therein. While we can welcome the inclusion of several elements we firmly believe that this Bill must be complemented by proceeding with a number of the proposals set out in the consultation. We understand that a number of these proposals can be progressed through existing powers and request a firm commitment from Government that these be implemented without delay.

Part 1 – Aquaculture

The Scottish Wildlife Trust supports sustainable aquaculture and would like to see Scotland become a world leader in sustainable aquaculture production. The

\(^1\) The Atlantic salmon (Salmo salar) is listed in annexes II and V of the European Union’s Habitats Directive as a species of European importance

\(^2\) What the Scottish public value about the natural heritage. Available at http://www.snh.gov.uk/docs/B941737.pdf

\(^3\) http://scottishwildlifetrust.org.uk/docs/002__057__publications__policies__Consultation_response___Aquaculture_and_Fisheries____1330709239.pdf
reputation of Scottish farmed fish products depends to a considerable degree on the ecological quality of Scotland’s aquatic environment. Quite apart from the need to minimise impacts on ecological grounds, it makes every sense for the industry to also minimise impacts to mitigate reputational risk. If the salmon farming industry is perceived as damaging wild salmon stocks and the environment, consumers may simply reject its products.

1 - Fish farm management agreements and statements. We welcome the inclusion of a statutory requirement for farms to be party to a Farm Management Agreement (FMAg) or Statement (FMS) with sanctions for non-compliance. However, we believe the setting of management area boundaries should be subject to stronger scrutiny.

Area-based management that promotes coordination of production, fallowing and treatment has long been identified as an effective method of reducing the risk and spread of disease and parasites and reducing the use of chemical treatments.\(^4\) While agreements have operated under the voluntary Code of Good Practice (CoGP), the lack of a statutory system risks such agreements being undermined by non-participation. Additionally, in a spirit of openness and transparency we believe Farm Management Agreements should be publically available documents and would benefit from the participation of appropriate stakeholder groups with common interests in the health of farmed and wild salmonids, and the wider environment.

Under the Bill, operators would retain the primary responsibility for determining boundaries of farm management areas (FMAs) under the CoGP. The criteria under which boundaries are set are not clear and the Code simply states that “delineation of FMAs is subject to review, which takes account of changes in operation, production, ownership, etc.”\(^5\)

We supported the consultation proposal to provide Scottish Ministers with a fall back power to determine management are boundaries and note the inclusion at section 1(6) of a power to modify the definition of the CoGP in relation to farm management areas. We understand that this provides a fall back power allowing Scottish Ministers to define farm management area under a separate mechanism if deemed necessary. We believe there should be commitment to a Government review of the current approach to the delineation of farm management area boundaries to ensure that it is appropriate in the context of environmental protection.

We firmly believe that boundaries for farm management areas must be determined primarily on ecological grounds, taking into account the best available evidence on sea-lice dispersal and connectivity/interactions between sites. Where there is limited information, a precautionary approach of selecting larger, rather than smaller boundaries, should be adopted. The proposed boundaries must be suitable to protect the local environmental and ecological features and account for the level of risk or sensitivity of a given area – for example its proximity to a river designated under the Habitats Directive for the protection of Atlantic salmon. They must also take account of the relevant cumulative and in-combination effects of connected activities, such as processing plants. The criteria by which a farm management area

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\(^4\) http://www.nasco.int/pdf/aquaculture/wild_farmed_report.pdf
\(^5\) http://www.thecodeofgoodpractice.co.uk/farm/farms-introduction
boundary has been decided should be publically available and involve the participation of appropriate stakeholder groups.

2 – Escapes, and obtaining samples, from fish farms. While we would advocate a goal of zero escapes we believe that it is essential that fish identified as escaped can be traced back to their farm of origin. We understand that genetic tools may now be available and we would support the use and application of such samples so that escapes can be identified and related to the farm or company of origin.

3 - Technical requirements for equipment used in fish farming. Escaped farmed salmon have the potential to disrupt ecosystems and alter the overall pool of genetic diversity through competition with wild fish and interbreeding with local wild stocks of the same population. It has been shown that interbreeding of farmed with wild salmon of the same species can result in reduced lifetime success, lowered individual fitness and decreases in production of wild salmon. Escaped farmed salmon must therefore be considered a severe threat to the long-term existence of wild Atlantic salmon.

The most effective way to address these risks is to reduce the number of escapes of farmed salmon to zero. This is in line with the international goal of the North Atlantic Salmon Conservation Organisation (NASCO) that ‘100% farmed fish to be retained in all production facilities.’

We fully support the inclusion of a power allowing Scottish Ministers to prescribe technical requirements for fish farm equipment. However, we believe that as a high proportion of escapes are caused by human error (30% of all salmon farm escape events in 2011), enforceable technical regulations should extend to include training in the operation of equipment as well as its design, construction, manufacture, installation, maintenance or size.

Furthermore, predation resulting in a hole in the net has accounted for 36% of total escape events at saltwater salmon sites between Jan 2011 (when current classification of escape cause was introduced) and Oct 2012. Efforts to understand and reduce predator effects, specifically seals, on farm equipment must be prioritised in the development of a technical standard. Ultimately removing the need to kill seals, for example by requiring tensioned nets or other effective and benign deterrents, would benefit wildlife and improve the public and investor perception of salmon farming, which suffers greatly from the association with seal deaths.

In Norway, a technical standard, enforced through the NYTEK regulations, was introduced in 2003 and specifies requirements for the design net cages and mooring systems necessary to cope with environmental conditions at fish farm sites. It also addresses the handling and use of equipment. The introduction of the standard appears to have resulted in a dramatic reduction in the number of major escape

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9 http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/18692/escapeStatistics
incidents in Norway, principally due to a sharp decline in large-scale escapes resulting from the failure of cages.\textsuperscript{11}

\textbf{4 – 7 Wellboats} It is of serious concern that wellboats are not sufficiently covered by controls to manage the risk of parasites, pathogens or diseases. We therefore welcome, the enabling legislation in the Bill and believe that it must be enacted as soon as possible. We understand that the control of discharges from wellboats at fish cage sites could be considered under existing Controlled Activities Regulation licence arrangements and we ask that Government take this forward urgently.

\section*{Part 2 – Salmon Fisheries}

The management model for migratory salmonids in Scotland allows local decision-making by those with local knowledge of the catchment. While we appreciate this model, we support proposals allowing Ministers to intervene when the required standards of operation are not being fulfilled.

\textbf{22 - Carcass tagging} We fully support the introduction of statutory carcass tagging for all net caught salmon as described in the Bill. Such a system is essential to reduce the levels of illegal and unreported catch. We believe a regulation must be introduced for the season subsequent to the Bills enactment. The requirements of the regulation should mirror those in place in England & Wales since 2009, where each tag is individually numbered and the details of all fish caught are recorded in a log book.

\section*{Proposals not addressed in the Bill}

Many proposals covered in the consultation have not been carried into the Bill. Although we understand that a number of these can be taken forward under existing powers we seek firm commitment and timelines for action.

\textbf{Publication of data –} A significant barrier in assessing the impacts of fish farming is the lack of publically accessible farm-specific data. The consultation proposed requirements around the provision of sea-lice, fish mortality, movement, disease, treatment and production and we understand that existing powers are available to require such information provision.

Understanding lice levels on farms and how infestations in farmed salmon are linked to increased incidences in wild salmonids is key to ensuring the sustainability of the industry and would go some way to addressing the conflicts that arise when the two are located in the same vicinity. The impact of such a link remains contentious. However, a report to the Salmon Aquaculture Dialogue\textsuperscript{12} concluded “it is not plausible to draw a single over-riding conclusion regarding the potential negative impacts of sea-lice on all wild fish stocks world-wide. Nevertheless we believe that the weight of evidence is that sea-lice of farm origin can present, in some locations and for some host species populations, a significant threat. Hence, a concerted


\textsuperscript{12} http://assets.worldwildlife.org/publications/189/files/original/SalmonAquacultureDialogFAQJuly2012Website_SalmonVVV1.pdf?1344876257
precautionary approach both to sea-lice control throughout the aquaculture industry and to the management of farm interactions with wild salmonids is expedient.  

In order to fully assess strategies for the control of sea lice and gain a broader understanding of the impacts on wild fish, the results of sea lice monitoring from individual farms should be made publically available in its raw form. While we note that the Government’s intention is to develop an improved voluntary system of reporting, in discussion with stakeholders, we would urge that existing powers be used to make such reporting a statutory requirement.

Marine Planning - While as stated in the consultation document it is not the intention for this Bill to consider issues related to location policy for fish farms it is important that the Committee consider this Bill within the wider marine policy and legislative context. In particular the Marine (Scotland) Act 2010 and the provisions concerning marine planning, which once established will provide a framework for the sustainable development of all industries and activities throughout Scotland’s seas. Marine planning is fundamental to pillar one (wider seas measures) of the Government’s three pillar approach to marine nature conservation. Marine planning can assess how multiple uses of the marine ecosystem can proceed whilst operating within the carrying capacity of the marine environment, which is of particular relevance to the aims of this Bill in managing interactions between wild and farmed fish.

Appropriate risk-based site selection for fish farms is a key factor in managing interactions between wild and farmed fish and can prevent many of the unintended and negative impacts of the industry. The use of science-based sensitivity mapping for example to identify suitable locations and guide decision-making will be an important future approach. Integration of fish farm area management with a strategic marine planning system will also enable full and proper consideration of cumulative and in-combination effects.

We are concerned therefore that targets for finfish aquaculture growth have seemingly been adopted by Government prior to formal consultation and adoption of a national marine plan. We do not believe that this target has considered the carrying capacity of Scotland’s environment for fish farms but is instead based on what the industry believes it can operationally achieve. Adoption of a national marine plan is now unlikely until 2014 with regional plans following in subsequent years. It is therefore vitally important that in the absence of a planning system, marine development occurs within the constraints of a robust regulatory regime that ensures environmental protection.

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14 By 2020: To increase the sustainable production of marine finfish at a rate of 4% per annum to achieve a 50% increase in current production
Written submission from the Sea Fish Industry Authority (Seafish)

The Sea Fish Industry Authority (Seafish) is a non-departmental public body that provides support to all sectors of the UK seafood industry. It has a stated commitment to promoting sustainable and profitable seafood enterprises. Seafish has no remit for involvement with the salmonid sectors, cultivated or wild, but it has a role in promoting and supporting all marine finfish and shellfish cultivation and sea fisheries developments.

In general, we welcome the provisions, as proposed, within the Bill, but offer comments on specific areas.

**Part 1 Aquaculture:** The focus of the section is, understandably, salmon-centric, but care should be taken that any measures proposed or implemented do not prejudice the present and future development of cultivation businesses and sites for halibut, cod, turbot or any other marine fish that may offer commercial prospects in the medium to longer term. Safeguards should be strengthened.

**Chapter 1 Fish farm management.** Section 1.2 The requirement for a marine (ie not a salmon or trout site) finfish cultivation site to be party to a Farm Management Agreement or Statement that may have little or no relevance to its business or impact may be an unwarranted burden and provision should be made so that a delay in agreeing such documents cannot be used as a block to development. A mediation mechanism between parties may be required on occasion.

There should also be a clearer mechanism for mediating between the differing requirements of cultivating to certified Organic Standards and those of ‘conventional’ farms when contentious issues arise.

**Part 3 Sea fisheries:** Amendment should be considered to clarify that conducting valid scientific research onboard a commercial fishing or similar vessel that is not designated as a research vessel would provide a defence to or ‘grounds for release’ under powers conferred by Sections 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43 and 44.

**Part 4 Shellfish:** We welcome the provisions to continue the protection offered to Shellfish Cultivation Waters. However, there remains the concern that the specific protections conferred under the Shellfish Waters Directive are not enshrined within the Bill and this may serve to lessen the actual level of protection encountered on the ground. In addition, the wording within section 47.4(b) (ii) might appear to offer SEPA the opportunity to decide that it may not be ‘necessary or desirable’ to implement protection measures in areas where it considers that the expense would not be commercially justified. Whilst not the intent of the Bill, this may prove to be prejudicial to some smaller shellfish cultivators located in some of the more remote and fragile rural areas.

**Part 5 Miscellaneous:** Section 50. Whilst recognising the necessity of funding activities pertaining to aquaculture or fisheries, the provision of the mechanism to introduce direct charges for such functions is of concern to industry. In these financially challenging times, any measure that imposes, or may impose an
additional, unknown and undefined, cost burden on a business or sector, induces uncertainty, weakens investor confidence and may ultimately influence future investment decisions or prejudice the viability of a business. Careful consideration should be given to the desirability of this step.

Should the Committee so wish, we would be happy to expand upon our representations in person.
I welcome the opportunity to submit evidence to the RACCE Committee.

I have operated a wildlife watching and diving charter boat in Argyll over 20 years, have also worked in trout farming and creel fishing and hold a degree in Marine Zoology. In the local area there are ten other wildlife boats generally employing two or three people with perhaps 24 customers per day bringing income to accommodation providers, shops, pubs and restaurants.

We are at a cliff-edge. The fin-fish farming industry is applying for consents for significant expansion, but existing environmental problems have not been resolved and farms which are currently in inappropriate locations and causing problems, such as Ardmaddy are applying for increases in biomass.

Important issues which threaten jobs in wildlife tourism and salmon fishing have been left out of what is a very limited draft Bill, and I hope that the Committee will expand the scope of this bill.

The technology already exists to allow fin-fish farming to operate in harmony with tourism and the marine environment and the environmental problems currently caused by the industry would be greatly reduced if the industry were encouraged by progressive legislation to adopt better technology.

Double netting cages with outer nets designed not to trap wildlife would make it unnecessary to shoot seals, or to use seal scarers which disturb porpoise and exclude them from sounds, threatening wildlife tourism jobs. There is scope within Chapter 2 of the proposed Bill under “equipment” to encourage the use of double nets. All new farms could be constructed with this technology.

Inappropriately sited farms could be moved well offshore to areas of lower conservation importance.

The ideal solution is for the industry to move to closed containment. In such systems the farm is separated from the sea or fresh water. The problems of disease and sea-lice transmission to and from wild fish, organic and chemical pollution, seal shooting and disturbance of porpoise by seal scarers would all be solved. Farms would make a significant saving in the use of chemicals. There is an economic benefit in that waste material would be used as fertiliser.

Seabed Pollution

44% of seabed monitoring reports of organic pollution provided by fish-farmers to SEPA between 2009 and 2011 were classified as “unsatisfactory” and a further 21% were graded “borderline”.(ref 1). This is consistent with my own underwater observations.

I have video taken at a farm showing extensive bacterial mat (indicating a highly polluted seabed) outside what was the ” Allowable Zone of Effects” (AZE) at the time. The farm was prosecuted and the site has been remodeled, so that the polluted area now falls within the new AZE.
I also filmed the seabed at [***], a farm currently classified as “satisfactory”. The video shows a very degraded seabed with bacterial mat over a large area. The SEPA monitoring report 22/4/10, when the biomass was 660 tonnes, states that “the survey does not satisfy the CAR license requirements” and that “two stations failed for abundances of enrichment polychaetes”. Despite these concerning observations the farm was graded as “satisfactory” and was perhaps fortunate not to be graded as “borderline” or “unsatisfactory”. This farm is in the process of applying for a CAR license to increase from 750 to 1500 tonnes. The computer model predicts that this more than doubling of biomass will not be beyond the assimilative capacity of the local environment. One has to question the reliability of the prediction given that the seabed is stressed at 660 tonnes.

There is a rocky reef near the small farm at [***] within the [***]. This reef had consistently hosted a population of the very rare UK BAP seafan anemone *Amphianthus dhornii* since 1983 and it was a regular dive site for us because of this.

I carried out a video survey of the reef in October 2001 just before the farm was first stocked and filmed 23 seafan anemones on one dive. I continued to survey exactly the same area on a regular basis, recording impacts to the reef - which was well outside the ‘Allowable Zone of Effects’. The required Appropriate Assessment (which should have been produced before the discharge consent was granted in 2001) was eventually published in 2005. It states “SEPA concludes that the presence of the cage group would not affect the integrity of the site, in particular the nearby reef features” A group of us returned to exactly the same survey site 11 years to the day after the pre-impact survey. The site had been fallowed for some time and many species appeared healthy, but in 8 dives we could find no sea-fan anemones. Would consent have been given for a nearby pollution source if the protected species was on land?

Scallop dredging was banned in the Firth of Lorn SAC in 2007. A computer model of sediment raised by dredgers predicted that the sediment would not affect the reefs (ref 2). The jewel anemone *Corynactis viridis* is an indicator species of very clear water. An underwater study (ref 3), found this anemone to be rare in what is now the SAC in 1982. I have filmed the same part of one particular reef within the SAC most years between 2001 and 2012 and it is clear from a comparison of the videos taken that the abundance of jewel anemones has very significantly increased on this and a number of other reefs within the SAC since 2007 when dredging stopped. We have not observed increases in jewel anemones outside the SAC. Thus observations on the reefs raise questions about the prediction of the computer model. The problem with computer models is that the sea is a highly complex place and any model is only as good as the assumptions it is based on. Computer models need to be validated by observations on the seabed.

However SEPA relies on computer modeling to license sites, even in situations of complex tides and rocky sebeds (such as the recently granted CAR license at Ardmorey) when it is known that the model used gives unreliable results in these circumstances.
Moving the goalposts

There used to be a recommendation that farms should be sited no closer than 8 Km to each other. Now we have much larger farms less than 2 km apart.

Until 2005 the AZE was 25 meters from the cage edge. Then Site Specific Modeling was brought in allowing larger areas to be polluted.

A layperson might reasonably assume that the ‘Allowable Zone of Effects’ around a fish farm would be an imaginary ‘line in the sand’ on one side of which some pollution effects would be tolerated but on the other side the seabed would be pristine. However it seems that this is now not the case at all. The Modeling report for (CAR/L/1000800 sept 2012) models the Infaunal Trophic Index (ITI) at the AZE at 30. The ITI relies on the assessment of benthic organisms in polluted areas. ITI 60 to 100 equates to a normal community: 30 to 60 is a ‘changed’ community and less than 30 is a ‘degraded’ community. Thus the AZE now represents the borderline between ‘degraded’ and ‘changed’.

In Chile salmon farms expanded greatly with poor environmental controls, then suffered a major outbreak of ISA disease with social and economic consequences. Is it wise for Scotland to be relaxing the environmental controls now?

Are existing environmental safeguards being effectively applied in the consenting process?

*The Scottish Government has committed itself to “using sound science responsibly.....ensuring policy is developed and implemented on the basis of strong scientific evidence, whilst taking into account scientific uncertainty (through the Precautionary principle)” (ref 4)*

There are a number of new applications for consent currently being considered and there are concerns that the principles above are not always applied to the process. If the Committee wishes to consider a case-study an independent analysis of the Appropriate Assessment and Planning Process at Ardmaddy South would be a worthwhile exercise.

Sea-lice

The transmission of sea-lice, other parasites and disease from farms to wild fish needs to be properly legislated.

Seal shooting, the impact of seal scarers on cetaceans and double nets

It is unnecessary for salmon farmers to shoot seals. Salmon farming and wildlife tourism operate in the same areas and while the numbers shot may be a small percentage of the overall population, shooting can severely deplete the local populations of seals which boats take people to see. There is a need for independent monitoring of the number of seals shot, even SNH do not know how many seals are shot at each site.
Because the single tensioned nets used by 87% of Scottish salmon farms are not fully effective at keeping seals and salmon separated, the industry shoots seals and uses devices called seal scarers or Acoustic Deterrent Devices (ADD’s) which emit loud underwater noises in order to keep seals away from the farms. ADD’s also disturb echo-locating porpoise and dolphins from a large area and so can exclude cetaceans and seals from inshore sea lochs and sounds (ref 5) which are important to cetaceans and to wildlife tourism operators like ourselves. Farms which use single nets, ADD’s and shoot seals are not complying with the requirement of the guidelines to the Marine (Scotland) Act 2010 that seals should be shot only as a “last resort”.

The ideal solution to this and other issues is to move or convert farms to closed containment. Another solution which fully meets the requirement that seals should be shot only “as a last resort” is for farms to fit an extra net completely surrounding the cage with a mesh size which does not trap wildlife. This double net keeps the seals and salmon separated so that there is no need to shoot seals or disturb porpoise. The farms benefit by selling “seal friendly salmon” and by reducing the risk of escaped stock. Double nets are already fitted to some Marine Harvest farms in Canada.

All Cetaceans have full legal protection under the Habitats Directive. The Nature Conservation (Scotland) Act makes it an offence to disturb deliberately or recklessly or to harass any cetaceans. The use of ADD’s in areas important to porpoise could well be illegal given that there are alternatives.

The wildlife on which our businesses rely is threatened by the unnecessary shooting of seals and by the disturbance of seals and cetaceans by ADD’s. We have lost sheltered dive sites which are important for winter bookings. Wild salmonids are in serious decline locally and there is scientific uncertainty as to the level of damage to ecosystems caused by chemical and organic pollutants.

The technology exists for fin-fish farms to prosper and expand with minimal impact on wildlife and tourism. The scope of this Bill could be expanded to encourage the industry to adopt this technology.

I would be happy to present and explain underwater videos and to take the committee members out on our boat to see the situation for themselves.

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Ref 1 Salmon and Trout Association report August 2012
Ref 2 Dale & Sherwin (2011) SNH Commissioned Report 414
Ref 3 Picton, Howsen et al. Sublittoral survey of Scarba, Lunga and Garvellachs NCC report 1982
Ref 5 Variation in Habitat Preference and Distribution of Harbour Porpoises West of Scotland. Cormac G. Booth PhD University of St.Andrews 2010
Written submission from the Spey Fishery Board

The Spey Fishery Board welcomes the draft Aquaculture & Fisheries Bill and appreciates the opportunity to comment on some aspects of the Bill, which the Board believes may have unintended consequences if they are pursued.

The Spey Fishery Board adheres to the DSFB's Code of Good Practice and each year we publish a comprehensive Annual Report, including a financial summary.

We already hold our Annual General Meeting in public and have no difficulty with the principle of open meetings. However, it is important and legitimate that some aspects of meetings can be held in private (e.g. when discussing deployment of bailiffs, CCTV cameras, staff wages etc.). It is also important that DSFBs are able to raise contentious ideas, which may never be taken forward, without concern that these would be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting. Without clear guidance about what it is acceptable to discuss in private, this provision could have the result of inhibiting discussion within meetings. Indeed, potential Board members in some districts in which there are particularly contentious issues to be faced may even be put off from volunteering and giving up their time. This is already an issue in some districts. Furthermore, the cost of moving these meetings to a venue with sufficient capacity for members of the public would involve a significant expense, which may prove disproportionate for many of the smaller DSFBs. We would suggest that a solution would be that the Annual General Meeting should be a public meeting, and that there might be an opportunity for the public to attend part of all other meetings and submit proposals to be considered.

We will implement a formal complaints procedure, if it is required, but we believe that this proposal may be unnecessarily prescriptive. The processing of complaints will usually be undertaken by the clerk and in the case of smaller boards, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue 'campaigns') becomes arduous, this will result in resources being diverted from other areas of operation. We are also concerned as to why such a statutory provision is deemed necessary, particularly when it appears to us that public bodies do not operate under a similar requirement.

The Spey Fishery Board welcomes the inclusion of a power to introduce a carcass tagging system in Scotland but we believe that this provision should be delivered in primary legislation. Carcass tagging was a clear recommendation of the mixed stock fisheries working group and there was overwhelming support for this provision in the consultation. Whether delivered via primary or secondary legislation, we would seek a clear assurance that a statutory system, using individually numbered, recorded tags, will be in place in time for the 2014 salmon fishing season. Any system which does not use numbered tags would not allow verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act). Equally, the Spey Fishery Board, along with many other DSFBs, is strongly in support of a national carcass tagging system for all rod caught fish not returned to the river. We believe that carcass tagging of rod caught fish would be a useful tool to aid DSFBs in ensuring compliance with their conservation policies. Furthermore, we
must emphasise that whilst it is illegal to sell rod caught fish, it is not currently illegal to purchase rod caught fish. Once we have a statutory system of carcass tagging in place, the Spey Fishery Board believe that it should be illegal to both sell and purchase an untagged fish.

The Spey Fishery Board is supportive of the principle provided by Section 25 that will enable Scottish Ministers to impose requirements regarding the monitoring of certain orders which we believe is consistent with evidence-based management. However, this section also makes failure to monitor and evaluate the effects of an order a criminal offence, on which a DSFB may be convicted on the evidence of one witness. This appears to be totally disproportionate, and again, may result in potential Board members being put off from volunteering and giving up their time. We understand that the inclusion of the provision that the Board may be convicted on the evidence of one witness is a drafting error, but we would highlight again that this is disproportionate in the case of a Board failing to meet a monitoring requirement. Finally, we believe that there would need to be a degree of proportionality in placing monitoring requirements on a DSFB, due to the potential expense and/or expertise required to carry out such monitoring, particularly in the case of smaller Boards. We would be concerned if Scottish Ministers were to take "out an order at their own initiative, and then impose a legally binding requirement to monitor such an order on that Board. We therefore believe that Section 25 should only apply where a DSFB or proprietors have applied to Scottish Ministers for such an order.

The Spey Fishery Board is also concerned by any proposal to permit fishing during the weekly close times for net fisheries (6pm Friday - 6am Monday), which for bag or stake net fisheries is achieved by removing the 'leader' of a net and thereby preventing fish from entering the nets. The weekly close times were put in place for sound conservation reasons and were designed to allow a proportion of the salmon run to have free passage into their natal rivers throughout the season. However, in some parts of Scotland, the weekly close time is often not being observed if, for example, rough sea conditions make it too dangerous to remove the leader, resulting in a significant increased exploitation of fish. We are content that exceptions to the weekly close time should exist and we would not want to see anyone's life being put at risk. However, we believe that where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity. Implicit in this, is a requirement for netsmen to report all such occurrences when leaders are not removed. We do not support the suggestion from SNF AS that the weekly close time should be abolished and a minimum number of days at sea would be introduced. We do not support this solution for a number of reasons. Such a solution would not allow free passage of fish to their natal rivers throughout the season, would permit additional exploitation on the fragile spring stock component (considered by Marine Scotland Science to include all fish entering the rivers before June) and would result in a considerable increase in exploitation from 128 days to 150 days. This would be absolutely contrary to internationally accepted best practice and agreements on mixed stock fisheries. It would also be unacceptable for such a solution to set a minimum rather than maximum number of days at sea.
The Tay District Salmon Fisheries Board welcomes the opportunity to comment on the Aquaculture and Fisheries Bill.

However, as our views have been comprehensively addressed by the Association of Salmon Fishery Boards we refer you to that response, which we endorse, rather than repeat them in detail.

In addition we wish to draw attention to the part of Section 20 concerned with Members Interests, particularly the part headed 46E(2)(e). As the majority of members of DSFBs are proprietors of salmon fishing rights with interests in their respective fisheries, a DSFB could not function if members are excluded from taking part in the board’s consideration of all business in which members have relevant financial interests. Clarification of what constitutes a relevant interest is required therefore. A distinction should be made between a fishery interest and a non-fishery financial interest (e.g. where a board member might have an interest in an activity that might impact on the protection and improvement of salmon fisheries such as hydro electric development, agriculture etc). Section (e) should only apply in the latter case.

We also wish to emphasise the concerns raised by the ASFB in relation to Section 25 of the Bill. We do not think it proportionate that a Board, made up of volunteers, should be criminally liable for the failure to monitor certain orders. This would especially be the case where an order was taken out by Scottish Ministers at their own hand. That would clearly be unfair and would, we believe, be a deterrent to volunteers wanting to serve on boards.
BACKGROUND

In collaboration with colleagues at universities and research institutes in St Andrews, elsewhere in the UK and overseas I have, over the past 15 years, published 10 journal articles, 1 book chapter and 1 major grey literature report relating to sea lice and their effects on host fish physiology and survivorship. Our research has primarily been funded by the Natural Environment Research Council and the European Union, but the most recent journal article (Paper 12) in *Proceedings of the Royal Society B* had no support from any external bodies other than the host institutions of the six co-authors.

In view of the recent interest in *Paper 12* – and its relevance to Part 1 of the *Aquaculture and Fisheries (Scotland) Bill* – I would wish here to provide a summary of how and why we came to undertake the work and publish the results in *Papers 11 and 12* in the peer-reviewed literature.

**Paper 11**

This work comprised part of a large international collaboration ("Sustainable Management of Interactions between Aquaculture and Wild Salmonid fish" – SUMBAWS – funded by European Union FP5; Contract number Q5RS-2002-00730) between Scotland, Ireland, Netherlands and Norway over the period 2002-2005. St Andrews was the lead Partner and Dr Neil Hazon the Project Co-ordinator.

*Paper 11* reported on the eight experimental releases of hatchery-reared salmon smolts undertaken as part of SUMBAWS in three river systems in Ireland over the period 2003-2005. For each release, approximately half the smolts were untreated controls and half were treated with the in-feed parasiticide, emamectin benzoate (SLICE) prior to release. SLICE is an effective treatment against sea louse infestation that is routinely applied in the salmon aquaculture industry. Its efficacy is limited to perhaps 1-2 months so any protection offered to the experimental smolts was restricted to the early marine migration of the juvenile fish. It is known (*Paper 2*) that wild salmon continue to cross-infest one another at sea throughout their marine migration and that adults returning after 2 years at sea carry, on average, higher infestations than those returning after just 1 year.

All experimental fish were internally tagged and externally marked to indicate the presence of a tag should the adult fish be recaptured on return to freshwater one or two years later. In total, 74,234 smolts were released and 472 tagged adult fish were recaptured one year later and 21 two years later. The overall result from the analysis of the tag recaptures, using Fisher's Combined Probabilities test, was that there was a highly significant increased likelihood of survival to return for smolts receiving the treatment. The probability of obtaining this overall result by chance was much less than one in a thousand (P <0.001). A probability of 5 in 100 (P = 0.05) is conventionally taken as the critical level in ascribing significance to an experimental outcome. The conclusion drawn from this study was that protection of smolts over the earliest weeks of their marine migration had a highly significant effect on survival to adulthood, and that sea lice comprise a significant source of mortality.
to free-ranging salmon. From estimates in the paper of the proportion of smolts that returned as adults, "protected" smolts were, on average, 1.8 times more likely to return than unprotected (control) smolts.

**Paper 12**

*Paper 12* was published in November 2012. Just prior to, and immediately following, the publication of *Paper 11*, two other papers (Jackson, D. *et al.* [2011] Aquaculture, 320: 159-163, and Jackson, D. *et al.* [2011] Aquaculture, 319: 37-40) were published elsewhere. Those papers reported the results and conclusions of similar experiments (also in Ireland) but undertaken by a different research group. The conclusion of both those papers was that "the salmon louse (was) a minor component of the overall marine mortality in the stocks studied". We had raised some concerns about the first Jackson paper in the Discussion section of our *Paper 11*, but following the second Jackson paper a group of us (Finstad, Gargan, Krkošek, Revie, Skilbrei, Todd) found that we all had concerns not only over the data that they analysed, and the statistical methods applied in analyzing those data, but also the validity of the conclusions that had been drawn in both. In view of this, we chose to compile all the available published literature (including both Jackson papers) on experimental releases of chemically treated and control groups of salmon smolts and to subject these to a detailed meta-analysis. Meta-analysis is a widely used approach to synthesizing and combining data from disparate sources, and has proved to be a powerful tool for identifying the pattern (or patterns) and strengths ('effect sizes') of significant outcomes. The available experimental data on releases of treated salmon smolts were extensive both in time (1996-2006) and geographic range (Ireland, Norway), and involved very large sample sizes totalling >280,000 fish. All releases were undertaken in rivers adjacent to areas subject to aquaculture.

We undertook three complementary analyses of the composite data, ranging from the standard computation of odds ratios (to estimate effect size), to simple paired *t*-tests and mathematical modelling of marine survival. All analyses converged on the same conclusion: that treatment had a highly significant effect on the survivorship of salmon smolts to return as mature adults. The overall odds ratio of 1.29 was shown by the mathematical modelling to correspond to an estimated loss of 39% of adult salmon recruitment. The 95% confidence interval around that mean estimate of 39% was 18-55%. Thus, when assessing the total mortality of salmon over their marine migration, the ultimate consequence was that more than one third of return adults were being lost if they had not been treated.

In *Paper 12* we made no attempt to estimate per cent survivorship of all the experimental releases but, as far as was possible, retained our analytical focus on comparisons of the numbers of tags actually retrieved. The generation of per cent survivorship estimates for populations or experimental groups is complicated, and necessitates various assumptions regarding tagged fish which survived but which were not caught or retrieved. Notwithstanding those qualifications, it is apparent that the conclusion drawn by Jackson *et al.* in their two papers (that sea lice mortality is a minor component of overall mortality) is based upon their estimates of a difference of perhaps 1 or 2% in the ultimate survival to return of treated and un-treated smolts, and that marine mortality increased markedly over the time period of their experiments. The latter can be explained by several factors relating to the experimental fish themselves and quite distinct from any purported changes in
overall marine mortality regime. Moreover, focusing on an absolute difference of 1-2% obscures the most important implications of these research findings. For example, if sea lice reduce adult recruitment (to re-enter the river) from 6% to 4% then this 2% reduction is equivalent to a one third (33%) increase in overall total marine mortality and a one third decrease in adult recruitment. To place this in hypothetical numerical terms, if, for a given river stock, numbers returning fell from 6,000 to 4,000 adults then that reduction would be viewed as being of concern to a river manager.

But here there are consequences beyond the simply numerical for the management and conservation of wild salmon populations. Because of their typical fidelity to return to their natal river, salmon stocks characteristically show marked genetic differentiation. Some of that genetic variation is considered to be adaptive. Salmon populations often have very low effective population sizes and the actual numbers of breeding adults can be very low in small river systems. Thus, if a stock is reduced from 60,000 to 40,000 that number alone may be of concern, but will likely have relatively little genetic effect at the population level. But a reduction from 60 to 40 adults in a small river may engender critically important population genetic effects as a result of the perhaps irreversible loss of genetic diversity in that stock.

We believe that the analyses and conclusions reported in Paper 12 are comprehensive and robust. We would suggest that there is a crucial importance to focusing on pair-wise comparisons in analysing experimental data such as these, and that the focus should not be directed towards absolute percentages but to relative proportions (or percentages), when assessing the overall total mortality effects influencing successful adult salmon return and which is attributable to sea lice. We maintain in Paper 12 that sea lice are a highly important source of mortality to free-ranging salmon. The data from all the experiments showed the same directionality of effect and a consistently significant outcome. But the nature of these experiments is such that one cannot unequivocally attribute a source to parasites infecting the experimental fish. However, given that the treatment was effective for only the first 1-2 months at sea, and that almost all rivers for which the analysed releases were undertaken were close to salmon aquaculture, the likelihood has to be high that salmon farms contributed to those infestations as the smolts emigrated through coastal waters. In our 2009 WWF report we urged a strongly precautionary approach in assessing the risk to wild and free-ranging fish posed by sea lice on farmed salmon: 

"... we believe that the weight of evidence is that sea lice of farm origin can present, in some locations and for some host species populations, a significant threat. Hence, a concerted precautionary approach both to sea lice control throughout the aquaculture industry and to the management of farm interactions with wild salmonids is expedient" (Paper 9). The salmon aquaculture industry has long placed high priority on the control of parasites on their captive salmon but the minimization of interactions between wild and farmed stocks remains a challenge.
References


Electronic Supplementary Material pertaining to the published article at (http://rspb.royalsocietypublishing.org/content/suppl/2012/11/01/rspb.2012.2359.DC1/rspb20122359supp1.pdf)
Written submission from the Urr District Salmon Fishery Board

As one of the small District Fishery Boards we wish to endorse the presentation of evidence to you by the Association of Salmon Fisheries Boards.

We only have one specific comment to add to that response and that relates to Section 25. Were there to be any provision that threatened a Board or its members with criminal prosecution for failure to monitor and evaluate the effects of an order promulgated by the Scottish Government or Marine Scotland on their behalf, this Board would cease to exist. That would be counter-productive.
Written submission from the UK Environmental Law Association (UKELA)

Stage 1 Inquiry, Aquaculture and Fisheries Bill SP Bill No.17, session 4, 2012.

The UK Environmental Law Association (UKELA) is the UK’s foremost membership organisation working to improve understanding and awareness of environmental law, and to make the law work for a better environment. As such, UKELA has a keen interest in ensuring the effectiveness of the legal framework for the regulation of aquaculture and fisheries management in Scotland.

UKELA has recently published a report called “The State of UK Environmental Law in 2011-2012”, the culmination of a two-year research programme. It finds that there is a lack of coherence, integration and transparency in UK environmental law today. This response, prepared by the Scottish Law working party of UKELA, in consultation with its water law sub-group, comments specifically, but not exclusively, on the issues of legislative coherence (i.e. clarity and comprehensibility), integration (i.e. overlapping and interaction of different regimes) and transparency (i.e. accessibility).

This response considers only Part 1 and clause 51 of the Bill. Where the Bill includes provisions and we consider these can be improved, we have included drafting suggestions in an appendix. Where the Bill does not include provisions, we would be happy to offer drafting suggestions if requested.

Part 1 chapter 1 – fish farm management agreements and statements

1. The availability of farm management statements (FMSs) on an equal footing to farm management agreements (FMAs) undermines the policy intent of creating a statutory requirement to participate in a FMA. The effectiveness of a FMA could easily be undermined by the exclusion of just one operator in a farm management area. It is certainly desirable that, if any fish farm operator is unable to sign up to an agreement with other operators in the area, a FMS be produced as a fall-back position. But improved control of sea-lice etc. will best be achieved by the cooperation of all the operators in a farm management area, so the Bill should establish a hierarchy, making FMAs the default, and permit a FMS only where every reasonable effort is shown to have been made to enter agreement with other operators, without success. Drafting suggestions can be offered if required.

2. In the interests of transparency and the promotion of good practice in farm management areas across Scotland, FMAs and FMSs should be made available on a public register. It is likely that they would have to be disclosed in any case (at least in part) on request under the Environmental Information (Scotland) Regulations 2004. Please see wider comment under Public register below.

3. The new section 4A needs to state the purpose and scope of FMAs and FMSs. The placement of this new provision immediately after sections 3 and 4 of the 2007 Act suggests that the purpose is the “improved prevention, control and reduction of parasites”, reflecting the wording used in sections 3(2)(a) and 6(2)(a) of the 2007 Act. But the intended purpose might be wider and cover the “improved prevention, control and reduction of parasites, pathogens and diseases”, reflecting the purpose set out in clause 3(2)(c) of the Bill in relation to technical standards. It needs to be
clear which of these is the intended purpose, so that operators are aware of the scope of this obligation.

Also, it would be possible for a FMA to set out arrangements for sea-lice management that did not satisfy either of these possible overall purposes, yet comply with the provision as drafted. Clearly such a FMA would not achieve the policy intent, so the purpose must be stated, whichever it is. A suggested amendment to section 4A(1) is included in the appendix to this response.

4. It needs to be clear that, in relation to farms that are party to a FMA (as opposed to farms that are not and have a FMS) the arrangements listed in new section 4A(4)(b) have to be integrated and/or common as between the farms. A FMA setting out separate and unconnected arrangements for each farm in the FMA might satisfy the provision as drafted, but there would be no point in such a FMA. A suggested amendment to section 4A(4)(b) is included in the appendix.

5. It is suggested that users of this legislation will naturally abbreviate the term ‘farm management area’ to FMA, leading to confusion with the term ‘farm management agreement’ (also FMA). The term ‘farm management zone’ (FMZ) should perhaps be used instead, throughout new section 4A.

6. A suggested amendment to new section 6(1), to improve clarity, is included in the appendix.

**Public register and publication of data on sea-lice**

It is extremely surprising that the 2007 Act does not contain provision for a public register. Openness and transparency are amongst the most important of public law principles, and it is standard practice for regulators acting in the public interest to be required to maintain a public register of licensing and enforcement activity. Marine Scotland already has such a duty under section 54 of the Marine (Scotland) Act 2010. The 2007 Act is the only example UKELA is aware of where this is not the case, meaning that the public has no means of knowing when, for example, an enforcement notice under section 6 of the Act has been served, and it is highly regrettable that an exception appears to have been made for aquaculture. For reasons of transparency and accountability, this regulatory anomaly needs to be corrected at this opportunity, and a provision included in the Bill requiring Marine Scotland to maintain a public register of enforcement activity under the 2007 Act and under this Bill, fish farm management agreements and statements, and any other information obtained using statutory powers under the 2007 Act or this Bill.

It is equally regrettable that sea-lice emissions data are not routinely collected, made available to a regulatory body and published. Site-specific emissions data have to be made available by every other industry that collects them, and again it appears that an exception is made for aquaculture. Fish farm operators’ concerns about commercial sensitivity and misuse of information are no different to those expressed by other industrial sectors, so in addition to the principles of openness and transparency, the principle of fairness is at stake. The public interest in the sharing and scrutiny of environmental information should outweigh operator concerns in this context, as they do in others. UKELA strongly urges the Committee to consider introducing amendments to this effect.
The Bill presents an opportunity for the resolution of a long-standing anomaly in the regulation of certain discharges to the marine environment from fish farming operations. This anomaly creates an inherent conflict for Marine Scotland, and it has caused enforcement problems in the past, so the opportunity to simplify the regulatory landscape and improve both the governance and enforcement of pollution control legislation should be taken now.

Farmed fish can be treated for sea-lice infestations in two broad ways, depending on the type of chemical used: either using ‘in-feed’ treatments, where the active chemical is mixed with feed during the feed production process, eaten by the fish and absorbed through its gut; or using ‘bath’ treatments, where the chemical is dissolved in sea-water and absorbed through the fish’s skin. Bath treatments can be administered either by surrounding the cage containing the fish with a tarpaulin and dissolving the chemical in the enclosed ‘bath’ of sea-water, or by dissolving the chemical in sea-water held in a wellboat and pumping the fish into the wellboat for treatment. In all cases, a residue of toxic chemical remains, which is subsequently discharged to the marine environment without further treatment. In the absence of treatment, such toxic discharges need to be tightly controlled.

Discharges of unabsorbed chemical residues from fish cages to the water environment are regulated by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (the ‘Controlled Activities Regulations’ or ‘CAR’). However, when a bath treatment takes place within a wellboat, the subsequent discharge, although made to the water environment and apparently covered by CAR just like discharges from cages, is regulated by Marine Scotland under the marine licensing provisions in Part 4 of the Marine (Scotland) Act 2010. The reason for this anomaly is that the discharge is made from a vessel as opposed to a cage.

One reason why regulatory control over sea-lice management was given to Marine Scotland in the 2007 Act, not SEPA, is because there is an inherent conflict between the function of controlling discharges of sea-lice treatment chemicals (which have to be kept within tight limits for the reasons given above) and the function of controlling the spread of sea-lice themselves (which for fish health reasons might require use of chemicals beyond the carrying capacity of the local marine environment). But when it comes to wellboat treatments, Marine Scotland has to operate with that conflict between these roles. For reasons of good governance, such conflicts should be avoided.

At the time of making CAR in 2005, discharges from vessels were covered by Part II of the Food and Environment Protection Act 1985 (FEPA). It is understood that the anomaly was not resolved at that stage because it would have required an amendment to Westminster legislation. This led to the provision in CAR (as originally made in 2005) that “these Regulations do not apply to any activity for which a licence is needed under Part II of the Food and Environment Protection Act 1985”.

In an incident in 2009, hundreds of farmed fish were killed at a fish farm in Shetland following the alleged use of illegal chemicals to treat a sea-lice infestation. The chemicals used were in some cases authorised by the Veterinary Medicines
Directorate for use on pigs or horses, but not on fish. Reputable fish farm operators were reportedly as eager as local people and animal welfare charities to see action taken, considering this the behaviour of a rogue operator that gave the whole industry a bad name and needed to be rooted out and punished. SEPA conducted an investigation and gathered evidence that it considered sufficient to secure a conviction for an offence under CAR, had the treatment taken place in cages. But it had taken place in a wellboat, meaning no such offence had been committed. Marine Scotland considered that SEPA’s evidence was insufficient to secure a conviction for an offence under FEPA, so no report was made to the Procurator Fiscal, and no further action was taken. There was much frustration that a legislative quirk had prevented action by SEPA.

Now that discharges from vessels in the Scottish marine area are regulated by Scottish Ministers under Scottish legislation, there is no longer any good reason not to resolve this regulatory anomaly, fully separate the conflicting functions of sea-lice and pollution control by giving SEPA control over discharges from wellboats (in the vicinity of fish cages), and bring consistency to enforcement in this area. This would require a short extra provision in the Bill amending Part 4 of the Marine (Scotland) Act to exclude such discharges from the list of licensable marine activities. It would not affect any of the currently proposed provisions in relation to wellboats.

**Controls on biomass and processing plants**

In its October response to consultation responses to a proposal in its last consultation to give Ministers powers requiring SEPA to reduce biomass to address concerns about fish welfare, the Scottish Government stated that SEPA can already reduce biomass in certain circumstances, and appeared to rule out the need for legislation.

SEPA can reduce biomass using its powers under CAR in response to benthic pollution, but it has no statutory remit in relation to fish health, so any attempt by SEPA to use those powers to reduce biomass in response to a sea-lice problem would be *ultra vires*.

In relation to another proposal for Ministerial powers to place additional controls on processing plants, the Scottish Government appeared again to suggest that SEPA has existing powers – possibly a reference to its powers under the Pollution Prevention and Control (Scotland) Regulations 2000 (the PPC Regulations). Again, SEPA’s lack of a statutory remit regarding fish health would undermine any attempt to apply its powers under the PPC Regulations in relation to a sea-lice problem.

It is submitted that legislation therefore would be needed for both these purposes.

**Part 1 chapter 3 – commercially damaging species**

UKELA is concerned that the Bill’s proposals in this regard are so wide-ranging, and that no reference is made, either in the Bill or the accompanying Policy Memorandum, to biodiversity or the Scottish Ministers’ duty under the Nature Conservation (Scotland) Act 2004 to further its conservation.
The aquaculture industry has reported problems in the past with native species such as seals, otters and cormorants, and as currently drafted, Ministers would be able, if convinced that they are having significant impact on fish farms and that they themselves have little commercial value, to designate such species as commercially damaging, with all that entails in relation to subsequent control.

The step of designating a native species as commercially damaging under clause 8 of the Bill appears to be the critical step in the process, so it is submitted that wide public consultation should be undertaken in relation to any designation proposal. This will give Ministers’ nature conservation advisor Scottish Natural Heritage (SNH), other public bodies and the general public the opportunity to comment on the proposal. As currently drafted, no consultation of any sort is required.

At the very least, a species’s value beyond the mere commercial needs to be considered: ecological and cultural value should be taken into account, and if wide public consultation is deemed excessive, or emergency designation becomes necessary, Ministers should be obliged to consult and have regard to the advice of SNH before designating any native species as commercially damaging.

**Clause 51 – fixed penalty notices**

UKELA regrets the casual introduction of a range of different sanctions in various regulatory regimes, in many cases imposed directly by the regulator without reference to the courts, whether fixed penalties as in the 2007 Act and the Bill, or “civil sanctions” e.g. under the Wildlife and Natural Environment (Scotland) Act 2011. There should be a proper public debate not only about the desirability and appropriateness of this approach to enforcement, taking account of outcomes in other parts of the UK where different enforcement approaches have been debated and introduced, but also about the powers and safeguards required, so that a consistent and principled enforcement ‘toolbox’ can be introduced across a number of regimes, rather than a series of fragmented and incomplete set of powers.

The opportunity for such a debate exists following the joint Scottish Government/SEPA consultation on proposals for an Integrated Framework for Environmental Regulation, which discussed a wide range of non-criminal regulatory sanctions for use by SEPA. The legislation that emerges from such a debate could provide the sanctions blueprint for all regulatory regimes in Scotland.
Appendix - drafting suggestions

Clause 1(2) - new section 4A(1):

‘A person who carries on a business of fish farming at a fish farm located within a farm management area must, for the purpose of improved prevention, control and reduction of parasites, pathogens and diseases —

(a) be party to a farm management agreement, or prepare and maintain a farm management statement, in relation to the fish farm...’ etc.

Clause 1(2) - new section 4A(4)(b):

‘(b) arrangements, which in the case of farm management agreements must be integrated as between the fish farms involved, for—

(i) fish health management...’ etc.

Clause 1(3) - new section 6(1):

‘Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming —

(a) in relation to a fish farm, does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), or

(b) in relation to a fish farm to which section 4A(1) applies, has failed or is failing to comply with that section,

the Scottish Ministers may serve a notice (“an enforcement notice”) on the person in relation to that fish farm.’
Written submission from Usan Salmon Fisheries Ltd/
Salmon Net Fishing Association Scotland

Purpose

1. The purpose of this paper is to provide written evidence to the committee in connection with the proposed Aquaculture and Fisheries (Scotland) Bill. This paper follows our submission of background material and the visit of committee members to our premises on 10 November 2012.

Background

2. Our family business (established in the 1960’s) is now one of the last independently owned salmon netting firms in Scotland. A clear sign of the demise of netting is that effort is now around 3% of the level in 1952 (when records began). We have the fourth generation of our family active in the business now. This is our legacy not only to our own family but to Scotland as a nation. Certainly, there are easier, less hazardous ways to make a living. However, as far as we are concerned, this is about much more. We are part of a long established Scottish tradition where what we do is not just to pay the bills, but it is our way of life and a part of Scotland’s rich heritage. Further details can be found on our business at www.usansalmon.com.

3. The angling season extends from 16th February to 31st October (in excess of 220 days fishing), a considerably longer season than our own. Our season currently runs from the 1st May until 31st August (87 days taking account of voluntary restrictions).

4. Much has been said in the past about the economic value of a rod caught fish being greater than that of one caught by nets. However, this ignores the key facts that we are an indigenous small independent Scottish company which pays its taxes, employs workers and invests money in its ongoing operations in terms of plant, equipment and other associated services. It should also be noted that the Scottish Government Freshwater Fisheries Forum Steering Group have stated that “it was generally recognised that netting should be acknowledged in the framework plan and that it would be useful to have a comparison on the value of net caught salmon compared with rod caught salmon. It was highlighted, however that netting, which has been in existence for centuries, is now in decline and that rod caught salmon now account for the biggest percentage of salmon caught. Making comparisons in monetary terms may not be best way of assessing value”.

5. It is also noteworthy, that while we continue to fish using traditional methods, we are also seeking to adapt and diversify elements of our business to meet the needs of consumers. As an example, we now sell smoked salmon at farmers markets, across the country, as well as the fact that a proportion of our fresh fish is exported abroad. We have also provided Salmon for the Royal household in the past in addition to supplying to the G8 Summit at Gleneagles. Our fish was also used in the final of the Great British Menu 2007 which was held at the British Embassy in Paris. We have established an online shop for selling our very own
smoked salmon to discerning customers at home and abroad at competitive prices. Clearly, the quality of our product is recognised. Additionally, we attended the European seafood Expo in Brussels, with the full support of Angus Council, Seafood Scotland and Highland and Islands Enterprise, to further our marketing efforts for this unique branded iconic Scottish produce.

6. Additionally, we have been successful in having have Scottish Wild Salmon registered as an EU Protected Food Name (PFN). We warmly welcomed the support of Scottish Government in that Scottish Wild Salmon has been awarded this highly prized accreditation (subject to drafting of the regulation). Achievement of this known standard provides proper recognition for this unique iconic Scottish product and the few remaining traditional salmon netters. Scottish Wild Salmon represents the highest quality of indigenous Scottish renewable produce, a fact recognised worldwide by both domestic customers and top chefs and restaurants. It is a centuries’ old Scottish tradition, though sadly, only a handful of Scottish salmon netting stations are still active. Survival of salmon netting is essential, being the only legal method of harvesting these fish for the enjoyment of consumers and very much a part of the fabric of Scotland.

7. As can be seen, we are not a huge commercial enterprise, employing 14 staff during the 2012 season, however, in these difficult economic times, it is important to remember that Scotland is built on small businesses and innovation. In our view, this should be fostered and encouraged rather than forced into terminal decline. Given the Scottish Ministers firm commitment to its economic recovery plan; we also believe that supporting rural industries under threat is entirely consistent with, and indeed central to, that policy objective.

Proposed Aquaculture and Fisheries (Scotland) Bill – Proposed Amendment – Removal of Coastal Netting From Local Fishery Board Management

8. We welcome much of the new bill in terms of its intent and purpose. In particular, we support the proposed measures around openness, accountability and transparency of local district fishery boards. However Angling interests make no secret of the fact that they deplore fixed engine fisheries (Scottish bag, jumper and stake nets). Sadly, there are now only a handful of these stations in operation around our Scottish coastline. Despite this, the Association of Salmon Fishery Boards are continually calling for their closure. They are seeking to vilify netting through a continuous stream of anti-netting propaganda, which has thus far been unchecked (notwithstanding representations from us).

9. Against that backdrop, we wish to see coastal netting removed from the management of local fishery boards all together. It is clearly recognised that we, and operations like ours, are an inshore fishery and the Esk board itself (our local management) has indicated it cannot manage us appropriately. We have sustained years of relentless persecution at the hands of the local fishery board, which is dominated by angling interests managing for abundance without the slightest regard for netting interests other than to see them put out of business. Therefore it is appropriate to consider transferring us to the management of Scottish Government Inshore Fisheries Team. This is effectively how other Scottish inshore fisheries are managed and there is therefore no sensible rationale for continuing to subject us to continued inept, haphazard and discriminatory management.
10. The purpose of the raw data replicated below is to demonstrate, in real terms, our position in relation to angling and the effect of previous revisions to the Weekly Close Time regulations.

<table>
<thead>
<tr>
<th>Netting Sector</th>
<th>Angling Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Season Length 16 Feb – 31 Aug – 128 days</td>
<td>Season Length 16 Feb – 31 Oct – 222 days</td>
</tr>
<tr>
<td>This equates to 28 Weeks and 2 days x 108 hours fishing time per week = 3072 hours (128 days per season).</td>
<td>Season Length - No change – 222 days</td>
</tr>
<tr>
<td>As a result of the 1988 Weekly Close Time increase, netsmen lost 21 days fishing time.</td>
<td>Season Length - No change – 222 days</td>
</tr>
<tr>
<td>Prior to 1988, Netsmen were entitled to fish for 149 days based on a season running from 16 Feb - 31 Aug. We propose consecutive days at sea from 4 April - 31 August, this continuous period could be varied depending on where MSS determine the stock to be strongest e.g. 18 April -14 Sept.</td>
<td>Season Length - No change – 222 days</td>
</tr>
<tr>
<td>Currently, in terms of consecutive days at sea, netsmen would entitled to fish from 25 April to 31 August = 128 days, thereby not fishing the early Spring stock where the stock is deemed the weakest.</td>
<td></td>
</tr>
<tr>
<td>SNFAS Members already delay fishing until 1 April for no return, whereas white fish sector fishermen receive recognition for adopting conservation initiatives by receiving more time to fish. Salmon net fishermen have received no such recognition.</td>
<td></td>
</tr>
<tr>
<td>Notes: From the headline days noted above, there is considerable further time lost for bad weather and other contrary environmental factors.</td>
<td></td>
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</tbody>
</table>
11. The current situation is inequitable. The introduction of days at sea, would avoid the need for our personnel to attempt to remove leaders in adverse weather and sea conditions. The conflict between Health and Safety and the outdated Weekly Close Time regulations must be resolved. It is an unacceptable position to face prosecution for failure to remove leaders, where to do so, would present a health and safety risk to our employees.

12. It is reprehensible for us to have to survive on reduced fishing time, where there is no threat to salmon stocks. We would argue that economic considerations must be of overriding importance in these circumstances. We are seeking to exercise our legal rights without being unreasonably fettered by circumstances out-with our control such as sea state and weather. The introduction of days at sea, presents an opportunity to implement flexibility, while balancing any genuine stock concerns (e.g. with the early spring component) that may exist.

13. In light of this we seek the abolition of the outdated Weekly Close Time legislation and replacement with a minimum days at sea allowance. Doing so, would avoid the need for us to wrestle with the conflicts of current fisheries legislation (avoiding inadvertent breaches of the law, due to circumstances out-with our control) and health and safety considerations (which of course must remain paramount at all times).

14. Under such a model, the Scottish Government could potentially set the season start date (having due regard for robust scientific stock evidence) and we would then be permitted to fish for the number of days specified in legislation. This would allow us to manage and plan our operations more efficiently and effectively, taking into account the environmental considerations and would also permit flexibility around the season start date should it be required while at the same time allowing us a statutory minimum number of days in which to exercise our legal title and safeguard our livelihood.

15. At present within the current fisheries legislation we could be charged at the behest of the Esk District Salmon Fishery Board, if we do not go to sea to remove our leaders or other gear, when they deem it is safe to do so (even where, with our expertise and experience we consider it unsafe to do so). We could also potentially face more serious charges from the MCA or the Health and Safety Executive if we go to sea and one or more of our employees get injured or even killed. There is also the very real possibility of being sued by the injured party or indeed by relatives, in the event that an employee died. Surely we as employers and humble fishermen should not have to make choices like these?
Written submission from the Wester Ross Area Salmon Fishery Board

The Wester Ross Area Salmon Fishery Board fully endorses the response made by the Association of Salmon Fishery Boards to the Rural Affairs, Climate Change and Environment Committee on the Aquaculture and Fisheries (Scotland) Bill – Stage 1 dated November 2012.

- At the same time, the board notes the following points as of particular concern:
  - It is essential that fish farms are obliged under this new statute to disclose their lice and treatment figure and methods (e.g. amounts and chemicals used).
    And that, therefore, the new law should make SEPA obliged to take action to reduce biomass where the above figures are outside pre-agreed parameters.
  - Despite a considerable majority of responses in favour of the consultation question relating to powers to revoke consents, the Marine Scotland response of “we do not intend to progress these proposals at this time” hardly qualifies as an explanation for its non-inclusion. WRASFB is strongly in favour of the inclusion of this power within the Act as a necessary requisite to counter-balance permanent planning permission for aquaculture sites that may not be, longer term, as well situated as at first considered.
Written submission from the Association of Salmon Fishery Boards

Submission endorsed by:

Kyle of Sutherland District Fisheries Board
Helmsdale District Salmon Fisheries Board
The Outer Hebrides Fisheries Trust
Western Isles District Salmon Fisheries Board
Urr District Salmon Fisheries Board
Netherdale Estate
Salmon & Trout Association
Kyle of Sutherland DSFB and the Kyle Fishery Trust
Nith District Salmon Fishery Board
The River Deveron District Salmon Fishery Board
Bell Ingram
Argyll District Salmon Fishery Board
The Wester Ross Area Salmon Fishery
The Tay District Salmon Fisheries Board

Introduction

The Association of Salmon Fishery Boards is the representative body for Scotland's 41 District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), which have a statutory responsibility to protect and improve salmon and sea trout fisheries.

We welcome the opportunity to comment on the general principles of the Aquaculture and Fisheries (Scotland) Bill.

Overarching Comments

1. There appears to be a basic disconnect between the provisions in Part 1 (Aquaculture) and Part 2 (Salmon Fisheries etc.) of the Bill. There is a perception that the underlying principles of fairness and transparency do not apply equally to both sectors. We also believe that there are a number of unintended consequences arising from the somewhat more prescriptive approach adopted towards DSFBs.

2. The Marine Scotland Response to the consultation did not adequately explain why some of the proposals that were consulted on, particularly those relating to aquaculture, have not been taken forward in this Bill. Whilst we have now received further clarity on the other mechanisms by which these proposals might be taken forward we would seek further assurance that these proposals will be acted upon, and a clear timetable for doing so should be set out. In the absence of such assurance, we would seek to have a number of those proposals (which were all supported by a wide cross section of stakeholders) included within the Bill.

3. We do not believe that some aspects included in Part 2 of the Bill were specifically consulted on.
Specific Comments

Part 1: Aquaculture

4. Section 1 sets out a requirement for any person who carries out the business of fish farming to be party to either a farm management agreement (where more than one operator is present in an area) or a farm management statement (where a single operator is present). We support this section, which was a clear recommendation of the Healthier Fish Working Group, but believe that such agreements and statements should be published in a publically accessible manner. We are concerned that the Bill does not contain any requirement for farm management agreements or statements to address/minimise impacts on the receiving marine environment, including impacts on wild fish. We remain concerned that the existing farm management agreements are extremely variable in size. Whilst we recognise that information and understanding about connectivity between farms and farm management areas is incomplete, it would appear that in some instances, the current farm management area boundaries are not primarily based on reasons of good husbandry, biosecurity and control of sea lice, but rather on operational priorities. On that basis we supported the consultation proposal that Scottish Ministers should have powers to specify FMA boundaries. We understand that Scottish Ministers will be able to specify FMA boundaries where necessary through the provisions in the Bill and the 2007 Act, but confirmation that this is the case would be welcome.

5. We welcome the inclusion of section 2 which will allow the origin of escaped fish to be ascertained, should advancements in genetic, or other technology, allow. We would also note that there is a move in Norway to ensure that all farmed fish are marked with a uniquely numbered tag, with the purpose of identifying the source of escapes under strict liability.

6. We welcome the inclusion of a technical standard for equipment used in fish farming (Section 3). The work of the Improved Containment Working Group has also demonstrated that a significant proportion of escapes are not due to equipment failure, but rather to human error (29.5% of all escapes in 2010). We therefore believe that Section 3 should be amended to ensure that any such standard includes provision for accredited training in the use of such equipment and a requirement to ensure that all personnel operating in Scotland demonstrate competence in the use of equipment.

7. We welcome the provisions relating to the control and operation of wellboats. However, it is not clear, if wellboats present significant issues relating to the prevention, reduction, removal or control of the risk of the spread of parasites, pathogens or diseases, why open water cages are not subject to similar controls.

Other consultation proposals not being taken forward in the current Bill

8. Powers to revoke consents: A power to revoke aquaculture consents is particularly important as our understanding of the interactions between the

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aquaculture industry and wild salmonids improves. Marine Scotland Science cannot accurately predict the effect of a particular site on wild fish. Given that most developments currently receive permanent planning consent, it is a real concern that such a power does not currently exist. Despite 71% of those substantive responses to the consultation being in favour of such a power, the Marine Scotland response was, ‘we do not intend to progress these proposals at this time’, with no further explanation.

9. Collection and publication of sea lice data (and information on fish mortality, movement, disease, treatment and production): The publication of sea lice data at an appropriate resolution is one of the key issues for wild fisheries organisations. We believe that the fundamental basis for any proposed solution must be an ability for wild fisheries managers to assess, at a local level, the success or otherwise of treatment strategies and to be provided with an assurance that, where those strategies have not been successful, management practices will be adapted to ensure that such issues do not reoccur during the next production cycle. Equally we believe that any proposed solution must also allow the aquaculture industry to demonstrate clearly that they are able to, and do, manage sea lice levels within acceptable tolerances without ambiguity or debate. The Marine Scotland response was ‘it is anticipated that this proposal will be progressed through non-legislative means, through improved voluntary reporting. Alternatively the Scottish Government has existing powers to progress the proposals [which also include other information on fish mortality, movement, disease, treatment and production] through secondary legislation’. Our clear preference is for these existing powers to be used to deliver this information. At the very least we would seek a clear assurance that the Scottish Government are willing to use these powers, should such voluntary agreements fail to deliver data at an appropriate resolution. The importance of transparency on sea lice data is highlighted by a recent paper which analysed the results of a number of previously published experiments involving the release of salmon smolts, half of which were treated to protect them against sea lice infestation and the other half were untreated. In these studies, high marine mortality naturally affected both treated and untreated salmon groups. However, the analyses used allowed for the high natural mortality to be accounted for and isolated the estimated loss of salmon recruitment due to parasitism, revealing a large and significant effect of parasites. The authors noted that precisely because natural mortality rates are high, even a proportionally small additive mortality from parasites can amount to a large loss in adult salmon recruitment.

10. Powers to require SEPA to reduce biomass consents: SEPA’s consideration of applications for biomass consents are limited to ‘discharges’ such as fish waste and sea lice treatments and such discharges are not interpreted by SEPA as including sea lice. Marine Scotland Science routinely state that ‘the industry Code of Good Practice takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and

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posing a risk for wild fish particularly in the case of larger farms or management areas holding a large biomass of farmed fish.’ Since the potential increased release of sea lice is not taken into account in SEPA’s decision-making process it is entirely correct that Scottish Ministers should have a power to reduce biomass consents where such action is appropriate for the health of wild fish. The Marine Scotland response was ‘SEPA can already reduce biomass consent in certain circumstances. We will consider further non-legislative solutions and have begun discussion with SEPA about these matters’. We are not clear whether SEPA could, or would, use these existing powers to reduce the biomass on site in order to protect wild fish and would seek clarity on this issue. We are also concerned that SEPA appear to have only used their existing powers to reduce biomass on a handful of occasions, despite 44% of monitoring surveys between 2009 and March 2012 being deemed by SEPA to be “unsatisfactory” (beyond the assimilative capacity of the local environment).

11. Powers to determine a lower threshold for sea lice levels above which remedial action needs to be taken: The absolute number of sea lice released from a farm is more important than the relative number of lice per fish (the basis of the Industry Code of Good Practice). We therefore believe that threshold lice levels should be changed to take into account farm biomass and the cumulative biomass in the local area in order to minimise risks to wild fish. We are aware that the industry already used a much lower treatment threshold than that set out in the CoGP in some areas. This is important, in order to protect wild fish, not for the health and welfare of the farmed fish. Marine Scotland believe that this can be delivered through existing powers but we would seek further clarity about how and when this will be taken forward.

Other issues relating to part 1

12. Enforcement notices under Section 6 of the Aquaculture and Fisheries (Scotland) Act 2007 allow Scottish Ministers to require the execution of such works, or the taking of other steps, with the purpose of the prevention, control or reduction of parasites. However, we have been informed by the Fish Health Inspectorate that any such notices are limited to observed problems with farmed fish and such notices cannot be utilised for the purpose of protecting wild fish. We do not believe that the 2007 Act specifically precludes such action, but if this is the case, we believe that the 2007 Act should be amended to allow such action to take place for the health and welfare of wild fish. We also believe that, related to point 8 above, the Fish Health Inspectorate should be given full access to the industry fish health management database operated by SSPO.

Part 2: Salmon Fisheries etc.

13. Section 20: Section 20 includes a number of amendments to the 2003 Act in relation to good governance. Whilst many of the provisions relating to governance look reasonable, we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation. The consultation asked three questions in relation to these issues: Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?; Do you agree that there should be a Code of Good Practice for wild salmon and
freshwater fisheries? If yes, do you think such a Code of Good Practice should be statutory or non-statutory?

14. We have no difficulty with the principle of publishing annual reports and audited accounts and indeed we encourage our members to do so via the DSFB’s Code of Good Practice. We would note that whilst we have no difficulty with providing copies of these documents to Scottish Ministers, this aspect was not consulted on.

15. Whilst we have no difficulty with the principle of open meetings, it is important and legitimate that some aspects of meetings can be held in private (e.g. when discussing deployment of bailiffs, CCTV cameras, staff wages etc.). It is also important that DSFBs are able to raise contentious ideas, which may never be taken forward, without concern that these would be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting. Without clear guidance about what it is acceptable to discuss in private (as permitted by section 20 – 46C(6)), this provision could have the result of inhibiting discussion within meetings. Ultimately, potential Board members in districts in which there are particularly contentious issues to be faced may even be put off from volunteering and giving up their time. We are aware that identifying potential volunteers is already an issue in some districts. The RACCE Committee will discuss its Stage 1 report in private but we are not aware that the Committee operates under a requirement to state their reasons for meeting in private as is set out in the Bill for DSFBs. We would again note that, although the consultation document stated that a Code of Good practice could include recommendations for Boards to hold meetings in public, there was no consultation on a legal requirement to do so. The cost of moving these meetings to a venue with sufficient capacity for members of the public, would involve a significant expense, which may prove disproportionate for many of the smaller DSFBs. In addition, some DSFBs operate over considerable geographical areas. For example, if the Argyll DSFB (total income through privately-funded levy system - £58,000) was required to advertise 4 meetings a year in all three local papers within that district, the annual cost of such advertisement would be £3,200. We would therefore seek clarity on exactly how such meetings should be publicised. A partial solution would be that the annual meeting should be a public meeting, and that there should be an opportunity for the public to attend part of all other meetings and submit proposals to be considered. Finally, we understand that the reference to ‘salmon anglers’ in Section 20 - 46C(2)(c)(i) is a drafting error, and should read ‘representatives of salmon anglers’.

16. If necessary ASFB will work with Marine Scotland to help DSFBs set up a formal complaints procedure, where such a procedure is not already in operation. However, it should be noted that the processing of such complaints will usually be undertaken by the clerk to the Board. In the case of smaller boards, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue ‘campaigns’) becomes arduous, this will result in resources being diverted from other areas of operation. It is worth noting however, that this provision was not consulted on, or even mentioned in the consultation document, and indeed, there is a fundamental question as to why such a statutory provision is necessary. Should
such a procedure be deemed necessary, we are not aware of any public bodies operating under a requirement to publish the number of complaints and a statement of the nature of each complaint and how it was disposed of. This aspect of the proposal appears to be unnecessarily prescriptive.

17. Section 20 includes an open-ended power for Scottish Ministers to modify the good governance requirements by order. We do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny. If, for example, this power is used to prescribe DSFB functions in legislation, DSFB donations to Fishery Trusts (which totalled £610K in 2010) would have to be linked to specific services and therefore subject to VAT. This, coupled with the potential additional costs outlined above, could have a significant negative effect on the core funding of fishery trusts across Scotland.

18. The Aquaculture and Fisheries (Scotland) Act 2007 contains a provision that Scottish Ministers may by order approve any code of practice issued for the aquaculture industry. In our consultation response, we supported a similar approach being adopted towards the DSFB Code of Good Practice, and indeed this approach was specifically highlighted by Marine Scotland in the consultation. We would therefore suggest that this approach would be more proportionate and would allow us to deal with some of the possible consequences highlighted above. We would of course be very happy to work with Marine Scotland officials to ensure that the ASFB Code is consistent with the principles outlined in the Bill. We would be content for the Ministerial Power to dissolve the committee constituting a board to remain, in an amended form, to reflect the above approach.

19. Section 21 includes a duty to consult and report before making certain applications. We have no difficulty with this provision in principle, but we have some concerns about the requirement to publish details in a newspaper on three occasions during the process.

20. We welcome the inclusion of a power to introduce a carcass tagging system in Scotland but we believe that this provision should be delivered in primary legislation. Carcass tagging was a clear recommendation of the mixed stock fisheries working group and there was overwhelming support for this provision in the consultation. Whether delivered via primary or secondary legislation, we would seek a clear assurance that a statutory system, using individually numbered, recorded tags, will be in place in time for the 2014 salmon fishing season. Any system which does not use numbered tags would not allow verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act). Equally, DSFBs are strongly in support of a national carcass tagging system for all rod caught fish not returned to the river. We believe that carcass tagging of rod caught fish would be a useful tool to aid DSFBs in ensuring compliance with their conservation policies.

21. We welcome the inclusion of a power to take fish or samples for analysis. Genetic analysis is a key tool in modern fisheries management and will enable rational management decisions to be made. We believe that genetic samples
can be taken without killing the fish in question but where such sampling would be likely to involve killing fish we consider that the local DSFB should be fully consulted prior to sampling taking place.

22. Section 25 provides that Scottish Ministers can impose requirements on DSFBs and proprietors in relation to the monitoring of certain orders. We believe that monitoring of such orders is consistent with evidence-based management and on that basis we are supportive of this in principle. However, this section also makes failure to monitor and evaluate the effects of an order a criminal offence, on which a DSFB may be convicted on the evidence of one witness. This appears to be totally disproportionate, and again, may result in potential Board members being put off from volunteering and giving up their time. Finally, we believe that there would need to be a degree of proportionality in placing monitoring requirements on a DSFB, due to the potential expense and/or expertise required to carry out such monitoring, particularly in the case of smaller Boards. We would be concerned if Scottish Ministers were to take out an order at their own initiative, and then impose a legally binding requirement to monitor such an order on that Board. We therefore believe that s25 should only apply where a DSFB or proprietors have applied to Scottish Ministers for such an order.

23. Section 26 includes an open-ended power for Scottish Ministers to vary the procedures for various orders. As we stated earlier, we do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny.

24. Section 28 includes a power for Scottish Ministers to modify DSFBs functions with respect to consenting of introductions (stocking). Such regulations may specify circumstances or cases where the consenting function is to be exercised by Scottish Ministers or when applications for consent should be referred to them. We note that Scottish Ministers already have jurisdiction over fish introductions in those parts of Scotland which are not covered by DSFBs. In addition, Scottish Ministers have jurisdiction over introductions of other freshwater species throughout Scotland. However, we are not aware of any evidence to suggest that the use of such regulatory powers is significantly better in those areas of Scotland under the jurisdiction of Scottish Minsters. Indeed, we would argue that some of the most concerning examples of questionable practice occur in these areas. We therefore believe that, should this power be exercised, that all decisions on stocking (all species) should be considered by a panel of independent stakeholders, prior to the granting of consent.

Other issues

25. Purchase of rod caught fish: It is illegal to sell rod caught fish but it is not illegal to purchase rod caught fish. Once we have a statutory system of carcass tagging in place, we believe that it should be illegal to both sell and purchase an untagged fish.

26. Consenting of activities: At present, the powers of DSFBs to consent certain fishery management related activities e.g. electro-fishing and collection of
broodstock for hatchery operations, which would otherwise be illegal are only exercisable out with the annual close time. During the close time, DSFBs must apply to Scottish Ministers for authorisation for these activities. Annual close times were historically set and based on the commercial salmon fishing season with an extension beyond such close times for rod and line fishing and whilst this definition of the salmon season may have made sense historically, when salmon netting was the major part of the sector, this is no longer the case. As the vast majority of fishery districts have little or no netting activities it seems incongruous, and a waste of scarce resources, for DSFBs to apply to Scottish Ministers for exemptions from certain offences to undertake activities, which include essential fisheries management techniques such as electrofishing, during the annual close time, when they do not have to do so at any other time. This places an unnecessary burden on all parties and so we propose that the period over which DSFBs can consent such activities should be extended throughout the year.

27. An end to fishing during weekly close times: It is an offence to fish or take salmon during the weekly close-time for net fisheries (6pm Friday – 6am Monday). In the case of fixed engine salmon fisheries (bag or stake nets), this is achieved by removing the ‘leader’, a net positioned perpendicular to the shore which diverts fish into the salmon net. Removal of the leader prevents fish from entering the nets. It has become apparent that, in some parts of Scotland, the weekly close time is often not being observed if, for example, rough sea conditions make it too dangerous to remove the leader. This happened on a large number of occasions throughout Scotland in 2012, equating to a significant increased exploitation of fish. We are content that exceptions to the weekly close time should exist and indeed ASFB do not want to see anyone’s life being put at risk. The weekly close times were put in place for sound conservation reasons and were designed to allow a proportion of the salmon run to have free passage into their natal rivers throughout the season. Therefore we believe that, where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity. Implicit in this, is a requirement for netsmen to report all such occurrences when leaders are not removed. We understand that SNFAS have suggested an alternative solution, whereby the weekly close time would be abolished and a minimum number of days at sea would be introduced. We do not support this solution for a number of reasons. Such a solution would not allow free passage of fish to their natal rivers throughout the season, would permit additional exploitation on the fragile spring stock component (considered by Marine Scotland Science to include all fish entering the rivers before June) and would result in a considerable increase in exploitation from 128 days to 150 days. This would be absolutely contrary to internationally accepted best practice and agreements on mixed stock fisheries. It would also be unacceptable for such a solution to set a minimum rather than maximum a number of days at sea.

28. The North Atlantic Salmon Conservation Organisation\(^3\) has successfully negotiated reductions in salmon fisheries in their marine feeding grounds in the North Atlantic. Recently, Mixed Stock Fisheries (MSFs - any fishery taking fish from 2 or more rivers of origin) have come under increased International

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\(^3\) NASCO: Established under the Convention for the Conservation of Salmon in the North Atlantic Ocean in October 1983
scrutiny. NASCO’s success in achieving tight restriction of traditional high seas MSFs near Greenland and the Faroes has led to increasing pressure on all parties to the Convention for the Conservation of Salmon in the North Atlantic Ocean to address MSFs in their home waters. As we expect Greenland and the Faroes to adhere to the current tight restrictions on their fisheries, we must keep our own house in order – it would be a disaster for Scottish salmon fisheries if these high sea fisheries were to resume. The operation of MSFs is contrary to internationally accepted best practise because they prevent management of the resource on an individual catchment basis. However, Scotland is in a unique position because all salmon fishing rights are private heritable rights. It is easy to portray the issues surrounding MSFs as simply an argument between rod fisheries and net fisheries (and this issue has been portrayed as the laird against the working man), but in reality this is simply an issue of sound management. Marine Scotland Science has stated that the decline in netting effort over the last 30 years has acted as a buffer for the rod fishery in the face of declining marine survival of fish. Rod fisheries have responded through increasing rates of catch and release (In 2011, the overall catch and release rate for salmon was 73%, rising to 91% for spring salmon). However, there is significant potential for netting effort to increase in future and indeed, the high price of wild salmon and sea trout has meant that a number of previously dormant or lightly fished stations have re-opened. Indeed our analysis of the district assessors’ valuation roles shows that there are at least 129 dormant netting stations which have the potential to come back into operation. ASFB believe that, when a netting station is put up for sale, or is to be leased to a third party, the relevant DSFB should, in the interests of salmon conservation, have a statutory right of first refusal to purchase (or lease) that netting operation before any proposed sale (or lease) could proceed. Such a right would also not be prejudicial to the fishery owner who would still have to receive appropriate compensation for the value of the fishery, thus protecting the private heritable rights of the fishery owner. It would not prevent such fisheries continuing to operate, but would prevent a significant increase in commercial exploitation, which flies in the face of internationally accepted best practise.

29. The need for the equitable burden of conservation was recognised by the Mixed Stock Working Group. There is currently an imbalance in that burden between the exploiters of the resource. In 2010, net fisheries accounted for over 45% of the retained catch, but only contributed 1.3% of the total funding raised by DSFBs for fishery management. As a specific example, the RACCE committee has visited both the River Dee, and Usan Salmon Fisheries Ltd. The Dee DSFB operates a policy of 100% catch and release and puts significant investment (both private and public funding) into the health of the river, with significant wider environmental benefits. However, recent work by Marine Scotland Science on the South Esk Fisheries Management Demonstration Project has shown conclusively that a significant proportion of the commercial catch at Usan, originated from the River Dee. Despite this exploitation, the Dee DSFB receives no contribution for fishery management from Usan.
Written submission from Scottish Environment LINK

Submission endorsed by:

Marine Conservation Society
National Trust for Scotland
RSPB Scotland
Scottish Ornithologists’ Club
Scottish Wildlife Trust
Whale and Dolphin Conservation
WWF Scotland

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society. We welcome the opportunity to offer views on the general principles of the Aquaculture & Fisheries (Scotland) Bill. This response has been prepared on behalf of LINK Marine Taskforce and is focused on Part 1 of the Bill: Aquaculture.

We believe Scotland should aim to become a world leader in best practice, promoting the highest possible environmental standards whilst recognising the need to secure a vibrant economy supported by the contributions of both aquaculture and freshwater fisheries that must operate alongside each other in many areas.

Our response to the consultation\(^1\) outlined our general support for many of the proposals. While we can support the general principles of this Bill, we are of the view that its provisions must be complemented by proceeding with a number of the proposals set out in the consultation. We understand that a number of these proposals can be progressed through existing powers and we request a firm commitment from Government that these be implemented without delay.

Context

It is important that the Committee consider this Bill within the wider marine policy and legislative context, in particular the Marine (Scotland) Act 2010 and the provisions concerning marine planning, which once established will provide a framework for the sustainable development of all industries and activities throughout Scotland’s seas. Marine planning is fundamental to ‘pillar one’ (wider seas measures) of the Government's three pillar approach to marine nature conservation. Marine planning can assess how multiple uses of the marine ecosystem can proceed whilst operating within the carrying capacity of the marine environment, which is of particular relevance to the aims of this Bill in managing interactions between wild and farmed fish.

Appropriate risk-based site selection for fish farms is a key factor in managing interactions and can prevent many of the unintended and negative impacts of the industry. The use of science-based sensitivity mapping, for example, to identify suitable locations and guide decision-making will be an important approach in future.

\(^1\) http://www.scotlink.org/files/policy/ConsultationResponses/LINKrespAqua&FishBillFeb2012.pdf (Link no longer active)
Integration of fish farm area management with a strategic marine planning system will also enable full and proper consideration of cumulative and in-combination effects.

We are concerned, therefore, that targets for industry growth\(^2\) have seemingly been adopted by Government prior to formal consultation and adoption of a National Marine Plan. Adoption of a National Marine Plan is now unlikely until 2014 with regional plans following in subsequent years. It is therefore vitally important that, in the absence of such a planning system, marine development occurs within the constraints of a robust regulatory regime that ensures environmental protection.

We limit our written evidence on the Bill to the following priority areas.

**Chapter 1: 1 - Fish farm management agreements and statements**

We welcome the inclusion of a statutory requirement for farms to be party to a Farm Management Agreement (FMAg) or Statement (FMS) with sanctions for non-compliance. Area based management has long been identified as the best method of reducing the risk and spread of disease and parasites as well as reducing the use of chemical treatments and their consequent environmental impacts. While such agreements have proved useful in many cases, the lack of a statutory system risks such agreements being undermined. Additionally, in the spirit of openness and transparency we believe Farm Management Agreements should be publically available documents and would benefit from the participation of appropriate stakeholder groups with common interests in the health of farmed and wild salmonids, and the wider environment.

Under the Bill, operators would retain the primary responsibility for determining boundaries of farm management areas (FMAs) under the Code of Good Practice. LINK firmly believes that boundaries for farm management areas must be determined primarily on ecological grounds, taking into account the best available evidence on sea-lice dispersal and connectivity between sites. Where there is limited information a precautionary approach, of selecting larger, rather than smaller boundaries, should be adopted. The proposed boundaries must be suitable to protect the local environmental and ecological features and account for natural geographic features. They must also take account of the relevant cumulative and in-combination effects of connected activities, such as processing plants. The criteria by which a farm management area boundary has been decided should be publically available and involve the participation of appropriate stakeholder groups.

We note the inclusion at section 1(6) of a power to modify the definition of the Code of Practice in relation to farm management areas. We understand this provides a power allowing Scottish Ministers to define farm management areas under a separate mechanism if deemed necessary. While we welcome the inclusion of this power, we would welcome a timeline for Government review of the current approach to the delineation of farm management area boundaries to ensure that it remains appropriate in all circumstances.

\(^2\) By 2020: To increase the sustainable production of marine finfish at a rate of 4% per annum to achieve a 50% increase in current production
Chapter 1: 2 – Escapes, and obtaining samples, from fish farms

While we would advocate a goal of zero or near zero escapes – which we believe is achievable through a statutory technical standard for farm equipment and other initiatives such as improved training - LINK believes that it is essential that fish identified as escaped can be traced back to their farm of origin. We understand that genetic tools may now be available and we would support the use and application of such samples so that escapes can be identified and related to the farm or company of origin.

Chapter 2: 3 - Technical requirements for equipment used in fish farming

Escaped farmed salmon have the potential to disrupt ecosystems and alter the overall pool of genetic diversity through competition with wild fish and interbreeding with local wild stocks of the same population. It has been shown that interbreeding of farmed fish with wild fish of the same species can result in reduced lifetime success, lowered individual fitness and decreases in production.\(^3\)

Escaped farmed salmon must therefore be considered a severe threat to the productivity and long-term existence of wild stocks of Atlantic salmon. The most effective way to address these risks is to reduce the number of escapes of farmed salmon to zero or near zero. This is in line with the international goal of North Atlantic Salmon Conservation Organisation (NASCO) that states ‘100% farmed fish to be retained in all production facilities.’\(^4\)

We fully support the inclusion of a power allowing Scottish Ministers to prescribe technical requirements for fish farm equipment. This was a key recommendation of the Improved Containment Working Group. However, we believe that, as a high proportion of escapes are caused by human error\(^5\), enforceable technical regulations should extend to include training in the operation of equipment as well as its design, construction, manufacture, installation, maintenance or size.

The Norwegian technical standard (NS 9415) was introduced in Norway in 2004 and specifies requirements for the design of feed barges, floaters, net cages and mooring systems necessary to cope with environmental conditions at fish farm sites. It also includes the handling and use of equipment. The introduction of the standard appears to have resulted in a dramatic reduction in the number of major escape incidents in Norway, principally due to a sharp decline in large-scale escapes resulting from the failure of cages.\(^6\)

Predation resulting in a hole in the net has accounted for 36% of total escape events at saltwater salmon farms between Jan 2011 (when current reporting of cause of escape was introduced) and Oct 2012.\(^7\) Efforts to understand and reduce predator effects, specifically seals, on farm equipment must be prioritised in the development

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\(^4\) http://www.nasco.int/pdf/aquaculture/BMP%20Guidance.pdf

\(^5\) 30% of all salmon farm escape events in 2011


\(^7\) Efforts to understand and reduce predator effects, specifically seals, on farm equipment must be prioritised in the development
of a technical standard. Ultimately, removing the need to kill seals under licence, for example by requiring tensioned nets or other effective and benign deterrents, would benefit wildlife and improve the public and investor perception of salmon farming, which suffers greatly from the association with seal deaths.

**Chapter 2: 4 - Wellboats**

It is of serious concern that wellboats are not sufficiently covered by controls to manage the risk of parasites, pathogens or diseases. The enabling legislation in the Bill is therefore welcome but this must be implemented as soon as possible. We understand that the control of discharges from wellboats at fish cage sites could be considered under existing Controlled Activities Regulations licence arrangements and we ask that Government to take this forward urgently.

**Additional points:**

It is important to note that, in addition to this Bill, there are several strands of policy and secondary legislation in development that aim to address those areas covered by the Aquaculture and Fisheries Bill consultation but were not carried into the Bill itself for a variety of reasons. We raise the following points as we feel it appropriate for the Committee to consider the wider context, including other areas that would support the Bill in achieving the highest environmental standards and understanding, mitigation and managing any wider impacts of fish farming in Scotland.

**Publication of sea-lice data**

Understanding lice levels on farms and how infestations in farmed salmon relate to incidences in wild salmonids is key to ensuring the sustainability of the industry and requires an appropriately robust response. The extent of such a link remains a hotly debated topic. However, a report to the Salmon Aquaculture Dialogue (co-ordinated by WWF) concluded - “it is not plausible to draw a single over-riding conclusion regarding the potential negative impacts of sea-lice on all wild fish stocks world-wide. Nevertheless, we believe that the weight of evidence is that sea-lice of farm origin can present, in some locations and for some host species populations, a significant threat. Hence, a concerted precautionary approach both to sea-lice control throughout the aquaculture industry and to the management of farm interactions with wild salmonids is expedient.”

The data from on-farm sea lice testing provides a critical resource to gain a broader understanding of the impacts on farmed and wild fish so that strategies to control sea lice can be fully assessed and effective ones developed and implemented. LINK therefore strongly believes that the results from sea lice monitoring from individual farms should be publicly available in disaggregated form. The Aquaculture Stewardship Council standards developed by the global multi-stakeholder Salmon Aquaculture Dialogue process determined that the standard should require frequent on-farm testing for sea lice, with test results made easily publicly available within 7 days of testing.

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9 [http://worldwildlife.org/industries/farmed-seafood](http://worldwildlife.org/industries/farmed-seafood)
Norway takes a transparent approach to the publication of data, with a greater amount of both sea lice and disease data being publicly available. For example, an overview of aggregated sea lice numbers is available online\(^\text{10}\), and the authorities hold information on individual companies. If a company exceeds the legal sea lice limit the result is made public. This practice is also applied to disease outbreaks. Scotland should at least bring itself in line with Norway and preferably aim to improve further and become a world leader in best practice.

We note that the Government intention is to develop an improved voluntary system of reporting, in discussion with stakeholders. We urge that existing powers be used to make such reporting a statutory requirement.

**Future of the Code of Practice**

The Aquaculture and Fisheries (Scotland) Act 2007 contains the power to adopt the Code of Good Practice in whole or in part. However, this power has never previously been used. We note elements of the Code would become legal requirements under this Bill. Were this Bill to pass, we feel that it would be timely for a multi-stakeholder group to review all elements of the aquaculture Code of Good Practice. Following a review and any amendments needed, the Code could potentially be statutorily adopted. This process could be undertaken by the Ministerial Group on Aquaculture or one of its subsidiary working groups, should future composition of the group reflect the full range of stakeholders with interests in finfish aquaculture.

\(^\text{10}\) www.lusedata.no
Written submission from the Scottish Salmon Producers’ Organisation

Submission endorsed by: Marine Harvest

Overview

The Scottish Salmon Producers’ Organisation (SSPO), whose members are responsible for some 98% of salmon production in Scotland, would like to raise with the Committee a number of points where the Bill (as presented) requires revision. These mainly relate to technical matters that are fundamental to the Bill being relevant and workable in practice, and a few matters of regulatory principle. These points have already been raised with the Scottish Government’s Bill Management Team and we hope that, as part of the Bill’s development, Ministers will bring forward revised text to address the points we have highlighted.

Our concerns relate to seven specific areas of the Bill that relate to aquaculture but we also wish to raise a few matters relating to freshwater fisheries where we believe the Bill has missed significant considerations.

Aquaculture: Bill Matters

1. Fish farm management agreements and statements (This includes Sections 1, 4A and 4B of the Bill)

The SSPO, its forerunner organisations, and its members pioneered the development of the Farm Management Area (FMA) approach and Farm Management Agreements (FMAg), beginning in the early 1990s. These approaches have been fundamental to the development of the Scottish salmon farming industry and have allowed the industry to develop effective area management approaches and biosecurity systems. More recently, the industry has introduced Farm Management Statements (FMS) as a means of embedding the FMA approach in single operator areas. The industry is therefore already wholly committed to the FMA/FMAg/FMS approach and has no objection in principle to this being incorporated into the regulations.

However, the Bill as presented is not sufficiently comprehensive in its area coverage and contains errors of fact and understanding about key elements of the approach. The provisions of the Bill (as presented) are, therefore, too limited, and also would be wholly unfeasible to adopt in practice.

We, therefore, wish to see:

a) The scope of the regulation extended to include all coastal marine fish farming.

b) Recognition on the face of the Bill that the Farm Management Agreements (FMAg) and FMS are plans, which must necessarily be flexible to meet the needs of different businesses and the day to day requirements of farm management. The point of statutory assessment is, therefore, the requirement for an FMAg or FMS to be in place.
c) The present reference to the Code of Good Practice for Scottish Finfish Aquaculture is incorrect. The CoGP is owned and managed by the Code of Good Practice Management Group and deals primarily with industry practice rather than statutory compliance. SSPO recommends that annual reporting on the CoGP (which was abandoned by Marine Scotland during changes to the Strategic Framework arrangements) should be re-established.

2. Escapes, and obtaining samples from fish farms (This includes Bill Section 2 and 5A)

SSPO finds it difficult to justify the provisions in this part of the Bill against the background that scientific research has unequivocally shown that introgression is of very little significance generally, and in Scotland in particular.

However, the Bill (as presented) has a number of technical problems which we consider must be addressed.

a) In section 2 the present wording means that any farm fish found in the wild can potentially trigger samples of fish being taken from every farm in Scotland. This is clearly neither logical nor proportionate. We, therefore, consider powers to sample farms should be limited to those within the catchment area which might be implicated in the escape.

b) In Section 5A

i. Reference to ‘fish or material from fish’ needs to be corrected to the biologically precise ‘fish or fish tissues’.

ii. The purposes for which fish may be sampled should be limited to the purpose of the provision intended, which is to assist in investigations of escaped fish and the risk of impact of escapes from farms on stocks of fish other than those on farms. Speculative excursions in the provisions that go beyond that raise human rights, legal ownership, intellectual property, and commercial competition considerations for business within and beyond fish farming.

3. Technical requirements for equipment used in fish farming (This includes Chapter 2, Section 3).

This section of the bill relates to the development of Scottish Technical Standards specifically for containment, which is being taken forward by an industry led joint working group with the Scottish Government.

We believe that the Bill's provisions should focus specifically on this rather than on equipment in general.

The section raises two important technical flaws:

a) The reference to ‘technical requirements’ in paragraph (1a) and elsewhere needs to be replaced by ‘technical standards’, which is the appropriate point of focus for regulatory control.
b) The reference to ‘-- for equipment’ in paragraph 1(a) is too all-embracing and not consistent with the approach to developing standards. It should be replaced by ‘---- for specified equipment’. This would then properly reflect the Scottish Standards approach.

4. Wellboats (This includes Chapter 2, Sections 4-7)

The main issue in this part of the Bill relates to the meaning of ‘wellboat’.

The definition in the Bill (as presented) is not adequate. As stated, it will include not only conventional wellboats but almost all small workboats used on fish farms. This is neither the intention in the regulation, nor is it a tenable position since it would render fish farms almost inoperable.

We have proposed as a definition 'live fish carrier requiring to have permanent operational life support systems’.

5. Commercially Damaging Species (This includes Chapter 3)

On the basis that this proposal relates specifically and solely to Mytilus trossulus we have no comment to make on this section.

6. Charging (This includes PART 5, Section 50)

There are matters of principle concerning government attempts to charge for its own core functions or seeking to make mandatory charges for services which are already supplied by industry-preferred commercial suppliers.

The Bill is flawed in attempting to introduce new highly-controversial ‘function charges’ on aquaculture and other sectors through secondary legislation made under the negative procedure. We consider that it is essential that the Bill is modified so that each new ‘service’ for which a charging regime is proposed is subject to proper consultation and full Scottish Parliamentary scrutiny through regulations subject to the affirmative procedure.

7. Fixed Penalty Notices (This includes PART 5, Section 51)

The salmon farming industry is unconvinced about FPNs, which seem to be being introduced for the convenience of Marine Scotland rather than for any sound legal or financial reason. However, Marine Scotland officials have stated that FPNs will be subject to the same levels of legal rigour as actions to be raised by the Procurator Fiscal.

We believe that the Scottish Government needs to address this matter by: (i) a clear up-front statement of the specific offences to which FPNs will apply; and (ii) by a commitment in the Bill to publish annual statistics relating to FPNs, broken down by type of offence and by industry sector

Aquaculture: Missed Opportunities
We regret that the development of the Bill has not taken the opportunity to review the entire regulatory process for aquaculture as a whole and considered it in line with other Scottish Government policy intentions to promote better regulation. The Bill fails to address issues that would support sustainable industry development and which have been raised by industry. In particular, we identify:

a) Addressing the regulatory overlap between Marine Scotland and SEPA in the regulation of controlled releases of substances from wellboats at pen locations;

b) Opportunities for Ministers to take powers to allow them to instruct SEPA to vary CAR licences where there is a need to treat fish, but where the existing CAR licence prevents this;

c) Addressing the long-standing issue of failure to regard wild fish hatcheries as Aquaculture Production Businesses, thus creating trade discrimination barriers between different types of hatcheries and increasing the risk of introduction of diseased fish into open water.

**Salmon Fisheries: Missed Opportunities**

The salmon farming companies are becoming increasingly involved in assisting west coast and island fisheries through provision of expertise, facilities and, in some cases, project funding. Also, farmers have an understandable neighbourly interest in wild fisheries management.

We strongly support the principle of developing policy based on scientific evidence rather than unsound, anecdotal information. With regard to the Bill, we believe that provisions could have been included to provide robust scientific investigation to determine if and why wild salmon numbers are declining. The Bill could also make provision to gather river management information, for example, catch statistics in the context of fishing effort which would enable fuller understanding of the environment in which we operate and more sustainable management practices.
Supplementary written evidence from the Rivers and Fisheries Trusts of Scotland (RAFTS)

Rivers and Fisheries Trusts of Scotland (RAFTS) wishes to submit supplementary evidence to the Committee further to the evidence gathering sessions in December.

We would like to reiterate our strong support for reporting of sea-lice data from Scottish marine finfish farms at farm scale level. We made this position clear on this point in our written submission to the Bill Consultation in late 2012 as follows:

“RAFTS believes that the most appropriate approach to be taken re the collection and publication of sea lice data is for full public access to data in a disaggregated form. Although there is currently an industry-run database which reports on sea lice numbers in 6 regional zones we do not believe this is sufficient. The regional areas are large and do not make it possible to identify locations or units performing well and meeting necessary standards from those who are not. The publication of average figures over such regions simply does not allow the necessary focus on remediation measures to be taken or to be seen to be taken by the public. In 2010 there was reporting of lice counts significantly above the target thresholds in many of the regional unit areas. Without finer resolution reporting of lice numbers the public is left with no option other to assume that all farms are not able to meet threshold targets where this simply may not be the case.

We believe strongly that full public access to lice data in Scotland would allow:

i) Assessments to be made of the success or otherwise of lice control strategies and subsequent impacts on wild fisheries

ii) Allow and support the Fish Health Inspectorate to prioritise limited resources on problem sites as part of the on-going farm inspection process and so use public funds more efficiently

iii) The more effective and informed operation of the aquaculture planning process by providing farm scale information and performance history to accompany applications being made to expand existing or set up new production centres.

Currently applications largely state that they will adhere to the Code of Good Practice with regard to lice levels and the routine response to this by Marine Scotland Science is to state that if the target is met then the impact will be minimal (despite also stating that current industry practice as laid out in the Code of Good Practice is insufficient to protect wild fish). At the present time there is no way of assessing such claims, and indeed, under some circumstances in some areas RAFTS does not believe that operators are capable of meeting such targets.

The consultation states, and we agree, that this area is a key area of contention between aquaculture and salmon and freshwater fisheries interests. We believe that, if the industry is confident that sea lice levels can be controlled in line with the Industry Code, then there should be no concern in making such information public, in a disaggregated form and at a farm scale.
In fact we would contend there is a reputational risk in not making information available at this scale as currently all farms and units within the 6 regional reporting units will be considered to either pass or fail against threshold values. At the present time there is a high incidence of threshold exceedance.

We acknowledge need for data to be properly presented, explained and understood, to minimise the risk of misinterpretation or misuse. However, this is not a reason to withhold or sanitise data and would propose that the industry itself provides such clarification and advice for issue alongside the published data.

We believe that the principles for collection and publication of sea lice data should be as follows:

- All farms should report data on a weekly basis to Marine Scotland
- Sea lice data should be published monthly, on a farm by farm basis, on a publically available webpage (operated by Marine Scotland or the Industry)
- The webpage can be used to explain the data in whatever manner is deemed appropriate

However, in our view, it is fundamentally important and essential that raw data is available”.

This view is supported by Professor Chris Todd in his supplementary evidence to the Committee with which we concur. It is also a view shared by a wide variety of other organisations with an interest in this subject.

“From a scientific perspective I believe it essential that sea lice data should be collated and published on a farm by farm basis. Concatenating and pooling data for multiple farms (or sites) within a sea loch or bay and publicising a summary statistic would considerably erode their utility in ascertaining farm performance and would effectively preclude informative and detailed scientific analysis of potential interactions with both other farmed and wild fish.” (Professor Chris Todd – Supplementary Evidence)
Written submission from the Salmon & Trout Association

S&TA Petition PE1336

The S&TA welcomes the opportunity to submit Written Evidence to the RACCE Committee and would welcome the opportunity to give Oral Evidence as the Committee sees fit.

In 2010, the S&TA submitted its aquaculture-related Petition to the Petition Committee [PE1336] which the Petitions Committee considered “a very worthwhile petition” and on 6th September 2011, unanimously referred it to the RACCE Committee for its further consideration, pending the publication of the Aquaculture and Fisheries (Scotland) Bill.

Since the submission of the S&TA Petition, the S&TA has published a number of reports into the environmental performance of the fish-farming industry, based on information obtained from statutory bodies and regulators, and dealing with:

- sea-lice numbers on fish-farms¹;
- resistance to or tolerance to sea-lice treatments;
- sea-lice treatment residues in benthic samples²; and
- organic pollution of the sea-bed under fish-farms³.

In June 2011, the Rivers and Fisheries Trusts of Scotland (RAFTS), the Association of Salmon Fishery Boards (ASFB), the S&TA and Fish Legal published research that confirmed a marked decline in Scottish wild Atlantic salmon stocks in salmon farming areas of the West Highlands and Islands as compared to non-salmon farming areas⁴.

This mirrored earlier research published by fisheries scientists, including from Marine Scotland Science⁵.

Sea-lice impacts and the publication of farm-specific sea-lice data

Significant numbers of fish-farms exceed the industry’s own sea-lice thresholds and there appears to be a growing lack of efficacy of and tolerance to available sea-lice treatments⁶. Most recent analysis by the S&TA of Fish Health Inspectorate reports, covering the first half of 2012, shows that of 93 farms inspected, almost a quarter were recording sea-lice levels above the industry threshold during the period for which records were inspected.

⁴ Marked decline in Scottish wild Atlantic salmon stocks confirmed in salmon farming areas. Press Release 24th June 2011 from RAFTS, ASFB, S&TA and Fish Legal.
Sea-lice treatment chemical residues on the seabed of Scottish sea lochs are have been found in excess of Environmental Quality Standards at 61 different fish-farm sites and there is evidence of a reduction in audit monitoring of fish-farms by SEPA inspectors.\(^7\)

Regrettably, FHI reports do not enable the reader to ascertain by how much, for how long and on how many occasions, a particular fish-farm has had sea-lice numbers above industry thresholds. This has inevitably constrained the utility of the information obtained from FHI.

The S&TA has pointed out that the section 1 of the Aquaculture and Fisheries (Scotland) Act 2007 already enables Scottish Ministers to collect and require publication of on-farm sea-lice data as a routine requirement on salmon farmers. However that power has not been used, despite the S&TA calling for the publication of farm-specific sea lice data and the publication of such data being generally supported by all public and statutory bodies.\(^8\)

The S&TA believes that that power available under the 2007 Act should now be amended in the current Bill to a duty on Scottish Ministers to ensure the timely publication of weekly farm-specific sea-lice data.

**Reducing fish-farm biomass or revocation of licences to control organic pollution and the impact on wild fish**

Of 311 reports of seabed monitoring of organic pollution provided by fish-farmers to SEPA between 2009 and 2011, 137 (44%), were deemed by SEPA to show unsatisfactory pollution of the seabed in the vicinity of the fish-farms “beyond the assimilative capacity of the local environment” and a further 64 reports (21%) were considered borderline, “close to having an unsustainable impact”\(^9\).

Subsequent to the publication of the S&TA report into organic pollution, further requests for information show that, over the same period, at only 8 fish-farms has any reduction in permitted biomass been required by SEPA due to unsatisfactory benthic reports, amounting to a total reduction of just over 2000 tonnes production across the entire industry. This is patently an unsatisfactory response to the damage being caused, given the large number of ‘unsatisfactory’ reports.

Quite apart from the prevention of unacceptable organic pollution, there remains a lacuna in the law in that a reduction in biomass (or, de facto, a revocation by reduction of biomass to zero if necessary) cannot currently be required by SEPA, any other regulator - or indeed by Scottish Ministers - in the face of evidence that sea-lice numbers emanating from fish-farm or groups of farms is harming wild salmonids.

Nor can the FHI currently order sea-lice treatments at fish farms in order solely to protect wild fish, their powers under the 2007 Act being limited to the protection of the farmed fish.

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Despite earlier recommendations and the inclusion in the pre-Bill consultation of such a power for Scottish Ministers, the Bill does not now contain a power for Scottish Ministers to order a reduction in permitted biomass at salmon farms, or indeed a de facto revocation (if required) of relevant licences and consents where damage is occurring to wild salmonids.

The S&TA believes that Scottish Ministers should be given at least a power, if not a duty to order a reduction in the permitted biomass of particular fish-farms (to zero if necessary) where evidence suggests that an unacceptable impact on wild salmonids is occurring due to parasites and or disease emanating from the farms concerned.

**General issues with salmon aquaculture**

Recent analysis of the impact of sea-lice and other parasites on wild salmon recruitment in the north-east Atlantic Ocean carried out by extremely eminent scientists, has concluded that sea-lice cause a 39% loss in salmon abundance. The study also suggests that the impact on wild smolts, as opposed to the studied hatchery smolts, would probably be greater with an even higher mortality. The authors warn that because natural mortality rates are high in Atlantic salmon, even a proportionally small additive mortality from sea-lice parasites can amount to a large loss in salmon recruitment.

This contrasts dramatically with the July 2012 statement of the last Scottish Minister responsible for the aquaculture industry, that “the evidence of impact of sea-lice on fish stocks in Scotland is not proven”.

The Scottish Government has committed itself to “using sound science responsibly...ensuring policy is developed and implemented on the basis of strong scientific evidence, whilst taking into account scientific uncertainty (through the Precautionary Principle)....”

The S&TA believes that the Scottish Government’s policy towards controlling the impact of sea lice from fish-farms on wild fish requires urgent revision.

The Bill, as currently drafted, must be significantly strengthened in the face of the overwhelming evidence building of the damaging impact of the salmon farming industry on wild salmonid populations and is particularly recommends that:

- a duty is placed upon Scottish Ministers to require the collection and publication of weekly farm-specific sea lice data; and

- Scottish Ministers are given the power envisaged in the consultation to order the reduction in farmed biomass at fish-farms, to include where there is reasonable scientific evidence of an unacceptable impact on wild salmonids from those farms.

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Finally, although we are necessarily limited here by the maximum length of written evidence requested by the Committee, the S&TA would encourage the Committee, throughout its deliberations on the Bill, to examine and consider:

- the negative economic and employment impact of the harm being caused to wild salmonid fish in the zones of aquaculture production on the west coast and in the islands; and

- the legal and practical methods by which those fish-farms currently sited near wild salmonid rivers might be relocated to less damaging sites.

The S&TA concurs with the views expressed by the ASFB in relation to those clauses in the Bill dealing with the fisheries management role and functions of DSFBs.
Rivers and Fisheries Trusts of Scotland (RAFTS) wishes to submit supplementary evidence to the Committee further to the evidence gathering sessions in December.

We would like to reiterate our strong support for reporting of sea-lice data from Scottish marine finfish farms at farm scale level. We made this position clear on this point in our written submission to the Bill Consultation in late 2012 as follows:

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Dear Nick

AQUACULTURE AND FISHERIES BILL – AUTUMN INTRODUCTION

I was grateful for the opportunity to meet earlier this month and to outline our proposed timetable with regard to the introduction of an Aquaculture and Fisheries Bill.

As promised, I am now writing to advise you formally of the Scottish Government’s intention to bring forward an Aquaculture and Fisheries Bill in Autumn this year. You may have already picked up the press release issued earlier today.

http://www.scotland.gov.uk/News/Releases/2012/05/fisheriesbill21052012

I recognise that this may have been later than the Committee would have expected but as I indicated when we met there has been a large (and at times vociferous) response to our consultation proposals. Consequently, we feel that we should use the intervening summer period to discuss some of the issues further with stakeholders, to ensure we fully understand the background behind some of these responses.

I should also confirm my original offer that if you would find it helpful, the Bill Team could provide a briefing to you, and/or the full Committee, on the policy thinking behind the propositions in the consultation paper, bearing in mind that not all of these are likely to make it into the Bill itself.

We could also offer some thoughts around potential engagements that the Committee might wish to undertake to help them more fully understand the background behind some of the proposals.

I hope that is helpful.

Jeff Gibbons
Bill Team Leader
Minister for Environment and Climate Change
Paul Wheelhouse BPA/MSP

F/T: 0845 774 1741
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Rob Gibson MSP
Convener
Rural Affairs, Climate Change and Environment Committee
The Scottish Parliament
Edinburgh
EH99 1SP

26 November 2012

Dear Rob

AQUACULTURE AND FISHERIES (SCOTLAND) BILL: SCOTTISH GOVERNMENT RESPONSE TO THE CONSULTATION PAPER

I am pleased to have the opportunity to work over the coming period with the Rural Affairs Climate Change and Environment Committee, as the lead Committee for considering the Aquaculture and Fisheries (Scotland) Bill. The Bill aims to ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment.

Since the Bill was first submitted to Parliament, I have become aware of the likely need to propose Government amendments at Stage 2. The Committee may find it helpful, therefore, if I set out the amendments we anticipate at present, so that these can be considered in taking evidence during Stage 1 of the Bill. The proposed amendments are set out in the attached Annex A.

In addition, concurrently with submitting the Bill to Parliament, we published our response to the consultation exercise and the analysis which informed the development of the Bill. Many of the questions within the consultation paper considered how to take forward our policy aims, whether through secondary legislation using existing powers or, where appropriate, voluntary arrangements. The Committee may find it helpful to see our updated response to the consultation document, which now contains some further detail to supplement and clarify particular points following further stakeholder engagement, attached as Annex B.
As part of that clarification process, we have also prepared and published, both on the Scottish Government webpage and through the Scottish Salmon Producers' Organisation, a two page note on the provisions in the Bill in respect of Fixed Penalty Notices, attached as Annex C.

Annex A reflects the likely Stage 2 amendments that we are aware of at this stage, but it is possible that other issues will arise. I will keep the Committee informed of any further developments as they arise.

On a final note, you will have seen the announcement last week that the Scottish Salmon Producers' Organisation (SSPO) have committed to broaden their reporting of information on sea lice management and control from 1 January 2013, so that it will include additional information of interest to wild fisheries Groups. In addition they have said that they will implement the recommendations from the Ministerial Group on Aquaculture's 'Healthier Fish Working Group'.

This development has been possible as a consequence of constructive dialogue over the last few months, involving a range of stakeholders. I consider this to be a significant step forward and it supports the outcomes being sought in the Aquaculture and Fisheries (Scotland) Bill currently going through the Parliamentary process which aims to deliver sustainable economic growth in the aquaculture sector while giving due regard to protection of the marine environment.

I am copying this letter to the Minister for Parliamentary Business.

Kind regards,

Paul Wheelhouse

PAUL WHEELHOUSE
AQUACULTURE AND FISHERIES (SCOTLAND) BILL – STAGE 2 AMENDMENTS

Amendment 1: Cockle fishing in the Solway Firth

Current offence provisions in relation to the Solway Firth prohibit "fishing for" cockles. So enforcement officers have to gather sufficient evidence in the act of fishing. It is problematic to do this for an act that is rarely if ever witnessed by the authorities. Health and Safety considerations mean that enforcement officers cannot easily venture out onto the sands where the illegal cockle fishing takes place (the "Morecambe Bay" issue). So the path to improving the odds for more effective enforcement lies, we believe, not in the creation of additional enforcement powers, but in framing the offence provisions in a way which is more closely aligned with the scenarios where suspected illegal cockling activity is often detected.

These scenarios include where suspected cockle gatherers are intercepted in lay-bys or car parks close to beaches either before or after they have been on the sands. Where such detections come immediately after the act of illegal fishing, the cockle gatherers may be found with cockles in their possession. However, illegally gathered cockles are often left in caches on the beach to be collected at a later time and the presence of cockles alone may not necessarily represent sufficient evidence of the act of fishing for them. It has not been un-common for those who are intercepted on their way to the foreshore to make it clear to enforcement officers that they will simply curtail their activity that night, with the clear inference that they will return again on another night when their activities might go unobserved. So to date, enforcement efforts have primarily frustrated illegal cockling activity rather than resulted in prosecutions.

Vehicular access to the foreshore along the Solway Firth is limited. As a result cockle fishermen often have to travel several miles diagonally over the sands - usually on quad-bikes - to get to the cockles beds. In the past at least one local land owner was suspected of providing access from the public road network to the foreshore for cockle fishermen via a private road on his property. However the landowner would not permit vehicular access to Marine Scotland when officers wanted to take their vehicles down his private road to look for illegal cockle gathering on the adjacent foreshore. Officers were faced with the prospect of walking down the road but without a vehicle - not least for health and safety considerations - this is less than ideal and ultimately thwarted the officers' attempts to intercept anyone fishing illegally. When this issue was raised previously, advice seemed to be that this could perhaps be overcome by giving officers of Marine Scotland a general power or responsibility to patrol the foreshore.

We wish to amend both the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967 - the latter since historic and possible future controls on cockles have used regulating orders and a possible several order has been mooted - to introduce defined circumstances in which the courts may be entitled to infer that accused persons had fished for, or were about to fish for cockles (or other
shellfish) in contravention of any principal order. The circumstances that the courts could take into account include:

- Persons are found in possession of the apparatus and paraphernalia associated with cockle fishing, which might include rakes, sacks, riddles, etc;
- Persons are found in possession of cockles.

Amendment 2: Section 30(1) of the Sea Fisheries Act 1981

The Bill currently contains provisions to amend Section 30(1) of the Sea Fisheries Act 1981. This concerns the regulatory framework of the Common Fisheries Policy, which places obligations and restrictions on others and not just exclusively on the masters and owners of fishing vessels. Following further consideration, we have concluded that the amendment as drafted does not deliver our policy intention in that it does not explicitly apply to shore based trades, and therefore a further minor amendment is necessary.
The Consultation Document and Analysis (with additional information) – November 2012

The Aquaculture and Fisheries Bill - Consultation Document set out key issues and priorities in relation to Scotland’s aquaculture, wild salmon and freshwater fisheries industries. The Consultation Document explored possible legislative measures for a potential Aquaculture and Fisheries Bill during the current Parliament. It also covered wider issues, such as provisions to protect shellfish growing waters. The document built on best practice and voluntary arrangements where appropriate, to protect the interests of those who have invested in the highest standards of management and husbandry.

The Consultation Document was published on the Scottish Government website on 12 December 2011. The document was accompanied by a Strategic Environmental Assessment (SEA) Environmental Report and a partial Business and Regulatory Impact Assessment (BRIA) of the proposals, published on 22 and 8 February 2012 respectively. The consultation period was extended from 2 March to 13 April 2012, to provide consultees with additional time to consider the accompanying impact assessments.

Each response received was read and considered by Marine Scotland and informed the development of the Aquaculture and Fisheries Bill and other approaches to policy implementation.

The analysis of consultation responses was undertaken on behalf of Marine Scotland by the Scottish Government’s Environmental Assessment Team, in accordance with Scottish Government’s Good Practice Guidance (May 2010). The detailed findings were presented in the Aquaculture and Fisheries Bill Consultation Analysis - Main Report. A Summary Report was also published.

This report comprises Marine Scotland’s response to the consultation and sets out how each issue will be taken forward.

It is recommended that this report is read alongside the summary report and the policy memorandum accompanying the Bill.

Overview of Consultation Questions

The Consultation Document contained 48 questions and was set out in six sections:

Section 1 - The Sustainable Development Of Aquaculture (Questions 1 - 18)
Section 2 - Protection Of Shellfish Areas (Question 19)
Section 3 - Fish Farming And Wild Salmonid Interactions (Questions 20 - 22)
Section 4 - Salmon And Freshwater Fisheries Management (Questions 23 - 36)
Section 5 - Modernising Enforcement Provisions (Question 37 - 45)
Section 6 - Paying For Progress (Questions 46 - 48)

Of the 48 questions, 38 were closed questions (i.e. 'yes' or 'no' questions) and ten were questions where consultees were asked for their views or suggestions on a range of issues. Consultees were also invited to provide comments on any issues which they considered were not covered by the Consultation Document, and/or should be considered for inclusion in the legislation.

Section 1 - The Sustainable Development Of Aquaculture

Question 1. Do you agree that we should, subject to appropriate safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm
Management Agreement (FMA), with the sanctions for failure to do so, or to adhere to the terms of the agreement?

Summary: There was general support from the majority of respondents. Support focused around the need for good husbandry and management of fish farms to be practised consistently across the sector.

Scottish Government response: The legal requirement to participate in an appropriate Farm Management Agreement is being taken forward in the Aquaculture and Fisheries Bill.

Question 2. Do you agree that operators should have primary responsibility for determining the boundaries (and other management arrangements) for Management Areas, but with Scottish Ministers having a fall back power to specify alternative areas?

Summary: There was significant opposition to this proposal. Opposition fell primarily into one of two categories: opposition to the definition of boundaries by operators, or opposition to the proposed fallback power for Ministers.

Scottish Government response: Following further policy consideration, we consider that the FMA provisions within the Bill have sufficient scope to ensure that operators farm within appropriate areas.

Additional information

All farms operate within a designated farm management area as defined in the Code of Good Practice for Scottish Finfish Aquaculture. The Code makes it clear that the delineation of FMAs is subject to review which takes account of changes in operation, production and ownership, for example, and the relevant maps are updated accordingly.

Through the provisions in Section 1 of the Aquaculture and Fisheries (Scotland) Bill Scottish Ministers would have the power to redefine the meaning of the CoGP. Under Section 6 of the Aquaculture and Fisheries (Scotland) Act 2007, Scottish Ministers have the power to require steps to be taken for the purposes of, amongst others, the prevention, control and reduction of parasites, which could include the ability to adopt and/or introduce a new system for creating/boundary setting of farm management areas.

Question 3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements?

Question 4. How do you think such a system might best be developed?

Summary: There was general support for development of a dispute resolution process. Most of those supporting the proposal indicated their preference for independent arbitration in one form or another.

Scottish Government response: Following further policy consideration, we consider that the current non statutory mechanism to resolve disputes remains appropriate, and should continue to be followed, within the proposed FMA statutory framework.

Question 5. Do you agree we ought to review the question of unused consents?

Question 6. What do you consider are suitable options to promote use or relinquishment of unused consents?

Question 7. Do you agree that Scottish Ministers should be given powers, ultimately to revoke, or to require or request others to revoke, consents?
Question 8. Should any such power relate to all or the particular consents (and if the latter, which)?

Summary: There was overall agreement with the proposals from consultees. A significant proportion of respondents from the freshwater fisheries and other sectors supported this proposal, citing for example the importance of a review in providing an accurate assessment of unused biomass. However, the aquaculture industry was strongly opposed.

Scottish Government response: We do not intend to progress these proposals at this time. We recognise the complexity of the issue of unused consents and that consents may be held for a variety of reasons. We will continue to encourage the aquaculture industry to bring forward non-legislative solutions which maximise the effective use of existing consents or their surrender if no practical use is likely.

Additional information

Prior to 1 April 2007, all marine fish and shellfish farms were consented by the Crown Estate (through a non-statutory scheme of development consent) or, in Shetland and Orkney, through a system of works licences issued by the local authority. On 1 April 2007, the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 came into force. This gave planning authorities full planning responsibility for all aquaculture developments in marine waters. For operators of sites which were established prior to 2007 and don't already have planning permission, they can apply through the Scottish Government Audit and Review process.

We agree with industry views that the completion of the Audit and Review process will result in a more complete picture of sites where aquaculture production will continue in the future. We are of the view that it would be appropriate to undertake a further detailed consideration of unused consents once the Audit and Review process is completed.

Question 9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data?

Question 10. Do you agree that aquaculture business ought to be required to provide additional information on fish mortality, movement, disease, treatment and production as set out above?

Question 11. What are your views on the timing and frequency of submission of such data?

Summary: There was some support for combined government and aquaculture industry responsibility for data collection and publication. There was strong support for additional information to be provided, as proposed in the Consultation Document. However, there was also strong opposition to this proposal from the aquaculture sector.

Scottish Government response: It is anticipated that this proposal will be progressed through non-legislative means, through improved voluntary reporting, in discussion with stakeholders. Alternatively, the Scottish Government has existing powers to progress the proposals through secondary legislation.

Additional information

Part 5, Section 38 of the Aquaculture and Fisheries (Scotland) Act 2007 details the powers available to the Scottish Ministers to make orders around information provision. For now, it remains our intention to progress data collection through voluntary means before the end of the year.

Question 12. Do you agree that Scottish Ministers should have the powers to require the Scottish Environment Protection Agency (SEPA) to reduce biomass consent where it appears to them necessary and appropriate - for example to address concerns about fish health and welfare?
Summary: There was strong support from many respondents, except the aquaculture industry, for powers to reduce biomass of sites, particularly to ensure the effective treatment of sea-lice and reduce benthic pollution.

Scottish Government response: SEPA can already reduce biomass consent in certain circumstances. We will consider further non-legislative solutions and have begun discussion with SEPA about these matters.

Additional information

We propose to develop, in conjunction with SEPA, an agreed SG policy position on such matters. One aspect of this will be setting out the circumstances under which the Scottish Government may ask SEPA to reduce biomass consent. Discussions have already commenced.

Question 13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats?

Summary: There was strong support for this proposal from the freshwater fisheries sector and public bodies, whilst the majority of the aquaculture industry were opposed.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

Summary: While there was support for the extension of these powers, largely to improve biosecurity (i.e. sea-lice, disease), the need to ensure that the associated costs to the aquaculture industry are manageable was also raised by some of these respondents.

Scottish Government response: This is still under consideration, although any conclusions can be progressed through the use of existing powers and we have begun discussion with SEPA about these matters.

Additional Information

Through the Pollution, Prevention and Control (Scotland) Regulations 2000 SEPA have the powers to require the adequate treatment of emissions to minimise harm to the environment.

Question 15. Do you agree that the regulatory framework should be the same for all seaweed farms?

Question 16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing?

Question 17. If not, what alternative arrangements would you suggest?

Summary: Of those who responded to this question (less than half of all responses), most expressed strong support for a consistent regulatory framework for all seaweed farms. This view extended across the stakeholder groups. There was no consensus on the appropriate regulatory approach for seaweed cultivation.

Scottish Government response: We do not intend to make any changes through the Bill. Further consideration is being given to the appropriate framework for discussions regarding the regulation of seaweed. We are of the view that any changes to the regulatory regime (if considered desirable) can be dealt with by secondary legislation by virtue of the Marine (Scotland) Act 2010 or the Town and Country Planning (Scotland) Act 1997. We intend to consult on a Seaweed Policy Statement and Strategic Environmental Assessment (SEA) before the end of the year (2012) and will provide further detail on the issue of regulation at this point.
Question 18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species?

Summary: There was support for this proposal amongst those who responded to this question (just over half of all responses), including strong support from the freshwater fisheries sector. However, the aquaculture industry had concerns with regard to the provisions of any open-ended powers but supported proposals to manage *Mytilus trossulus*, which is an identified problem.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Section 2 - Protection of Shellfish Areas

Question 19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry?

Summary: Of those who responded, nearly all supported this proposal.

Scottish Government response: This proposal will be taken forward in the Aquaculture and Fisheries Bill. Further details are set out in Part 2 of the Scottish Government’s Consultation Analysis: Delivering Scotland’s River Basin Management Plans: An integrated approach to the protection of shellfish growing waters published in May 2012. [http://www.scotland.gov.uk/Publications/2012/05/84791/downloads](http://www.scotland.gov.uk/Publications/2012/05/84791/downloads)

Section 3 - Fish Farming and Wild Salmonid Interactions

Question 20. Do you agree that there is a case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken, in appropriate circumstances and potentially as part of a wider suite of protection measures?

Summary: While most respondents who answered this question supported the proposal, there was strong opposition from the aquaculture industry.

Scottish Government response: Following further consideration we believe that the existing powers in the Aquaculture and Fisheries (Scotland) Act 2007 (Part 1, section 6) together with the provisions within the Bill provide sufficient scope to enable action to be taken in these particular circumstances, and that no further legislative change is necessary.

Question 21. Do you agree we should provide powers for Scottish Ministers to require all finfish farms operating in Scotland to use equipment that conforms to a Scottish Technical Standard? (The technical content of the standard would be defined separately)

Summary: There was strong support for introduction of a technical standard across all stakeholder groups.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 22. Do you agree that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes?

Summary: There was overall support amongst respondents for this proposal. Several respondents were of the view that this measure could enable the tracing of escaped farmed fish. The aquaculture industry and other commercial industry respondents were strongly opposed to these additional powers.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.
Question 23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?

Summary: Many consultees across the stakeholder groups, particularly aquaculture and the public sector, were supportive of the proposal for a duty for Boards to act fairly and transparently.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 24. Do you agree that there should be a Code of Practice for wild salmon and freshwater fisheries?

Question 25. If yes, should such a Code of Practice be statutory or non-statutory?

Summary: While introduction of a Code of Practice was strongly supported across the stakeholder groups, there was opposition from many to making it statutory.

Scottish Government response: The Scottish Government acknowledges the existing Code of Good Practice developed by the Association of District Salmon Fishery Boards which offers guidance to Boards on fulfilling their duties and we anticipate that this sector-led Code will continue to exist and be updated by ASFB to reflect the proposed new responsibilities placed on Boards by the Aquaculture and Fisheries Bill. We have therefore concluded that it is not necessary to make any changes to the current status of the code.

Question 26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout?

Summary: There was strong support for powers to introduce a carcass tagging system in Scotland, with respondents recognising numerous benefits from the proposal.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis?

Summary: There was strong support for this proposal, but the aquaculture industry and other commercial sector respondents were largely opposed.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 28. Do you agree that Scottish Ministers should have the powers to initiate changes to Salmon District Annual Close Time Orders?

Summary: There was strong support for Ministerial powers to change Annual Close Time orders across nearly all of the stakeholder groups.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?

Summary: While the majority of respondents to this question supported the proposal, there was strong opposition from DSFBs/RAFTS consultees.
Scottish Government response: The proposal is being taken forward in the Aquaculture and Fisheries Bill.

**Question 30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures?**

Summary: There was strong support across all stakeholder groups for this proposal.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

**Question 31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures?**

Summary: Overall there were mixed views on this proposal. Only the public and voluntary sectors were strongly supportive; the aquaculture industry was strongly opposed.

Scottish Government response: The Scottish Government notes the mixed reaction to this proposal and will consider the issue as part of further work to modernise management structures for salmon and freshwater fisheries.

**Question 32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?**

Summary: There was strong support for the collection of comprehensive rod effort data from all the stakeholder groups.

Scottish Government response: Scottish Ministers have adequate powers to require effort data for rod fisheries under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and no further legislative change is necessary. The issue will be looked at as part of considerations for a national data collection workstream.

**Question 33. What additional information on the fish or fisheries should proprietors and/or Boards be required to collect and provide; and should this be provided routinely and/or in specific circumstances?**

Summary: The majority of respondents generally agreed with the principle of providing additional information on both fish and fisheries.

Scottish Government response: The consultation generated a number of suggestions for additional information. These will be looked at in the context of considerations for a national data collection workstream and the development of a national policy position on introductions / stocking.

**Question 34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district?**

Summary: There was overall support amongst most stakeholder groups for this proposal, with the exception of freshwater fisheries and DSFB/RAFTS respondents.

Scottish Government response: Proposals to require additional information from fisheries are being taken forward in the Aquaculture and Fisheries Bill.

**Question 35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances?**

Question 36. If so, why and in what circumstances?
Summary: There was strong support for the proposal amongst all stakeholder groups, and particularly for greater transparency in introduction / stocking activities.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Section 5 - Modernising Enforcement Provisions

Question 37. Do you agree that strict liability criteria should apply - where they capable of being applied - for offences related to Marine Licensing requirements insofar as they apply to aquaculture operations and, potentially, in other situations?

Summary: While many of those who responded to this question supported this proposal, there was strong opposition from the aquaculture and other commercial businesses stakeholder groups.

Scottish Government response: This proposal is not being progressed for the time being.

Question 38. Do you agree that we should extend the use of fixed financial penalties as alternatives to prosecution in relation to marine, aquaculture and other regulatory issues for which Marine Scotland has responsibility?

Summary: Less than half of consultees answered this question, and there were mixed views on the use of fixed penalties amongst those that did answer.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Additional Information

A detailed note on the FPN provision can be accessed at:

http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/bill/fpn

Question 39. Do you agree that we should increase the maximum sum that can be levied through a fixed penalty notice to £10,000?

Question 40. Are there particular regulatory areas that merit a higher or lower maximum sum?

Summary: Less than half of the consultees answered this question. There were mixed views on increasing the maximum sum for fixed penalty notices amongst those who did respond. There was no consensus amongst respondents on whether there was a case for higher fixed penalty sums in certain regulatory circumstances

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Question 41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed?

Summary: Those who responded to this question (around a third of all respondents) largely supported the proposed amendment.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.
Question 42. Do you agree that sea fisheries enforcement officers should be given specific power to allow vessels to be detained in port for the purposes of court proceedings?

Question 43. Do you agree that sea fisheries enforcement officers should be able to dispose of property seized as evidence when it is no longer required, or forfeit items which would be illegal to use?

Question 44. Do you agree that sea fisheries enforcement officers should have the powers to inspect object in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises?

Summary: While almost two-thirds of consultees declined to answer these questions, there was strong support for the proposal to allow vessels to be detained in port for the purposes of court proceedings, with some considering it as a necessary change to close a loophole which could allow foreign nationals to evade justice. There was also strong support for powers to inspect objects in the sea and elsewhere, with many recognising that it may be of assistance in the enforcement of un-licensed fishing.

Scottish Government response: The proposals in Questions 42, 43 and 44 are being taken forward in the Aquaculture and Fisheries Bill.

Question 45. Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer?

Summary: While over two-thirds of respondents declined to answer this question, there was general support across most stakeholder groups who did respond. There were some concerns, however, amongst some sea fisheries respondents and some individuals and political representatives.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

Section 6 - Paying For Progress

Question 46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities?

Question 47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced?

Question 48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds?

Summary: While many consultees supported the proposal for enabling powers to allow for charges for public services, there was strong opposition from the aquaculture and marine fisheries industries.

Scottish Government response: The proposals detailed in questions 46-48 will be taken forward in the Aquaculture and Fisheries Bill. Further consultation would take place before the introduction of any charging regime.
Other Comments and Issues Raised

Many respondents provided additional comments on wider issues relating to aquaculture and freshwater fisheries in their responses. In summary, these included (with Scottish Government response where appropriate):

- Disagreement with information in and/or conclusions of the SEA.
- Support for changes in farming practices (i.e. closed containment, production and technical innovations).
- Suggesting further consultation and collaboration on the operation of MAs, particularly regarding salmon farming practices and sea-lice treatments.
- Suggestions for further action on escapes (i.e. requirement for remedial action by operators, genetic sterilisation and preventing site development in offshore locations).
- Support for presumption against or powers to limit fish farm developments in areas of importance to wild salmonids.
- Scottish Government response: A number of proposals regarding farm management are being progressed through provisions within the Bill.
- Suggestion for the provision of additional scope for DSFBs (i.e. include all species of trout, notification of developments impacting on river systems, include as a consultee for planning permission applications).
- Suggestion for the adoption of an ecosystem approach for fisheries management.
- Several suggestions for further legislative change in relation to salmon and freshwater fisheries. These included proposed changes affecting the operation of, and management regime for, salmon net fisheries.
- Scottish Government response: It is anticipated that these issues will be considered as part of further work to modernise the management structures for salmon and freshwater fisheries.
- Concern that the proposals in the Consultation Document may adversely impact the coarse angling and aquaculture industries.
- Support for changing the use of Protection Orders (POs) where risk to native species or the environment can be demonstrated.
- Scottish Government response: It is anticipated that these issues will be considered as part of further work to modernise the management structures for salmon and freshwater fisheries.
- Recommendation for a review of the Scottish Aquaculture CoGP.
- Scottish Government response: The Scottish Government is represented on the CoGP Working Group which regularly reviews the effectiveness of the Code.
- Support for inclusion on a range of additional provisions (i.e. pollution, seal shooting, acoustic deterrent devices, locational planning issues amongst others).
http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/bill/fpn
Dear Mr Gibson

Aquaculture and Fisheries (Scotland) Bill

Thank you for the opportunity to provide Scottish Water’s views on Stage 1 of the Aquaculture and Fisheries (Scotland) Bill. As previously indicated to the Committee, unfortunately we were unable to attend the oral evidence session owing to a prior commitment with SEPA and SNH in Dingwall.

In providing information we will make some general remarks regarding our assets and operations and previous investment. We will then provide additional comments in relation to some of the specific points picked up in the committee meeting on 19th December.

General Comments

We support the objective of a sustainable and healthy shellfish industry, making best use of Scotland’s natural resources. However a key element of sustainability is ensuring the industry develops in a way that does not drive disproportionate public investment.

To that end, we believe an important consideration in setting future shellfish designations is the extent to which the water body may or may not be impacted by existing infrastructure (Scottish Water or others), agricultural diffuse pollution or wider land runoff issues. Failure to fully understand the ability of a water body to meet Class A requirements prior to taking a decision to designate has the potential to drive significant abortive expenditure in seeking to address a range of potential water quality impacts, which may not require to be addressed.

As a key principle, Scottish Water investment aims to deliver benefit to the environment and value to the customer. In order to do that, there must be clear evidence that Scottish Water assets are causing a problem, and that intervention by Scottish Water will deliver a benefit at reasonable cost.
Past investment

Over the past 10 years, Scottish Water has invested extensively to improve its assets in the vicinity of shellfish waters. In the region of £60-70m capital investment has delivered significant improvement to Scottish Water assets. The objectives were to meet the microbiological standards required for shellfish waters, and are included as conditions within discharge licences monitored by SEPA.

These schemes have generally sought to either remove the discharges through provision of central treatment and discharge outwith the vicinity of the shellfish water, or to disinfect the effluent to secure compliance. Additionally, investment in the network has focussed on limiting spill frequencies that would continue to support the shellfish water objectives.

Effectiveness of investment and diffuse pollution

Having addressed the Scottish Water discharges, we understand there is little evidence of a substantial improvement in shellfish water quality classification. Importantly, this does not mean that Scottish Water assets were not previously impacting quality. Rather, it indicates multiple sources of microbiological input of which, our assets contributed a proportion of the load. These may include agricultural diffuse pollution, land runoff, riverine inputs and private discharges).

It is important that in pursuing the shellfish waters agenda Scotland invests the time and effort to fully characterise the range of inputs and steps that may be required in order that the full benefits of designation may be realised.

Bathing Waters – a parallel for Shellfish?

Since 2010, and in partnership with SEPA, Scottish Water has delivered a number of bathing water studies to understand the extent to which our assets may impact the ability of the bathing water to achieve the revised Bathing Waters directive (they are currently designed and operated to meet existing standards).

This work has highlighted that for the majority of bathing waters there may be little or no investment required for Scottish Water – our assets are not the key limiting factor in achieving the standards. Further work is required by SEPA and other partners to better understand the extent to which other sources present a risk. To that end, SEPA’s priority catchment work focussed on diffuse pollution is an initiative we strongly support.

We suggest that in the interest of ensuring both the effectiveness of any pollution control measures, and that Scotland takes cost effective action, similar assessment may be required to support evidence based decisions.

Specific Comments – Relating to the transcript of 19th December

We appreciate that we have benefit of viewing the transcript of the meeting prior to responding. Our response will focus on some specific points raised during the hearing, and we are happy to provide further information if required.
Scottish Water discharges vs diffuse pollution

In response to the question asked by Jayne Baxter MSP, this is substantially covered above. It is our view that through our investment we have largely removed the impact of Scottish Water discharges as a source of shellfish water downgrade.

In terms of how we might address other sources, we believe there are lessons to be learned from SEPA’s priority catchment work and would agree that further investigation, licensing and promoting good practice for septic tanks would be appropriate.

Text Alert System

In respect of the point made by Craig Burton, we would highlight that over the past year we have developed an agreement with the Shellfish Growers that they will be alerted in the event of an Environmental Pollution Incident – a spill caused by a problem with the asset – that may lead to a spill to the shellfish water. As yet there have been no such instances since this agreement was made.

With regard to an alert system when an asset such as a Combined Sewer Overflow (CSO) spills under normal operating conditions, there is further work required. CSOs are a vital element of the sewerage system. As the majority of Scotland’s (and indeed Europe’s) sewerage infrastructure takes both sewage and surface rainfall, CSOs act as a relief valve to protect customers from the sewage system backing up during heavy rainfall.

When this occurs, dilute storm sewage may be discharged to the environment (along with other microbiological runoff as indicated in the evidence from the Food Standards Agency).

In the vicinity of shellfish waters and bathing waters CSOs are designed to operate at a frequency that protects the shellfish water. In most cases there will not be monitoring in place, and Scottish Water is currently exploring a monitoring strategy for such CSOs. This is a key step before we could progress an alert system in the manner of South West Water (as referenced in the transcript).

More importantly, we must recognise that (as noted by FSA Scotland in the transcript), shellfish waters may be significantly impacted by runoff during rainfall events. Alerting shellfish growers purely on the basis of a CSO discharge would not cover other sources of loading. As noted above, our bathing water studies have highlighted that in many cases Scottish Water assets are not the limiting factor to achieving compliance.

We suggest much work is required to better understand the relationship between the various sources of microbiological loading to shellfish waters and the impact of heavy rainfall. In particular, it would be useful to understand the extent to which risk to health is exacerbated by harvesting shellfish during extended periods of wet weather, which have been shown to be a key constraint on bathing water quality. Further study may inform the most appropriate response to be made.

We are keen to continue to engage with shellfish growers and others to explore this further.
Joint Working

We agree that in progressing this issue, joint working through the Shellfish Forum and in other groups is critical. We believe this is the key route to ensure that we deliver a sustainable approach to meeting the obligations of the Bill. We will engage with all parties as appropriate.

I hope that this addresses the questions of the Committee and would be happy to discuss this matter further as required.

Yours Sincerely

Mark Williams

Dr Mark Williams
Environmental Regulation
and Climate Change Manager
Present:
Bruce Crawford (Committee Substitute)  
Nigel Don (Convener)  
Mike MacKenzie  
Hanzala Malik  
John Pentland  
John Scott  
Stewart Stevenson (Deputy Convener)

Apologies were received from Jim Eadie.

**Aquaculture and Fisheries (Scotland) Bill:** The Committee considered its approach to the delegated powers provisions in this Bill at Stage 1 and agreed to seek further information in writing from the Scottish Government.
Aquaculture and Fisheries (Scotland) Bill: Stage 1

10:58

The Convener: The purpose of this item is for the committee to consider the delegated powers in the Aquaculture and Fisheries (Scotland) Bill. The committee is invited to agree the questions that it wishes to raise with the Scottish Government on the powers. It is suggested that those questions be raised in written correspondence. On the basis of the responses received, the committee would expect to consider a draft report at its meeting on 18 December 2012.

Section 1(2) enables the Scottish Salmon Producers Organisation—the SSPO—to issue a code of good practice for Scottish fin-fish aquaculture. The effect of the power, which is in the proposed new section 4A(2) to (5) of the Aquaculture and Fisheries (Scotland) Act 2007, is that farm management agreements and statements must reflect, so far as is possible, any recommendations in the code, including recommendations on the various matters set out in subsection (4), such as fish health management. The code also defines the farm management areas in which the requirements apply.

11:00

Does the committee agree to ask the Scottish Government to explain why it is considered appropriate to confer the power on the SSPO by the issue of a code of practice, rather than to provide that the powers to regulate such matters are exercisable by regulations in a Scottish statutory instrument? Such a code is not subject to scrutiny by the Parliament and does not attract the drafting and publication requirements that apply to a statutory instrument. Does the committee also agree to ask why it is considered appropriate to confer power on the SSPO to define the farm management areas for the purposes of the regime rather than to prescribe them by Scottish statutory instrument, which would allow scrutiny by the Parliament?

Members indicated agreement.

The Convener: The code of good practice recommends good practice measures for fish farming, and one intention of section 1(2) of the bill appears to be that farm management agreements and statements will require to reflect such good practice. Does the committee agree to ask the Scottish Government to explain why it is considered appropriate to enable the code to include any recommendations that the SSPO determines, which the agreements and statements must reflect so far as possible, as there is no provision that the code or any later document shall specify good or best practice measures that are to be reflected in the agreements and statements?

Members indicated agreement.

The Convener: Section 3(1) creates a power for the Scottish ministers to make regulations that prescribe technical requirements for equipment that is to be used for and in connection with fish farming. Further provision can be made to ensure that such requirements are complied with. Section 3(4)(b) provides that the regulations may “confer functions on any person in relation to the prescribing of requirements.”

Does the committee agree to ask the Scottish Government to explain how and by whom that power is expected to be exercised?

Members indicated agreement.

The Convener: Failure to meet the minimum requirements, which are to be prescribed by regulations, shall attract the criminal penalties and other official enforcement measures that will be set out further in the regulations. Does the committee agree to ask the Scottish Government to explain why, in regulations that are subject to parliamentary procedure, it is considered appropriate that persons apart from the Scottish ministers could be given functions in relation to prescribing those requirements?

Members indicated agreement.

The Convener: Section 3(6) provides that the regulations could provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of an amount that is to be specified in the regulations. Unlike the provision in section 3(5) for the maximum penalty for a single criminal offence, section 3(6) states no maximum daily or other periodic fine. Does the committee agree to ask the Scottish Government to explain why that is considered appropriate and whether a maximum penalty could be specified in section 3(6)?

Members indicated agreement.

The Convener: Section 9(1) enables provisions to be made to prohibit or control the movement of any commercially damaging species that are present or suspected of being present in any body of water. Section 9(2) provides for the matters that may be contained or provided for in an order under section 9. That section makes no provision for any maximum time for provisions to apply for or about the prohibition or control of the movement of species and so on, and nor does the list of matters that may be included in an order, as set out in subsection (2), include provision as to the authorised period of the controls.

Members indicated agreement.
Does the committee agree to ask the Scottish Government to explain why it is considered appropriate not to include in the bill any provisions as to the time for which the prohibition or control of the movement of species and so on will apply?

Members indicated agreement.

The Convener: Section 14 provides a power for the Scottish ministers to make control schemes for the control of commercially damaging species on fish and shellfish farms. The relevant orders would not be statutory instruments and would not be subject to parliamentary controls.

Section 14(5)(c) says that a control scheme may “include incidental, supplemental, consequential, transitional, transitory or saving provision.”

In the absence of an explanation in the delegated powers memorandum, we have no information on how those incidental powers are intended to be used or why they are appropriate without attracting parliamentary procedure.

Does the committee agree to ask the Scottish Government to explain why the power in section 14(5)(c) to make

“incidental, supplemental, consequential, transitional, transitory or saving provision”

in a control scheme is required, in what circumstances such powers may be exercised, and why parliamentary control and the formal requirements of a Scottish statutory instrument are not considered appropriate for such provisions?

Members indicated agreement.

The Convener: Section 20 of the bill amends section 44 of, and inserts new sections 46A to 46G into, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, to introduce good governance obligations on district salmon fishery boards. It is suggested that we ask the Scottish Government to explain why the power in section 20—in new section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003—is necessary in so far as it enables any modification, including repeal, of section 44(1) of the 2003 act, which provides the “basic” requirement for a district salmon fishery board to prepare annual reports and audited statements of accounts relating to the activities of the board and an annual meeting to consider the report and accounts. It is also suggested that we ask how it is envisaged that the power will be exercised.

Bruce Crawford: I think that we need a bit more discussion on that. One thing that has certainly struck me since I have become involved in the work of the committee is that, whichever Government is in power, we seem to be always looking for ways to make it more difficult for people to get things done.

In this circumstance, it would be more difficult for a Government to move fast and get things done if there was an affirmative process rather than a negative process. I am all for allowing Governments to be freed up from bureaucracy so that they can do things more quickly rather than be stuck with difficult situations. I know that we are asking a question here, but we should not necessarily assume that having the affirmative procedure would be better than what is currently provided.

The Convener: I absolutely agree with you, and the Rural Affairs, Climate Change and Environment Committee might also agree with you, but I suggest that that is a policy decision, which will be informed by the question.

Bruce Crawford: If we start drawing people’s attention to the issue, they will inevitably start asking questions and we will end up with the affirmative procedure.

John Scott: I want to back up Bruce Crawford’s very sensible comment. Why has the affirmative procedure been chosen here?

Bruce Crawford: Why should it be affirmative?

John Scott: Yes, why should the affirmative procedure be used for something relatively modest?

The Convener: Forgive me, but I do not understand that comment.

Bruce Crawford: Paragraph 96(b) in our legal brief suggests that we ask the Scottish Government,

“given that the power is to modify provisions in the Act, whether the affirmative procedure is a more suitable level of scrutiny for the exercise of this specific power”.

That means that we are asking that an affirmative instrument be laid before Parliament on every occasion rather than just allow the Government to get on and get things done. On this small matter, I am quite happy to allow the Government to get on and get things done.

The Convener: Even if the order modifies the basic requirements in the original act?

Bruce Crawford: I am talking only about new section 21A(3)(c) in relation to part 5.

The Convener: Forgive me, but I think that I am talking about section 20 here.

Bruce Crawford: Are we on paragraph 96 of the legal brief, or have I jumped the gun?

The Convener: I think that you may have jumped the gun. Let us just make sure that we know where we are. I am talking about section 20.

Bruce Crawford: Am I on section 22 of the bill? You are forewarned for when we get to section 22.
The Convener: You will appreciate that I cannot tell you which section you are on.

Bruce Crawford: I apologise, but John Scott knows where I am. I will come back to the point later.

John Scott: In wondering why we need the affirmative procedure, I was talking about the suggestion in paragraphs 85 and 86 of our legal brief.

Bruce Crawford: Did you say paragraphs 95 and 96?

John Scott: No, paragraphs 85 and 86. I wonder why we need an affirmative instrument.

Bruce Crawford: I think that the same issue applies here.

The Convener: Let me stick with where I am. At this point, we are talking about section 20 of the bill.

Bruce Crawford: And the same point applies.

The Convener: I think that we have taken the point, but I return to my earlier point that section 20 appears to have the power to modify the basic requirements in the act.

John Scott: Perhaps our clerks can give us the reason why they are happy that the affirmative procedure is required here.

The Convener: Does the legal adviser want to add to what has been said?

Colin Gilchrist (Legal Adviser): Essentially, because the additional governance requirements are specified in the bill, in principle any amendment to them is a textual amendment of the bill. The power in section 20 of the bill to amend section 44(1) of the 2003 act relates to something that was an initial requirement in the 2003 act. As a matter of principle, the affirmative procedure may be appropriate for such textual amendments. The recommendation was made on that basis.

The Convener: Are we comfortable with asking the question? Lots of points have been noted on where that might lead, and I am sure that they will be drawn to the attention of the Rural Affairs, Climate Change and Environment Committee.

Members indicated agreement.

The Convener: Section 22 of the bill will insert a new section 21A into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The regulation-making power in the proposed new section 21A(1) of the 2003 act will enable the Scottish ministers to put in place a statutory scheme for carcass tagging of wild salmon. New section 21A(3) states that the regulations may make “such modifications of Part 5 of this Act as the Scottish Ministers think fit”.

Part 5 confers powers on ministers by regulations to impose charges in connection with the carrying out of fisheries functions. Does the committee agree to ask the Scottish Government to explain: why the power in the proposed new section 21A(3)(c) of the 2003 act to make “such modifications of Part 5 of this Act as the Scottish Ministers think fit” is appropriate; why it could not be framed as a power to make modifications that are consequential on making regulations under the proposed new section 21A(1); how it is envisaged that the power could be used; and, given that the power is to modify provisions in the act, whether the affirmative procedure is a more suitable level of scrutiny for the exercise of that specific power, bearing in mind the fact that we are talking about the modification of an act?

Bruce Crawford: I am sorry about my earlier confusion. This is the part that I wanted to address.

The Convener: I will just restate the principle. Negative procedure is appropriate unless the text of an act is being changed, in which case affirmative procedure is appropriate. That has been our default position.

John Scott: I am not sure whether Bruce Crawford sat on the committee that discussed the 2003 act when it was a bill, but I did and I suggested that fish should be tagged to the ridicule of the then Government. I am delighted to see tagging being introduced even at this late stage.

The Convener: I can confirm that it is being talked about.

John Scott: Were you on the Transport and the Environment Committee at the time, Bruce?

Bruce Crawford: I cannot remember, John. You have a much better memory than me.

I agree that we should ask the question but I make the general point that we should be trying to make things easier for people who are in the difficult circumstances in which the world finds itself just now, and that includes the Government. We should not be binding it up with all sorts of rules and regulations and requiring it to keep coming back to Parliament, because it gums up the parliamentary process.

The Convener: With respect, I do not think that that is any part of our intention. The question is being asked in principle—

Bruce Crawford: I can see the question but if we ask it and draw the issue to the attention of the policy committee, and we end up with an
affirmative procedure, that is where it might end up. However, I accept the question.

**The Convener:** Section 28(3) will insert a new section 33B into the 2003 act that will enable the Scottish ministers to make provision by regulations to recall to ministers, or restrict, district salmon fishery board functions when consenting to the introduction of salmon or salmon spawn into inland waters, under the proposed new section 33A of the 2003 act. Does the committee agree to ask the Scottish Government to clarify, in relation to the powers in section 28(3) of the bill, how section 33A(3A) was added to that act? Section 33A was added by the Aquaculture and Fisheries (Scotland) Act 2007, but that addition did not include a subsection (3A).

There was a question in there; are we comfortable with asking it?

**Members indicated agreement.**

**The Convener:** Thank you.

Section 50(1) confers a power that will enable the Scottish ministers to make regulations for or about the imposition of charges in connection with the carrying out of fisheries functions, which will also be specified in the regulations. Section 50(2) defines the functions in relation to which the Scottish ministers may impose a charge. Those are functions of the Scottish ministers under any legislation that relates to fish or shellfish farming, salmon or freshwater fisheries, or sea fishing. The section also covers functions of persons who are appointed or authorised by ministers to enforce the legislation, such as sea fishery officers. It extends to functions under domestic and European Union legislation.

11:15

Does the committee agree to ask the Scottish Government to explain why it is necessary for the scope of the powers to extend widely to all the types of functions set out in section 50(2) under domestic and EU legislation, given that the delegated powers memorandum suggests that the regulations will impose charges “in connection with certain specific fishery functions”.

and why it would not be appropriate for the bill to prescribe those specific functions for which there would be charging, possibly with a power to modify or add to them?

**Members indicated agreement.**

**The Convener:** Does the committee agree also to ask how it is envisaged that those powers will be exercised, and in relation to which functions they will be exercised, beyond the list of matters that can be covered in regulations in section 50(3)? Given that those are significant new powers to impose charging across a wide range of fisheries and fishing functions, the committee might ask why the affirmative procedure would not offer a more appropriate level of parliamentary scrutiny of the exercise of the powers rather than the proposed negative procedure, in particular for the selection of the specific functions to which the charging regime would apply.

Does the committee agree to ask those questions?

**Members indicated agreement.**

**The Convener:** The power in section 51(2)(c), which seeks to insert new section 25(2B)(a) into the Aquaculture and Fisheries (Scotland) Act 2007, will permit any amendment of the definition of “relevant offence” for the purposes of the fixed penalty notice provisions in that section 25. Does the committee agree to ask the Scottish Government whether, given that the delegated powers memorandum does not explain why the power to amend the definition of “relevant offence” in any way is required, the scope of the power could be drawn more narrowly?

Does the committee agree to raise all questions in writing?

**Members indicated agreement.**

**The Convener:** Thank you for your patience.

That completes agenda item 4, and item 5 is in private.

11:16

*Meeting continued in private until 11:37.*
Introduction
The Association of Salmon Fishery Boards is the representative body for Scotland’s 41 District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), which have a statutory responsibility to protect and improve salmon and sea trout fisheries.

We welcome the opportunity to present evidence on the cost implications of the Aquaculture and Fisheries (Scotland) Bill. Unless otherwise stated, we limit our comments to Part 2 of the Bill.

Consultation
1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
   ASFB responded to the consultation on the Aquaculture and Fisheries Bill and the associated BRIA. Whilst we made passing reference to some of the financial assumptions made, this was not the prime focus of our response. However, we would highlight that some aspects of the approach which has been adopted in Part 2 of the Bill were not specifically consulted upon and had we been aware that such a prescriptive approach would be adopted, we would have made a more detailed submission to the BRIA.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
   Not applicable

3. Did you have sufficient time to contribute to the consultation exercise?
   Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?
   We believe that there are a number of unintended consequences arising from the approach adopted in Part 2 of the Aquaculture and Fisheries (Scotland) Bill, and indeed we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation.

   - The Bill requires that all meetings of District Salmon Fishery Boards must be held in public, unless there is a good reason to conduct the meeting in private. The cost of moving these meetings to a venue with sufficient capacity for members of the public, would involve a significant expense, (venue hire could be in the order to £100-400 per meeting) which may prove disproportionate for many of the smaller DSFBs. In addition, some DSFBs operate over considerable geographical areas. For example, if the Argyll DSFB (total income through privately-funded levy system - £58,000) was required to advertise 4 meetings a year in all three local papers within that district, the annual cost of such advertisement would be £3,200. This would involve a diversion of funds away from managing the fisheries. We would
emphasise that the consultation exercise did not specifically consult on whether meetings should be held in public. Rather, the consultation asked whether there should be a Code of Good Practice, which could include recommendations for Boards to hold meetings in public.

- The Bill also requires that DSFBs must maintain and keep under review arrangements for dealing with complaints. Again, this provision was not consulted on, or even mentioned in the consultation document, and indeed, there is a fundamental question as to why such a statutory provision is necessary. It should be noted that the processing of such complaints will usually be undertaken by the clerk to the Board. In the case of smaller DSFBs, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue ‘campaigns’) becomes arduous, this will result in resources being diverted from other areas of operation.
- Section 21 includes a duty to consult and report before making certain applications. We have no difficulty with this provision in principle, but we are concerned that there appears to be a requirement to publish details in a newspaper on three occasions during the process. This again would appear to be an unnecessary expense, particularly in areas where more than one newspaper would have to be used.
- Fisheries Trusts are charitable organisations which are set up to protect and develop our native fish stocks and populations by undertaking a range of activities including river habitat restoration, fish and fisheries monitoring and research and education programmes. DSFB donations to Fishery Trusts totalled £610K in 2010 reflecting the close partnership working between many DSFBs and Trusts. Should significant DSFB resources have to be diverted to meeting the good governance requirements in the Bill, this could have a significant negative effect on the core funding of fishery trusts across Scotland.

On the basis of the above points, we do not agree that the costs of delivery are ‘negligible’, as set out in the financial memorandum.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

With the exception of the points made above on good governance, we are content that the costs set out in the financial memorandum for the other provisions contained in Part 2 are accurate.

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

In the case of smaller DSFBs we believe that some of the costs relating to good governance may be disproportionate and indeed may threaten the existence of some of these organisations.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No specific comment
Wider Issues

8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom? See comments above.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
We believe that the Financial Memorandum accurately reflects such costs, such as those set out for carcass tagging, introductions etc.
Fergus D. Cochrane  
Finance Committee & Scottish Commission for Public Audit  
T3.60,  
The Scottish Parliament  
Edinburgh  
EH99 1SP.

Dear Fergus

30 November 2012

FSAS/CM/fb

AQUACULTURE AND FISHERIES (SCOTLAND) BILL: FINANCIAL MEMORANDUM

In response to your letter dated 24 October in relation to the above named Bill, please find enclosed a response from the Food Standards Agency in Scotland (FSAS).

FINANCE COMMITTEE QUESTIONNAIRE

Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

- FSAS staff had extensive discussions with policy leads for water quality issues in Scottish Government. Financial information was provided in the course of these discussions.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

- The FM outlines a marginal indirect cost which may fall to FSAS as a result of the Bill. The assumptions in arriving at these costs are not clearly set out. Any additional costs that may fall to FSAS are dependent on the number of active shellfisheries in any designated area, and whether these sites can be covered by pre-existing monitoring points. Under food hygiene legislation, we are required to classify and monitor shellfish production areas. This includes routine testing of shellfish flesh for E.coli, chemical contaminants, marine biotoxins and testing for the presence of certain phytoplankton species. The FSA also conducts a sanitary
survey on any area which may be subject to classification. The cost of a sanitary survey is in the region of £30k. These costs would however be considered ‘business as usual’ costs for FSA should any new, active fisheries come on stream. If the shellfish sector is to grow significantly over the next few years these costs could be significant. Costs to FSA therefore reflect the number of fisheries and their geographic spread. Informal feedback from industry suggests that there is capacity within existing classified areas to increase production. On that basis, the FM correctly reflects the potential for marginal year on year monitoring cost increases (for classification purposes only) arising indirectly from the Bill. It assumes that newly classified areas will fit within pre-existing monitoring frameworks for more expensive elements of the programme.

- FSAS expects to be a member of the working group mentioned in para 322 and we believe that there is the potential to reduce costs on regulators through increased cooperation.

3. Did you have sufficient time to contribute to the consultation exercise?

- Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

- Yes, subject to the caveat outlined in my response to question 2.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

- Yes, subject to the caveat outlined in my response to question 2.

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

- Yes, subject to the caveat outlined in my response to question 2 and any Governmental budgetary constraints that may apply in future.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
• Yes, subject to the caveat outlined in my response to question 2.

**Wider Issues**

8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

• Yes, from an FSAS perspective, subject to the caveat outlined in my response to question 2. No other costs have been considered at this stage. Whether it remains appropriate for Government to pay in full for official controls in relation to food is subject to consideration currently at an EU level. The outcome of these discussions in the longer term has the potential to influence some of the costs outlined in the FM.

• We also note the considerable costs that Scottish Water have invested and plan to invest in order to protect shellfisheries up to 2015. Given that wider diffuse pollution may be, proportionally, more significant for shellfisheries in Scotland than elsewhere in the UK, would it be appropriate to consider alternatives to capital spending alone by Scottish Government in terms of risk management in designated areas? We look forward to working with Scottish Government, Scottish Water, SEPA and industry in order to consider how best the risks associated with pollution events might be mitigated in future in a more cost efficient way through the working group mentioned at paragraph 322.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

• Yes, subject to the caveat outlined in my response to question 2. These cannot currently be quantified in full.

Yours sincerely

PROFESSOR CHARLES MILNE
Director, Scotland
February 2013

Dear Rob,

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
RESPONSE FROM THE SCOTTISH GOVERNMENT TO THE STAGE 1 REPORT OF THE
AQUACULTURE AND FISHERIES (SCOTLAND) BILL

I am writing in response to the Rural Affairs, Climate Change and Environment Committee’s Stage 1 Report on the Aquaculture and Fisheries (Scotland) Bill.

I would like to take this opportunity to thank the Committee for its careful consideration of the Bill, and to all those who contributed to that consideration by providing evidence. I am pleased that the Committee supports the general principles of the Bill.

A number of important issues have been raised during Stage 1 proceedings and a detailed response is attached in the Annex to this letter. The text in bold relate to extracts lifted from the Committee’s Report.

I hope the Committee finds this information helpful in its further consideration of the Bill.

Kind regards,

PAUL WHEELHOUSE
Annex

Aquaculture and Fisheries (Scotland) Bill

Response to the Rural Affairs, Climate Change and Environment Committee’s Stage 1 Report

Summary

I welcome warmly the Committee’s endorsement of the general principles of the Bill.

I note the Committee’s comments on the need to improve the relationship between the wild fisheries and farmed fishing sectors. Indeed the Committee will remember that when providing evidence I made a similar reference in my opening remarks. I agree that it is crucial that relations continue to improve and are maintained between fish farming and wild fisheries interests. I don’t believe anyone would disagree with that view. Indeed in some areas there are excellent examples of joint working at a local level.

The key challenge will be to progress jointly towards tangible, positive action amongst these sectors which share interests in the same environment. That common denominator must be the springboard for improved communication, mutual respect and trust. Moreover good neighbours talk, listen and engage.

The Committee is familiar with the refresh of the Ministerial Group on Aquaculture (MGA). This Group will drive forward the principles of sustainable growth, good governance and science. The specific details of the refresh are still being worked out but I anticipate that the main business will be progressed by a number of working groups reporting to a core Group. These Groups will cover such issues as capacity, technical, science and operational, and interactions. I believe these forums will encourage improved engagement and joint working; and that will be evidenced by the progress we will look to make over the coming years. This will also help to promote an increase in positive local engagement between the respective interests around Scotland.

The Committee will wish to note that the next meeting of the MGA is not scheduled to take place until Tuesday 26 March. The MGA will therefore not be in a position to come back on the points identified at paragraph 204 of its Report in the timescale identified. However it will be an issue that I will invite the MGA to consider as a priority.

I particularly welcome the Committee’s interest and comments in relation to the forthcoming review of the management of salmon and freshwater fisheries in Scotland. The stage 1 report rightly acknowledges that there are many issues still to be addressed in this area and notes the Government’s two stage approach to delivery of a key manifesto commitment to modernise management structures. The Committee’s report helpfully points towards areas which should be considered as part of the review and I give my assurance that these will be taken into account in the scoping process. I share the Committee’s ambitions for the process and outcomes of the review – this is a key area where all interested parties must work together in a spirit of co-operation to deliver a salmon and freshwater fisheries management system which is robust, coherent and fit for purpose in the 21st century.

As the Committee notes, I have already intimated my intention to lay amendments at Stage 2. I will continue to consider the evidence and any suggested amendments of key stakeholders, and will take note and reflect on any points which may be raised in the Stage 1 debate.
Background

SG Consultation

I accept that some of our stakeholders consider that the consultation process was not as clear as it might have been. That was evidenced both by the number of responses we received and more specifically by many of the comments, some of which appear to have been based on the assumption that all of the proposals would be taken forward and would require primary legislation.

I will certainly reflect on the process and we will learn from the experience.

Legislative Background

I share the Committee’s observation that action to modernise the management structures of salmon and freshwater fisheries has historically not progressed as quickly as it might over a number of decades and further work is required. The Committee has recognised the legislative and historical complexities of this area and these will take some time to explore and unpack. I view the Bill as the first step in delivering the Government’s commitment to modernisation and will take forward the issues identified by the Committee’s report in the context of the forthcoming review of the management of salmon and freshwater fisheries in Scotland. I share the Committee’s support for the creation of a governance system which is robust, sustainable and fit for purpose and believe it is imperative that all those with an interest use this opportunity to get it right.

This Bill is not about introducing new powers in isolation – it is about enhancing the existing regulatory framework for aquaculture to ensure it is appropriate, proportionate and compatible with the aspirations for sustainable economic growth towards 2020 and beyond.

Policy Memorandum and sustainable development

I note the Committee’s views of the adequacy of our assessment of sustainable development in the Policy Memorandum. That is extremely pertinent given the primary aims of the Bill, and as confirmed where I provided evidence that we have considered this from an environmental, social and economic perspective.

I will certainly take on board the Committee’s observations about the preparation of sustainable development sections in future policy memoranda.

Climate Change

I welcome the Committee’s acknowledgement of the Bill’s potential to help the aquaculture and wild fisheries sectors to mitigate and adapt to current and future climate change challenges. I will endeavour to consider progress in this area on a regular basis, making best use of all scientific and analytical advice, and where relevant drawing on the expertise available within the MGA.
Part One – Aquaculture

Fish farm Management

I believe I can offer the clarity the Committee seeks on whether farms in an area where a Farm Management Agreement (FMA) could not be agreed would have an individual Farm Management Statement (FMS). The Bill provisions currently provide that a person who is not party to a FMA must instead prepare and maintain a FMS. This caters for a position where farms within a farm management area are unable to reach consensus on a FMA. This will ensure all fish farms are obliged to have either an FMA or FMS in place. FMSs are also provided to deal with scenarios where there is a single farm in farm management areas.

In both scenarios, the evidence indicates that such instances do not occur on a regular basis.

I welcome the Committee’s endorsement of proposals to place FMAs/FMSs on a statutory footing, and agree there should be no issues with the transition from voluntary to statutory arrangements. We continue to work with the SSPO to ensure the new regulatory system is implemented and managed to best effect, in particular that the mediation service provided by the SSPO is fully accessible and fit for purpose.

In addition, the Scottish Government will also address the concerns of the Subordinate Legislation Committee and other stakeholders by bringing forward a further amendment to Section 4A to provide that there is no direct link between a FMA or FMS and the Code of Good Practice.

Escapes and obtaining samples from fish farms

I welcome the Committee’s support of the Bill provisions to manage fish escapes in future through the introduction of statutory technical standards for fish farm equipment. My officials and I will continue to develop regulations in this area through the discussions of the MGA commissioned Containment Working Group.

I also welcome the Committee’s endorsement of proposed powers to improve further the containment of fish. I agree with the Committee’s view that sampling must be proportionate and reasonable. We are already actively considering the comments made by a number of stakeholders regarding these provisions. As we indicated when providing evidence, technology moves on and there will continue to be developments in this area both in the context of sampling/genetic testing and alternative methods, which we may need to take account of.

Seals

I can confirm that work continues with the fish farming and wild fisheries interests to consider further options for seal management. The Committee will wish to be aware that the Scottish Aquaculture Research Forum (SARF) have recently called for proposals on a further piece of work to supplement the technical standards to include predator control aspects such as net protection measures regarding predation, net tensioning to reduce escapes by predation and the use of predator nets into the specification.
Fish Farming: equipment and wellboats

I agree with the Committee’s conclusion that training is best handled by the fish farming industry and will look at how best to consider progress in the delivery of good practice in that regard via the MGA and the advice of the Containment Working Group. We understand that a training module may well feature within the modern apprenticeships currently being trialled by the industry.

I also welcome the Committee’s recommendations and conclusions on wellboats. Discussions have already taken place on the definition of wellboats provided in the Bill to ensure it captures only the intended vessels and I intend to bring forward at Stage 2 an amendment to clarify this. My officials will also work with wellboat interests and the Norwegian Government to ensure regulations to manage the sector meet the need and are proportionate, reasonable and where possible, transferable. Officials have already established a Wellboat Technical Standards Working Group which will have its inaugural meeting in March. That process will enable officials to discuss the potential for wellboat manufacture and maintenance in Scotland with the sector, whilst mindful that this is primarily a business decision for industry to make.

I will update the Committee on consideration of changes to the licensing regime for wellboat discharges when these are complete. These considerations will take account of future arrangements for wellboats and the overall regulation of these vessels.

Commercially damaging species

The Committee notes the concerns that the provisions are too narrowly drafted and not comprehensive enough, in that they are limited to the presence of species on fish and shellfish farms, rather than casting the net wider to encompass where the species originated from and how it reached the farm. The Committee asks the Scottish Government to re-examine that issue ahead of Stage 2, should the Bill reach that Stage, to ascertain if any amendments are required to better achieve the purpose of the provisions.

The Committee notes the comments made by the Minister with regard to the potential impact of genetically modified salmon on wild salmon. However, the Committee remains of the view there could be circumstances (such as an escape of approved genetically modified salmon) in which genetically modified salmon could be commercially damaging to wild salmon. The Committee therefore asks the Ministerial group on Aquaculture to keep this matter under review.

I welcome the Committee’s general support of the provisions for the control of commercially damaging species, and believe the current proposals are proportionate to the need. I will reflect on the provisions as drafted in light of the Committee’s request. However, these provisions are specifically to enable the industry as a whole to deal with species that have negative commercial impacts on a particular site, not to control the species in the natural environment. There are powers under other legislation to deal with invasive non-native species.

I note the Committee’s views on genetically modified salmon and will encourage the MGA to keep issues relating to GM under review.
Aquaculture issues not taken forward in the Bill

**Biomass and revoking consents**

I note the Committee’s concern about the separation that exists between the biomass permitted, and the biomass that could be treated with the quantity of medicine licensed to be used at a site. I will look to the MGA to keep the issue under review mindful that SEPA have a major role in biomass controls.

**Treatment of farmed and wild fish**

The provisions in the 2007 Act only relate to parasites (*caligus elongates* and *lepeophtheirus salmonis*) in fish farms and shellfish farms.

**Publication of sea lice data**

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.

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).

The Committee recommends the Ministerial Group on Aquaculture gives careful consideration to how farm-by-farm sea lice data can be made available to inform scientific research and reports back to the Committee before the conclusion of Stage 2.

I note the Committee’s comments on the provision of sea lice data. The Committee will be aware that we already have access to the information on sea lice levels that we need to meet our current regulatory requirements, as well as access to industry data to undertake and inform our scientific work as required.

I am encouraged by the SSPO’s voluntary proposal to enhance its public reporting from 6 to 30 areas. I consider this to be a significant development and an appropriate balance between public reassurance and commercial interests at this time.

This public data release will, as intimated, be supplemented for scientific and compliance purposes on a bilateral basis.
Overall, I am persuaded that the package of data moves us forward in a balanced and proportionate way, but I will keep the matter under close review.

**Part two— Salmon Fisheries**

**Background and context**

The Committee rightly identifies the need for robust data to inform management decisions and policy on wild fisheries. This is a key and ongoing area of work for the Scottish Government and stakeholders. The Bill provisions on sampling and information will help develop the evidence base further and facilitate management actions at local and national level. Work is also planned on how the evidence base can be improved and how data can best be used and shared, and it is in this context that we will consider the issue of counters and other information sources.

I note the Committee’s views on collection of effort data. Scottish Ministers already have powers within the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to require the collection of effort data for rod fisheries: section 64 of that Act provides scope. Effort for rods has not been collected to date for the reasons discussed during the Committee’s evidence sessions. Discussions on this point will continue as part of the work outlined above but I think it important that resources are directed into collection of data and information which has the greatest potential to inform decision-making.

Given the continued reservations around the usefulness of effort data and the problems associated with agreeing a suitable collection method, I believe investment in alternative data collection methods, for example investigating the potential use of more counters, are of greater priority. I will be happy to update the Committee on our work to improve data collection and sharing in due course.

**Wild salmon and sea trout – catch and release schemes**

I note the Committee’s recommendation that District Salmon Fishery Boards consider the appropriateness of establishing catch and release schemes on rivers in their areas, and will draw it to their attention.

**Governance of District Salmon Fishery Boards**

**Holding meetings in public**

The Committee has sympathy with the concerns of smaller Boards that they may be less able, in terms of resource, to cope with the implementation of the provisions in the Bill than larger Boards. The Committee therefore welcomes the Minister’s acknowledgement of this issue and his commitment to address the matter in the Scottish Government’s forthcoming review.

The Committee therefore recommends that the enactment of the relevant sections of the Bill dovetail appropriately with the outcomes and implementation of the Scottish Government’s review, to ensure there is no unmanageable adverse impact on smaller Boards in the short-term.

I welcome the Committee’s observation that the good governance provisions in the Bill are an important and necessary step in improving transparency and accountability. My officials
will work with the sector to develop guidance for Boards on implementation of the good governance obligations, mindful of the varying landscape in terms of resource and the context of the forthcoming review of the management of salmon and freshwater fisheries in Scotland.

Involvement of other interests

I agree with the Committee’s observation on the importance of consultation with wider interests and consider the requirement in the Bill for Boards to consult before submitting applications for statutory measures as a helpful first step forward. I will reflect further on the Committee’s views in the context of scoping the review.

Members’ interests

I welcome the Committee’s position that it is important not only to establish the principle of improving accountability and transparency by declaring such interests, but also to place that principle on a statutory footing in the Bill. My officials will work with ASFB to develop guidance on implementation of the good governance obligations, including dealing with conflicts of interest.

Management

Carcass tagging

I note the Committee’s interest and views on carcass tagging and confirmation that that a scheme be introduced via an enabling power. Options for schemes covering rod caught and net caught fish will be consulted on fully prior to use of the power and we will reflect on, and discuss with stakeholders, the issue of individually numbered tags. It is recognised that our stakeholders have a divergence of views as to how this is best progressed. I agree that the provisions have the potential to close a legal loophole on the purchase of rod caught salmon.

Fish sampling and investigations

The Committee supports the sampling and investigation provisions in the Bill but draws the attention of the Scottish Government to the comments made by the Association of Salmon Fishery Boards that local District Salmon Fishery Boards should be consulted if the sampling would involve killing fish.

I note the point and my officials will discuss with the Association of Salmon Fishery Boards (ASFB) as part of Bill implementation.

Monitoring, evaluation and varying orders

The Committee did not receive a significant volume of evidence on these sections of the Bill. The Committee notes the comments made by The River Tweed Commission regarding Section 25 only applying to orders made on the initiative of District Salmon Fishery Boards, and expressing concern at the proportionality of making non-compliance an offence. The Committee draws these comments to the attention of the Scottish Government.

I note these comments and consider a criminal sanction suitable for non-compliance with monitoring. There is existing precedent in the 2003 Act for Boards to be criminally liable for offences and a need for a sanction to ensure that monitoring requirements are met.
In response to monitoring requirements only being applicable for measures made on the initiative of DSFBs, it must be noted that Boards are the statutory managers of salmon fisheries and ruling out the option that they be required to monitor measures would be short-sighted and potentially a disincentive for effective local management.

- **Close times**

I welcome Committee’s support for the provision to give Scottish Ministers the power to change annual close times.

- **Introduction of fish for re-stocking**

I welcome the Committee’s observations, in particular the need to consider whether introductions legislation is framed in a way which ensures compliance with EU obligations. My officials and I will review introductions policy in association with relevant stakeholders and consult fully before bringing forward proposed legislative changes to the Parliament.

**Salmon Fisheries Issues not included in the Bill**

- **Coarse Fishing**

  The Committee is reassured by the comments made by the Minister, and by the lead Scottish Government official, Willie Cowan, that the Scottish Government will reconsider the views of the coarse fishing sector, and include relevant issues in the Scottish Government’s forthcoming review.

The forthcoming review of the management of salmon and freshwater fisheries in Scotland will consider management of both salmon and freshwater fisheries.

- **Salmon netting – management**

  The Committee notes the call from Usan Salmon Fisheries Ltd for netting interests to be removed from DSFB management, and transferred to direct Scottish Government management.

  The Committee notes the Scottish Government’s commitment to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

I note that this is a key issue for the forthcoming review.

- **Salmon netting - close times and days at sea**

  The Committee welcomes the Scottish Government’s intention to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

I note that this is a key issue for the forthcoming review, the desired outcome of which is a management and operational regime which is fit for purpose in the 21st century.
Sale of netting stations

The Committee notes the issue will form part of the Scottish Government’s upcoming review of wild fisheries management in Scotland and awaits developments with interest.

I note the Committee’s recommendation in the context of scoping the review. As I mentioned in evidence there are considerable complexities to this proposal which need to be examined, not least the potential disruption to the operation of the free market and the rights of property owners to dispose of assets.

Salmon netting – conflict resolution

My officials will discuss with ASFB actions which might be taken in the short term to aid conflict resolution within Boards, looking at examples of best practice where possible. In the longer term the issue will be considered in the context of the review.

Funding of DSFBs

I note the Committee’s recommendation that this issue be considered as part of the forthcoming review.

Part three- Sea Fisheries

Inspection and seizure of objects used in commercial sea fishing

The Committee notes the concerns raised by Seafish with regard to the inspection and seizure powers and the use of scientific equipment on board commercial vessels and asks the Scottish Government to provide clarity on this issue, and to consider bringing forward an amendment at Stage 2, if necessary, should the Bill reach that Stage.

I don’t see this as a problem in practice. I understand that this point relates to vessels that are chartered to undertake scientific voyages using equipment/gear that under normal circumstances would be illegal under the rules in force. I do not believe a formal derogation, or defence, within the Bill is necessary. Research activity is clearly signalled to enforcement officers and easily distinguishable from fishermen trying to circumvent the rules. There have been no problems reported in the past where an enforcement officer has attempted to take enforcement action on what has been bona fide scientific research.

I will be writing to the Elaine Hayes, Chair of Seafish to give her some reassurance on this point. I will ensure that is copied to the Committee.

Enforcement of EU rules

I am grateful for the supportive comments on the proposed Government led Stage 2 amendments on the enforcement of EU rules.
Part four – Shellfish

Protection of Shellfish Waters

The Committee notes the proposals outlined by the Scottish Government for developing an effective notification system to alert shellfish growers of significant pollution issues. However, the Committee also notes the comments made by Scottish Water with regard to alerts relating to Combined Sewer Overflow spills and the further work it believes is required before such a system could be established.

The Committee believes the development of such a system would be of great benefit to the shellfish growing industry and therefore recommends the Scottish Government works closely with Scottish Water and the shellfish industry to establish this and updates the Committee on progress towards establishing such a system.

I recognise that it is important for the Scottish Environment Protection Agency, Scottish Water and other stakeholders to work closely and cooperatively with the shellfish growing and marketing industries to implement the provisions set out in the Bill and address any underlying issues, and my officials have already set up a working group to take these matters forward. Emerging research illustrates that the pollution distribution in shellfish waters is not uniform and not necessarily attributable to sewage from the public network, so the group will work collaboratively to identify sources of pollution and develop proportionate responses to addressing this issue.

Orders as to Fisheries for Shellfish

I welcome the support of the Committee in terms of our proposal to strengthen the law regards cockle fishing.

It has been suggested that the amendment be split into two parts to deal with those that are in possession of paraphernalia used to catch cockles and those that are not. The ability to pursue persons suspected of being involved in illegal fishing for cockles will depend, of course, on the availability of evidence that proves the commission of that offence. The intention is that it will seek to alter existing offence provisions in a way that will better allow the courts to infer that an accused was a person concerned in the illegal fishing for cockles from circumstantial evidence. Each individual case will, of course, need to be considered on its merits and it will be a matter for the courts to determine whether the accused should be convicted on the available evidence. The proposals are currently being discussed and developed with Crown Office.

Like the Committee, I recognise the need to work closely with all relevant agencies and industry bodies to develop proposals for tackling issues such as the difficulty in tracing and tracking shellfish, and the documentation required to sell shellfish both in the UK and overseas.

Part Five – Miscellaneous

The recent response to the Subordinate Legislation Committee confirmed my intention to bring forward an amendment at Stage 2 to ensure any orders relating to the charging provision are subject to the affirmative procedure.
I also note the Committee’s recommendation that we look at the issues raised in evidence relating to investment in fisheries management and the part anglers could play in that. Marine Scotland will publish statistics on the use of Fixed Penalty Notices. I will also give consideration as to how best to publish statistics relating to other instances of non-compliance.

**Finance Issues**

I welcome the comments of the Committee in relation to the Financial Memorandum although I should report that some of our stakeholders have expressed their concern that they were not presented with an opportunity to engage with the process. I recognise that is a matter for the Finance Committee but I think it appropriate that I acknowledge their concerns.

I also acknowledge the comments made by the ASFB. As with other provisions, my officials will consider the potential impact on all stakeholders to ensure that it is proportionate and reasonable.

I welcome the comments of the Subordinate Legislation Committee. I have recently written to the Convener of that Committee to confirm that we are giving serious consideration to all of the points they have raised.
Background


2. The response from the Scottish Government to this report is reproduced in the annex.

3. The Stage 1 debate is due to take place on Thursday 28 February 2013.

Scottish Government response

Section 1(2) – (inserting section 4A(2), (3) and (5) of the Aquaculture and Fisheries (Scotland) Act 2007) - the Code of Good Practice for Scottish Finfish Aquaculture

4. In its stage 1 report, the Committee drew the attention of the lead committee to this proposed power, which allows the Scottish Salmon Producers’ Organisation (“SSPO”) to issue the Code of Good Practice for Scottish Finfish Aquaculture. The Committee noted that any recommendations of the Code must (so far as possible) be reflected in farm management agreements and statements.

5. The Committee observed that the policy intention, as confirmed by the Scottish Government in a written response prior to the publication of the report, is to seek to ensure that good practice is adopted by members of the aquaculture industry, by means of the farm management agreements and statements. However, the Committee noted that the inserted section 4A of the Aquaculture and Fisheries (Scotland) Act 2007 contains no explanation or restriction that the Code must set out matters of good practice.

6. In its response to the Committee’s report, the Scottish Government advised that it will bring forward a clarifying amendment at Stage 2. The amendment will seek to recognise that while the Code is published by the SSPO, a Code of Good Practice Management Group, of which the SSPO is but one member, is responsible for ensuring that it is kept fit for purpose.

7. In its response to the Committee’s report, the Scottish Government also committed to bringing forward a further amendment to 4A to clarify that there is no direct link between a farm management agreement or statement and the Code of Good Practice.
Section 3 – power to prescribe technical requirements for equipment used in fish farming

8. The Committee expressed concerns as to the scope of Section 3(4)(b), so far as it could enable the regulations to confer functions on other persons apart from the Scottish Ministers to prescribe (by a form of subordinate legislation under the regulations) the technical requirements for equipment used in fish farming.

9. In its response to the Committee’s report, the Scottish Government stated that it would not be its intention to delegate the function of setting the standards to a third party. The Scottish Government agreed to consider whether the provision could be adjusted, by way of an amendment at Stage 2, to clarify that intention.

10. The Committee also recommended that the Scottish Government considered in advance of Stage 2, in relation to section 3(6), whether this power could specify some appropriate maximum level of a daily or other periodic fine as the punishment for continuing offences which may be created in the regulations.

11. The Scottish Government agreed to give consideration to this matter.

Section 20 – (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) – Ministerial power to modify the good governance requirements

12. In its report, the Committee noted that the Scottish Government had undertaken to amend the Bill at Stage 2 in relation to the powers in section 20. The Scottish Government has noted that as drafted the repeal of the good governance requirements placed on district salmon fishery boards, including the “basic” requirements in section 44(1) of the 2003 Act would be competent, and this is not the policy intention. The Committee will consider the Bill as amended in this respect after Stage 2.

13. The Scottish Government noted the Committee’s comments.

Section 22 – salmon carcass tagging

14. The Committee was content with the powers in Section 22 in principle and noted that the Scottish Government intended to bring forward an amendment at Stage 2 to make the power subject to the affirmative procedure rather than the negative procedure as originally drafted.

15. The Scottish Government noted the comments of the Committee.

Section 50 – power to charge in connection with fisheries functions

16. The Committee considered that the powers to charge in connection with fisheries functions in section 50 were significant powers and recommended that the Scottish Government consider in advance of Stage 2 whether the power should be
subject to the affirmative procedure rather than the negative procedure as originally drafted.

17. In its response, the Scottish Government recognised that further Parliamentary scrutiny may be appropriate and agreed that the regulations should be subject to the affirmative procedure.
Annex

Correspondence from Scottish Government dated 19 February 2013

The Subordinate Legislation Committee’s recommendations or comments are highlighted in bold and are followed by the Scottish Government’s response.

Section 1(2) – (inserting section 4A (2), (3) and (5) of the Aquaculture and

20. The Committee draws the status conferred on the Code of Good Practice for Scottish Finfish Aquaculture, issued by the Scottish Salmon Producers’ Organisation to the attention of the lead Committee. It notes that any recommendations of the Code must (so far as possible) be reflected in farm management agreements and statements.

21. It observes that the policy intention as confirmed in the written response from the Scottish Government is to seek to ensure that good practice is adopted by members of the aquaculture industry, by means of the farm management agreements and statements. The inserted section 4A of the Aquaculture and Fisheries (Scotland) Act 2007 contains no explanation or restriction that the Code must set out matters of good practice.

22. The Scottish Government has also confirmed that the reference to the Code in the inserted section 4A (5) of the 2007 Act will be amended at Stage 2. The Committee will consider that amendment further after Stage 2.

The Scottish Government has noted the comments of the Committee. The policy behind the provision was to require groups of farmers (or where that was not possible those operating under terms of statements) to work together to draw up their own set of arrangements in relation to a minimum of matters. In addition the agreements had to deal with operators joining and leaving areas, and the areas themselves had to be defined. These minimum standards may be understood, taken together as constituting “good practice”.

A clarificatory amendment will be brought forward at Stage 2 which seeks to recognise that while the Code is published by the SSPO, a Code of Good Practice Management Group, of which the SSPO is but one member, is responsible for ensuring that it is kept fit for purpose.

In addition, the Scottish Government will also be looking to address the SLC’s concerns and those of other stakeholders by bringing forward a further amendment to 4A so that there is no direct link between a farm management agreement or statement and the Code of Good Practice.

Section 3 – power to prescribe technical requirements for equipment used in fish farming
35. The Committee therefore draws to the attention of the lead committee that section 3(4) (b) provides that regulations under section 3(1) may “confer functions on any person in relation to the prescribing of requirements.” The Committee has concerns as to the scope of this power, so far as it could enable the regulations to confer functions on other persons apart from the Scottish Ministers to prescribe (by a form of subordinate legislation under the regulations) the technical requirements for equipment used in fish farming.

36. The Committee recommends that the Scottish Government consider for Stage 2 how section 3(4) could more clearly distinguish between the power proposed to be delegated to the Scottish Ministers (only) to prescribe by subordinate legislation the requisite standards or how they would be set; and on the other hand functions which may be delegated to other persons in the regulations, in relation to how the technical requirements will be agreed and set.

37. The Committee also recommends that the Scottish Government considers in advance of Stage 2, in relation to section 3(6), whether this power could specify some appropriate maximum level of a daily or other periodic fine as the punishment for continuing offences which may be created in the regulations.

The Scottish Government has noted the comments of the Committee. With regard to section 3(4)(b), the policy intention has always been that Scottish Ministers would prescribe the technical standards, having been informed by the Sub-Group established for that very purpose under the auspices of the Ministerial Group on Aquaculture (MGA). It would never be the intention to delegate the function of setting the standards to a third party. Accordingly we will consider whether the provision could be adjusted, by way of an amendment at Stage 2, to clarify that intention.

Further consideration will also be given to the question of specifying a daily or periodic fine, including the determination of a maximum (cumulative) level, recognising that this would need to be proportionate and sufficiently punitive to discourage future transgressions.

Section 20 – (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) – Ministerial power to modify the good governance requirements

43. The Committee notes that the Scottish Government has undertaken to consider an amendment at Stage 2 in relation to the powers in section 20 (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003). The Government has noted that as drafted the repeal of the good governance requirements placed on district salmon fisheries boards, including the “basic” requirements in section 44(1) of the 2003 Act would be competent, and this is not the policy intention. The power of modification is intended to be used only for the purposes set out in the inserted section 46F (2) of the 2003 Act.
44. The Committee shall consider the Bill as amended in this respect after Stage 2.

The Scottish Government has noted the comments of the Committee.

Section 22 – salmon carcass tagging

49. The Committee is content with the powers in section 22 in principle.

50. The Committee notes that after reflection the Scottish Government has decided that the affirmative procedure would be a more appropriate level of scrutiny for regulations under the inserted section 21A of the 2003 Act, where the power in section 21A(3)(c) to modify Part 5 of the 2003 Act is used. It will bring forward an amendment at Stage 2. The Committee will consider this amendment after Stage 2.

The Scottish Government has noted the comments of the Committee.

Section 50 – power to charge in connection with fisheries functions

58. The Committee considers that the powers to charge in connection with fisheries functions in section 50 are significant powers. The proposed regulations would specify which functions the charging regime will relate to within the wide range of functions described in subsection (2) of that section, the persons to be subject to charge, the amounts of charge, and other matters as listed in section 50(3).

59. Accordingly the Committee considers that the exercise of the powers in section 50 to make regulations should be subject to the affirmative procedure. The Committee considers that the Scottish Government should consider this further in advance of Stage 2.

The Scottish Government has noted the comments of the Committee. The need to consult is explicit on the face of the Bill at 50(5). However the Scottish Government recognises that further Parliamentary scrutiny might well be appropriate and would agree with the Committee’s recommendation that the regulations should be subject to affirmative procedure.
Note: (DT) signifies a decision taken at Decision Time.

Aquaculture and Fisheries (Scotland) Bill: The Minister for Environment and Climate Change (Paul Wheelhouse) moved S4M-05712—That the Parliament agrees to the general principles of the Aquaculture and Fisheries (Scotland) Bill.

After debate, the motion was agreed to (DT).
Aquaculture and Fisheries (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-05712, in the name of Paul Wheelhouse, on the Aquaculture and Fisheries (Scotland) Bill. I remind members to speak through the chair by referring to other members by their full names and not as “you”.

15:01

The Minister for Environment and Climate Change (Paul Wheelhouse): I am pleased to open the debate on the general principles of the Aquaculture and Fisheries (Scotland) Bill—the first bill that I have been involved with in a ministerial capacity.

Over a year ago, we consulted on a number of key issues and priority areas for possible legislation to ensure a regulatory regime that is fit for purpose. We wanted to build on existing best practice and voluntary arrangements wherever appropriate and to promote openness and transparency. That consultation continues; discussions with our stakeholders have greatly informed our thinking and have helped to shape the bill that we are debating.

I thank the Rural Affairs, Climate Change and Environment Committee for its work. I also thank everyone who gave evidence to the committee through the course of the consultation. I am pleased that the committee supports the general principles of the bill, which are that we must ensure that Scotland’s farmed and wild fisheries sectors, and their interactions with each other, continue to be managed effectively. In doing so we can maximise the combined contribution of both sectors to supporting sustainable economic growth, while giving due regard to the wider marine environment.

Earlier this week, I provided a written response to the committee’s report. I hope that my response has helped to provide the clarity that some in the chamber have asked for and that the Parliament will feel able to endorse the bill going forward.

The committee commented on the need to improve the relationship between wild fisheries and the fish farming sector. I share that view and, indeed, I made reference to it in my opening remarks to the committee. I have also expressed that view to stakeholders. Some areas already provide excellent examples of joint working at a local level, but that is not universally evident. That must change. Good neighbours talk, listen to and engage with each other.

I have already intimated my intention to lodge some amendments at stage 2. I hope that they will be welcomed by our stakeholders as points of clarity to improve technical aspects of the bill. I will take note of and reflect on any further points that are raised in the debate.

Tavish Scott (Shetland Islands) (LD): I thank the minister for giving way. He mentioned the amendments that he plans to lodge and he answered a parliamentary question this week in which he acknowledged the considerable amount of secondary legislation that will have to be introduced. Will he give a commitment that that secondary legislation, when it is introduced, will be subject to full consultation—particularly with the industry, because that is the aspect of this process that they potentially fear?

Paul Wheelhouse: I have said on record and I am happy to reiterate that, where appropriate, we will use the affirmative procedure to ensure that there is adequate consultation on any secondary legislation that is made. I am happy to work with the member to ensure that we give maximum consultation opportunities for those important measures.

I move on to the importance of aquaculture and freshwater fisheries to Scotland. In Scotland, we are fortunate to have an abundance of water that is suitable for aquaculture and fishing. I am pleased that the committee agrees that the bill improves the framework for the aquaculture and freshwater fishing sectors’ sustainable development—in the short, medium and long term. Both aquaculture and freshwater fishing provide jobs, often in remote and fragile economies, investment, exports, and rural vitality and social cohesion.

The committee asked about the Aquaculture and Fisheries (Scotland) Act 2007 and to what extent its aquaculture provisions have been successful. In our view, the management regimes that are monitored by the fish health inspectorate are working well. Aquaculture’s code of good practice—independently audited, with compliance of 98 per cent—is guiding the industry on its statutory responsibilities and day-to-day good practice. However, this bill is not about updating the 2007 act. It has been drafted to further enhance the existing regulatory regime to ensure that it is effective for 2020 and beyond, and to provide a platform for sustainable growth with due regard to the environment.

The provisions within the bill provide: new legal measures for fish farm operators, including statutory farm management agreements or statements; provisions for obtaining samples from fish farms; requirements for technical equipment standards and control mechanisms for the operation of wellboats; moves to improve the
management and governance of district salmon fisheries boards, making them more transparent and accountable; safeguards for the shellfish industry, with measures to ensure that shellfish waters continue to be protected from pollution once the European Union shellfish waters directive is repealed in December this year; and powers to impose charges in connection to services that are provided by the Scottish ministers in the carrying out of fish farming and fisheries functions. Also included are additional enforcement powers to support sea fishery officers in carrying out their monitoring and investigation duties, and the extension of fixed-penalty notices to respond to issues of regulatory non-compliance.

I welcome the committee’s endorsement of proposals for the aquaculture sector, including to place farm management agreements and statements on a statutory footing. We will work with the Scottish Salmon Producers Organisation to ensure that the new regulatory system is implemented and managed to best effect. I also welcome the committee’s endorsement of proposed powers to improve further the containment of fish. My officials will work with wellboat interests to ensure that regulations to manage the sector are proportionate, reasonable and, where possible, transferable. Reflecting the committee’s interest in the matter, I will also encourage the wellboat industry to explore the potential for wellboat development, manufacture and maintenance in Scotland.

I have repeated on a number of occasions that not everything that we require to achieve needs legislation to deliver and work is, therefore, being developed alongside the bill. We have noted the recommendations of the committee in respect of sea lice data. The Government already has access to the information on sea lice levels that we need to meet our current regulatory requirements, as well as access to industry data to undertake and inform our scientific work.

In that regard, I am pleased to announce today agreement to joint funding, totalling £1 million, for a programme of research between the Scottish Government and industry, overseen by the Scottish aquaculture research forum. The programme will have at its core a project to assess the impacts of sea lice and salmon of farmed origin in the wild in Scotland. The industry also acknowledges that data needs to be available to reassure the public and to aid the management of local fisheries—that is a key area of interaction.

Alex Fergusson (Galloway and West Dumfries) (Con): I am not absolutely persuaded that the need to inform the public is as important as the minister suggests, although I accept that that is desirable. However, I am persuaded that there is a need for science and academia to have a considerable amount of farm-by-farm data in order to monitor the expansion of the industry. Would the minister care to comment on that?

Paul Wheelhouse: We are persuaded that there is a wider public interest in the health of our fish farms in terms of the quality of the stock. I accept that there are commercial confidentiality considerations that come into play, but I believe that we have the balance right in terms of seeking a greater degree of public awareness of the health of the stock in our fish farms, allowing inspectors to inspect the data and ensuring that we have the appropriate level of enforcement actions to deliver improvements in the situation around sea lice contamination.

I am encouraged by the SSPO’s voluntary proposal to increase the number of areas in which there is public reporting of sea lice levels from six to 30. I consider that to be a significant development that can be further developed in time. I will keep the new scheme under active review through the ministerial group on aquaculture, mindful that the Scottish ministers already have the power to legislate in the area, if necessary, through the 2007 act.

The committee welcomed my plans to reinvigorate the ministerial group on aquaculture and supported the current role that is played by the stakeholder reference group. Both of those groups have been established for the longer term and will be key to improved relations and engagement between the aquaculture and wild fish sectors. I am currently considering how best we might replicate a group with a structure similar to the ministerial group on aquaculture for the wild fisheries sector, to ensure similar engagement among stakeholders and interest groups on wild fishery matters.

The bill is the first step in delivering the Government’s commitment to modernising management structures for salmon and freshwater fisheries. I welcome the committee’s endorsement of that view. There are two themes in this part. First, the bill will deliver immediate improvements to the openness, accountability and transparency of district salmon fishery boards. Many boards are already carrying out the requirements that we are making statutory, and the bill will drive forward best practice in good governance. We will work with the Association of Salmon Fishery Boards to give guidance on implementation, mindful that boards are of varying size and capacity.

The second theme is the enhanced management of salmon fisheries. The bill looks to improve the collection and sharing of data and information on fisheries to help promote science-based management. It will provide ministers with access to the full range of management measures—specifically, annual close time
I believe that it is imperative that all those with an outcome: a management system that is robust, independently of Government, and I am pleased close times and how fisheries management should management of netting interests, the operation of number of key issues for the sector, including anticipate the review considering in depth a fisheries in Scotland, not just salmon fisheries. I can confirm that it will include all officials have started the process of scoping that which will perhaps be regarded as long overdue. The past century has seen numerous attempts by various Governments to modernise the legislation on freshwater fisheries, which is a complex and emotive area. There has been progress, but not the major step change that the committee rightly notes is needed. Many significant issues need to be addressed, and the committee’s report highlights a number of specific areas that need more work.

I assure members that our ambition is not limited. I can confirm that I will take that work forward in the context of a major review of salmon and freshwater fisheries management in Scotland, which will perhaps be regarded as long overdue. Officials have started the process of scoping that review and I hope that it will get under way this summer. I can confirm that it will include all fisheries in Scotland, not just salmon fisheries. I anticipate the review considering in depth a number of key issues for the sector, including management of netting interests, the operation of close times and how fisheries management should be funded. The review will be conducted independently of Government, and I am pleased that the committee shares my vision for its outcome: a management system that is robust, sustainable and fit for purpose in the 21st century. I believe that it is imperative that all those with an interest use this unique opportunity to get matters right.

I welcome the committee’s recognition that the sea fisheries provisions bring Scotland into line with the rest of the United Kingdom as regards marine enforcement powers. However, we will look at the one or two minor points highlighted in the evidence and report back to the committee on our conclusions.

We recognise the tremendous potential that the shellfish sector has for increased production because of the demand for our quality products. I am therefore pleased that the committee welcomes the bill’s proposals for a framework to give continued protection from pollution to shellfish growing waters. I recognise that the provisions will provide only baseline protection in the process and I agree that both the Government and our agencies must continue to work with the sector and other stakeholder interests to ensure that proportionate measures are taken to deliver continued protection.

I welcome the committee’s support for our proposals to lodge amendments at stage 2 to strengthen the law on illegal cockle fishing, not least because of its current significance in the Solway. In addition, we continue to work with other agencies that are enforcing the law in respect of illegal shellfish harvesting to find solutions to other aspects of the issue.

We must manage our resources wisely. The bill gives ministers the power to charge for fisheries functions undertaken by Marine Scotland. Ultimately, if something is being provided that is of benefit, then it is right that the beneficiary should pay a fair contribution for that benefit. I am glad that the committee recognises that we would not bring forward a charging order without consulting those affected. I can confirm that a charging order will be subject to the affirmative procedure to ensure appropriate scrutiny of it.

I note the recommendation that we publish statistics on the use of fixed-penalty notices and I give a commitment to publish such statistics, anonymised, on an annual basis. We will also consider publishing statistics for other non-compliance activities to provide a complete picture.

I want Scotland to continue to be a great place to do business and we want new enterprises to be attracted to Scotland. We want both indigenous businesses and new businesses coming into Scotland to grow, but we also have a duty to protect our natural resources for the long term. That is why we seek, through the bill, to ensure that the marine environment is protected while realising the benefits of a successful and growing aquaculture industry, developing side by side with
the wild fisheries in Scotland. I emphasise that the bill is not a blueprint for assured growth, but it aims to ensure that there is an effective and proportionate regulatory framework to facilitate that growth. I look forward to the debate that will follow and to hearing members’ views on the bill’s provisions.

I move,

That the Parliament agrees to the general principles of the Aquaculture and Fisheries (Scotland) Bill.

The Deputy Presiding Officer (Elaine Smith): Thank you, minister. I advise members that time is extremely tight and that there is no extra time. I call Rob Gibson to speak on behalf of the Rural Affairs, Climate Change and Environment Committee. You have a maximum of nine minutes, Mr Gibson.

15:14

Rob Gibson (Caithness, Sutherland and Ross) (SNP): The Rural Affairs, Climate Change and Environment Committee began its scrutiny of this important bill with limited knowledge of the challenges that face aquaculture and wild fisheries in Scotland. After viewing salmon spawning on the River Dee, freshwater and seawater fish farms, a salmon processing plant, scientific research stations, salmon-netting operations and wild fisheries hatcheries—where aquaculture and wild fisheries representatives work side by side—we learned a lot in a matter of weeks.

The extensive gathering of oral and written evidence gave the committee a better idea of how the bill should be amended. From the outset, the committee agreed that the general principles of the bill are sound and that the Parliament should support them and send the bill on to its first amending stage. I thank all who gave us their invaluable support, all those whom we met on our travels and all those who submitted written evidence and/or gave oral evidence to the committee.

However, the issue of “working together” loomed large. Every committee member was struck by the tensions between the wild fisheries and aquaculture sectors—the expression that we used in our report was “tit-for-tat”. As we waded through evidence, examining claims and counter-claims, we reached the point at which we felt that enough was enough. Fish farms and wild angling are here to stay. Both sectors contribute to Scotland’s economy and have environmental responsibilities. However, to deliver thriving sustainable aquaculture and wild fisheries, both sectors must work together.

Tavish Scott: I agree with the point that Mr Gibson is making, but presumably he would also reflect that that conflict, which he rightly describes, is not true of the whole country or of all the areas that the committee looked into. It is perhaps important to reflect that.

Rob Gibson: We might reflect that some parts of the country have greater tensions, but the intention behind the bill is to try to meet the needs of all parts of the country. The committee wholeheartedly backs the intention to improve the transparency and accountability of both sectors while minimising bureaucracy.

During the stage 1 process, the Scottish Government announced that the bill will be a first step in reforming wild fisheries management in Scotland. The committee will closely monitor that process, which should build on the aquaculture and wild fisheries legislation that was passed only a few years ago.

Turning to specifics, the committee supports most of the bill’s aquaculture provisions, such as those that will place farm agreements and statements on a statutory footing. We support the taking of samples from any fish farm where that is necessary to determine where an escape of fish originated, because preventing escapes is essential. We call on the Scottish Government to consider other methods for tracing escaped fish ahead of stage 2.

The wellboats that transport and treat farmed fish must be tightly defined in law, as retrofitting boats to meet new standards could prove costly. We would like to see provisions included in the bill that would make that commercially viable. However, having wellboats built and retrofitted in Scotland will happen only if the Scottish Government works directly with the Norwegian Government to develop common standards.

We back the provisions on defining species that are commercially damaging to fish farms. However, we ask the Government to examine the origins of such species rather than just their presence on or near to farms.

Much of the debate focused on sea lice, which is an issue that is currently not covered by the bill. Sea lice can infect wild and farmed fish, but they can spread quickly on fish farms, with effects on wild stocks. We call on the Government to look closely at that issue, as other members will mention in more detail later in the debate. Fish farms currently collect data on the numbers of sea lice. After considering the issue carefully, we agreed that we wish to see data collated and published for each farm management agreement. The committee will continue to consider that issue as the bill proceeds. However, the important point is that the bill ensures that data are available to scientists and researchers to manage sea lice outbreaks.
Seals predate on fish farms and can damage nets, which leads to escapes. The industry is working hard to address that issue. Currently, a number of seals are being shot on fish farms. The committee welcomed alternative methods of predator control, such as the development of audio devices that cause no damage to seals or other marine animals.

On wild fisheries, we were encouraged to learn that, against a backdrop of long-term decline, the number of salmon coming back to our rivers is stabilising. We need to build on that. Unfortunately, in many areas the number of sea trout has declined sharply for various reasons.

The bill addresses the governance and management of district salmon fisheries boards, which I hope will improve the accountability and transparency of their activities. The complaints procedures outlined in the bill are appropriate and proportionate, as are the proposals to ensure that board members declare financial interests.

We support the introduction of a carcass tagging scheme in which tags are individually numbered. As the minister mentioned, that will be consulted on.

Another hot topic was salmon netting at the mouths of our rivers, which has been declining in Scotland for some time. The small salmon-netting community sought to amend the bill to protect their livelihood.

We spent an afternoon at a salmon-netting station, and we talked to all who worked there and other netsmen who had journeyed from Strathy in my constituency. They argued for the management of salmon netting to be removed from district salmon fisheries boards and placed with the Scottish Government’s inshore fisheries group. They also wanted an end to the close times that require the removal of their equipment on weekends. They would prefer a more flexible days-at-sea regime. Netsmen face challenging conditions, but a days-at-sea regime would not be appropriate. However, more transparent conflict resolution in district salmon fisheries boards is needed.

The committee supported the sea fisheries part of the bill, which is not controversial. Illegal cockle fishing in the Solway was discussed—no doubt my colleague Alex Fergusson, MSP for Galloway and West Dumfries, will talk about that in greater detail. The Scottish Government indicated that that issue would be pursued by an amendment to the bill to assist the police and fiscais in detaining and prosecuting offenders. Alas, amendments alone will not end illegal shellfish harvesting—which goes beyond cockles—and we call on the Government and its partners to develop practical and workable proposals to tackle the problem.

We approved proposals for charging and fixed-penalty notices. We welcome the Government’s clarification that it will not introduce a rod licensing scheme, although anglers could have a role to play in assisting investment in wild fisheries management. Fixed-penalty notices can streamline legal processes, and we want the Government to publish statistics on their use for marine offences.

With some amendment, the bill will enhance aquaculture and wild fisheries to develop sustainably. We recommend that the Parliament support the general principles of the bill, allowing us to advance to the amending stages.

15:22

Claudia Beamish (South Scotland) (Lab): The Rural Affairs, Climate Change and Environment Committee supports the bill’s general principles, as the committee convener has stated.

I want to consider the bill’s context for a few minutes, which takes me immediately to the policy memorandum and the request from the committee to the Scottish Government

“to consider whether the assessment of sustainable development in the Policy Memorandum fulfils its potential as a means of ensuring a consistent and thorough regard for environmental, economic and social impacts of the changes proposed by the Bill and alternatives.”

The memorandum does not fulfil that potential. I therefore ask the minister to assure us that there will be an on-going assessment of the measures in the bill, as it progresses.

The committee has recently heard evidence on biodiversity; I stress its importance in relation to the bill. Concerns have been expressed about the delay of Scotland’s marine plan because marine spatial planning is key to appropriate development.

All potential development in our seas, whether aquaculture fisheries, marine renewables or oil and gas, must be judged in the context of marine carrying capacity. The delay to the marine protected areas is also a cause for concern. Our fragile coast and rural communities—where livelihoods depend on fish farms, fish processing, wild salmon rivers and tourism—must be considered, too.

The science is vital in determining what appropriate development is. It is essential that data be readily and publicly available for research into the sustainable future for all sectors concerned, and for the wider marine environment. That is even more of an imperative in the context of the changes in our marine and river environments resulting from climate change. We all need to do our best to climate proof the bill—hard as that may be—and the ensuing regulations.
Excellent work on that is on-going, but it is important that the Scottish Government and all sectors work strategically so that we honour our climate change commitments more broadly.

Before focusing in detail on the sections of the bill, I, too, will say something about the adversarial nature of the engagement of some of the sectors involved. As our report points out, the committee’s work was hindered by it, which “made it difficult at times for the Committee to assess the best way forward”.

That was not helpful. I highlight paragraph 2 of the committee’s opening summary:

“As important as this legislation is, perhaps of equal significance for Scotland in the long-term, is improving the current relationship between the wild and farmed fishing sectors, with a view to establishing closer, productive, cooperative working relationships for the overall benefit of the people of Scotland and the environment.”

I make a strong plea to that end to all those concerned.

The committee was certainly welcomed by many on its two days of fact-finding visits, which upped my knowledge. One must always try to be positive in times of conflict, and I believe that those visits set a good tone.

Part 1 of the bill focuses on the future of the aquaculture industry. There is no doubt that the Scottish Government is keen on the development of the industry for home consumption and export markets. The minister highlighted the point that new markets are opening up. The Scottish Government is negotiating agreements on salmon exports to China, which have grown exponentially in the past two years.

During his evidence to the committee, the minister stated:

“The clear message is that growth must be sustainable.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 9 January 2013; c 1614.]

That is reassuring in the context of the Scottish Government’s target of a 50 per cent increase in the sector by 2020, 34 per cent of which is, I believe, still to be achieved.

The market for many products that are branded as being from Scotland is based on clear provenance. Scotland’s reputation for good-quality waters is quintessential. Therefore, it is essential that there is careful monitoring and action, to which the bill and the regulation following it will contribute strongly.

The committee’s visits to Marine Harvest demonstrated the good practice that exists in the fish farming sector. The committee supports the move to put farm management agreements and statements on a statutory footing, but there is a need, in addition, to focus on the minority of farms that are not currently signed up, in order to ensure their quick compliance.

Co-ordinated management to underpin the building of trust and good relationships across the sectors is as important as marine spatial planning. The committee recommends that the Scottish Government work with the SSPO to ensure that mediation services are “fully accessible and fit for purpose”.

I acknowledge the minister’s input in that regard.

The committee also “notes concerns raised about the number of seals which are being shot at fish farms as part of predator control.”

The key point is that alternatives to killing must be as humane as possible. Therefore, I was encouraged to hear of the work of the Scottish Aquaculture Research Forum in the minister’s feedback to the committee.

The committee explored the possibility of human error, which is important in relation not only to escapes but to broader good practice. I note that there are many good in-house training schemes in the aquaculture industry, but the situation should be monitored in case there is a need for further intervention.

The minister stated that, at stage 2, an amendment would provide a clearer definition of wellboats. My colleague the convener, Rob Gibson, already highlighted the importance of building of wellboats in Scotland. We hope that the Scottish Government will consider that on a broader level, especially in terms of employment.

I note that the minister will look to the MGA to keep the issue of the revoking of consents under review. Is that robust enough?

I welcome today’s funding announcement on sea lice. I will quote from the committee report, because I believe that this section is important:

“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”.

I stress that I hope that any delay in reporting that is introduced in any amendments will reassure the aquaculture industry about commercial confidentiality concerns. I am not convinced that the minister’s position takes us far enough on that.

The committee is also concerned about “the current lack of … farm-by-farm data”, but there has been some reassurance on that issue. Across the committee, we are absolutely
conscious of the importance of the availability of scientific evidence.

The focus in part 2 is of equal importance. I know that other members will look at the management and governance of the district salmon fishery boards. As a committee, we are keen to “establish the principle of improving accountability and transparency” through the bill. The challenges that are faced by small boards should also be taken into account.

The disappointment of the coarse fishing sector about the lack of connection is recognised and has been acknowledged by the minister. On one of its visits, the committee was welcomed by Usan Salmon Fisheries Ltd. It is important that the Scottish Government’s review of wild fisheries considers the range of issues that have been raised, not least the weekly close times. It is reassuring that the minister has stated that those are key issues for the forthcoming review, and I hope that the discussions between Government officials and salmon fishery boards on short-term actions will help to resolve what appear to be local concerns.

The committee is clear that “good water quality is vital for the shellfish industry”, and I understand that the minister has already set up a working group to work collaboratively to resolve pollution challenges.

All members will be aware of the tragedy that took place at Morecambe Bay because of illegal cockling. My colleague Graeme Pearson will highlight that issue in relation to the Solway Firth and other parts of Scotland. The committee believes that it is essential that the Scottish Government provide its view of the way forward in helping to break that trade and to tackle the danger that is posed by fast-moving tides to the people who are being exploited.

The Deputy Presiding Officer: I call Alex Fergusson. You have a tight six minutes.

Alex Fergusson (Galloway and West Dumfries) (Con): To address all the issues and concerns that the bill embraces in a mere six minutes is an almost impossible task, so my remarks must be focused on just a few of the topics that it covers.

Despite the time constraint, I cannot begin my contribution to the debate without thanking the clerks to the committee for the outstanding job that they did in the preparatory work and the publication of the report, which they undertook with patience, humour and no little expertise. The clerks and, indeed, members of the Scottish Parliament information centre have made a monumental task for the committee’s members a great deal easier than it might otherwise have been.

It has been a monumental task, which has involved an equally monumental amount of written and oral evidence, through which we have had to wade and which, I believe, still leaves quite a few questions hanging unanswered. I reiterate what other members have said: our deliberations have not been made easier by the very public tit-for-tat battle of words between the aquaculture industry and the wild fishery sector that took place during our evidence gathering and which is on-going in various national journals and newspapers today. Although that has not made our task any easier, the degree of agreement among the committee on many of the basic issues that the bill deals with has been impressive.

The two items on which I want to make particular comment were not in the original bill. The first of those is the contentious matter of publication of sea lice data, which has already been mentioned. It would be fair to say that the committee heard from a large number of organisations that believe that radical changes to publication of such data are imperative, and one that does not. Over the past months, I have become more and more convinced by the views of the many, and less and less convinced by the view of the one, which seems too often to state that the sea lice issue is not an issue at all. However, it has to be an issue. Ministers quite rightly say that they take decisions and act only on the advice of the best available science. Therefore, it cannot be right that the authors of that best science cannot access farm-by-farm data on an issue as important as sea lice numbers.

In response to the recommendation that the committee made in paragraph 204 of its report, that “the Ministerial Group on Aquaculture gives careful consideration to how farm-by-farm sea lice data can be made available to inform scientific research”, the minister stated that “we already have access to the information on sea-lice levels that we need to meet our current regulatory requirements, as well as access to industry data to undertake and inform our scientific work as required”;

and he repeated that in his opening remarks. That concerns me, because in a report that Marine Scotland science published recently called “Development and assessment of a biophysical dispersal model for sea lice”—on a study at Loch Linnhe—which was commissioned to help to establish more effective farm management areas, the authors state that they had to make a fairly
major assumption, which is surely not the best thing on which to base a scientific paper, because "actual sea lice data from each farm site are not available".

At the very least, it is obvious that there is a considerable discrepancy there.

I cannot help but feel that it is vital for the industry—which the Scottish Government is encouraging to expand very rapidly indeed—to make public, or at least to make available to our scientists and academics, the data that they need to monitor safely the sustainability of that expansion. I give notice that I therefore intend to lodge amendments at stage 2 to explore how that can best be achieved. I heard what the minister said in his speech, and I undertake to monitor carefully any initiatives that the industry or the Government develops in the meantime.

As the convener so accurately forecast, I cannot possibly discuss the bill without making reference to a naturally occurring species in our marine environment: the humble cockle. Reference to this shellfish is not included in the bill, but ministers will be aware of my long-standing determination to see a cockle fishery re-established on the Solway—something that I believe is achievable, and which could be of great benefit to our local economy. I very much welcome the steps that Marine Scotland is undertaking to bring that about, even as we speak, and I greatly welcome the Government’s willingness to strengthen during stage 2 current laws in relation to illegal cockle fishing. As I think the minister mentioned, as long as illegal cockling takes place—with the large amounts of money in cockles, the temptations are huge—there will not be a legal fishery. That has been the case for too long on the Solway, so I highly commend the Government’s actions and intentions in that regard.

The bill also touches on wild fisheries—in particular, the governance of district salmon fishery boards. Although the Government is leaving much of the detail of management of wild fisheries to the review to which the minister referred, I have concerns about some aspects of the bill’s impact on the work of the boards, which I seek also to address at stage 2, specifically in relation to the suggested publication of notices for certain proposed applications and to the scale of the penalties that have been suggested for the failure of boards to monitor the effects of an order.

There is a great deal more to the bill than I have been able to cover in the time that has been available to me, and my colleague Jamie McGrigor will expand on some aspects. For now, I commend the committee’s report to Parliament, and I assure Parliament that the Conservatives will support the general principles of the Aquaculture and Fisheries (Scotland) Bill this evening.

15:37

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I very much welcome the work that has been undertaken by the Rural Affairs, Climate Change and Environment Committee. The committee’s report responded to and incorporated a wide range of views in encouraging an environmentally viable and sustainable future for our fish farmers and freshwater fisheries and for all users of our marine environment.

Scotland is known worldwide for the quality of our environment, and that reputation underpins our successful food and drink export industry, in terms of both land and of the marine and river environments. People do not even need to think about making a choice between food that has been produced in a sustainable way and in pristine conditions and an alternative at the other extreme, in which production methods damage the environment and the consumer.

The general point is made by the Paisley snail case, in which a pauper, May Donoghue, successfully sued a manufacturer who had left a dead snail in a bottle of the ginger beer that she had purchased in the Wellmeadow cafe in Paisley in 1928. I regret to inform Parliament that the manufacturer of the ginger beer was one David Stevenson; as far as I am aware, he was not a relative of mine, and I hope not to find that he was.

Nigel Don (Angus North and Mearns) (SNP): Parliament might wish to be made aware of the fact that the snail may never have existed. The point was never proven, and was taken as read.

Stewart Stevenson: I think that, when the courts decide that the facts of a case are found, we should accept, through the telescope of age, that the snail was the point of application of the case. That is certainly true.

People want to be able to trust their food. If anything is to come out of the horsemeat scandal, it is that it illustrates that point. We want aquaculture, which is a major contributor to our food and is now a bigger industry than the wild-fish sector, to be even more successful in the future. We can help if we get things right. A country that has transparent rules and practices that guarantee that the consumer’s food comes from a pristine environment is ahead of the game at once, and having a good production environment is the first prerequisite to underpinning consumer confidence.

It is no surprise that our farmed salmon carries Scotland’s flag to all the global airts; it is a marker of quality. Our salmon are a health food—there is lots of omega 3 in them, for example—are the basis of much fine dining and are increasingly affordable in every home. Omega 3 reduces strokes and lowers blood pressure. Salmon tastes good and does people good. Therefore, when we
legislate on our industry, we must legislate for it. We must provide the certainty that the environment within which the industry produces is good.

We know what people elsewhere think about our fish farming industry. In 1992, Scottish aquaculture received an unprecedented double honour; the French Ministry of Agriculture awarded the renowned Label Rouge mark to Scottish farmed salmon. That was not only the first time that the honour was given to a food that originated outside France, but was the first time that it was awarded to a fish product. That is an early indicator of the trust that our superb Scottish salmon has throughout the world. We are, of course, the European Union’s largest exporter of salmon, and there is room for substantial growth.

Other species have scope for growth, too. Our blue mussel accounts for most of our shellfish production. There were 7,000 tonnes of that, worth £8.6 million, in 2011. The aim is to double that in the next decade.

Our marine environment is, of course, a shared environment, so when we protect our clear blue—but, alas, not very warm—waters, we support sport fishing and a raft of coastal leisure activities. We also play a part in wider conservation measures that are important to a range of species. For example, who would have thought 20 years ago that we would find that we have living coral reefs in our marine waters? We support diversity, and that is part of it.

We also need to manage the production environment. That is in the interests of all coastal activity and benefits local communities. Again, sea lice are a big part of people’s engagement with the undoubted impacts of fish farming. I very much welcome plans by the Scottish Salmon Producers Association to publish data on that in considerable detail. We need enough detail to build public confidence and to support the needs of research, but not so much that extrajudicial action by extremists could result. That is unlikely, but we need to balance that.

**Alex Fergusson:** Will Stewart Stevenson take a brief intervention?

**Stewart Stevenson:** I do not think that I have time to do so. Please forgive me.

We have and we need a legal enforcement regime that deals with the small number of breaches of the rules, but above all, we need cooperation between the science, aquaculture and environment communities. Perhaps that has not been wholly evident in the evidence that has been given to the committee.

The committee was right to quote Steve Bracken in its report. He said:

“salmon farming and wild fisheries are both vital industries for the coast and inland parts of Scotland.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 5 December 2012; c 1466.]

That is undoubtedly true.

I take an interest in wild fishing. My brother and I had a wonderful summer in 1968, when we were employed by the Tay District Salmon Fisheries Board as water bailiffs. I therefore very much welcome the opportunity that the bill creates to modernise a rather Victorian structure for supervising wild fisheries, and I look forward to future developments.

15:43

**Jayne Baxter (Mid Scotland and Fife) (Lab):** I am sorry to say that because I joined the Rural Affairs, Climate Change and Environment Committee only towards the end of December, I was unable to participate in the site visits and earlier consideration of many of the issues that are raised in the stage 1 report. I thank my fellow committee members and the clerks for their patience as I got to grips with the bill. In that process, it became apparent to me that there are a number of governance issues in the aquaculture and fishing industries that need to be addressed. I am pleased that the committee was able to scrutinise some of those issues.

The nature of some of the difficulties in the communication, structure and governance in the sectors is highlighted at the start of the committee’s report, which draws attention to the nature of the engagement between the aquaculture and wild fisheries sectors, which is perceived to have been less than helpful at times. The committee’s recognition of the value of productive and co-operative working relationships is vital to the success of the legislation.

In taking evidence from the minister, it was established that an industry body that was involved in developing proposals for the bill—the freshwater fisheries forum—had not met for some time. I believe that it had not done so since 2009. I was therefore pleased that the minister recognised the need to learn from that and to ensure that the structure and governance arrangements are fit for purpose, and that he remains open to reviewing the role of the forum in the future and sees the importance of stakeholder engagement.

The committee’s report highlights the consultation and the engagement of key stakeholders on the proposed legislation, so I will not focus on that, although I hope that the Scottish Government learns from the experience as we proceed. The minister has recognised the concerns of respondents about the nature of the
consultation, and I welcome his commitment to reflect on the process.

The aspect that generated the most discussion during the committee's consideration of the bill was the publication of sea lice data. However, as the committee's report notes and as my committee colleagues have highlighted, the bill as it stands does not cover the issue. I welcome the fact that the Scottish Government will give further consideration to data publication and to whether data should be placed in the public domain. I note that the issue is to be considered by the ministerial group on aquaculture, although it is obviously disappointing that the group's next meeting will not take place until 26 March.

As is clear from the committee's inquiries, the data exist and in some circumstances are made available or shared as part of farm management agreements within farm management areas. However, as Douglas Sinclair from the Scottish Environment Protection Agency pointed out:

“It is one of the few areas in the Scottish environment in which someone can be doing something that can significantly impact on someone else's interests and there is no public access to what is going on.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 5 December 2012; c 1431.]

I recognise the concerns about the publication of data on a farm-by-farm basis, but I am disappointed that the Scottish Government has not included in the bill a measure on publication of sea lice data on a farm management area basis.

Paul Wheelhouse: I ask Jayne Baxter to bear it in mind that some farm management areas might involve only a single company or, indeed, a single fish farm, and that that presents difficulties in publication of the data.

Jayne Baxter: I am aware of that. It is disappointing that, judging by the minister's response to the committee's stage 1 report, the Scottish Government does not intend to lodge amendments on the issue at stage 2. I support the committee's view that publication of data for areas that are covered by farm management agreements and statements could facilitate greater public scrutiny while—I believe—minimising the potential impact on the industry.

I note the voluntary proposal from the Scottish Salmon Producers Organisation to increase the level of publishing of data for the industry, which is a positive step. However, given the committee's recent experience in its evidence sessions of the relationships between sectors, I am sceptical as to whether a voluntary approach will be enough.

That point draws me back to the importance of establishing coherent, transparent and effective governance arrangements for the aquaculture industry and fisheries sector. The formalising of farm management agreements and statements is to be welcomed, as they are crucial to establishing the framework surrounding farm management areas for the future. If a provision on the publication of data is not to be included in the bill as amended at stage 2, I would welcome early consideration of the matter by the ministerial group on aquaculture.

As we return to legislate on aquaculture just a few years after the Aquaculture and Fisheries (Scotland) Act 2007, it is clear that we must ensure that the legislation is fit for purpose in order to avoid having to repeat the exercise in the near future. Therefore, although I am pleased that the committee recommends support for the general principles of the bill, I hope that the Scottish Government will use the opportunity to make improvements at stage 2.

15:48

Angus MacDonald (Falkirk East) (SNP): As a relatively new member of the Rural Affairs, Climate Change and Environment Committee, I was pleased to take part in the bill scrutiny process from the start. The committee has undertaken extensive work. As the committee convener said, we had a large amount of submissions to digest as well as the information that was gleaned from our worthwhile fact-finding missions to Lochaber, royal Deeside and Montrose.

The bill has so many aspects that, like Alex Fergusson, I will be able to touch on just a few in the six minutes that I have for my speech.

The first aspect is aquaculture. We all want a sustainable aquaculture industry that is run with consideration for the environment and adapted to the marine environment and biological diversity. As a top-quality food producer, the aquaculture industry relies on good environmental conditions and water quality, which means that, if fish farmers are to protect their businesses, they have an obvious vested interest in maintaining good water quality and avoiding any negative impact on their surroundings.

Diseases and parasites represent a serious threat to wild salmon populations, and it is primarily sea lice that have the most serious impact on wild fish. The issue has proved to be a challenge to the industry in the past. The committee acknowledged that sea lice are an emotive and controversial issue, which has attracted a great deal of comment and conflicting views from stakeholders in responses to the Scottish Government's consultation and in evidence to the committee.

Although salmon lice occur in wild salmon and sea trout, they are an example of a parasitic
What was going on, but it was worrying to hear that in other parts of the country riparian woodlands are being cut down to allow better access to the river for anglers. Such an approach is in direct contrast to the long-term planning that is going on in royal Deeside.

The committee heard that higher river temperatures may lead to reduced reproduction in salmon, as a result of physiological stress and increased susceptibility to disease. The higher temperatures might cause young salmon to migrate to sea earlier, which results in a disconnect in relation to the availability of marine food sources. Reductions in summer rainfall reduce summer flows, further increasing water temperatures while making it more difficult for salmon to migrate upstream. Increased winter flows might damage the gravels in salmon spawning beds, resulting in the loss of or damage to eggs.

The committee therefore recommended that the Scottish Government, as part of its review of wild fisheries management, consider how the experiences in the upper Dee scheme and other best practice can be rolled out across the country. The committee also recommended that

"the Scottish Government gives careful consideration to ensuring the Bill ... takes full account of climate change mitigation measures, to ensure the aquaculture and wild fisheries sectors contribute to helping Scotland meet its statutory climate change targets and are able to continue to adapt to the emerging effects of climate change."

The river restoration fund is a good example of a way of making that happen.

I hoped to have time to talk about fixed-penalty notices, protection of shellfish waters, and wellboats and the need to ensure that fabrication and retrofitting happens in Scotland, but my time is up. I have covered a few of the issues that the committee considered, but I am sure that my committee colleagues will pick up on other aspects of the bill in the debate.

15:54

Graeme Pearson (South Scotland) (Lab): As someone who is not a member of the committee, I am delighted to be speaking in the debate. I wish the minister well in seeing his first bill through Parliament successfully. In spite of some divided opinions shared with the Rural Affairs, Climate Change and Environment Committee in evidence sessions, we have had a largely consensual debate around the measures proposed in the bill, although with the caveat that the committee believes that the bill can and needs to be improved before it can achieve the aims set out by the Scottish Government. I have to say that I share that view.
Given that the Scottish Government has recognised that it is not only achievable but desirable to strengthen the bill and given that it has already suggested some amendments for stage 2—should the bill pass stage 1—I believe that we can support the bill with a degree of confidence that it will be improved considerably by stage 2.

One aspect of the bill that the committee feels needs strengthening is the provisions on illegal cockle fishing. I have a particular interest in that, not solely because of my engagement in South Scotland as a regional representative but because since the cockle-fishing ban was introduced in the Solway almost 18 months ago criminal gangs have been involved in poaching there. Those gangs have been organising the lifting of significant numbers of cockles and have often been exploiting foreign workers to get the work done.

Despite that being a major problem, the police have struggled to prioritise sufficiently work to tackle it as the current legislation does not give them a sufficiency of powers to deal with it. The Scottish Government has recognised the need and the potential to strengthen the bill in that respect. I am pleased that the committee has backed the principle that the bill be improved to help deal with illegal cockle picking and has advocated that the Scottish Government discuss any possible amendments with the police and other authorities to ensure that the bill addresses the issues that officers are experiencing on the ground.

The committee also advocated that the Scottish Government consider the suggestion made in evidence sessions by David McCallum, a chief inspector in Dumfries and Galloway Constabulary, that any amendment be split into two parts: the first to deal with a person found in circumstances in which it is reasonable to suspect that they intended to commit the offence; and the second to deal with those found with tools and paraphernalia from which it is reasonable to conclude that they intended to commit the offence. It is crucial that any new legislation is fit to deal with organised criminality in this context. I commend those suggestions to the committee and to the Parliament.

The committee rightly noted in its report that strengthening the bill will not in itself be enough to resolve the issue of illegal cockle picking or other illegal shellfish harvesting in Scotland. It did, however, suggest that further progress could be made if the Scottish Government continued to work closely with all relevant agencies and industry bodies to develop proposals for tackling issues such as the difficulty in tracing and tracking shellfish and the documentation required to sell it both in the UK and overseas.

Alex Fergusson: Does the member agree that the best way to prevent illegal shellfish, and particularly cockle, fishing is to encourage legal fishing activity? The more that can be done to bring about an open cockle fishery on the Solway, the less likelihood there will be of illegal activity.

Graeme Pearson: I concur with the member’s suggestion. Equally, however, I am sure that he would acknowledge that organised crime will seek profit wherever it can. The amendments that have been suggested are therefore essential.

I hope that by working with the industry and other relevant agencies, including those engaged in money laundering investigations, and by giving the police powers to deal more effectively with illegal cockle fishing, it will be possible to shut down that avenue for criminal gangs to raise money and thereby reduce the potential for the exploitation of foreign workers in that process.

I also hope that, by foiling poachers, we will ensure that there is a sustainable cockle population in the Solway. That could also help with the establishment of a fishery that is run by local fishermen who fish responsibly and that provides local jobs.

The extent of the bill is such that I could not possibly cover it all in my speech. However, on the issue of sea lice, I agree with the comments that Alex Fergusson made earlier. I hope that some cognisance will be taken at stage 2 of the way in which we measure sea lice and deal with the threat that they present.

16:00

Nigel Don (Angus North and Mearns) (SNP): I cannot recall approaching a bill on a subject about which I knew so little, so I start by thanking the committee clerks, the staff of the Scottish Parliament information centre and others who have educated us. I am sure that every other member of the committee started in a better place, but I really did not know much—possibly only one end from t’other—as far as salmon went.

I particularly draw attention to the contribution of our visit to the upper Dee riparian scheme, and I thank Mark Bilsby, the river director. I am also conscious, as are other members, of the enormous contribution that Marine Harvest made to our education. I thank Steve Bracken on the record for that. Members in the chamber who were not involved in those visits can be reassured that the committee learned a great deal from them, and as a result we are in a position to produce a stage 1 report that is, at the very least, well informed.
I want to comment briefly on the points that others have made about the number of emails that we have received. I think that the industry is perhaps still not learning. A document that arrived yesterday has lots of pretty pictures and writing in white on a dark background that is almost impossible to read. In contrast, I commend Alan Wells, whom I think we can commend throughout, for the clarity of his information, which has black writing on white paper and is on two sides of a single piece of paper. I think that that is the way forward. Outside bodies might like to take note.

We picked up, in particular, that there are conflicts across the industries. Fish farms are seen by the angling community as being the providers of lice, and the netsmen are everybody’s enemy because dead fish do not spawn. We need to understand—some members have alluded to this already—that the economic conflicts that are inherent in all of this are inevitable and they must be respected. We have to work with them; we cannot get rid of them.

On the issues of anglers and netsmen, I note that the long-term trend in salmon returning to our waters has been downward. Perhaps it is stabilising, as the convener said, but perhaps it is not, because we will only know afterwards. The data never quite tell us at the time. I therefore commend the catch and release scheme on the River Dee. We were impressed by the work on that.

I also need to note the views of Usan Salmon Fisheries in my constituency. It is concerned about some of the controls on it, and it wants to see a days at sea approach as an alternative to its having to get its nets out at the weekends. We understand that. Also, it likes the idea of management being transferred to the Scottish Government. We looked at that and—I think rightly—we concluded that the Government needs to consider the issues more deeply. I am glad that they will be looked at.

We must not lose sight of the fact that these fishermen work in a business to which they have a proprietary right. However difficult we might find the management of that, we must not lose sight of their rights. I do not think that the Government will do that.

Lastly, I turn to a subject that others do not usually think about. As convener of the Subordinate Legislation Committee, I would like to comment on what we did and the Government’s response to it, because I think that it will be instructive.

Marine Scotland’s responses show that in the first instance there is a matter of clarity. The committee drew the Government’s attention to the status of the code of good practice, and the Government responded with the view that “a clarificatory amendment” will be made and, in addition, it will make an amendment to new section 4A. We have seen the Government respond to concerns about clarity regarding what a code of practice might be.

There were also concerns about the powers that the bill will give. Regulations under section 3(1)

“confer functions on any person in relation to the prescribing of requirements.”

The Subordinate Legislation Committee was naturally concerned about that—the right people should have powers. The Government responded by saying that that will “be adjusted, by way of an amendment at stage 2”, for which I thank it.

There was also some concern about the level of fine. The Parliament should be extremely concerned about that. Levels of taxation should not be open ended, and I suggest that, in principle, levels of fine should not be open ended. The Government has again responded appropriately. It said that

“Further consideration will ... be given”

to the specifying the level of

“a daily or periodic fine.”

Finally, the committee was concerned about procedure. The committee noted that, after discussion and reflection on delegated powers, the Government has decided that the affirmative procedure would be more appropriate, and it will bring forward amendments at stage 2. The detail need not concern us, but I thank the Government for those responses.

I have taken the opportunity to highlight some of the things that the Subordinate Legislation Committee looks at, because I do not think that we highlight them very often.

16:06

Jim Hume (South Scotland) (LD): To say that the progress of the Aquaculture and Fisheries (Scotland) Bill to date has been without controversy would be pushing the truth to some degree.

It has become apparent that the wild fishery sector and the aquaculture sector have differing views on what is best for their different sectors in some locations. For us on the Rural Affairs, Climate Change and Environment Committee, it has been apparent how important the two sectors are for Scotland. Wild fishing in the likes of the Tweed, Dee and Tay brings in a huge amount of income and generates a huge amount of employment, not to mention that wild fishing is the
most popular participant sport in the UK and thus a large attraction for the tourism industry. Throughout Scotland one will find many hotels full due to anglers, who are so important that when a family member of mine looked to have a wedding reception in Kelso, one particular hotel was unavailable as at that time of year the anglers came to fish on the famous junction pool on the Tweed.

Angling is an iconic sporting pastime in Scotland, which Stewart Stevenson mentioned, but aquaculture, too, has an important place in our economy. Although it is located more in the north and west, it nevertheless provides important employment opportunities in communities where there may be less on offer. The Government has recognised the further economic opportunity that aquaculture could provide for Scotland. The Scottish aquaculture industry has an admirable ambition to grow by 32 per cent by 2020, which is supported by the Scottish Government.

That ambition has to be achieved sustainably—I hate to use that word, which is often overused. All stakeholders agreed that we need a clean environment for not just the wild fish and invertebrates but the fish farms that are located in our wild places.

Many people raised the concern of sea lice and the potential of outbreaks from fish farms to wild fish, and, of course, from wild fish to fish farms, although it has to be argued that wild fish are by definition wild and therefore there could be little human intervention in them that would increase lice population.

There are concerns that if fish farms are mismanaged they could be a breeding ground for pests such as sea lice, although representation to the committee stated that the aquaculture industry has a good, clean image, and of course it is in its interest to treat and control any pests that may be present. I believe that that clean image is already being used as a powerful marketing tool by the industry. The recent horsemeat scandal has highlighted the importance of good local food, which farmed Scottish fish has the advantage of being, and the importance of keeping the clean, green image of our wild and farmed fish, not just for the public in Scotland, but for our export market and tourist industry.

Concerns were expressed on both sides, not just about pests such as sea lice but about escapes of farmed fish into the wild. During the committee’s debates on the bill, I highlighted the example of rainbow trout, a non-native species that is farmed in my region. The trout are treated at egg stage to become what are known as triploids; basically, they are made infertile to ensure that if any of them escape they have no chance of creating their own community, which would obviously displace our native fauna.

Triploids do not seem to be widely used in salmon fishing in Scotland, although good research has been carried out on that issue at Stirling. The industry has expressed concern that triploids do not grow as fast as normal fish, but they are still a non-chemical, non-genetic way of ensuring that any farmed fish that escape have no chance of breeding with our native stock. I would appreciate it if the minister, along with the industry and stakeholders, could examine that issue to find out whether there is still scope for using triploid salmon fish to negate results of unintentional escapes and I ask the minister to mention the issue when he sums up.

The bill addresses not only what needs to be done to best protect our environment while we grow the aquaculture industry, but the transparency of district salmon fishery boards. To be honest, I think that the Government has provided scant detail of what it wants to achieve with the boards and when and why it wants to take such measures. I questioned the minister on that very matter at committee; after all, this has been talked about since at least the 1960s with little real change being made. We should note that the good work of many advisory boards in the catchment areas of the Tweed, Nith and Dee has significantly improved riparian habitat and non-native species control and we are now reaping the benefits with increases not just in salmonid species but other aqua fauna. According to the Tweed Foundation’s figures, more than 13,000 salmon alone were rod-caught last year and in the first half of last year returns were 13 per cent above the five-year average.

The Liberal Democrats support the bill at stage 1. We recognise the importance of a sustainable wild and farmed fish industry for economic and environmental reasons and look forward to the bill’s further stages and any amendments that may improve it.

16:12

Richard Lyle (Central Scotland) (SNP): As a member of the Rural Affairs, Climate Change and Environment Committee, I am very pleased to take part in the debate and hope in the time available to cover the essence of the bill.

Committee members carried out fact-finding visits to salmon rivers, wild fisheries hatcheries, coastal netting stations, fresh and seawater fish farms, scientific stations and processing plants and, with the extensive written and oral evidence that it has received, the committee has built up a detailed picture and understanding of both the aquaculture and wild fisheries sectors. Given that
their economic, environmental and social contributions and impacts are of considerable importance to Scotland, legislation is needed to enable them to develop sustainably and to co-exist as harmoniously as possible. Salmon farming and wild fisheries are vital industries for the coastal and inland parts of Scotland.

Climate change might have many implications for aquaculture and fisheries in Scotland. For example, in the case of salmon fisheries, any increase in river temperatures might reduce salmon reproduction. Reductions in summer rainfall will reduce summer flows, which will also increase water temperatures and make it more difficult for salmon to migrate upstream, and increased winter flows might scour the gravels and salmon spawning beds, resulting in the loss of or damage to eggs.

The bill places requirements for farm management agreements and farm management statements on a statutory footing, but I note that a significant majority of Scotland’s fish farms are already operating voluntarily within such a system.

Committee members have heard a range of opinions on the number, causes and effects on the wider environment of escapes from fish farms. Given that such escapes are obviously undesirable for the aquaculture and wild fisheries sectors, it is important for the sectors to work together to limit the number of escapes and their effects.

I note that some fish farms are putting in better nets with finer mesh to make it hard for seals to access them. Many fish farms are deploying acoustic deterrents in a bid to keep seals away from the farms. The culling of seals is not supported by the general public—or by me. Non-lethal alternatives need to be explored to allow seals to co-exist with the aquaculture industry. I welcome the efforts of some parts of the aquaculture industry to pursue alternative measures—in terms of netting and other equipment—that would prevent seals from being able to break through into farm cages. I also welcome the work that is being done at the University of St Andrews to develop an audio device that is as humane as possible for seals and which does not harm other species. I am encouraged that that device has secured investment.

As part of its evidence gathering, the committee learned that few, if any, wellboats are built in Scotland—they are mostly built in Norway. The retrofitting of wellboats may also largely take place in Norway. Like the convener, I encourage the Scottish Government to work towards securing further building and retrofitting of such vessels in Scotland.

The committee has taken evidence on provisions to allow the introduction of a carcass tagging scheme for all net-caught salmon to replace the current voluntary scheme, making it an offence to sell or possess salmon that is not tagged.

I compliment the work of the committee convener over the past months, the work of other committee members with regard to the bill, and especially the work of the clerks and the advice that they have given us. As I mentioned at the beginning of my speech, members visited various areas and fish farms. Unfortunately, due to an eye operation that weekend I was not able to go on those visits. However, I commend the bill to the Parliament.

16:17

Margaret McDougall (West Scotland) (Lab): I speak as a former member of the Rural Affairs, Climate Change and Environment Committee. I was present for most of the bill inquiry, but unfortunately I left before the scrutiny was concluded.

During the inquiry, I took part in a committee visit to Aberdeenshire to the upper Dee riparian scheme to look at salmon fisheries issues and then went on to the Usan Salmon Fisheries in Montrose. I thank the people who were involved in facilitating those visits, because I found them incredibly useful and much more informative on the practical issues that are facing aquaculture fisheries than sitting round a committee table.

Environmentally, we need to promote sustainable fishing and tackle the effects of climate change. While at the upper Dee riparian scheme, we saw proactive attempts to mitigate the effects of climate change such as using tree cover to lower water temperatures to enable salmon spawning, which has already been mentioned. It was hard to believe that while we stood shivering on the banks of the Dee, salmon were under threat of losing their spawning ground if the water temperature increased by another degree. I recommend that the Scottish Government looks at the methods that are being used by the Dee scheme to mitigate climate change as part of its review into wild fisheries.

At Montrose we heard about the challenges that are experienced by the netsmen in keeping to close times because of bad weather and other circumstances. Although adherence with close times is important for conservation and stocking reasons, account must be taken of the operational issues that are faced by netsmen. It was suggested to the committee that current close times should be replaced with a designated days-at-sea allowance. However, I concur with the
committee’s conclusion that that would not be an acceptable solution, due to the difficulties that it would pose. The issue is due to be included in the Scottish Government’s forthcoming review of wild fisheries management, which is a welcome development.

The Aquaculture and Fisheries (Scotland) Bill is designed to make changes to the law on fish farming and shellfish farming, including new requirements for freshwater fishers, changes to the law on sea fishers and shellfish waters and the ability to introduce fixed-penalty notices for certain offences in aquaculture fisheries, to name but a few.

It is vital to ensure that the bill is not only fit for purpose right now but fit for purpose as we move into the future. Since the Aquaculture and Fisheries (Scotland) Act 2007 was passed, progress has been slow and work is still required. I agree with the committee report in stating that it is disappointing that we have needed primary legislation so soon after that act. We must ensure that the new bill is robust, sustainable and fit for purpose. There are still a number of reviews to be carried out, and I ask why they were not all included in the bill.

We need a bill that will promote sustainable aquaculture and wild fisheries, economically and environmentally, in the long term, given how important those industries are to Scotland.

The aquaculture industry is looking to grow by 32 per cent by 2020, which is about 4 per cent each year. In evidence, Steve Bracken, of Marine Harvest, said:

“salmon farming and wild fisheries are both vital industries for the coast and inland parts of Scotland. I am absolutely sure that we can grow and become bigger and better in both areas.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 5 December 2012; c 1466.]

We need to ensure that the bill supports that growth.

Sustainable fishing faces many challenges, not least the threat to fish stocks from predators such as seals. I believe that the committee’s conclusion that seals should be shot to protect fish farm stocks only as a last resort is correct. It is important that non-lethal alternatives such as netting and other equipment such as audio seal scarers should be used, provided that they are as humane as possible and do not harm other species. I am pleased to hear that the minister has informed the Rural Affairs, Climate Change and Environment Committee that work continues to be done to find further options for seal management.

I support the bill at stage 1, but I want it to be more robust so that it not only promotes economic and environmental growth but brings Scotland’s aquaculture and fisheries sector into the 21st century, making the sector sustainable in the long term.

16:22

Graeme Dey (Angus South) (SNP): As Alex Fergusson and Angus MacDonald have said, it would be impossible to cover every aspect of the bill and the stage 1 report in six minutes, so I will confine myself to addressing two aspects, in particular the most contentious one, which is the publication of sea lice data. That topic has been the cause of considerable discussion and will continue to be so. As the minister has confirmed today, the Scottish Government is minded to continue the voluntary approach, accepting a commitment from the SSPO to move to publishing data online, with a time lag, on a 30-area basis.

The committee heard evidence that, in Ireland, there has for some time been access to such information on a farm-by-farm basis, and that it has been made public within a month of monitoring being carried out. I found myself asking why we should not do that in Scotland, especially when—as I understand it—the minister might clarify this later—the data is recorded on that basis and is available to the fish health inspectorate on request. I found the resistance of the SSPO to that level of granularity to be poorly explained. Its input to the debate on the issue did not come close to neutralising the contribution of Douglas Sinclair of SEPA, who said that this is

"one of the few areas in the Scottish environment in which someone can be doing something that can significantly impact on someone else’s interests and there is no public access to what is going on... If someone lives downwind of smoking chimneys on a factory and they want to find out what is in the smoke, they can find out from us—from the published record. Fish farming in Scotland is the one omission. For all sorts of reasons, it ought to be sorted out and the information ought to be published."—[Official Report, Rural Affairs, Climate Change and Environment Committee, 5 December 2012; c 1431.]

However, when Paul Wheelhouse made a case for the industry’s position, he revealed that there was more to it than simple intransigence. He explained that there was substance behind talk of commercial sensitivity and that there is a genuinely held and perhaps justified concern that retail contracts that are placed with firms on multiple farms might be jeopardised if it became public knowledge that one of the locations had a significant sea lice issue.

There is no easy solution to the issue, or one that will satisfy everyone. The committee believes unanimously that greater transparency is required in the aquaculture industry, although we recognise that that could threaten reputational damage for companies and potential difficulty for the marketability of an important food product and
employment in rural areas in an industry that is reckoned to employ, directly or indirectly, up to 6,000 people.

Claudia Beamish: Does the member agree that the possibility of a delay in the publication of the sea lice data would help with regard to the SSPO’s concerns?

Graeme Dey: I do, indeed. The recommendation in our report that the ministerial group on aquaculture look closely at the possibility of data being collated and published with a built-in delay on the basis of a farm management agreement or farm management statement struck us as a reasonable compromise. However, the matter will undoubtedly be returned to if the bill reaches stage 2.

In his response to the committee’s report, the minister defended the 30-areas approach, describing it as striking “an appropriate balance between public reassurance and commercial interests at this time.”

He added that, although he regarded the new set-up as moving things “forward in a balanced and proportionate way,” he would “keep the matter under close review.”

To shed further light on the matter, could he clarify in his closing remarks whether figures reported for the 30 areas would be subject to independent verification?

I turn now to salmon netting and in particular its management. The committee heard of the conflict that can arise between the netting interests and district fisheries boards. We were made aware in evidence of the desire of some to see coastal netting removed from the management of local fisheries and placed under the control of the inshore fisheries team. Further, we heard suggestions for introducing a days-at-sea regime rather than the current weekly close time arrangements. However, as the convener indicated earlier in the debate, the committee was not persuaded that either way was necessarily the correct path to tread.

The obvious question is how in practice a changed set-up could be monitored. In addition, members heard nothing to suggest that the conflict between netsmen and boards is so widespread as to justify the suggested moves. That said, no one doubts the difficulties and, indeed, dangers that netsmen can face in plying their trade, so it is welcome that the Scottish Government will look at the whole issue as part of its review of wild fisheries management.

Like Alex Fergusson and others, I express gratitude to the SPICe team and the committee clerks for the support afforded members in scrutinising the bill and producing the report. As noted on page 1 of the report and as mentioned by other speakers, the process of arriving at conclusions on the bill’s proposals was not helped by the adversarial engagement of some of those holding an interest in the subject matter, who felt it appropriate to launch excessive levels of counterclaim evidence.

The evidence that was gathered in the committee rooms of the Parliament and out in the field furnished members with a balanced and objective knowledge base on which to reach conclusions. However, the committee continued to receive, by way of follow-on from stakeholder sessions, many responses that did not add to the sum of knowledge on the issue and which, in some instances, merely comprised an attempt to discredit alternative viewpoints. In spite of that, the committee produced a stage 1 report that we feel appropriately reflects the situation out there and identifies areas of the bill that could undoubtedly be improved by amendment.

I seek members’ support for the stage 1 report on the Aquaculture and Fisheries (Scotland) Bill and for the broad principles of the bill.

16:28

Jean Urquhart (Highlands and Islands) (Ind): I am pleased to have the opportunity to support the bill’s basic principles at stage 1. Although a lot of my colleagues have identified during the debate issues that require more work or consideration, I think that there is consensus that work can be done to improve the sustainability, accountability and transparency of the aquaculture and wild fisheries sectors. Indeed, the Rural Affairs, Climate Change and Environment Committee’s report on the bill commented that “the current draft of the Bill is very much the starting point, and should the Bill reach Stage 2 it will require amendment in order to make it ... robust”.

There is no doubt that the cabinet secretary and the Government have a tough and delicate task on their hands. Again, the committee’s report reflected the difficulties in finding consensus on the way forward on contentious issues due to current difficulties between the aquaculture and wild fisheries sectors. Although it is not something that can always be addressed by legislation, I am sure that we would all agree that improving the relationships could and should be part of the process.

The importance of the aquaculture and wild fisheries sectors to Scotland’s Highlands and Islands communities must not be underestimated. The popularity of Scottish salmon continues to grow at an exponential rate, with aspirations to
increase sustainable production by 4 to 5 per cent per annum until 2020. Enabling the sectors to continue to grow and to provide jobs and exports in an ecologically sound manner is essential to ensuring the sustainability not only of the sectors but of many rural and remote communities. However, do we know what the increase of 5 per cent per annum until 2020 will look like? Planning applications are already being refused on the basis of proliferation. We need a national plan if we want to see such growth.

Recognising the opportunity for Scotland and realising its potential is the right thing to do. Being sensitive to the natural environment, legislating against abuse by a large industry, always protecting the fantastic wild salmon and its life cycle and believing that quality must not be compromised by quantity should all be Scotland’s trademarks.

Of the issues that the bill seeks to address, I am of the opinion that the presence of sea lice and the strategies used to contain them will be paramount to the bill’s success. I welcome the minister’s announcement of £1 million of funding for scientific research. I believe that that is essential not only to reassure the public but to ensure that we have sustainable growth in fish farming.

In conclusion, I support the bill at stage 1. I look forward to seeing work on the bill continue over the coming weeks and months to create a strong framework for the sector.

The Deputy Presiding Officer (John Scott): We move to closing speeches. I call Jamie McGrigor—you have seven minutes or thereabouts.

16:31

Jamie McGrigor (Highlands and Islands) (Con): I refer members to my fisheries entry in the register of members’ interests.

During my time as an MSP, I have spoken in numerous aquaculture debates and my consistent theme has been the need to see the sustainable co-existence of the aquaculture sector and the wild fisheries sector. That remains my position, and I am very glad to say that it seems also to be the strong view of the committee, whose report—as Claudia Beamish quoted—rightly states:

“As important as this legislation is, perhaps of equal significance for Scotland in the long-term, is improving the current relationship between the wild and farmed fishing sectors”.

On that point, I am encouraged that there seems to be more positive dialogue between Alan Wells of the ASFB and Scott Landsburgh of the SSPO. One cannot blame either of them for supporting their own sector, but the key is surely sensible compromise based on scientific and circumstantial evidence. Both fisheries sectors need to be profitable to help the Scottish economy. As I have said before, a prosperous salmon farming industry will be much better equipped to care for environmental issues than an industry that is hanging on by its fingertips.

In that context, we must remember that the salmon farming industry has been afflicted not only by sea lice but more recently by amoebic gill disease. The £10 million that is being spent on treatment of that new salmon plague is part of the £26 million that is spent annually on fish treatments within the industry. I am disturbed by news that Slice is no longer working as well as it did as a sea lice preventative, but I am encouraged by the cultivation of ballan wrasse for use as a cleaning fish, which acts as a non-chemical agent for the industry.

As a member of the European and External Relations Committee, this morning I visited Scottish Sea Farms, which was a very enlightening and worthwhile experience. Scottish Sea Farms placed emphasis on the need for a national strategy for aquaculture, so I ask the minister to take that on board. The company also talked about the need for a link between production and processors, which does not seem to exist to a great extent at the moment.

As a Highlands and Islands MSP, I am hugely aware that both farmed fish and wild fisheries businesses are crucial. Aquaculture is a very big part of Scotland’s growing food exports, and wild salmon and sea trout fishing attract substantial tourism income to our communities, with spin-offs for hotels and shops.

Having recently spoken to the SSPO, I understand that its ambition is for growth of some 4 per cent per annum. That was confirmed this morning by the Scottish Salmon Company, which said that 4 per cent is on the optimistic side. That is hardly the same as the Scottish Government’s call for a 50 per cent increase in production as soon as possible. I feel that that assertion has caused a great deal of angst among the wild fish interests, who perceive that sudden growth of that nature might have an extremely adverse effect on wild fisheries. A sea loch can only take so much biomass, which is understood well. Will the minister comment on that?

The committee called for improved publication of sea lice data, which was mentioned by Alex Fergusson, Graeme Pearson and Graeme Dey. It saw no reason why new transparency measures should not be based on the Irish model or applied farm by farm. Who would disagree with that level of transparency in principle? However, the SSPO has pointed out to me that the matter is complex. It considers that such a policy could hurt individual
farms that have reached the testing threshold too often. In other words, people and markets could lose confidence in the product of an individual farm, and the SSPO is therefore trying to protect its members.

The SSPO has devised a new sea lice reporting system—which it says is more transparent than any other in the world—which will cover more than 30 areas of Scotland’s west coast and report every quarter. The SSPO compares that with Norway’s system, which tests only nine areas. However, in Norway, the figures for individual farms can be accessed by the public, which is the case in Ireland, too. I have sympathy with the SSPO’s point about individual farmers, but I fail to see why transparency on sea lice burdens should be such a bad thing in Scotland when it is commonplace elsewhere. What is there to hide? According to the SSPO’s principle, a farm that was not burdened by sea lice might find itself tarred with the same brush as one that was burdened by sea lice if it happened to be in the same reporting area. The SSPO’s policy is a double-edged sword. We will see what ensues at stage 2 in the debate on the issue. However, it is important to get the best compromise for all the sectors because, although the past may be important and can be learned from, what is crucial is the future, and the dogma of the past must be put aside.

The committee rightly highlights the undesirable impact of escapes of farmed fish. It is vital to have instant reporting on when and where escapes happen. Whatever the technological advances in sea-cage design, the incredible combined power of wind and water will make some escapes inevitable, so mitigation measures are essential. In that regard, I am glad that the committee praised the good work of Marine Harvest in its training of fish farm workers, which is key, as Claudia Beamish suggested.

The possible establishment of onshore sites is an interesting development that will doubtless catch on, if successful. I press for more research and development on other species—especially halibut, which do not host sea lice and could be farmed more widely in Scotland.

Will the minister explain why there are virtually no salmon farms on the east coast? The SSPO requested that I ask that question.

On wild fisheries, the committee is correct to report that we need more data on why east and north coast rivers have increased runs, but most west coast rivers suffer declines. What has happened to the grilse run on the west coast in the past two years? How do we bring back sea trout fishing to the glory days of the past in places such as Loch Maree and Loch Na Sealga in that outstandingly pretty part of Scotland?

On the subject of district salmon fishery boards, the Conservatives support the principles behind the good governance requirements, but we agree with the committee that some of the smaller boards do not have the resources to cope with all the proposed requirements. However, those smaller boards have important local knowledge, which is a vital component of good management.

There have been good speeches in the debate—Alex Ferguson’s speech warmed the cockles of my heart. I am sure that Lord Foulkes would have had trouble pronouncing illegal cockling, too.

We agree with the committee that the bill is a starting point. We look forward to improving the bill at stage 2 so that it is of genuine benefit to the wild fish and the farmed fish sectors.

16:39

Claire Baker (Mid Scotland and Fife) (Lab):
This has been a wide-ranging debate with many interesting speeches.

I wish the minister all the best in taking forward his first piece of Government legislation. He might get through this afternoon quite comfortably, but stage 2 might be a bit bumpier.

I thank members of the committee for the time that they took to prepare the stage 1 report. They not only considered the proposals in the bill but took the time to consider the broader issues and discuss issues that are outwith the bill’s scope. I know that that involved more than taking evidence in cosy committee rooms. The committee also travelled to salmon rivers, wild fishery hatcheries, coastal netting stations, fish farms and processing plants—we have heard about some of those experiences this afternoon—all in the deepest, darkest Scottish winter. I am sure that that is the kind of team building that companies cannot pay for these days.

The breadth of the issues that have been discussed this afternoon perhaps demonstrated the bill’s limitations. The committee has stressed the need for the legislation to be fit for purpose for many years to come. There are exceptions—the area is complex—but, having introduced legislation as a first step, the Government needs to be careful that subsequent reviews and discussions do not weaken the bill. For example, in her opening speech, Claudia Beamish spoke about the importance of how the bill connects to the marine plan.

In the pre-legislative consultation document that explored the possible content of the bill, the Scottish Government said:

*aquaculture production and salmon and freshwater fisheries are estimated to be worth over £650m ... to
Scotland ... It is important that both sectors—and their interactions—are managed effectively, as part of the wider marine and freshwater environment and to maximise their combined contribution to our aim of sustainable economic growth in Scotland.”

The bill aims to address those issues.

The consultation generated more than 1,000 responses. There is no denying that opinions were strongly divided. It would certainly be difficult to make easy progress on some of the issues that were raised.

However, the Government’s solution to that was to produce a bill that was accompanied by a further document outlining where future action was planned for the matters that were not addressed in the bill—which, coincidentally, also seemed to be the matters that caused the greatest dispute.

Unlike James Isbister, who caught a 6ft ling this week, the Government seems to have cast a line, got plenty of bite but failed to land the big fish.

Although the bill seeks to improve the regulatory framework, it has increasingly been seen as the start of a process, with much work being left to the refreshed ministerial group on aquaculture and a forthcoming review of wild fisheries management.

The committee talks about the need for a “coherent wild fisheries management structure”.

It is a point well made. The minister must be mindful of the need for continuity and coherence.

Many members referred to the tensions between stakeholders and to the sometimes contradictory evidence that was received—a point that was strongly emphasised in the stage 1 report.

Scotland has a growing aquaculture sector. The Scottish Government recognises its importance to the economy. Scottish farmed salmon is viewed as a high-value, high-quality product throughout the world. It is Scotland’s top food export and is marketed in more than 65 countries, with particular growth in the far east. It employs more than 6,000 people often in rural areas, and there is a target of increasing the production of all farmed fish by 50 per cent by 2020.

Alongside that industry is a wild fisheries sector, which is also highly valued in Scotland and throughout the world. One of Scotland’s most iconic images is of a wild salmon leaping up a river. That fish must be protected, as well as pursued, in its native environment.

In its briefing for the debate, the Scottish Wildlife Trust highlighted the fact that there has been a decline in Atlantic salmon in European waters over the past three decades. It identifies the complex reasons—food availability, water temperature changes, pollution, barriers in rivers, overfishing and the effects of aquaculture—and recognises that probably a combination of all of them has contributed to decline.

**Claudia Beamish:** I want to stress something about being a sea trout champion that I did not get time to say in my speech. The serious point is the concern that the sea trout is under even greater threat than the salmon. Jamie McGrigor highlighted that as well. I would like the minister to be aware of that issue.

**Claire Baker:** I thank Claudia Beamish for her intervention.

Although the two sectors need to coexist, an appropriate balance needs to be struck, and there needs to be greater trust and transparency. The level of regulation is crucial. No one wants us to have regulation that would damage an important Scottish industry, but calls have been made for proportionate regulation, in recognition of the fact that across our food chain there is a need—perhaps now more than ever—for transparency and, as my colleague Jayne Baxter highlighted, robust governance.

As many members identified, how we report sea lice is the most contentious issue and, in some ways, it is one that encapsulates the tensions that exist across the sector. It raises issues of proportionate regulation, of transparency, of trust, of consumer confidence and of the importance of a science-led approach. Both sides of the debate make persuasive arguments, of which Graeme Dey gave a good description as he outlined the nature of the debate that has taken place in the committee. I welcome the recent moves by the SSPO to increase its accountability, but I recognise the strong arguments in favour of a more robust reporting system. Although the minister has ruled out a Government amendment on the matter at this stage, the importance that the committee has attached to the issue suggests that we will return to it at stage 2.

In the time that I have left, I will pick up on a few issues that members have highlighted. Graeme Pearson and Alex Fergusson discussed illegal cockle fishing. Thankfully, cases of illegal activity and exploitation in the sector are few and far between, and it is important that we do not allow the activities of a minority to tarnish the reputation of the rest of the sector. I am pleased that the Government has recognised the need to strengthen the legislation in this area. It is important that the Government works with the Scottish police service, the industry and other relevant agencies to ensure that robust further progress is made.

It is interesting that many members have talked about areas that were discussed in the consultation, but which were not included in the
I will touch briefly on the issue of commercially damaging species. In its report, the committee suggested that the Scottish Government should take the opportunity to re-examine the issue and to consider lodging amendments, but at the moment the minister continues to argue that the current proposals are proportionate. I hope that the Scottish Government will reflect on the committee’s comments as the bill moves forward.

Angus MacDonald and Richard Lyle talked about the potential for the bill to contribute to tackling climate change challenges, as well as the challenges that the sector faces. Rob Gibson and Margaret McDougall spoke about the contentious issue of seals and reflected the committee’s support for greater use of alternative predator controls. Jim Hume discussed escapes and promoted a solution; we await the minister’s reply. The committee recognised that escapes from fish farms are undesirable and stressed the importance of all sectors working together to minimise them.

The report also raised concerns about biomass. Last year in the chamber, I highlighted to the minister the concern that the aim of increasing the production of all farmed fish by 50 per cent by the year 2020 could result in a subsequent increase in the use of chemical treatments. I reiterate that point and ask for assurances that the Government is actively looking into the issue. It is important that the regulatory framework that the bill contains is robust enough to ensure that any increases in aquaculture will be suitably managed and regulated.

It has been an interesting debate, in which there has been as much discussion of what is not in the bill as there has been of what is in it. We might be moving towards stage 2, but wider issues need to be addressed before we can be confident that we have an aquaculture and fisheries sector that is fit for the 21st century, and which will meet the needs of the industry and the wider environment. Those will need to be resolved through the bill or through future work by the Parliament.

Paul Wheelhouse: We have had a good and intelligent debate. There is agreement around the chamber in support of the general principles of the bill. I am extremely grateful to members for that and for the constructive approach that everyone has taken in my first debate as a minister leading a bill. The debate has been constructive in allowing consideration of how the bill might be improved, of why we chose not to legislate on some of the issues that we consulted on and of the consultation process. I am grateful for all the contributions and will reflect on them, although it must be recognised that no bill that introduces any change or regulation will ever receive unqualified support from all stakeholders.

Bruce Crawford (Stirling) (SNP): As usual, we heard a very interesting speech from Jamie McGrigor this afternoon. He mentioned that there were no fish farms on the east coast. I recently visited the Cromarty Firth and the Moray Firth, around Avoch. I saw what looked suspiciously like cages for fish farming at both locations. Am I correct in assuming that they are fish farms and that Jamie McGrigor got it wrong?

Paul Wheelhouse: I can confirm that both those areas are on the east coast. Not having visited the sites myself, I cannot confirm whether there are fish farms there, but they are certainly both on the east coast.

Many of the comments that have been made relate to enabling powers that we are seeking through the bill. The detailed work on that continues and the powers will be discussed with stakeholders and will be consulted upon as we develop the relevant regulations and before we bring the secondary legislation to the Parliament—that picks up a point that Tavish Scott made early in the debate.

Other issues will be considered in our review of the management of salmon and freshwater fisheries. Many members highlighted the importance of that exercise, and I recognise and support that view. Further issues are progressing in discussions with the sectors concerned and voluntary arrangements are being made, such as on the issue of sea lice data.

I will try to address some of the specific points that have been raised. The honourable Jamie McGrigor has just been mentioned. He and Claire Baker picked up on the same point about growth targets and the potential difficulties in sustaining a certain level of growth. It is important to highlight the fact that the growth targets are those of the industry. They are based on 4 per cent per annum growth between the 2009 baseline and 2020. Because we are now using a 2011 baseline, it is now a 32 per cent growth that we need to achieve between now and 2020. I recognise that the 50 per cent figure is perhaps a bit out of date. Nevertheless, we are already progressing well from the baseline, and we are making good progress towards the 50 per cent target.

Stewart Stevenson and Graeme Dey raised a point about verification. Stewart Stevenson referred to Label Rouge, and there are other independent accreditors of the quality of farmed salmon and trout. There are industry pressures to improve the health of the salmon that is produced.
in Scotland—it is not purely down to the SSPO or other organisations; there are outside voices that ensure that consumers of quality products take an active interest in the health of the fish.

The data that are published are sense checked by the Scottish Government and Marine Scotland, although our inspectors have accessed individual farm records—Alex Fergusson referred to that—under the regulatory regime. Food Certification International Ltd, which provides the product certification scheme for Label Rouge Scottish salmon, carries out visual inspections of fish for sea lice as part of its inspection checklist. I hope that that addresses some of the concerns that have been expressed about data.

Graeme Pearson, Alex Fergusson and other members raised the very important matter of cockle fishing. I welcome Graeme Pearson’s contribution to the debate, which was based on his experience as a police officer. I am happy to report that we have been working with criminal justice partners, including the Crown Office and Procurator Fiscal Service, on proposals that we will introduce at stage 2 to deal with illegal cockling. That will build on suggestions made by Dumfries and Galloway Constabulary in its evidence.

Turning to the possibility of a legal cockle fishery, which was also raised by Alex Fergusson and Graeme Pearson, my officials are happy to meet any groups or individuals with proposals for a sustainable fishery on the Solway Firth, subject to an appropriate scientific assessment that the stock can be harvested sustainably. Measures to combat illegal cockle fishing, including a multiagency approach, are taking place, but I accept that they could be further improved. Discussions are taking place on that. Those measures, coupled with the possibility of a sustainable legal fishery, will help to prevent a further tragedy like the one at Morecambe Bay, to which a number of members referred.

Claudia Beamish, Angus MacDonald, Richard Lyle and Margaret McDougall all spoke about climate change—another very important subject. When proofing the bill, we will want to ensure that it takes climate change into account. Climate change is a key driver behind our taking powers to amend the annual close time orders, the requirement to monitor management measures and the examination of powers to consent introductions of salmon into rivers.

I add to that the work on the Dee and other rivers to which a number of individuals referred. River restoration funding is being deployed to improve tree cover along river habitats in order to improve the shade for salmon and reduce river temperatures. Sadly, we are getting to the point at which many rivers are becoming particularly difficult places for salmon to survive in.

Claudia Beamish: I seek reassurance that, with its partners, the Scottish Government will look at the possibilities of rolling out that sort of model strategically. I think that the minister highlighted that in his report to the committee.

Paul Wheelhouse: That work is certainly very important. If we are to protect the iconic salmon in Scotland and its valuable role in tourism and developing the economies of some of our rural communities, it is important that we implement whatever measures are necessary to protect in particular the key rivers that sustain salmon activity.

Alex Fergusson, Jayne Baxter and Rob Gibson mentioned issues to do with sea lice data. That is probably the defining issue in the debate for the committee and for the many stakeholders who contributed to that discussion. It is important to differentiate public reporting from regulation and the need for data for compliance and research—those data requirements are handled separately. On public reporting, I recall a starting point of six regions—I think that Angus MacDonald referred to that. The Government is persuaded that the enhancement of 30 areas is proportionate as an incremental response by the fish farming industry, but I reassure members that the new voluntary arrangements that the SSPO is putting in place will be kept under review. We have powers under the Aquaculture and Fisheries (Scotland) Act 2007 to require the publication of data if we need to do that, but I would much rather seek a voluntary approach and avoid the Government being heavy-handed with legislation. It is important that we give the industry time to respond, but I promise members that I will keep the issue under constant review.

Jamie McGrigor: Bruce Crawford was perfectly right to say that there are very few fish farms on the east coast. I think that I said that there are virtually no fish farms there, but I am prepared to accept that I am probably wrong about that. There is also a smolt farm in Loch Shin, which eventually pours into east coast waters. I think that the SSPO’s question was that, if it is being asked to expand, there is the whole coast of Scotland, so why should everything be put on the west coast?

Paul Wheelhouse: The applications are largely industry led, of course; it looks for appropriate locations to develop activities. I will certainly look at the east coast issue, but I think that industry demand drives existing activity and locations.

A number of other points have been raised. I take the point that Rob Gibson made about carcass tagging. That certainly has an important role to play. Some concerns that have been
expressed about it are perhaps manageable, and we can deal with them to ensure that the system is up and running.

Claudia Beamish mentioned sustainable development. I take the point entirely. We know less about aquaculture than, for example, the Scotch whisky sector, which has been more involved in providing information on its social and wider impacts on the economy. I agree with Claudia Beamish that science is critical to the debate. I hope that the ministerial group on aquaculture strand that looks at science, involving the Scottish aquaculture research forum, will play an important role in improving our knowledge.

I hope that Stewart Stevenson sought permission from George Adam to include a mention of the Paisley snail before he came to the chamber. I found that very entertaining.

I reassure Jayne Baxter that the 2007 act gives us the powers to require sea lice data if we need them.

Nigel Don commented on the role of the Subordinate Legislation Committee. I thank him for the role that the Subordinate Legislation Committee has played in preparing for the debate and for its scrutiny of the bill. That has been invaluable.

Jim Hume made a point about the salmon industry and the use of sterile fish to avoid the problem that is presented by escapes. The salmon industry has considered their use but, unfortunately, there are issues to do with their vigour and quality. We will watch developments on that front with interest.

Richard Lyle talked about the seal population and the requirement to shoot seals. Although we do not have definitive data on the number of seals that were, unfortunately, shot under the previous regime, the introduction of licensing, which requires demonstration that non-lethal methods have been used before a licence can be sought, has resulted in a dramatic reduction in the numbers that are shot.

I am near the end of my time, so I thank members for their contributions. I look forward to discussing with the committee the points that have been raised. I invite members to support me by agreeing to the principles of the Aquaculture and Fisheries (Scotland) Bill so that we can move on to detailed scrutiny at stage 2.
1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 14 Schedule 1
- Sections 15 to 43 Schedule 2
- Sections 44 to 57 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Alex Fergusson

1 Before section 1, insert—

<Duty to publish information about fish farms and shellfish farms>

After section 1 of the Aquaculture and Fisheries (Scotland) Act 2007 insert—

“1A Duty to publish information

A person who carries on a business of fish farming or shellfish farming must—

(a) within 1 month of compiling it, publish information relating to the number of parasites counted in the course of a weekly count of parasites at the facility, including—

(i) the date of the count, and

(ii) the number of parasites counted on the fish sampled per facility and the stages of the life-cycle of the parasites counted, those stages for Caligus elongates being mobiles and for lepeophtheirus salmonis being non-gravid mobiles and gravid females, and

(b) ensure that the published information remains accessible to the public for the period of 3 years beginning with the date of publication.”.>

Section 1

Tavish Scott

65 In section 1, page 1, line 17, after <of> insert <coastal marine>

Tavish Scott

66 In section 1, page 1, line 17, leave out <at a fish farm located within a farm management area>

Claudia Beamish

49 In section 1, page 1, leave out lines 19 to 22 and insert—
<(  ) where there is more than one person who carries on the business of fish farming within the farm management area—
   (i) be party to a farm management agreement in relation to the fish farm, and
   (ii) ensure that the fish farm is managed and operated in accordance with the agreement,
(  ) where there is only one person who carries on the business of fish farming within the farm management area—
   (i) prepare and maintain a farm management statement in relation to the fish farm, and
   (ii) ensure that the fish farm is managed and operated in accordance with the statement.>

Paul Wheelhouse
12 In section 1, page 2, leave out lines 2 and 3

Paul Wheelhouse
13 In section 1, page 2, leave out lines 13 and 14

Paul Wheelhouse
14 In section 1, page 2, line 16, leave out <(2)(b)(ii)> and insert <(2)(b)>

Paul Wheelhouse
15 In section 1, page 2, line 16, leave out <(3)(b)(ii)> and insert <(3)(b)>

Jayne Baxter
50 In section 1, page 2, line 24, at end insert—
   <(  ) minimising impacts on wild fish and wild fish populations,>

Claudia Beamish
51 In section 1, page 2, line 24, at end insert—
   <(  ) communication with persons who, so far as the persons who carry on a business of fish farming within the farm management area can reasonably ascertain, have an interest in the marine environment or the freshwater environment in or in the vicinity of the farm management area, including in particular persons who, or who are representative of those who, have an interest in wild fish or nature conservation,>
(ba) arrangements for the publication, within 1 month of compiling it, of information relating to the number of parasites counted in the course of a weekly count of parasites at the farms within the farm management area, including—

(i) the number of parasites, presented where appropriate as an average across the farm management area, counted on the fish sampled and the stages of the life-cycle of the parasites counted, those stages for *Caligus elongates* being mobiles and for *lepeophtheirus salmonis* being non-gravid mobiles and gravid females, and

(ii) the period of 7 days within which the counts were made,

(bb) arrangements to ensure that information published in accordance with arrangements under paragraph (ba) remains accessible to the public for the period of 3 years beginning with the date of publication.

Alex Fergusson

2 In section 1, page 2, line 25, at end insert—

<(  ) arrangements for the publication of the agreement or statement,>

Paul Wheelhouse

16 In section 1, page 2, line 31, leave out <Scottish Salmon Producers’ Organisation> and insert <Code of Good Practice Management Group>

Tavish Scott

67 In section 1, page 3, line 7, leave out from <that> to end of line 14 and insert <a farm management agreement or farm management statement is in place.>

Section 2

Tavish Scott

68 In section 2, page 4, leave out lines 11 and 12

Tavish Scott

69 In section 2, page 4, line 17, leave out from beginning to <farms,> in line 18

Paul Wheelhouse

17 In section 2, page 4, line 18, leave out from <and> to end of line 20

After section 2

Rob Gibson

11 After section 2, insert—
Prohibition on introduction of genetically modified organisms

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 35 (unauthorised introduction of fish into inland waters) insert—

“35A Prohibition on introduction of genetically modified organisms

(1) A person is guilty of an offence who intentionally introduces a genetically modified organism into waters in a farm management area or into inland waters.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In this section—

“farm management area” has the meaning given in section 4A(5) of this Act,


Jayne Baxter

53 After section 2, insert—

Enforcement notices for the protection of wild fish

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) In section 6 (enforcement notices)—

(a) in subsection (2), before paragraph (a) insert—

“(za) the protection of wild salmonids in the vicinity of the fish farm,”,

(b) in subsection (2), in paragraph (a), after “control” insert “, containment”.

Jayne Baxter

54 After section 2, insert—

Power of the Scottish Ministers to direct SEPA to vary or revoke licences

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 6 (enforcement notices) insert—

“6A Power of the Scottish Ministers to direct SEPA to vary or revoke licences

(1) Where the Scottish Ministers—

(a) are satisfied that a person who carries on a business of fish farming does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), and
(b) consider that other enforcement measures available to them are not appropriate in the circumstances of the case,

the Scottish Ministers may direct SEPA to revoke, or vary in such manner as the Scottish Ministers see fit, any licence or authorisation granted or issued by it under any enactment to the person.

(2) The purposes are—

(a) the prevention, control, containment and reduction of parasites,

(b) the containment of fish,

(c) the prevention of escape of fish,

(d) the recovery of escaped fish,

(e) the protection of wild salmonids,

(f) the protection of the marine or freshwater environment.”.

**Section 3**

**Tavish Scott**

70 In section 3, page 4, line 27, leave out <requirements> and insert <standards>

**Tavish Scott**

71 In section 3, page 4, line 29, leave out <requirements> and insert <standards>

**Tavish Scott**

72 In section 3, page 4, line 35, leave out <requirements> and insert <standards>

**Jim Hume**

55 In section 3, page 4, line 36, at end insert—

<(  ) prescribe training requirements for persons who will use such equipment as may be prescribed,>

**Tavish Scott**

73 In section 3, page 5, line 4, leave out <requirements> and insert <standards>

**Tavish Scott**

74 In section 3, page 5, line 8, leave out <requirements> and insert <standards>

**Tavish Scott**

75 In section 3, page 5, line 9, leave out <requirements> and insert <standards>

**Jim Hume**

56 In section 3, page 5, line 10, after <equipment> insert <and training>
In section 3, page 5, line 23, leave out <requirements> and insert <standards>.

In section 3, page 5, leave out line 29.

In section 4, page 6, line 5, leave out from <contains> to end of line 19 and insert <is described as a wellboat in its registration or insurance documentation.>

In section 4, page 6, leave out line 16 and insert—

<(  ) the grading of farmed fish.>

In section 4, page 6, line 19, at end insert <, and “grading”, in relation to farmed fish, means separating and sorting the fish according to size.>

In section 6, page 7, line 30, after <appeal> insert <by way of summary application>

In section 6, page 7, line 32, leave out <7> and insert <14>

In section 7, page 8, line 36, at end insert—

<(  ) Before recovering any expenses under subsection (6), the Scottish Ministers must provide to the person on whom the notice was served a statement of the expenses.>

In section 3, page 5, line 23, leave out <requirements> and insert <standards>.

In section 3, page 5, leave out line 29.

In section 4, page 6, line 5, leave out from <contains> to end of line 19 and insert <is described as a wellboat in its registration or insurance documentation.>

In section 4, page 6, leave out line 16 and insert—

<(  ) the grading of farmed fish.>

In section 4, page 6, line 19, at end insert <, and “grading”, in relation to farmed fish, means separating and sorting the fish according to size.>

In section 6, page 7, line 30, after <appeal> insert <by way of summary application>

In section 6, page 7, line 32, leave out <7> and insert <14>

In section 7, page 8, line 36, at end insert—

<(  ) Before recovering any expenses under subsection (6), the Scottish Ministers must provide to the person on whom the notice was served a statement of the expenses.>

In section 10, page 11, line 21, at end insert—
An order under section 9(1) which includes provision conferring a power such as is mentioned in subsection (3)(b) must provide for—
(a) the nature of the surveillance activities to be undertaken, and
(b) the duration of those activities,
to be agreed with the person who carries on the business of fish farming or shellfish farming at a fish farm or shellfish farm affected by the activities.

Schedule 1

Paul Wheelhouse

22 In schedule 1, page 51, line 12, after <appeal> insert <by way of summary application>

Paul Wheelhouse

23 In schedule 1, page 51, line 27, at end insert—

<( ) An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.>

Section 16

Paul Wheelhouse

24 In section 16, page 16, line 4, after <appeal> insert <by way of summary application>

After section 19

Paul Wheelhouse

25 After section 19, insert—

<Chapter 4
Planning permission for marine fish farms
(1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.
(2) After subsection (2) insert—
“(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—
(a) by order, or
(b) on application to them in accordance with regulations under subsection (8).”.
(3) After subsection (4) insert—
“(4A) Subsection (4B) applies where—
(a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and

(b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.

(4) In subsection (8)—

(a) paragraph (a) is repealed, and

(b) in paragraph (b), for the words “such an application” substitute “an application for planning permission”.

Section 20

Paul Wheelhouse

26 In section 20, page 19, leave out line 21

Paul Wheelhouse

27 In section 20, page 21, line 18, leave out <such>

Paul Wheelhouse

28 In section 20, page 21, line 19, leave out from <as> to end of line 20

Paul Wheelhouse

29 In section 20, page 21, line 20, at end insert—

<(  ) An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (2) below.> 

Section 21

Paul Wheelhouse

30 In section 21, page 22, line 26, at end insert—

<(  ) specify in the notice details of—

(i) where and how such representations or objections (if any are made) may be viewed, and

(ii) how copies of any such representations or objections that are made may be obtained.> 

Paul Wheelhouse

31 In section 21, page 22, line 29, after <specify> insert <in the notice>
Paul Wheelhouse
32 In section 21, page 23, leave out lines 3 to 8

Alex Fergusson
3 In section 21, page 23, line 4, leave out from first <a> to <application> in line 6 and insert <such manner (being reasonably accessible to persons in the district or districts affected by the proposed application) as the applicant sees fit>

Alex Fergusson
4 In section 21, page 23, line 11, leave out from first <a> to <application> in line 12 and insert <such manner (being reasonably accessible to persons in the district or districts affected by the proposed application) as the applicant sees fit>

Paul Wheelhouse
33 In section 21, page 23, line 22, leave out <, (6)>

Alex Fergusson
5 In section 21, page 23, line 35, at end insert—
   <( ) after paragraph 11(2) insert—
   “(2A) The Scottish Ministers may waive the requirement under sub-paragraph (1) above where it appears to them that adequate notice of the proposals has already been given under paragraph 9B.”>

Section 22

Paul Wheelhouse
34 In section 22, page 25, line 26, at end insert—
   <( ) In section 68 (orders and regulations), in subsection (4), after “under” insert “subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under”>

Section 25

Alex Fergusson
6 In section 25, page 27, line 23, at end insert—
   <(6AA)Before imposing requirements under subsection (6A), the Scottish Ministers must consult—
   (a) each district salmon fishery board that would be affected by the proposed requirements,
   (b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.
(6AB) A consultation under subsection (6AA) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.

Alex Fergusson

7 In section 25, page 27, line 28, leave out <4> and insert <3>

Paul Wheelhouse

35 In section 25, page 27, line 29, leave out from <and> to end of line 30

Alex Fergusson

8 In section 25, page 27, line 38, at end insert—

<(3AA)Before imposing requirements under subsection (3A), the Scottish Ministers must consult—

(a) each district salmon fishery board and each proprietor of salmon fisheries that would be affected by the proposed requirements,

(b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.

(3AB) A consultation under subsection (3AA) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.>

Alex Fergusson

9 In section 25, page 28, line 5, leave out <4> and insert <3>

Paul Wheelhouse

36 In section 25, page 28, line 6, leave out from <and> to end of line 7

Alex Fergusson

10 In section 25, page 28, line 19, at end insert—

<( ) after subsection (6) insert—

“(6A) Before imposing requirements under subsection (6)(ba), the Scottish Ministers must consult—

(a) each district salmon fishery board and each proprietor of salmon fisheries that would be affected by the proposed requirements,

(b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.
(6B) A consultation under subsection (6A) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.”.

Section 29

Jim Hume

60 In section 29, page 30, line 38, at end insert—

<( ) in subsection (2), after “5(1)(c),” insert “13, 14,”,>

Jim Hume

61 In section 29, page 30, line 41, after <salmon),> insert <—

( ) in subsection (1), for the words from “does” to the end of the subsection substitute “—

(a) does the act for—

(i) some scientific purpose; or

(ii) the purpose of protecting, improving or developing stocks of fish;

(b) has consulted the district salmon fishery board for that district; and

(c) has obtained the previous permission in writing of the Scottish Ministers.”,

( )>

After section 29

Claudia Beamish

62 After section 29, insert—

<Regulations on right to buy salmon fisheries

Regulations on right to buy salmon fisheries

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 39 insert—

“39A Regulations on right to buy salmon fisheries

(1) In order to secure the results in subsection (2), the Scottish Ministers may by regulations make provision for a scheme to grant to district salmon fishery boards the right to buy salmon fishing rights in any waters in a salmon fishery district other than inland waters.

(2) The results are that—

(a) a district salmon fishery board may register an interest in acquiring salmon fishing rights,
(b) where such an interest in acquiring salmon fishing rights is for the time being registered, the owner of those rights, or a creditor in a standard security with a right to sell the rights, must give notice to the district salmon fishery board of a proposal to sell the rights or any part of them,

(c) the district salmon fishery board has the right to buy the rights to which the proposed sale relates from the owner or, as the case may be, the creditor.

(3) Regulations under subsection (1) may, in particular, make provision for—

(a) classes of salmon fishing rights that are subject to the right to buy,

(b) circumstances in which district salmon fishery boards will have the right to buy such salmon fishing rights,

(c) procedures to be followed by a district salmon fishery board in order to exercise the right,

(d) procedures to be followed by a district salmon fishery board following the purchase of salmon fishing rights.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.”.

Section 33

Paul Wheelhouse

37 In section 33, page 33, line 37, at end insert—

<( ) An application under subsection (2) is to be made by way of summary application.>

After section 43

Paul Wheelhouse

38 After section 43, insert—

<Inshore sea fishing

Contravention of orders prohibiting inshore sea fishing

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—

“(1B) A person commits an offence if—

(a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;

(b) the person is found there at, or about, a time at which the prohibition under the order applies;

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order, and
(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

(2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—

(a) it is proved that—

(i) the accused was found in, or in the immediate vicinity of, the area specified in the order;

(ii) the accused was found there at, or about, a time at which the prohibition under the order applies, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;

(b) sea fish the fishing for which is prohibited by the order.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;

(ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

Paul Wheelhouse 39 After section 43, insert—

<Powers of entry

(1) The Inshore Fishing (Scotland) Act 1984 is amended as follows.

(2) After section 6 insert—
“6A  Power to enter land

(1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.

(2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, and for that purpose may—

(a) open lockfast places;
(b) remove any objects preventing the officer from gaining access to the land;
(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;
(d) require the owner or occupier of the land to allow the officer access to the land.

(3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer’s identity.

(4) A person commits an offence if the person—

(a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
(b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

(6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.

(7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.

(8) A person who commits an offence under subsection (4) above is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;
(b) on conviction on indictment to a fine.

(9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.

(3) After section 10 insert—

“10A  Crown application: Scotland

(1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.

(3) No contravention by the Crown of that section makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown,

(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Schedule 2

Paul Wheelhouse

40 In schedule 2, page 53, line 36, at end insert—

<(  ) A forfeiture application is to be made by way of summary application.>

Section 44

Paul Wheelhouse

41 In section 44, page 40, line 25, at end insert—

< (ab) if any person in Scotland—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the person is guilty of an offence;”.

Paul Wheelhouse

42 In section 44, page 40, line 26, leave out <or (aa)> and insert <, (aa) or (ab)>

Section 47

Paul Wheelhouse

43 In section 47, page 42, line 35, leave out from <after> to end of line 36 and insert <—

( ) the words “each body of water in the district, and” become sub-paragraph

(i) of that paragraph, and

( ) after that sub-paragraph insert—
“(ii) each shellfish water protected area in the district, and”;

After section 48

Paul Wheelhouse

44 After section 48, insert—

<Contravention of regulated fishery orders

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) In section 3 (effect of grant of right of regulating a fishery)—

(a) after subsection (4) insert—

“(4A) Subsection (4B) applies where an order under section 1 of this Act—

(a) confers a right of regulating a fishery for any specified description of shellfish, and

(b) imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery or any part of it.

(4B) A person commits an offence if—

(a) the person is found within the limits of, or in the immediate vicinity of, the regulated fishery,

(b) the person is found there at, or about, a time at which the restrictions imposed or regulations made by the order apply,

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or regulations, and

(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to dredge, fish for and take shellfish in contravention of the restrictions or regulations.

(4C) A person who commits an offence under subsection (4B) is liable on summary conviction to a fine not exceeding £50,000.”,

(b) in subsection (5), after “subsection (3)” insert “or (4B)”, and

(c) in subsection (6), for “Subsection (1) of this section” substitute “This section”.

(3) After section 3 insert—

“3A Contravention of regulated fishery orders: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 3(3) of this Act involving dredging, fishing for and taking shellfish in contravention of restrictions imposed or regulations made by—

(a) an order under section 1 of this Act, or

(b) the grantee of such an order.

(2) It is to be presumed that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations if—
(a) it is proved that—
   (i) the accused was found within the limits of, or in the immediate vicinity of, the regulated fishery to which the order relates,
   (ii) the accused was found there at, or about, a time at which the restrictions or regulations apply, and
   (iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the order,

(b) shellfish the dredging, fishing for and taking of which is prohibited by the restrictions or regulations.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence within the limits of, or in the vicinity of, the regulated fishery to which the order relates was for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or requirements, or

(b) where the accused was found in possession—
   (i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose,
   (ii) of shellfish mentioned in paragraph (b) of that subsection, the shellfish were caught or taken in contravention of the restrictions or requirements.”.>

Paul Wheelhouse

45 After section 48, insert—

<Enforcement of orders: powers of entry

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) After section 4C insert—

“4CA Power to enter land

(1) For the purposes of exercising the powers conferred by sections 4A to 4C, and of enforcing the restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may at any time enter land (including the foreshore) other than a dwelling house, and for that purpose may—

(a) open lockfast places,
(b) remove any objects preventing the officer from gaining access to the land,
(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object,
(d) require the owner or occupier of the land to allow the officer access to the land.

(2) A British sea-fishery officer may—
(a) exercise the power of entry under subsection (1) on foot or in a vehicle,
(b) when exercising that power, take with the officer—
   (i) such persons as appear to the officer to be necessary,
   (ii) any equipment or material.

(3) The power of entry under subsection (1)—
(a) may not be exercised in relation to land in respect of which section 4B confers a power of entry, and
(b) is without prejudice to the power of entry conferred by that section.

(4) A British sea-fishery officer who proposes to exercise the power of entry conferred by subsection (1) must, if so required, produce evidence of the officer’s identity.”.

(3) In section 4D—
(a) in subsection (1)—
   (i) for the words “or 4B(3) or (12)” substitute “, 4B(3) or (12) or 4CA(2)(b)”,
   (ii) for the words “or 4C” substitute “, 4C or 4CA”,
(b) in subsection (2)(a), for the words “or 4B” substitute “, 4B or 4CA”,
(c) after subsection (2) insert—
   “(2A) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (2) relating to—
   (a) a failure to comply with a requirement imposed under a power conferred by section 4CA,
   (b) obstructing a British sea-fishery officer in the exercise of such a power.
   (2B) Subsection (2A) above is without prejudice to any power of arrest conferred by law apart from that subsection.”.

(4) In the title to section 4D, for “4C” substitute “4CA”.

(5) After section 24 insert—

“24A Crown application: Scotland
(1) Section 4CA binds the Crown and applies in relation to Crown land as it applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.
(3) No contravention by the Crown of section 4D(2) in respect of a failure to comply with a requirement under a power conferred by section 4CA makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown,

(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Section 50

Tavish Scott
78 In section 50, page 44, line 6, leave out <functions> and insert <services>

Tavish Scott
79 In section 50, page 44, line 8, leave out <functions> and insert <services>

Tavish Scott
80 In section 50, page 44, line 9, leave out <functions> and insert <services>

Tavish Scott
81 In section 50, page 44, line 13, leave out <functions> and insert <services>

Tavish Scott
82 In section 50, page 44, line 16, at end insert—

<( ) for specifying the services for which charges may be imposed,>

Tavish Scott
83 In section 50, page 44, line 21, leave out <functions> and insert <services>

Tavish Scott
84 In section 50, page 44, line 30, leave out <function> and insert <service>

Tavish Scott
85 In section 50, page 44, line 33, leave out <function> and insert <service>
Tavish Scott

86 In section 50, page 44, line 36, leave out <such> and insert—

<(a) representatives of the fish farm and shellfish farm industry,
(b) persons on whom charges are likely to be imposed, or representatives of such persons,
(c) persons who, so far as the Scottish Ministers can reasonably ascertain, are also providers of the services for which charges may be imposed, or representatives of such persons,
(d) such other>.

Tavish Scott

87 In section 50, page 44, line 38, leave out <functions> and insert <services>

Tavish Scott

88 In section 50, page 45, line 4, leave out <functions> and insert <services>

Section 51

Tavish Scott

64 In section 51, page 46, line 34, at end insert—

<( ) After section 31 (withdrawal of fixed penalty notice or expiry of period for paying) insert—

“31A Reports on fixed penalty notices

(1) The Scottish Ministers must prepare and publish a report on fixed penalty notices as soon as practicable after the end of each reporting period.

(2) A report under subsection (1) must include—

(a) the number of fixed penalty notices issued in the reporting period,
(b) the offences for which those fixed penalty notices were issued.

(3) In this section, “reporting period” means the period of 3 months—

(a) in the case of the first report, beginning on the day on which section 51 of the Aquaculture and Fisheries (Scotland) Act 2013 comes into force,
(b) in the case of a subsequent report, the period beginning on the day after the end of the preceding reporting period.”.>

Section 52

Paul Wheelhouse

46 In section 52, page 47, line 9, leave out <An> and insert <The following orders and regulations are subject to the affirmative procedure—

(a) regulations under section 50,
(b) an>
Paul Wheelhouse
47 In section 52, page 47, line 10, leave out <is subject to the affirmative procedure>

Paul Wheelhouse
48 In section 52, page 47, line 11, leave out <any>
1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Duty to publish information on parasites**
1, 52

**Fish farm management agreements and statements**
65, 66, 49, 12, 13, 14, 15, 50, 51, 2, 16, 67

**Obtaining samples from fish farms**
68, 69, 17

**Prohibition on introduction of genetically modified organisms**
11

**Fish farms: enforcement notices and revocation of licences**
53, 54

**Technical requirements for equipment used in fish farming**
70, 71, 72, 55, 73, 74, 75, 56, 76, 18

**Wellboats: definition and enforcement notices**
77, 19, 20, 58

*Notes on amendments in this group*
Amendment 77 pre-empts amendment 19

**Appeals and applications: procedure**
21, 57, 22, 23, 24, 37, 40

**Commercially damaging species: surveillance**
59

**Marine fish farms: planning**
25
District salmon fishery boards: governance
26, 27, 28, 29

Applications for orders and regulations under the 2003 Act
30, 31, 32, 3, 4, 33, 5

Notes on amendments in this group
Amendment 32 pre-empts amendment 3

Technical and procedural
34, 43, 46, 47, 48

Monitoring and evaluating the effects of orders
6, 7, 35, 8, 9, 36, 10

Offences exempted by permission or consent
60, 61

Regulations on right to buy salmon fisheries
62

Offences and powers of entry under fisheries legislation
38, 39, 41, 42, 44, 45

Power to charge in connection with fisheries functions
78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

Report on fixed penalty notices
64
Present:
Jayne Baxter
Claudia Beamish
Graeme Dey (Deputy Convener)
Nigel Don
Rob Gibson (Convener)
Jim Hume
Richard Lyle
Angus MacDonald
Jamie McGrigor (Committee Substitute)

Also present: Paul Wheelhouse, Minister for Environment and Climate Change and Tavish Scott.

Apologies were received from Alex Fergusson.

Aquaculture and Fisheries (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 12, 13, 14, 15, 16 and 17.

The following amendments were disagreed to (by division)—

1 (For 2, Against 7, Abstentions 0)
65 (For 4, Against 5, Abstentions 0)
66 (For 4, Against 5, Abstentions 0)
49 (For 4, Against 5, Abstentions 0)
50 (For 3, Against 5, Abstentions 1)
51 (For 3, Against 5, Abstentions 1)
52 (For 4, Against 5, Abstentions 0)
2 (For 4, Against 5, Abstentions 0)
67 (For 2, Against 7, Abstentions 0)
68 (For 1, Against 8, Abstentions 0)
69 (For 1, Against 8, Abstentions 0)
11 (For 2, Against 7, Abstentions 0).

The following provisions were agreed to as amended: sections 1 and 2.

The Committee ended consideration of the Bill for the day amendment 11 having been disposed of.
Scottish Parliament
Rural Affairs, Climate Change and Environment Committee
Wednesday 20 March 2013

[The Convener opened the meeting at 09:30]

Aquaculture and Fisheries (Scotland) Bill: Stage 2

The Convener (Rob Gibson): Welcome to the 11th meeting in 2013 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off mobile phones and BlackBerrys, as leaving them in flight mode or on silent will affect the broadcasting system.

We have received apologies from Alex Fergusson, who is representing the Parliament in Malawi today. We welcome as his substitute Jamie McGrigor. Jamie, do you have any interests to declare?

Jamie McGrigor (Highlands and Islands) (Con): I have no interests to declare other than those that are recorded in my entry in the register of members' interests.

The Convener: We also welcome Tavish Scott, who is attending the meeting for stage 2 of the bill.

Under agenda item 1, we are starting stage 2 consideration of the Aquaculture and Fisheries (Scotland) Bill. I welcome the Minister for Environment and Climate Change, Paul Wheelhouse, who is the member in charge of the bill. I also welcome the officials accompanying the minister, whom he can perhaps introduce.

The Minister for Environment and Climate Change (Paul Wheelhouse): I am accompanied by four officials: Lindsay Anderson, who is here from the Scottish Government legal directorate to advise on legal aspects of the bill; David McLeish, who has been involved in the drafting of the bill; Alastair Mitchell, who is one of the lead officials on the aquaculture side of things; and Norman MacLeod, who can help us with group 10, on planning matters.

The Convener: We also welcome Tavish Scott, who is attending the meeting for stage 2 of the bill.

Under agenda item 1, we are starting stage 2 consideration of the Aquaculture and Fisheries (Scotland) Bill. I welcome the Minister for Environment and Climate Change, Paul Wheelhouse, who is the member in charge of the bill. I also welcome the officials accompanying the minister, whom he can perhaps introduce.

The Minister for Environment and Climate Change (Paul Wheelhouse): I am accompanied by four officials: Lindsay Anderson, who is here from the Scottish Government legal directorate to advise on legal aspects of the bill; David McLeish, who has been involved in the drafting of the bill; Alastair Mitchell, who is one of the lead officials on the aquaculture side of things; and Norman MacLeod, who can help us with group 10, on planning matters.

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The Convener: I remind everyone that they should have a copy of the bill as introduced, the marshalled list of amendments that was published on Monday and the groupings of amendments, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate to me by catching my attention in the usual way. If the minister has not already spoken in the group, I will invite him to contribute to the debate before I move to the winding-up speech. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press the amendment to a vote or to withdraw it. If the member wishes to press ahead, I will put the question on the amendment. If a member wishes to withdraw an amendment after it has been moved, I will check whether any committee member objects to the amendment being withdrawn. If any member objects, the amendment will not be withdrawn and the committee will move immediately to a vote on the amendment.

Any member who does not want to move an amendment when called to do so may say, “Not moved.” Please note that any other MSP who is present can move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

We have agreed that we will not go beyond the end of part 1 of the bill today. If we do not get that far, we will stop at an appropriate point and pick up from where we left off next week. I thank the minister for introducing his officials. Let us move straight to the first group.

Before section 1

The Convener: The first group is on a duty to publish information on parasites. Amendment 1, in the name of Alex Fergusson, is grouped with amendment 52. I ask Jamie McGrigor to speak to and move amendment 1, on Alex Fergusson's behalf, and to speak to the other amendment in the group.

Jamie McGrigor: I am delighted to be able to speak to and move amendment 1 on behalf of Alex Fergusson, especially as aquaculture is so important to my region, as indeed is wild salmon and sea trout fishing. Over the years in the Parliament, I have always tried to stress the fact that we need to have both in sustainable co-
existence. In order to have that, it is important that we have available as much open scientific data as possible.

Given the written and oral evidence that the committee received, it stated in its stage 1 report that it is keen to ensure that farm-by-farm data on sea lice is available to the scientific and academic communities. The industry is hopefully heading towards a 50 per cent increase in production over the next decade or so, and that increase surely demands careful scientific monitoring given the environmental sensitivities that surround it. Both the industry and the minister have said that such data is already available for research purposes, but the Loch Linhe report by Marine Scotland science states at least three times that major assumptions had to be made because there was no access to farm-by-farm data.

Amendment 1 would put the industry in Scotland on the same footing as the industry in Norway, where farm-by-farm data is available on request. The data is held by the Norwegian equivalent of the Food Standards Agency and it is published on an area basis, but it is available on a farm-by-farm basis. We have looked at various ways to replicate that, but they would all involve the data being held by a Government agency and therefore being subject to freedom of information legislation. We concluded that the only way in which to ensure that the environmental impacts of the expansion of the industry are properly and effectively monitored is to publish the weekly data—which is collected anyway and would just need to be published—relating to sea lice. That data is already gathered and collated, with a permitted delay of up to one month from the date of collection.

Let us look at what happens in other countries. In Norway, as I said, data is collected on a farm-by-farm basis and published on an area basis, with site data being available on request. In Ireland, farm-by-farm data is collected 14 times a year and published every month. In Chile, Multiexport Foods chairman José Ramón Gutiérrez has said that sea lice levels in Chile are rising steadily in line with the increasing volume of farmed fish. Site data is published by Chile’s national service for fisheries and aquaculture.

At stage 1, the publication of farm-level data was supported by a wide range of stakeholders including the Scottish Environment Protection Agency, Highland Council, wild fisheries organisations, the Scottish Wildlife Trust and the UK Environmental Law Association. In addition, during the consultation on the bill, farm-level publication of sea lice data was supported by all councils that deal with aquaculture.

I say to the minister that the Scottish Government should stand for transparency. In my view and the view of many others, anything that is bound up with secrecy is likely to be detrimental to having an open playing field in which all the evidence is available. Therefore, if the Scottish Government wants transparency, please let the fish farm industry have it.

I move amendment 1.

Claudia Beamish (South Scotland) (Lab): Good morning to everybody—committee members, the minister, his officials and the public.

I have lodged an alternative amendment on the publication of sea lice data. On the question why such an amendment is needed, there was a great deal of discussion at stage 1 about the appropriate resolution for the publication of sea lice data. The committee stated in its stage 1 report that there might be publication of sea lice data at the farm management area level, which is different from the suggestion that has been made on behalf of Alex Fergusson by my colleague Jamie McGrigor, through amendment 1.

From my understanding of the situation, taking into account as best I can the different interests concerned, I believe that what amendment 52 proposes is a reasonable and balanced way of proceeding on the issue of sea lice data. I acknowledge that it is a step further than that proposed by the Scottish Salmon Producers Organisation. However, publication of such data would allow the industry to demonstrate its management response and performance in relation to sea lice at a resolution that would be relevant to the management unit of co-ordinated sea lice treatment, which is the farm management area.

Technically, under the Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, fish farms are already required to maintain a record of the number of parasites in weekly parasite counts. However, there is no current requirement to publish such data. The Aquaculture and Fisheries (Scotland) Act 2007 should therefore be amended to require publication of parasite counts on a weekly basis averaged over the farm management area. That should be consistent with the requirements of paragraph 2 of schedule 1 to the record-keeping order. That data should remain for inspection and not be removed at the next reporting period. That point relates to a major failing, in my perception, of the current system that is operated by the SSPO, under which data is available only for three months, after which it cannot be accessed, even on request.

In my view, the arrangements in amendment 52 would, like amendment 1, aid transparency, but they would do so through a compromise that would take into account all the different interests. They would make information available for research purposes in a more accessible way,
which is extremely important, and they would contribute to sustainable marine development in the context of the target to increase fish farming production by 50 per cent by 2020.

On the farm management area definition, the Scottish Wildlife Trust made the point to me that it would have to be done on an ecological basis for it to work. I appreciate that that is not part of amendment 52, but I want to highlight that point in this context.

**The Convener:** No other member wishes to take part in the debate on the amendment. Do you wish to respond to Claudia Beamish, minister?

**Paul Wheelhouse:** I do. I acknowledge the strength of feeling in the committee—and, indeed, across the chamber during the stage 1 debate—about sea lice data reporting, and I recognise the motivation behind amendments 1 and 52. I will try to address the points that Jamie McGrigor and Claudia Beamish raised in that regard.

As I said during the stage 1 debate, it is important to contextualise the debate on the public reporting of sea lice data in a way that reflects its primary purpose, which is to reassure the public that fish farms are environmentally sustainable in the wider marine environment. Such reporting is not, as some might wish, a means by which to judge regulatory compliance by the salmon farming industry or individual farms. We have a thorough regulatory system for that, which is overseen by the fish health inspectorate, SEPA and others, and a robust regime of controls and checks, which the bill will enhance, in my view.

At stage 1, I referred to the SSPO’s proposal for an increase in the reporting of sea lice data from reports for the current six areas to a considerably enhanced 30-area reporting level for public consumption, based on reporting against recognised wild fish catchments, which reflects to some degree Claudia Beamish’s point about understanding the ecological impact of salmon farming. That proposal has been enhanced by a recent commitment by the SSPO to provide Marine Scotland science with access to sea lice information at farm management area level to support defined research projects.

**09:45**

Jamie McGrigor, on behalf of Alex Fergusson, raised the issue of the availability of farm-by-farm data. The Loch Linnhe report was produced at a particular point in time and the data issue has since been resolved. The information is now available at a farm-by-farm level, certainly to fish health inspectors and others. It is not published, of course, which is perhaps the point that most concerns Mr McGrigor and Mr Fergusson.

As I understand it, the new voluntary arrangement for public sea lice data reporting that the SSPO has proposed will include an annual report. For the first time, that allows the prospect of tie-up between farm sea lice data and wild fish catch and efforts statistics, to allow thinking on any impact from fish farming to be developed. The industry has rightly pointed to the complexity of data and the commercial risk if that data is misinterpreted or taken out of context. It believes that some might do that deliberately to suit their own agendas. The industry also advocates a regime that focuses on the environmental impact of its work in the wider marine environment, arguing that work on the farms is more a matter for the industry and the regulators directly.

On balance, I think that the industry has come a long way. I am therefore persuaded that its voluntary public reporting package is sufficient, offering a balanced and proportionate step forward to allow us to endorse its use in parallel with our on-going regulatory management of the industry.

That is the broader context in which the amendments should be considered. However, I continue to reassure members—in the committee and more widely throughout the Parliament—that we will keep the issue under review through the ministerial group for sustainable aquaculture, which includes wild fish interests in its membership. I will not shy away from using existing powers in the 2007 act to legislate if it appears that that voluntary arrangement is falling short.

I commit today to reviewing the success or otherwise of that arrangement within the current session of Parliament. I believe that the point that we have reached addresses many of the concerns that were expressed during the stage 1 debate. I encourage all sides now to work together in a spirit of collaboration to manage our marine environment. I urge the committee to resist the amendments.

**The Convener:** Graeme Dey has a question for the minister, which I am happy to allow. Jamie McGrigor will have his chance to come back in soon.

**Graeme Dey (Angus South) (SNP):** Minister, are you saying that, while data will be published for six areas, in addition information will be provided to Marine Scotland for 76 farm management areas for scientific assessment purposes?

**Paul Wheelhouse:** My understanding is that we are publishing for 30 areas rather than six and that the SSPO will provide information at farm management area level to Marine Scotland science for the purposes of scientific research.
That will not be published but it will be available for scientific use.

Jamie McGrigor: I listened to what the minister had to say. I am sure that he has thought it through carefully, but my point—and, I think, Claudia Beamish’s, too—is this: why not publish these things? If, as you say, the figures in the Loch Linnhe report were eventually made available on a farm-by-farm basis, what has the industry got against publishing the figures? They are published in Norway, Ireland and Chile, all of which have big aquaculture industries. All that one is asking is for Scotland to be put on the same basis as those other countries. I want to put it on the record that I am not quite au fait with the minister’s reasons for not doing that.

Claudia Beamish’s amendment does not go quite as far as asking for farm-by-farm data but asks for clear publication on an area basis, with which I would also agree. If the data has already been collected and collated, I cannot see any reason why it cannot be published.

I press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 1 disagreed to.

Section 1—Fish farm management agreements and statements

The Convener: Amendment 65, in the name of Tavish Scott, is grouped with amendments 66, 49, 12 to 15, 50, 51, 2, 16 and 67.

Tavish Scott (Shetland Islands) (LD): I thank the clerks and the chamber desk team for their ability to turn my meandering thoughts into appropriate amendments.

As the convener knows well, the fish farming industry exists in parts of Scotland that would otherwise struggle to provide employment. By lodging my series of amendments, I seek to ensure that this competitive industry succeeds in the future, which I know the minister and the Government wish to happen for the very reason that Claudia Beamish mentioned.

I accept the point that Jamie McGrigor and other committee members have made with regard to the wild fish lobby. The lobby does not operate in my part of the world, but I accept that the convener and other members, including Mr McGrigor, face a serious issue in that respect in their areas of Scotland, and the committee and the Government must deal with it. At times, I wonder if Kofi Annan would be an appropriate person to call on in that regard.

On the specifics of this group of amendments, the bill amends the 2007 act to make compulsory fish farm management agreements or statements, which set out management requirements on each fish farm that cover fish health management, the management of parasites, the movement of live fish on and off farms, the harvesting of fish and the fallowing of farms after harvesting. In addition to those responsibilities, Government inspectors can enforce conditions in all those areas. My concern about the bill as it is currently drafted is that the Government will be involved in the day-to-day operations of fish farms, and I genuinely do not believe that that is what the minister—never mind Marine Scotland—wants.

Fish farm management agreements and statements are plans that cover a rolling two-year period. They will roll on in the normal course of business, but things change—as I am sure anyone, and any committee member, who is involved in the industry will know—as husbandry matters change. The course of events in the natural environment means that, for example, a farmer may need additional supplies or medicines or a particular change in treatment, or the weather may intervene. That is as true for the fish farming industry as it is for any food production system that involves the natural environment.

I will give an example from my constituency. If the system was too prescriptive, it would affect a fish farm in Unst that depends on supplies from Aberdeen, which involves not just a 12-hour overnight journey but two further hours of travel involving two ferries across Shetland. That is one significant example, but I am sure that similar distances are involved in the convener’s constituency.

I therefore cannot conceive that the Government wishes to have a system that means that all such business decisions have to be referred to Marine Scotland. I am sure that the minister appreciates the potential that would exist for FOI requests and parliamentary questions—heck, I would lodge a topical question every week on such an issue, although the minister will probably be relieved to
know that I have never had one selected yet, so he is probably quite safe on that front.

The potential for members to question and scrutinise the activities on fish farms would be considerable indeed, and it would put an enormous—and quite unfair—pressure on the minister and on future ministers, as well as on Marine Scotland. Amendments 65 to 67 address the unintended consequences of section 1. Amendment 65 simply relates to wording and ensures that farm management areas cover the coast, which I hope was the intention in drafting the bill. Amendments 66 and 67 seek to ensure that the minister and Marine Scotland do not end up being responsible for the day-to-day operations of every fish farm around the coast of Scotland.

I move amendment 65.

Claudia Beamish: Amendment 49 introduces a requirement to be a party to a fish farm management agreement. Stakeholders and the committee are clear that the policy intention is that a farm management agreement should be in place where more than one company is operating and that there should be a farm management statement where there is only one operator.

However, the Association of Salmon Fishery Boards has expressed concern that the bill would allow a farm management statement to be used if operators failed to reach an agreement. I understand that that scenario was confirmed by the minister's response to the committee's stage 1 report. That could allow an area to be managed in a sub-optimal way and could compromise the principle of synchronisation of stocking, fallowing and treatment, which is beneficial to the industry and to wild fishery managers. Indeed, it is understood that that situation already applies in at least one farm management area in the Western Isles, where two operators use markedly different fallowing periods during production cycles.

The scenario can be remedied by ensuring that, when there is more than one operator in a farm management area, the operators are obliged to become parties to a single farm management agreement. I propose amending the bill so that a fish farmer must be a party to a farm management agreement, unless there is only one fish farm operator in the farm management area. It should not be possible to revert to a farm management statement if two or more operators in a farm management area fail to reach an agreement.

Paul Wheelhouse: I strongly endorse the desire that Tavish Scott expressed for ministers, the Government and Marine Scotland to avoid micromanaging a commercial industry such as aquaculture. He set out very well some of the challenges that that would present for ministers and Marine Scotland. It is certainly not the Government's desire to get involved in the day-to-day micromanagement of the sector—far from it.

I welcome the discussion about section 1, as all the provisions relating to fish farm management are fundamental to the bill's wider purpose and to ensuring that we have a regulatory regime that is appropriate, proportionate and complementary to the principles of sustainable growth. Tavish Scott has suggested that there are weaknesses in our intention to work within the framework of the code of good practice-designated geographical areas, but I disagree with that view. Farm management statements and agreements are best considered in the context of the code.

I understand the points that Claudia Beamish made about the desire to ensure that only farm management agreements are in place, other than in the obvious case of only one company operating in an area. Although that might be desirable, we would all accept that it is not always possible in reality, which is not always the consequence of a lack of determination on any party's behalf.

In some scenarios, amendment 49 would place a potentially unreasonable burden on an operator to comply with the other companies in its area—for example, in the scenario of different production cycles that Claudia Beamish described. When there are different scales of activity there may be dispute about how best to resolve the issue. I have talked to the committee about the role of mediation in trying to resolve differences within areas, but we must allow for the possibility of it being impossible to reach such a conclusion.

The Scottish Salmon Producers Organisation highlighted its concern about the reference to the code of good practice in proposed new section 4A of the 2007 act. It did not consider that compliance with statutory FMAs should be measured by reference to a non-statutory code of good practice. On reflection, I agree. I also agree with the Subordinate Legislation Committee's point that the bill appears to delegate to the SSPO and the code's authors the function of setting out good practice standards that fish farmers must apply. As a consequence, it is necessary to make amendments 12 and 13 and consequential amendments 14 and 15.

10:00

Jaye Baxter has suggested that we widen the statutory content of farm management agreements and statements to include measures to minimise impacts on wild fish and their populations. I strongly sympathise with the desire to support wild fisheries and, to pick up Tavish Scott's point about some committee members' constituencies, that is an important dimension. The bill's provisions are
balanced and proportionate in minimising the potential impact on wild fish. It is difficult to envisage what additional practical measures could be reasonably undertaken as a result of amendment 50.

Claudia Beamish has suggested that, as part of the development of FMAs and FMSs, we should make it a requirement to communicate with those with an interest in the marine environment in and around the farm management area. The code of good practice encourages close communication with all key stakeholders, and I consider that to be the appropriate framework in which communication should take place. Making communication a statutory requirement would make it increasingly difficult to ensure that all those with an interest have been appropriately consulted or that they would acknowledge that to be the case through the ministerial group on sustainable aquaculture.

The statutory publication of FMAs and FMSs, as suggested by Alex Fergusson through Jamie McGrigor, would be a disproportionate approach and would carry a significant commercial risk were the information to be taken out of context or misinterpreted. It would also impose an unjustified burden. Moreover, it could be a disincentive to operators who include substantial detail in existing agreements, who might become concerned that their positive approach could be presented out of context by A N Other.

I will address a point that Jamie McGrigor made in relation to the previous group of amendments. The bill rightly reflects more generally the fact that FMAs and FMSs are operationally and commercially sensitive and are therefore primarily matters for farmers. I am aware of some FMAs that are shared with local fisheries interests. I commend that approach, when it is possible.

Amendment 16 corrects a factual inaccuracy in the bill, which I have acknowledged previously, in relation to the ownership of the code of good practice.

Tavish Scott appears to support some stakeholder views that there is no correlation between the detailed requirements in an FMA or FMS and the need to make an informed assessment about whether operators are delivering, which may require taking samples, for example. Needless to say, I disagree.

I invite the committee to resist amendments 65, 66, 49, 50, 51, 2 and 67 and to agree to amendments 12 to 16.

Jayne Baxter (Mid Scotland and Fife) (Lab): Good morning. There is a general acceptance that aquaculture development impacts on wild fish in some areas and circumstances. Recent attention has shifted from asking whether there is an impact to considering the extent and significance of the known impacts. Amendment 50 is designed to ensure that impacts on wild fisheries are minimised and adequately considered by the industry when compiling farm management agreements and statements.

Jamie McGrigor: Quite simply, amendment 2 would require all farm management agreements and statements to be published, to increase the openness and transparency that the publication of sea lice data brings about. It would add to the publication of sea lice data by setting the context behind sea lice management strategies.

Alongside publication of sea lice figures, the publication of farm management agreements and statements would show whether a management strategy was working. If a farm were to publish sea lice data and its agreement or statement together, that would show the industry, the public and environmental bodies what is being done to fix any problems that exist in a farm or an area.

Tavish Scott: I absolutely take the minister’s point and genuinely believe him, not least from a practical point of view, when he says that he and other ministers do not want to micromanage the industry. However, that places an onus on the Government to set out how it will avoid doing that.

I appreciate that we have a short debate today, that we are considering amendments to a bill and that we do not have time to go into the detail—heaven help us were we so to do. However, once legislation is passed, it is on the statute book and, in the absence of any other way of addressing what I think are genuinely unintended consequences, there are concerns that the Government will be hauled into day-to-day management. The industry has expressed those concerns privately to the minister and to most of us who have fish farm interests in our areas and constituencies.

I am deeply concerned that, unless the minister has some other clever mechanism that is not clear yet—perhaps he will come back with it at stage 3—the Government now and in the future, because the bill is about not only today but the future, will end up in the ghastly situation of being held to account for decisions that are taken on fish farms.

That is my main point. Had the minister set out in some way the mechanism by which the Government and Marine Scotland could avoid that—perhaps he will do that in the future—I would be much more comfortable with what is proposed. There is a real danger that what I have suggested might happen and, on that basis, I will press my amendments.

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 65 disagreed to.

Amendment 66 moved—[Tavish Scott].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 66 disagreed to.

Amendment 69 moved—[Claudia Beamish].

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 49 disagreed to.

Amendments 12 to 15 moved—[Paul Wheelhouse]—and agreed to.

Amendment 50 moved—[Jayne Baxter].

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Abstentions
McGrigor, Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 50 disagreed to.

Amendment 51 moved—[Claudia Beamish].

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Abstentions
McGrigor, Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 51 disagreed to.

Amendment 52 moved—[Claudia Beamish].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 52 disagreed to.
Amendment 2 moved—[Jamie McGrigor].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 2 disagreed to.
Amendment 16 moved—[Paul Wheelhouse]—and agreed to.
Amendment 67 moved—[Tavish Scott].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Hume, Jim (South Scotland) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.
Amendment 67 disagreed to.

Section 2—Escapes, and obtaining samples, from fish farms

The Convener: Group 3 is on obtaining samples from fish farms. Amendment 68, in the name of Tavish Scott, is grouped with amendments 69 and 17.

Tavish Scott: I absolutely accept the need for the Government, through its appropriate agencies, to obtain samples from fish farms. The point of my amendments is to clarify the purpose of sampling and what the samples are to be used for.

I will make two other points on the amendments. First, I understand that there might be a challenge under the European convention on human rights because, as I am sure will have been recognised in the minister’s legal advice, when the state obtains—for want of a better word—an asset that belongs to a private business or private individual, questions will be raised about the legal process and how that has been gone about. I have no doubt that the minister’s lawyers have pored over that issue, but I seek clarification on the matter, given that the Parliament has in the past had to deal retrospectively with how bills or parts of bills comply with ECHR.

10:15

My next—and, I suppose, main—point is that I am concerned about how Marine Scotland’s three distinct and separate roles of enforcement, research and policy can work in the same organisation. I have a huge amount of sympathy for the minister, because I think that he has been given a hospital pass on the issue. I did not agree with the decision to merge those functions into one body and thought, for lots of obvious reasons, that it was not the right move not just for the fish farming industry but for the fishing industry and other users of the sea.

The arrangement creates an important and indeed impossible conflict of interest among the different functions and, no matter how able the Chinese walls that are established in such organisations might be, I do not see how we can separate out the very clear conflicts that might well emerge. The bill brings that issue into sharp focus, particularly in the charging measures in its latter sections, and I want any such conflicts of interest to be avoided in the bill.

My amendments seek to end those conflicts, remove the bill’s potential in that regard and ensure that the bill is compatible with ECHR. In simple terms, when Marine Scotland takes samples, it should do so for the prescribed purpose, and that purpose should be clear, unambiguous and understood by the industry, the fish farm and the Government. That is not too
much to ask with regard to an important function that I believe should be carried out.

I move amendment 68.

Paul Wheelhouse: I acknowledge Tavish Scott's point and will address it in my response.

The aquaculture measures in the bill will continue to enhance regulation and build on current and developing best practice. We acknowledge the excellent progress that the industry has made in tackling escapes, its continued significant investment in new equipment and its on-going engagement in developing technical standards—which I hope to take forward in the ministerial group on sustainable aquaculture—but escapes still happen and it has sometimes been difficult to trace the origin of fish.

Of course, the proposed powers are not just about tracing escapes. It is eminently sensible that the legislation is future proofed to ensure that we have the necessary powers to obtain samples for other purposes, such as scientific and other research that might be necessary in the future.

I have heard the SSPO's concerns about the scope of the proposals and the committee's comments on the matter at stage 1; I take on board Tavish Scott's point about the requirement to be clear about the intention behind the use of the powers; and I support the principle that sampling must be proportionate and that only what is needed should be taken. There must be controls on the use of fish. I say in response to Tavish Scott's fair point that our intention that sampling must have a legitimate purpose has been flagged up to the industry.

Given all that, the Government's amendment 17 is a direct response to the concerns and seeks to tighten the grounds on which we would take samples for our own purposes. I recognise that proposed new section 5A(3)(e) of the 2007 act is wide ranging and I concede that there is little to be gained in retaining it when read alongside proposed new section 5A(3)(b). However, Tavish Scott's amendments 68 and 69 should be resisted, as they would unhelpfully limit the future use of the provisions.

Amendment 68 seeks to remove proposed new section 5A(3)(b) of the 2007 act. Given the overall policy objective of securing a sustainable and growing aquaculture sector, we still consider that that power, deployed in a reasonable and—I stress—proportionate manner, is entirely appropriate and should be retained. Amendment 69 would clearly limit our ability to field test new or developing methodologies for tracing the origins of farmed fish escapees to ensure that they are robust and applicable to Scottish circumstances.

For those reasons, I ask the committee to resist amendments 68 and 69, which collectively would significantly limit our ability to develop and field test future tracing methodologies. The bill was considered by the Presiding Officer to be within the Parliament's competence at introduction, and we believe that that deals with the ECHR issue. I urge the committee to accept the Government's amendment 17.

Tavish Scott: Mr Wheelhouse is not the first minister who has said, "The Presiding Officer has, of course, said that the bill is ECHR compatible." Mr Gibson and I have heard that in relation to a number of measures. I do not hold that against Mr Wheelhouse in any way. He has said it on the record, and that is good enough for me, although heaven help us if we come back to the matter with a legal challenge in due course. At least we tested the point today.

I take the minister's point that the Government considers its amendment 17 to be a direct response to the concerns about prescription, as the amendment will ensure that the manner in which the sampling is done is described and that the samples are taken for the intended purpose. That is fair, it is as it should be and I accept it.

However, I am concerned by other Government statements. If I wrote down Mr Wheelhouse's words correctly, he said that my amendments would

"unhelpfully limit the future use of the provisions."

That is my point. Believe me—Governments always want to take more powers. I was part of a Government that took more powers, and it was not always the right thing to do.

I am concerned that Governments should always set out what they want powers for and why they want them. I understand the why, as the minister has been clear about that, but the what is a pretty important question because, given the way in which the bill is drafted, there is pretty well unlimited scope for how the provision could be taken forward—not by the current minister, of course, but by future Governments. That is the test that we should always apply when we are dealing with legislation. Because I want to constantly and consistently apply that test, I intend to press amendment 68 and move amendment 69.

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 68 disagreed to.

Amendment 69 moved—[Tavish Scott].

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 69 disagreed to.

Amendment 17 moved—[Paul Wheelhouse]—and agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: The next group is on prohibition on the introduction of genetically modified organisms. Amendment 11, in my name, is the only amendment in the group.

Amendment 11 addresses three elements with regard to genetically modified organisms. If the Food and Drug Administration of the United States of America gives final approval to the farming of genetically modified salmon and those salmon are capable of breeding, escapes could happen, as they happen in other cases. Any interbreeding with wild Atlantic salmon would be totally unacceptable.

If anyone introduced GM salmon into our farmed or inland waters, it would undermine the quality of Scots farmed salmon. My amendment underlines my belief that that should be an illegal act with an appropriate fine.

There is a third issue about GMOs, which is the introduction of GM-based feed, soya and oils for farmed salmon, which could be eaten by wild salmon into the bargain. The intent of amendment 11 goes alongside the concerns of supermarkets such as Waitrose, Sainsbury’s and the Co-op, and their customers, who demand the highest quality of non-GM food. Those supermarket chains are looking for insurance that fish farming will be conducted in as natural a way as possible.

Amendment 11 aims to tackle those fundamental food quality issues and, above all, to meet the wishes of anglers, fish farmers and supermarkets and their customers to have GM-free Scottish salmon, whether farmed or wild.

I move amendment 11.

Jamie McGrigor: Can you clarify whether amendment 11 applies to triploid fish?

The Convener: I do not believe that it does, because triploid fish could not then breed with salmon, whether farmed or wild.

Jamie McGrigor: So it does not apply to triploid fish.

The Convener: That is correct.

Jim Hume (South Scotland) (LD): I have some other concerns about triploid fish. Some people have said that, for example, the process of making a rainbow trout a triploid fish is genetic modification. That happens in many inland waters, and amendment 11 refers to inland waters. With all respect, convener, you do not seem to be 100 per cent sure on that point and it was not something that we studied in any great detail during stage 1.

I am happy to support amendment 11 because I think that it is well intended, but I put on record that I might have to reconsider come stage 3. We do not want to have the unintended consequence of putting every inland fish farm out of business, which amendment 11 might do if triploid fish were seen to be genetically modified.

The Convener: Thank you for that point.

Minister, will you comment on amendment 11?

Paul Wheelhouse: I very much sympathise with the points that you made when moving amendment 11, convener, but my concern is that we should not deal with salmon in isolation from other foods. I recognise that some—indeed, maybe many—consumers have particular concerns regarding GMO produce. As one consumer, I am concerned about that. However, the application of GMO technology and the use of GMOs are already adequately regulated in Scotland and the European Union. The Scottish Government has made it clear on a number of occasions that we are steadfastly against having GMOs in our food chain.
The European Food Safety Authority is finalising draft guidelines for the assessment of GM animals, including GM fish, following a public consultation last year. Before any GMO, including salmon, could be released in Scotland, the Scottish ministers would be required to give consent under the Environmental Protection Act 1990. That would include assessment of the potential for detrimental effects.

We have made our position on the issue very clear. I stress that GMO is not an issue that we want to progress, given our view that the integrity and perceived purity of Scottish produce must be protected to maintain our premium market position.

Although we have taken the view that appropriate restrictions are already in place, I would perhaps direct the convener and other committee members, if they were interested, to ask the newly appointed food expert group, which the Minister for Public Health Michael Matheson announced, to address the general point regarding maintaining a GMO-free food chain, packaging standards and other matters. That might be an appropriate channel by which the issue could be addressed. I take on board Jim Hume’s point about the potential to discuss the issue further in the committee and, indeed, to engage the Government on it before stage 3.

I put on record that the committee might wish to be aware that the Scottish salmon farming industry itself is opposed to the introduction of GM fish stocks. I recognise the convener’s point about the potential for food for farmed salmon to be contaminated with GMO material, which I take very seriously.

The SSPO has a publicly-stated policy of opposing the use of genetic modification in salmon production. It states that there is currently no such activity on Scottish farms and it can foresee no circumstances under which there would be in future, for the reasons outlined about maintaining the perceived quality and premium value of Scottish salmon.

Given the fact that the SSPO, the Scottish Government, the EU and—as the convener outlined—many supermarkets are all against GMO, I think that there are a number of pressures that suggest that it is unlikely that GMO will be introduced into the salmon and trout farming industry. In the circumstances, I invite Rob Gibson to withdraw the amendment; if he chooses to press it, I urge the committee to reject it.

10:30

The Convener: There could be unintended consequences regarding inland fish farms in the way that the amendment is worded. That gives me pause for thought as we would wish to avoid unintended consequences.

The need for access to non-GM soya to be widely available is very important as fish farms move away from the use of fish feed. There is a huge debate to be had about how that can be achieved through wholesalers. In South America, there are huge difficulties in getting non-GM soya because GM soya has been planted in such large amounts. I believe that that is a cause for considerable concern for the future of our industry in Scotland and its GM-free status.

I understand the minister’s comments about the various means by which the Government can address some of those points, and at this stage I would seek to withdraw amendment 11 from discussion, with the agreement of the committee. Does any member object to the amendment being withdrawn?

Claudia Beamish: I object.

The Convener: As there has been an objection to the amendment being withdrawn, I must put the question on the amendment.

The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 11 disagreed to.

The Convener: We will end proceedings on the bill for today as we have reached an appropriate point at which we can pick up next time. I thank all of the members, the minister and his team for their contributions.

10:33

Meeting suspended.
Aquaculture and Fisheries (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 14 Schedule 1
- Sections 15 to 43 Schedule 2
- Sections 44 to 57 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 2

Jayne Baxter

53 After section 2, insert—

<Enforcement notices for the protection of wild fish

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) In section 6 (enforcement notices)—

(a) in subsection (2), before paragraph (a) insert—

“(za) the protection of wild salmonids in the vicinity of the fish farm,”,

(b) in subsection (2), in paragraph (a), after “control” insert “, containment”.

Jayne Baxter

54 After section 2, insert—

<Power of the Scottish Ministers to direct SEPA to vary or revoke licences

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 6 (enforcement notices) insert—

“6A Power of the Scottish Ministers to direct SEPA to vary or revoke licences

(1) Where the Scottish Ministers—

(a) are satisfied that a person who carries on a business of fish farming does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), and

(b) consider that other enforcement measures available to them are not appropriate in the circumstances of the case,

the Scottish Ministers may direct SEPA to revoke, or vary in such manner as the Scottish Ministers see fit, any licence or authorisation granted or issued by it under any enactment to the person.

(2) The purposes are—
(a) the prevention, control, containment and reduction of parasites,
(b) the containment of fish,
(c) the prevention of escape of fish,
(d) the recovery of escaped fish,
(e) the protection of wild salmonids,
(f) the protection of the marine or freshwater environment.”.>

Section 3

Tavish Scott
70 In section 3, page 4, line 27, leave out <requirements> and insert <standards>

Tavish Scott
71 In section 3, page 4, line 29, leave out <requirements> and insert <standards>

Tavish Scott
72 In section 3, page 4, line 35, leave out <requirements> and insert <standards>

Jim Hume
55 In section 3, page 4, line 36, at end insert—

<( ) prescribe training requirements for persons who will use such equipment as may be prescribed,>

Tavish Scott
73 In section 3, page 5, line 4, leave out <requirements> and insert <standards>

Tavish Scott
74 In section 3, page 5, line 8, leave out <requirements> and insert <standards>

Tavish Scott
75 In section 3, page 5, line 9, leave out <requirements> and insert <standards>

Jim Hume
56 In section 3, page 5, line 10, after <equipment> insert <and training>

Tavish Scott
76 In section 3, page 5, line 23, leave out <requirements> and insert <standards>

Paul Wheelhouse
18 In section 3, page 5, leave out line 29
Section 4

Tavish Scott
77 In section 4, page 6, line 5, leave out from <contains> to end of line 19 and insert <is described as a wellboat in its registration or insurance documentation.>

Paul Wheelhouse
19 In section 4, page 6, leave out line 16 and insert—

ﺃ( ) the grading of farmed fish.

Paul Wheelhouse
20 In section 4, page 6, line 19, at end insert <, and

“grading”, in relation to farmed fish, means separating and sorting the fish according to size.

Section 6

Paul Wheelhouse
21 In section 6, page 7, line 30, after <appeal> insert <by way of summary application>

Tavish Scott
57 In section 6, page 7, line 32, leave out <7> and insert <14>

Section 7

Tavish Scott
58 In section 7, page 8, line 36, at end insert—

ﺃ( ) Before recovering any expenses under subsection (6), the Scottish Ministers must provide to the person on whom the notice was served a statement of the expenses.

Section 10

Tavish Scott
59 In section 10, page 11, line 21, at end insert—

ﺃ( ) An order under section 9(1) which includes provision conferring a power such as is mentioned in subsection (3)(b) must provide for—

(a) the nature of the surveillance activities to be undertaken, and

(b) the duration of those activities,

to be agreed with the person who carries on the business of fish farming or shellfish farming at a fish farm or shellfish farm affected by the activities.
Schedule 1

Paul Wheelhouse
22 In schedule 1, page 51, line 12, after <appeal> insert <by way of summary application>

Paul Wheelhouse
23 In schedule 1, page 51, line 27, at end insert—

<( ) An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.>

Section 16

Paul Wheelhouse
24 In section 16, page 16, line 4, after <appeal> insert <by way of summary application>

After section 19

Paul Wheelhouse
25 After section 19, insert—

<CHAPTER 4
PLANNING PERMISSION

Planning permission for marine fish farms

(1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.

(2) After subsection (2) insert—

“(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—

(a) by order, or

(b) on application to them in accordance with regulations under subsection (8).”.

(3) After subsection (4) insert—

“(4A) Subsection (4B) applies where—

(a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and

(b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.
(4) In subsection (8)—
   (a) paragraph (a) is repealed, and
   (b) in paragraph (b), for the words “such an application” substitute “an application for planning permission”.

Section 20

Paul Wheelhouse
26 In section 20, page 19, leave out line 21

Paul Wheelhouse
27 In section 20, page 21, line 18, leave out <such>

Paul Wheelhouse
28 In section 20, page 21, line 19, leave out from <as> to end of line 20

Paul Wheelhouse
29 In section 20, page 21, line 20, at end insert—
   <( ) An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (2) below.>

Section 21

Paul Wheelhouse
30 In section 21, page 22, line 26, at end insert—
   <( ) specify in the notice details of—
   (i) where and how such representations or objections (if any are made) may be viewed, and
   (ii) how copies of any such representations or objections that are made may be obtained.>

Paul Wheelhouse
32 In section 21, page 23, leave out lines 3 to 8

Alex Fergusson
3 In section 21, page 23, line 4, leave out from first <a> to <application> in line 6 and insert <such manner (being reasonably accessible to persons in the district or districts affected by the proposed application) as the applicant sees fit>
Alex Fergusson

4 In section 21, page 23, line 11, leave out from first <a> to <application> in line 12 and insert <such manner (being reasonably accessible to persons in the district or districts affected by the proposed application) as the applicant sees fit>

Paul Wheelhouse

33 In section 21, page 23, line 22, leave out <, (6)>

Alex Fergusson

5 In section 21, page 23, line 35, at end insert——

<(  ) after paragraph 11(2) insert——

“(2A) The Scottish Ministers may waive the requirement under sub-paragraph (1) above where it appears to them that adequate notice of the proposals has already been given under paragraph 9B.”>.

Section 22

Alex Fergusson

89 In section 22, page 24, line 3, at end insert——

<(  ) Regulations under subsection (1) above must make provision for——

(a) each tag to bear a unique identification number, and

(b) the recording, in such manner as the Scottish Ministers may prescribe, of the identification number of each tag issued.>.

Alex Fergusson

90 In section 22, page 25, line 7, after <sale,> insert <buys,>

Paul Wheelhouse

34 In section 22, page 25, line 26, at end insert——

<(  ) In section 68 (orders and regulations), in subsection (4), after “under” insert “subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under”.

Section 25

Alex Fergusson

6 In section 25, page 27, line 23, at end insert——

<(6AA)Before imposing requirements under subsection (6A), the Scottish Ministers must consult——

(a) each district salmon fishery board that would be affected by the proposed requirements,
(b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.

(6AB) A consultation under subsection (6AA) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.

Alex Fergusson

7 In section 25, page 27, line 28, leave out <4> and insert <3>

Paul Wheelhouse

35 In section 25, page 27, line 29, leave out from <and> to end of line 30

Alex Fergusson

8 In section 25, page 27, line 38, at end insert—

<(3AA) Before imposing requirements under subsection (3A), the Scottish Ministers must consult—

(a) each district salmon fishery board and each proprietor of salmon fisheries that would be affected by the proposed requirements,

(b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.

(3AB) A consultation under subsection (3AA) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.>

Alex Fergusson

9 In section 25, page 28, line 5, leave out <4> and insert <3>

Paul Wheelhouse

36 In section 25, page 28, line 6, leave out from <and> to end of line 7

Alex Fergusson

10 In section 25, page 28, line 19, at end insert—

<( ) after subsection (6) insert—

“(6A) Before imposing requirements under subsection (6)(ba), the Scottish Ministers must consult—

(a) each district salmon fishery board and each proprietor of salmon fisheries that would be affected by the proposed requirements,
(b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.

(6B) A consultation under subsection (6A) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.”

Section 29

Jim Hume

60 In section 29, page 30, line 38, at end insert—

\[\text{in subsection (2), after “5(1)(c),” insert “13, 14,”.}\]

Jim Hume

61 In section 29, page 30, line 41, after <salmon),> insert<br/>(  ) in subsection (1), for the words from “does” to the end of the subsection substitute “—

(a) does the act for—

(i) some scientific purpose; or

(ii) the purpose of protecting, improving or developing stocks of fish;

(b) has consulted the district salmon fishery board for that district; and

(c) has obtained the previous permission in writing of the Scottish Ministers.”,

( )>

After section 29

Claudia Beamish

62 After section 29, insert—

\[\text{Regulations on right to buy salmon fisheries}\]

Regulations on right to buy salmon fisheries

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 39 insert—

“39A Regulations on right to buy salmon fisheries

(1) In order to secure the results in subsection (2), the Scottish Ministers may by regulations make provision for a scheme to grant to district salmon fishery boards the right to buy salmon fishing rights in any waters in a salmon fishery district other than inland waters.

(2) The results are that—
(a) a district salmon fishery board may register an interest in acquiring salmon fishing rights,

(b) where such an interest in acquiring salmon fishing rights is for the time being registered, the owner of those rights, or a creditor in a standard security with a right to sell the rights, must give notice to the district salmon fishery board of a proposal to sell the rights or any part of them,

(c) the district salmon fishery board has the right to buy the rights to which the proposed sale relates from the owner or, as the case may be, the creditor.

(3) Regulations under subsection (1) may, in particular, make provision for—

(a) classes of salmon fishing rights that are subject to the right to buy,

(b) circumstances in which district salmon fishery boards will have the right to buy such salmon fishing rights,

(c) procedures to be followed by a district salmon fishery board in order to exercise the right,

(d) procedures to be followed by a district salmon fishery board following the purchase of salmon fishing rights.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.”.

Section 33

Paul Wheelhouse

37 In section 33, page 33, line 37, at end insert—

<( ) An application under subsection (2) is to be made by way of summary application.>

After section 43

Paul Wheelhouse

38 After section 43, insert—

<Inshore sea fishing

Contravention of orders prohibiting inshore sea fishing

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—

“(1B) A person commits an offence if—

(a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;

(b) the person is found there at, or about, a time at which the prohibition under the order applies;

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order, and
(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

(2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—

(a) it is proved that—

(i) the accused was found in, or in the immediate vicinity of, the area specified in the order;

(ii) the accused was found there at, or about, a time at which the prohibition under the order applies, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;

(b) sea fish the fishing for which is prohibited by the order.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;

(ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

Paul Wheelhouse

39* After section 43, insert—

Powers of entry

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) After section 6 insert—
6A Power to enter land

(1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.

(2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, and for that purpose may—
   (a) open lockfast places;
   (b) remove any objects preventing the officer from gaining access to the land;
   (c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;
   (d) require the owner or occupier of the land to allow the officer access to the land.

(3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer’s identity.

(4) A person commits an offence if the person—
   (a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
   (b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

(6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.

(7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.

(8) A person who commits an offence under subsection (4) above is liable—
   (a) on summary conviction to a fine not exceeding the statutory maximum;
   (b) on conviction on indictment to a fine.

(9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.

(3) After section 10 insert—

“10A Crown application: Scotland

(1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.

(3) No contravention by the Crown of that section makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown,

(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”

Schedule 2

Paul Wheelhouse
40 In schedule 2, page 53, line 36, at end insert—

<(  ) A forfeiture application is to be made by way of summary application.>

Section 44

Paul Wheelhouse
41 In section 44, page 40, line 25, at end insert—

<(ab) if any person in Scotland—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the person is guilty of an offence;”>

Paul Wheelhouse
42 In section 44, page 40, line 26, leave out <or (aa)> and insert <, (aa) or (ab)>

Section 47

Paul Wheelhouse
43 In section 47, page 42, line 35, leave out from <after> to end of line 36 and insert <—

the words “each body of water in the district, and” become sub-paragraph (i) of that paragraph, and

after that sub-paragraph insert—
“(ii) each shellfish water protected area in the district, and”;>

After section 48

Paul Wheelhouse

44 After section 48, insert—

<Contravention of regulated fishery orders

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) In section 3 (effect of grant of right of regulating a fishery)—

(a) after subsection (4) insert—

“(4A) Subsection (4B) applies where an order under section 1 of this Act—

(a) confers a right of regulating a fishery for any specified description of shellfish, and

(b) imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery or any part of it.

(4B) A person commits an offence if—

(a) the person is found within the limits of, or in the immediate vicinity of, the regulated fishery,

(b) the person is found there at, or about, a time at which the restrictions imposed or regulations made by the order apply,

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or regulations, and

(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to dredge, fish for and take shellfish in contravention of the restrictions or regulations.

(4C) A person who commits an offence under subsection (4B) is liable on summary conviction to a fine not exceeding £50,000.”,

(b) in subsection (5), after “subsection (3)” insert “or (4B)”, and

(c) in subsection (6), for “Subsection (1) of this section” substitute “This section”.

(3) After section 3 insert—

“3A Contravention of regulated fishery orders: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 3(3) of this Act involving dredging, fishing for and taking shellfish in contravention of restrictions imposed or regulations made by—

(a) an order under section 1 of this Act, or

(b) the grantee of such an order.

(2) It is to be presumed that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations if—
(a) it is proved that—
   (i) the accused was found within the limits of, or in the immediate vicinity of, the regulated fishery to which the order relates,
   (ii) the accused was found there at, or about, a time at which the restrictions or regulations apply, and
   (iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and
(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the order,

(b) shellfish the dredging, fishing for and taking of which is prohibited by the restrictions or regulations.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence within the limits of, or in the vicinity of, the regulated fishery to which the order relates was for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or requirements, or

(b) where the accused was found in possession—
   (i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose,
   (ii) of shellfish mentioned in paragraph (b) of that subsection, the shellfish were caught or taken in contravention of the restrictions or requirements.

Paul Wheelhouse

45 After section 48, insert—

<Enforcement of orders: powers of entry

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) After section 4C insert—

“4CA Power to enter land

(1) For the purposes of exercising the powers conferred by sections 4A to 4C, and of enforcing the restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may at any time enter land (including the foreshore) other than a dwelling house, and for that purpose may—

(a) open lockfast places,
(b) remove any objects preventing the officer from gaining access to the land,
(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object,
(d) require the owner or occupier of the land to allow the officer access to the land.

(2) A British sea-fishery officer may—
(a) exercise the power of entry under subsection (1) on foot or in a vehicle,
(b) when exercising that power, take with the officer—
   (i) such persons as appear to the officer to be necessary,
   (ii) any equipment or material.

(3) The power of entry under subsection (1)—
(a) may not be exercised in relation to land in respect of which section 4B confers a power of entry, and
(b) is without prejudice to the power of entry conferred by that section.

(4) A British sea-fishery officer who proposes to exercise the power of entry conferred by subsection (1) must, if so required, produce evidence of the officer’s identity.”.

(3) In section 4D—
(a) in subsection (1)—
   (i) for the words “or 4B(3) or (12)” substitute “, 4B(3) or (12) or 4CA(2)(b),”
   (ii) for the words “or 4C” substitute “, 4C or 4CA”,
(b) in subsection (2)(a), for the words “or 4B” substitute “, 4B or 4CA”,
(c) after subsection (2) insert—
   “(2A) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (2) relating to—
   (a) a failure to comply with a requirement imposed under a power conferred by section 4CA,
   (b) obstructing a British sea-fishery officer in the exercise of such a power.
(2B) Subsection (2A) above is without prejudice to any power of arrest conferred by law apart from that subsection.”.

(4) In the title to section 4D, for “4C” substitute “4CA”.

(5) After section 24 insert—

“24A Crown application: Scotland
(1) Section 4CA binds the Crown and applies in relation to Crown land as it applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.
(3) No contravention by the Crown of section 4D(2) in respect of a failure to comply with a requirement under a power conferred by section 4CA makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—
   (a) belongs to Her Majesty in right of the Crown,
   (b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Section 50

Tavish Scott
78 In section 50, page 44, line 6, leave out <functions> and insert <services>

Tavish Scott
79 In section 50, page 44, line 8, leave out <functions> and insert <services>

Tavish Scott
80 In section 50, page 44, line 9, leave out <functions> and insert <services>

Tavish Scott
81 In section 50, page 44, line 13, leave out <functions> and insert <services>

Tavish Scott
91 In section 50, page 44, line 15, at end insert—
   <( ) Each set of regulations made under subsection (1) must make provision for the imposition of charges in respect of only one of the following categories of fisheries functions—
      (a) the carrying out of actions for the purposes of enforcing, or otherwise ensuring compliance with, the legislation,
      (b) scientific or other research activities,
      (c) the provision of advice or other services in respect of fisheries functions.>

Tavish Scott
82 In section 50, page 44, line 16, at end insert—
   <( ) for specifying the services for which charges may be imposed.>
Tavish Scott
83 In section 50, page 44, line 21, leave out `<functions>` and insert `<services>`

Tavish Scott
84 In section 50, page 44, line 30, leave out `<function>` and insert `<service>`

Tavish Scott
85 In section 50, page 44, line 33, leave out `<function>` and insert `<service>`

Tavish Scott
86 In section 50, page 44, line 36, leave out `<such>` and insert—
<
(a) representatives of the fish farm and shellfish farm industry,
(b) persons on whom charges are likely to be imposed, or representatives of such persons,
(c) persons who, so far as the Scottish Ministers can reasonably ascertain, are also providers of the services for which charges may be imposed, or representatives of such persons,
(d) such other>

Tavish Scott
87 In section 50, page 44, line 38, leave out `<functions>` and insert `<services>`

Tavish Scott
92 In section 50, page 44, line 39, at end insert—
<(6A) Where the Scottish Ministers have made regulations under subsection (1), they must, as soon as practicable after the end of the review period, prepare and publish a report on the operation of each such set of regulations.

(6B) A report under subsection (6A) must include—
(a) information on—
   (i) the type, level and number of charges that have been imposed during the review period, and
   (ii) the categories of persons on whom they have been imposed, and
(b) an assessment of how the imposition of charges during the review period has contributed to the economy, efficiency and effectiveness of the carrying out of fisheries functions.

(6C) In subsections (6A) and (6B), “review period” means the period of 3 years beginning with the day on which regulations made under subsection (1) come into force.>

Tavish Scott
88 In section 50, page 45, line 4, leave out `<functions>` and insert `<services>`
Section 51

Tavish Scott

In section 51, page 46, line 34, at end insert—

<(  ) After section 31 (withdrawal of fixed penalty notice or expiry of period for paying) insert—

“31A Reports on fixed penalty notices

(1) The Scottish Ministers must prepare and publish a report on fixed penalty notices as soon as practicable after the end of each reporting period.

(2) A report under subsection (1) must include—

(a) the number of fixed penalty notices issued in the reporting period,

(b) the offences for which those fixed penalty notices were issued.

(3) In this section, “reporting period” means the period of 3 months—

(a) in the case of the first report, beginning on the day on which section 51 of the Aquaculture and Fisheries (Scotland) Act 2013 comes into force,

(b) in the case of a subsequent report, the period beginning on the day after the end of the preceding reporting period.”>

Section 52

Paul Wheelhouse

In section 52, page 47, line 9, leave out <An> and insert <The following orders and regulations are subject to the affirmative procedure—

(a) regulations under section 50,

(b) an>

Paul Wheelhouse

In section 52, page 47, line 10, leave out <is subject to the affirmative procedure>

Paul Wheelhouse

In section 52, page 47, line 11, leave out <any>
Aquaculture and Fisheries (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Fish farms: enforcement notices and revocation of licences**
53, 54

**Technical requirements for equipment used in fish farming**
70, 71, 72, 55, 73, 74, 75, 56, 76, 18

**Wellboats: definition and enforcement notices**
77, 19, 20, 58

*Notes on amendments in this group*
Amendment 77 pre-empts amendment 19

**Appeals and applications: procedure**
21, 57, 22, 23, 24, 37, 40

**Commercially damaging species: surveillance**
59

**Marine fish farms: planning**
25

**District salmon fishery boards: governance**
26, 27, 28, 29

**Applications for orders and regulations under the 2003 Act**
30, 32, 3, 4, 33, 5

*Notes on amendments in this group*
Amendment 32 pre-empts amendment 3
Salmon carcass tagging  
89, 90, 34

Monitoring and evaluating the effects of orders  
6, 7, 35, 8, 9, 36, 10

Offences exempted by permission or consent  
60, 61

Regulations on right to buy salmon fisheries  
62

Offences and powers of entry under fisheries legislation  
38, 39, 41, 42, 44, 45

Technical and procedural  
43, 46, 47, 48

Power to charge in connection with fisheries functions  
78, 79, 80, 81, 91, 82, 83, 84, 85, 86, 87, 92, 88

Report on fixed penalty notices  
64
RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

EXTRACT FROM THE MINUTES

12th Meeting, 2013 (Session 4)

Wednesday 27 March 2013

Present:

Jayne Baxter
Claudia Beamish
Graeme Dey (Deputy Convener) Nigel Don
Alex Fergusson Rob Gibson (Convener)
Jim Hume Richard Lyle
Angus MacDonald

Also present: Paul Wheelhouse, Minister for Environment and Climate Change and Tavish Scott.

Aquaculture and Fisheries (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48.

The following amendments were agreed to (by division)—

30 (For 5, Against 3, Abstentions 1)
32 (For 5, Against 4, Abstentions 0)
33 (For 5, Against 4, Abstentions 0).

The following amendments were disagreed to (by division)—

53 (For 4, Against 5, Abstentions 0)
54 (For 4, Against 5, Abstentions 0)
70 (For 2, Against 7, Abstentions 0)
71 (For 2, Against 7, Abstentions 0)
72 (For 2, Against 7, Abstentions 0)
55 (For 4, Against 5, Abstentions 0)
73 (For 2, Against 7, Abstentions 0)
74 (For 2, Against 7, Abstentions 0)
75 (For 2, Against 7, Abstentions 0)
56 (For 4, Against 5, Abstentions 0)
76 (For 2, Against 7, Abstentions 0)
77 (For 1, Against 7, Abstentions 1)
57 (For 4, Against 5, Abstentions 0)
59 (For 2, Against 7, Abstentions 0)
4 (For 4, Against 5, Abstentions 0)
The following amendments were moved and, no member having objected, withdrawn: 89 and 64.

Amendment 3 was pre-empted.

The following amendments were not moved: 58, 9, 79, 80, 81, 91, 82, 83, 84, 85, 86, 87, 92 and 88.

The following provisions were agreed to without amendment: sections 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 49, 50, 51, 53, 54, 55, 56 and 57 and the long title.

The following provisions were agreed to as amended: sections 3, 4 and 6, schedule 1, sections 16, 20, 21, 22, 25, and 33, schedule 2 and sections 44, 47 and 52.

The Committee completed Stage 2 consideration of the Bill.
Aquaculture and Fisheries (Scotland) Bill: Stage 2

09:38

The Convener: Agenda item 2 is the second day of stage 2 of the Aquaculture and Fisheries (Scotland) Bill. I welcome Paul Wheelhouse, who is the Minister for Environment and Climate Change and the member in charge of the bill. Good morning, minister.

The Minister for Environment and Climate Change (Paul Wheelhouse): Good morning.

The Convener: I also welcome the minister’s officials, whom I ask him to introduce. They very nearly outnumber members.

Paul Wheelhouse: I come well armed. Alastair Mitchell, who is head of aquaculture policy, is immediately to my right. Carole Barker-Munro, who is head of salmon and recreational fisheries policy, is also to my right. Ewen Milligan is head of enforcement operations and David McLeish is from the office of the Scottish parliamentary counsel. To my left are Lindsay Anderson, who is from the Scottish Government legal department, and Jeff Gibbons, who is the bill team leader. Norman Macleod has not made it.

The Convener: Thank you very much, minister.

After section 2

The Convener: We start with amendments on enforcement notices and revocation of licences for fish farms. Amendment 53, in the name of Jayne Baxter, is grouped with amendment 54.

Jayne Baxter (Mid Scotland and Fife) (Lab): The Association of Salmon Fishery Boards and other wild fisheries organisations have been informed by the fish health inspectorate that the enforcement provisions of the Aquaculture and Fisheries (Scotland) Act 2007 do not extend to the health and welfare of wild fish. In its stage 1 report, the committee requested clarification that the provisions in the 2007 act extend to enabling action regarding lice outbreaks among wild fish. The minister has subsequently provided that clarification, but the provisions in the 2007 act relate only to parasites in fish farms and shellfish farms.

The fish health inspectorate should be able to utilise its powers where there is evidence that a fish farm is failing to contain lice at safe levels for local salmonid populations—for example, where there is evidence of a lice epizootic among nearby populations of wild fish coinciding with high levels of sea lice on the farmed fish.
In its consultation on the Aquaculture and Fisheries (Scotland) Bill, the Scottish Government asked the following questions. First, it asked:

“Do you agree that Scottish Ministers should have powers to require SEPA to reduce a biomass consent where it appears to them necessary and appropriate—for example to address concerns about fish health and welfare”?

Secondly, it asked:

“Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents”?

Following significant support for both those proposals, Marine Scotland responded:

“SEPA can already reduce biomass consent in certain circumstances. We will consider further non-legislative solutions and have begun discussion with SEPA about these matters.”

On revocation of licences, the response was simply:

“We do not intend to progress these proposals at this time.”

The committee has heard clear evidence of the relationship between biomass and sea-lice infestation pressure on wild fish. Given that the Scottish Environment Protection Agency considers the effects of sea lice to be ultra vires, it is therefore vital that the committee is absolutely clear that Scottish ministers have a power to vary a licence that has been issued by SEPA.

There is significant concern among a range of stakeholders that revocation of licences is not currently possible. Given that Marine Scotland science is unable to give definitive predictions as to the effect of a farm site being in a particular location, and taking into account the fact that most developments receive permanent planning consent, such a power is potentially important as our understanding of the interaction between aquaculture and wild salmonids improves.

I move amendment 53.

**Paul Wheelhouse:** Amendment 53 would extend and expand the criteria according to which an enforcement notice could be served under the Aquaculture and Fisheries (Scotland) Act 2007 to encompass circumstances relating to protection of wild salmonids and containment of parasites. Although protection of wild fish is important—indeed, many of the provisions in the bill will help to enhance protection of wild fish as well as building on current best practice for fish farm health management—I do not believe that amendment 53 will be effective.

Existing provisions in the 2007 act currently provide the ability to assess the measures that are in place on a farm to control sea lice. The source and spread of such parasites, which occur naturally in the wild, are by extension outwith the control of the farmer. Legislation that seeks to control their source and spread will therefore be unworkable. In addition, amendment 53 does not address the issue of inspection powers, which might be needed to complement that power.

Amendment 54 would provide in statute the ability for Scottish ministers to direct SEPA to revoke controlled activities regulations licences or to reduce the biomass of fish that is allowed to be farmed at a particular site, should there be problems that cannot be dealt with through other enforcement measures. We have previously said that ministers can already direct SEPA to reduce biomass under certain conditions that are beyond the powers that it has traditionally used to reduce biomass in managing discharges to the marine environment.

I have put on record my intention to progress the issue through non-legislative means, so although I agree with the principle of amendment 54, I believe that it is unnecessary. I oppose amendments 53 and 54 and ask the committee to do the same.

**Jayne Baxter:** I thank the minister for his comments, although they are disappointing. I am interested in his comment that he is keen to progress the matter through non-legislative measures, but I will press the amendments, in any case.

**The Convener:** The question is, that amendment 53 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

**Against**

Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 53 disagreed to.

Amendment 54 moved—[Jayne Baxter].

**The Convener:** The question is, that amendment 54 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.
For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 54 disagreed to.

Section 3—Technical requirements for equipment used in fish farming

09:45

The Convener: Amendment 70, in the name of Tavish Scott, is grouped with amendments 71, 72, 55, 73 to 75, 56, 76 and 18.

Tavish Scott (Shetland Islands) (LD): The Government has set a target of growing production in the fish farming industry by 50 per cent by 2020. That is by any standards an exacting target, as Claudia Beamish pointed out when we considered amendments last week. In my estimation, if the Government is to hit its target—never mind ask the industry to hit it—it must accept, at the very least, that the framework that the bill provides must allow it to do so.

In amendment 70 and the related amendments in my name, I seek to ensure, once again—that relates to points that I made last week—that the Government does not try to micromanage the industry. A sensible working group, which involves the industry and Government and operates under the auspices of the ministerial group on aquaculture, which is chaired by the minister, defines a set of standards for use across the industry. That means that those standards are agreed and can be introduced and monitored across the industry. It seems to me—until now, it has seemed to the Government—that that is a sensible way to achieve not just the higher industry standards that Government and the industry are looking for, but higher environmental standards, which are of interest to committee members and to stakeholders who have a great interest in the industry.

It was not sensible of the Government to draft section 3 using the word “requirements”. That will stifle improvement and innovation, because every time a change is necessary, action might subsequently be needed. Whether that will be the case is not clear from the explanatory notes or from any other documents that have been brought before Parliament in respect of the bill.

I suggest that the word “standards” be used, instead of “requirements”. The purpose of the working group is to achieve standards. That is an eminently sensible way forward, which has worked in the past, so I see no need to change the approach. Furthermore, if the Government is minded to force through section 3 with its current wording, every technical change in fish husbandry will have to be approved by Marine Scotland and there will, again, be enormous interest in ministerial decision making. As I made clear last week, I am pretty concerned about the potential for ministerial decision making to be scrutinised on a very regular basis by parliamentarians, whatever side they are on in relation to the industry.

I am trying to save the minister from unintended consequences of his bill. The use of the word “standards” would be appropriate in the context of a bill that is seeking to facilitate the achievement of the Government’s and the industry’s production targets.

I recognise the merit in Jim Hume’s proposed wording in relation to training requirements. It would be eminently sensible for the industry to achieve the standards that are envisaged in amendments 55 and 56.

I move amendment 70.

Jim Hume (South Scotland) (LD): I will speak to amendments 55 and 56.

Given what we have heard in evidence and in much of the correspondence that all committee members have received, it is evident that escaped farmed fish are a cause for concern. Escapes are often due to equipment failure or predator attack. However, the improved containment working group recognised that, in 2010, 29.5 per cent of escapes were due to human error. It is fair to say that the committee recognised that, too.

My amendments 55 and 56 would allow training to become part of the technical standard, in line with the proposal of the original aquaculture technical research forum. I hope that fellow members recognise the usefulness of the amendments.

Paul Wheelhouse: The provisions to introduce technical requirements for equipment that is used in fish farms were developed and informed by the improved containment sub-group of the ministerial group on aquaculture, to which Tavish Scott referred. That expert group comprises fin-fish farmers, trade associations, suppliers and manufacturers of fish farm equipment such as nets, pens and moorings, and insurers and regulators.
The provisions were not developed in isolation, but reflect a general desire for common standards across the industry that are appropriate and proportionate. The bill contains an enabling power, which will permit the detail to be laid out in subordinate legislation, given that the requirements that are to be prescribed under regulations are likely to change as a result of technological advances and the evolution of best practice in the industry.

Tavish Scott made a point about growth in the industry. I recognise the 50 per cent figure, but I alert the committee to the fact that we are looking to achieve a 32 per cent increase from a 2011 baseline by the target date.

A regulation-making power enables ministers to respond to issues more readily and flexibly than would prescribing the relevant standards in primary legislation. That is the background. Before today, I was not clear about why Tavish Scott lodged his amendments to seek to replace “requirements” with “standards”, but I am now slightly clearer about that.

The regulations will set out the requirements that equipment is to meet. Those requirements will set minimum design and other standards that equipment must meet, but they might also create obligations in terms of maintenance and installation of equipment, which would not be referred to as “standards”. The requirements in paragraphs (d) to (f) of section 3(3) relate to providing information, giving access, co-operation, keeping records and notification of equipment failures. Those requirements are not really standards and it would be wrong to label them as such, as amendments 73 to 75 would.

There are requirements that set standards, but other requirements are about wider issues. I therefore do not consider that Tavish Scott’s amendments would enhance the provision in any way; in fact, they could restrict the power. I ask the committee to reject amendments 70 to 76.

I recognise the reasoning behind Jim Hume’s amendments, which would ensure that regulations that were made under the power in section 3 could require fish farm operators and their staff to be appropriately trained to use fish farm equipment that adheres to the new technical standards. I recognise that such training would mitigate against escapes that were due to human error. I am well aware that the issue is important and that it was raised a number of times at stage 1. In its stage 1 report, the committee concluded that training is best handled by the fish farming industry and that we should look at how best to consider progress on delivering good practice via the ministerial group on aquaculture, which is to be known as the ministerial group on sustainable aquaculture, and with the advice of its improved containment working group.

Training is an important aspect of the work to develop technical standards. In addition to the requirement for equipment to meet technical specifications, work will cover operational procedures, codes of practice, operators manuals and training of operators, to ensure that equipment is used appropriately and that procedures are followed correctly.

As I have said, we are working with the industry to ensure that staff are appropriately trained. That builds on the best practice workshops and in-house schemes that the industry has introduced. I have also asked the MGA’s improved containment working group to consider training to prevent escapes that are due to human error.

Amendment 56, which would include a requirement for fish farmers to retain training records, seems to be entirely sensible. It would have the desired effect of allowing inspectors to check that staff have been appropriately trained. However, given that amendments 55 and 56 are interrelated, I do not wish to consider either of them in isolation at stage 2, or in haste. We will come back at stage 3 with further thoughts.

Government amendment 18 is a direct response to concerns that the Subordinate Legislation Committee raised at stage 1, and to wider policy considerations. That committee was concerned that section 3 would enable the Scottish ministers to delegate to third parties the power to prescribe in regulations a technical requirement for fish farming equipment. That was not our intention, so we seek to make it clear that requirements will be set in regulations only by the Scottish ministers.

I invite the committee to resist amendments 70 to 76.

I invite Jim Hume not to move amendments 55 and 56 on the basis that we will come back at stage 3 with further thoughts. I also invite the committee to accept amendment 18.

Alex Fergusson (Galloway and West Dumfries) (Con): I want to seek clarification from Tavish Scott because I am tempted to support his amendments. I struggle with how to put this, but I will liken the business of the equipment that is used in fish farming to a car. I suggest that his first two amendments refer to the overall car at the end of the process and it seems to me that there is some legitimacy for standards to be imposed on the overall make-up of a car. The other amendments seem to refer to bits of the car, such as the engine, wheels or whatever, for which there is slightly less relevance for standards, as opposed to requirements. I wonder whether he would comment on that in his summing up in order to satisfy me that the standards are relevant the
whole way through the process rather than just at the start.

Nigel Don (Angus North and Mearns) (SNP): Alex Fergusson’s question is interesting and I am sure that Tavish Scott will want to consider it. We are arguing about words, which we sometimes have to do. I take the minister’s point that in the context, “requirements” appears to be a wider word than “standards”, which is why the draftsmen are telling us that that word should be used. On that basis, it seems to me that the minister has a fair point that we would want to support.

On amendment 18, I note the concerns of the Subordinate Legislation Committee about delegation of powers and I am grateful to the minister for the amendment, which is the right thing to do in the context of delegated powers.

The Convener: I invite Tavish Scott to wind up and to press or withdraw the amendments.

Tavish Scott: I will take those points in not-quite reverse order. First, to deal with Mr Fergusson’s car analogy—at least it was not a tractor he used; we would have had a long debate on that—the simple answer is that there is an industry and government working group that involves, as the minister said in his introduction, stakeholders from across the industry and from outside the industry, as well as technical experts from the Government and Marine Scotland. In my humble estimation that group should be more than able to deal with the body but also the contents of the body as well, depending on which analogy we wish to follow.

I want to make two other points on the minister’s response. His answer on the detail is that we will get yet more legislation and yet more opportunities in Parliament. With the greatest of respect, I say that subordinate legislation tends to get nodded through the Parliament. I have been here a long time, as others of us have, and I do not remember too many bits of subordinate legislation ever coming under any kind of sustained scrutiny, which is in my view a failure of the Parliament, and not a failure of the Government that proposed the subordinate legislation. The idea that that will lead to a day-by-day, real hard assessment of another change to a requirement is cloud-cuckoo-land and will give the Government carte blanche.

The minister said it himself; he used the phrase “restrict the power”. He does not want the amendments to restrict the power of the Government. I do want to restrict the power of the Government: I think that it is taking far too much power and it cannot keep taking more powers to restrict and micromanage the industry. That is what is going on in section 3.

Nigel Don prefers the word “requirements” because, as he very fairly put it, it is “wider”; he was quite right about that. The Government wants wider wording because that gives it more latitude and more ability to control the industry. The Government has to explain what it wants to do. No ministerial explanation that I have heard—today and all through the passage of the bill since its introduction—has made it absolutely clear that the Government wants to impose a set of greater regulations on the industry and therefore to restrict its ability to make changes to its operational practices.

What we are heading for is operational involvement by the Government, through Marine Scotland, in the day-to-day commercial activities of an industry. If that is what the Government wants it should say so, and I will press the amendments.

The Convener: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 70 disagreed to.

Amendment 71 moved—[Tavish Scott].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 71 disagreed to.

Amendment 72 moved—[Tavish Scott].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)
Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 72 disagreed to.

Jim Hume: I appreciate what the minister said and I trust him, but in the spirit of democracy, I will move amendment 55.

Amendment 55 moved—[Jim Hume].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)
Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 55 disagreed to.

Amendment 73 moved—[Tavish Scott].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)
Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 73 disagreed to.

Amendment 74 moved—[Tavish Scott].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)
Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 74 disagreed to.

Amendment 75 moved—[Tavish Scott].

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)
Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 75 disagreed to.

Amendment 56 moved—[Jim Hume].
The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 56 disagreed to.

Amendment 76 moved—[Tavish Scott].

The Convener: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 76 disagreed to.

Amendment 18 moved—[Paul Wheelhouse]—and agreed to.

Section 3, as amended, agreed to.

Section 4—Meaning of “wellboat”

The Convener: The next group is on wellboats: definition and enforcement notices. Amendment 77, in the name of Tavish Scott, is grouped with amendments 19, 20 and 58. I note that, if amendment 77 is agreed to, I cannot call amendment 19 as a result of pre-emption.

Tavish Scott: The purpose of amendment 77 is to recognise that the bill's definition of “wellboat” is not adequate, because it covers many more vessels and boats than are used as wellboats.

I do not know whether the minister heard about the issue in Eyemouth but I can assure him that I certainly heard about it on Lerwick pier over the weekend. The discussion is being taken forward by boat owners, the industry and other users of the sea, particularly those in the fishing industry, and I hope that the Government recognises that it has basically got the definition wrong.

As a result, amendment 77 seeks to set out as a definition the best example that I could come up with: one based on the vessel's “registration or insurance documentation”. I am not suggesting that the definition is perfect—indeed, I do not know what would be perfect—but it seems to tighten up a definition that I am sure the minister does not want to include boats that are simply not used for such purposes.

Amendment 58 seeks to ensure that, when the Government lays a charge or recovers expenses, such charges or expenses should be detailed to those who find themselves at the end of such moves. That is only right; after all, I do not think that any of us would pay our lawyer's or accountant's fees without asking for a breakdown. It allows us to dispute figures and, if a lawyer is involved, we can—as no doubt we have all had occasion to do—take him to the clerk of the sheriff court. It just seems like good governance that, in such areas of activity, the Government should set out the details of charges, and that is simply what amendment 58 seeks to achieve.

I move amendment 77.

Paul Wheelhouse: Amendments 19 and 20 seek to do the same thing, but from different angles. I should say, though, that I understand the industry's concerns about the definition of “wellboat”, which Tavish Scott has expressed so well on its behalf.

Section 4 defines the meaning of “wellboat” for the purposes of section 5, in which ministers take powers to regulate control and monitoring of operations of wellboats in Scotland. At present, there is no statutory definition of the term. The bill as introduced contains a definition that, it could be argued, might include every vessel used in fish farming, including static feed barges and other work boats. However, that is clearly not our intention.

I have to say that amendment 77 in the name of Tavish Scott lacks specification and, in essence, means that a vessel is a wellboat if the registration document says so. If the registration document says that the vessel is a cargo boat, the regulations cannot apply, even when the vessel is carrying out the functions of a wellboat.

We have taken a different approach and have defined the purposes for which a wellboat could be used. We aim to take a risk-based approach to
regulations, specifying standards for the tasks and functions that pose the greatest risk to fish health and welfare and the environment. Amendments 19 and 20, therefore, clarify the policy intention not to include work boats and feed barges used in the industry, and they add the function of grading fish, which, according to fish farmers and wellboat operators, is a common use.

Amendment 58 would require a statement of expenses to be provided when the Scottish ministers seek to recover expenses incurred in the enforcement of wellboat regulations. Such a provision is already implicit in giving effect to the bill as drafted, but I will consider the matter further and, if necessary, lodge an amendment at stage 3.

For those reasons, I ask Tavish Scott to withdraw amendment 77 and not to move amendment 58, and I ask the committee to accept amendments 19 and 20.

Tavish Scott: I am happy not to move amendment 58, given the minister’s assurances. His comments are fair enough. I think that the requirement for a statement of expenses should be explicit in the bill, but I take his point.

I will press amendment 77, because I would like to see what consultation the minister has with the industry that demonstrates that his proposal meets the objective, which I suspect we share, of not including in the definition vessels that are clearly not for salmon farming in any respect. If by stage 3 he can demonstrate that that has happened through one of the aquaculture working groups or whatever, I will be more than happy not to bring back the amendment at that stage but, for the purposes of today, I will press it just to ensure that we have that explicitly on the record.

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Abstentions
Fergusson, Alex (Galloway and West Dumfries) (Con)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment 77 disagreed to.

Amendments 19 and 20 moved—[Paul Wheelhouse]—and agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

Section 6—Enforcement notices

The Convener: The next group is on the appeals and applications procedure. Amendment 21, in the name of the minister, is grouped with amendments 57, 22 to 24, 37 and 40.

Paul Wheelhouse: All the amendments in the group, except amendments 23 and 57, make express provision for appeals and applications to the sheriff to be made by way of summary application. I emphasise that, were the express provision not included in the bill, the affected sections would still have the same effect, as the default rule is that an application or appeal to the sheriff under an enactment is by way of summary application unless the enactment provides otherwise. However, the Sheriff Court Rules Council would prefer it if each of the sections with a right of appeal specified the method by which the appeal is to be brought, to make that perfectly clear. Therefore, the amendments are simply to improve clarity and do not change the effect of the bill in any way.

Similarly, amendment 23 follows advice from the Sheriff Court Rules Council that it would be preferable if the bill made explicit provision for the court in which an appeal will be heard. Amendment 23 therefore makes it clear that any appeal against the decision of the sheriff relating to a control scheme—which must be on a point of law only—lies with the Court of Session and not the sheriff principal. That should remove any ambiguity. From a practical perspective, the higher court has the benefit of avoiding layers of appeal, which might bring with them unhelpful and costly delays in seeking a resolution.

Tavish Scott’s amendment 57 would double the length of time that a master, owner or operator of a wellboat has to appeal against an enforcement notice to a sheriff. I am not clear why 14 days is considered more appropriate or who is suggesting that the current timescale needs to be revised. Marine Scotland has received no representations on the issue. The approach proposed in the bill is not inconsistent with existing legislation. The key issue for all concerned is for such matters to be dealt with as quickly as possible.

For those reasons, I urge the committee to accept amendments 21 to 24, 37 and 40 and to resist amendment 57.

I move amendment 21.

Tavish Scott: The minister might have answered this, but the point that I wanted to test
through amendment 57 is about consistency in the bill. In section 16, on page 16, where the Government details appeals in connection with emergency action notices, the proposal is for a 14-day period for appeal. However, in section 6, the appeal period is only seven days. There might be good reasons, legal or otherwise, for the difference between those periods, and the minister might have given them. If he can illustrate to me that the bill is consistent in respect of those two sections, I will be more than happy not to move amendment 57.

Paul Wheelhouse: I recognise the point that Tavish Scott makes. However, I am led to believe that moving to 14 days for this particular provision would be inconsistent with other legislation. Therefore, I urge the committee to resist the amendment in Tavish Scott’s name.

Amendment 21 agreed to.

10:15
The Convener: Tavish, do you intend to move amendment 57?

Tavish Scott: With respect, I am not sure that I understood the answer to my question, so I will move the amendment.

Amendment 57 moved—[Tavish Scott].

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 57 disagreed to.

Section 6, as amended, agreed to.

Section 7—Marine enforcement officers’ functions

Amendment 58 not moved.

Section 7 agreed to.

Sections 8 and 9 agreed to.

Section 10—Orders under section 9(1): samples and surveillance

The Convener: The next group is on the surveillance of commercially damaging species. Amendment 59, in the name of Tavish Scott, is the only amendment in the group.

Tavish Scott: I absolutely accept the importance of the work that is undertaken by the regulatory bodies—in this case, Marine Scotland. That is clear and, rightly, is part of the relationship between the industry and the regulatory body. However, with amendment 59, I want to ensure that the purposes, the specific measures and the duration of the activities are crystal clear.

I hope that that is consistent with the theme of all the amendments that I have lodged in respect of the bill, which is to ensure that, at all times, the Government and its regulatory bodies are crystal clear about the purpose of what they are doing.

I accept the need for the work—that, of course is the case—but the nature of that work must be detailed. The purpose of the amendment is to ensure that.

I move amendment 59.

Paul Wheelhouse: I accept the concerns that Tavish Scott has expressed, but I do not think that this amendment is necessary and I believe that it might lead to delays in the successful control of commercially damaging species.

I believe that the amendment is unnecessary, given that there is already provision in section 10(3)(d) for an order to include provision about the matters that a programme of surveillance is able to address. We have received no representations from the shellfish industry, which is most likely to be impacted by the issue and which has experienced the circumstances in which the powers would be used and the type of surveillance that would be undertaken.

Further, I believe that the amendment could be damaging—unintentionally, I am sure—given that it would require agreement on the detail of the surveillance activities to be reached with the fish or shellfish farmer themselves. That could weaken the measures that are required or lead to a delay in their implementation that, ultimately, could lead to delays in the successful control of commercially damaging species. I therefore urge the committee to resist amendment 59.

Tavish Scott: I do not mean to delay successful control but, on the minister’s point about there having been no representations, it is sometimes the job of parliamentarians to guess what might happen as a result of the proposals in bills. There are plenty of examples that I can think of over the past years where the consequences of a bill have become apparent only later, and the affected
industry has popped up to ask why we did not do something or ask appropriate questions at the time.

The minister made a point about the possibility that the amendment could weaken or delay the control of a disease problem or otherwise damaging set of circumstances. There is no way that any commercial business will delay or weaken a measure that will lead to the control of that situation, because it will lose money every day that the situation continues. I do not think that the minister’s point is legitimate.

The industry and the Government should expect of each other a degree of clarity and assuredness around what they are doing. After all, it would be open to the Government to interpret how the proposal in amendment 59 would operate, if it were to become part of statute. I do not think that it would be beyond the wit of clever officials to do that, so I do not think that there are legitimate concerns about the proposal, which would strengthen the bill and—more to the point—make it clear what is being sought. I therefore press the amendment.

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 59 disagreed to.

Section 10 agreed to.

Sections 11 to 14 agreed to.

Schedule 1—Commercially damaging species: control schemes

Amendments 22 and 23 moved—[Paul Wheelhouse]—and agreed to.

Schedule 1, as amended, agreed to.

Section 15 agreed to.

Section 16—Appeals in connection with emergency action notices

Amendment 24 moved—[Paul Wheelhouse]—and agreed to.

Section 16, as amended, agreed to.

Sections 17 to 19 agreed to.

After section 19

The Convener: The next group is on marine fish farms: planning. Amendment 25, in the name of the minister, is the only amendment in the group.

Paul Wheelhouse: Amendment 25 relates to the audit and review process, which is a time-limited process run by the Scottish Government to determine planning permission for marine fish farms that were in existence before responsibility for marine aquaculture developments was transferred to local authorities in 2007. Ministers currently have the ability to grant planning permission by individual application or by order for specific classes of development covering multiple sites.

Amendment 25 addresses an issue that has been identified with the Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011, which granted planning permission for classes of fish farms situated in “marine waters” specified in the order. Unfortunately, the description of “marine waters” used in that order has resulted in a number of fish farms having been given planning permission without having gone through the appropriate audit and review process.

Amendment 25 will enable those farms to be placed in the same position as they were in before the order was made, ensuring in the process that they are not disadvantaged. They will then be taken through the audit and review process as necessary.

I emphasise that this is largely a technical amendment that will not affect fish or shellfish farms other than those that I have outlined above.

I move amendment 25.

Alex Fergusson: I seek clarification from the minister on a point. I am entirely likely to have got it wrong, but I would appreciate clarification. My understanding is that the audit and review process will not be subject to any level of public scrutiny, unlike the case for a normal planning application. Does the minister feel that that is something that might be addressed in the name of openness and transparency in the process?

Paul Wheelhouse: I am happy to address that point. Certainly, I recognise that amendment 25
has been introduced at a late stage to address a problem that has been identified. There is an issue to do with the consultation, as the member has identified. Amendment 25 will affect only existing fish farms that are in operation and that unfortunately received planning permission unintentionally due to incorrectly defined terminology in the 2011 order.

If it would help the member, I can explain some of the technical issues, which might clarify where we are coming from on the amendment.

Subsection (2) of the proposed new section will enable the Scottish ministers to grant planning permission for the operation of an individual marine fish farm, either by order or by application to them. Subsection (3) ensures that the farms are not disadvantaged under that process. The appropriate date is the later of 31 March 2014 or the date of expiry of the consent in place on 1 April 2007 under which the fish farm is authorised to operate.

Subsection (3) provides also that, when planning permission is revoked by order before the appropriate date, planning permission will not be required as a result of the previous grant of permission by the 2011 order until the appropriate date for the fish farm. That will ensure that any farms that have had planning permission revoked because that permission had been granted inadvertently will be in the same position as they were in before the order was made.

The provisions in an order are designed to ensure that appropriate checks and balances are put in place to take account of the environmental context in which the fish farm is to be granted permission. I assure the member that the environmental factors will be considered as part of the audit and review process. We can come back to the committee in advance of stage 3 with guidance about what the implications might be for a consultation.

Amendment 25 agreed to.

The Convener: Thank you, members. I suspend the committee for a couple of minutes to allow the officials for the next stage of the committee to enter.

10:26

Meeting suspended.

10:31

On resuming—

Section 20—District salmon fishery boards: openness and accountability

The Convener: The next group is on the governance of district salmon fishery boards. Amendment 26, in the name of the minister, is grouped with amendments 27 to 29.

Paul Wheelhouse: As the committee turns to part 2 of the bill, I would like to take the opportunity to remark on its policy themes and provide some context for your considerations, if that is acceptable.

Good governance and the promotion of openness, transparency and accountability are key themes that run through part 2. I am pleased that the committee, in its stage 1 report, welcomed the good governance obligations as a necessary and welcome step in improving accountability and openness in boards’ affairs. I am also pleased that the ASFB has indicated its support for new responsibilities to be placed on DSFBs, and we will work with it to develop guidance for boards on complying. We are mindful that boards vary in size and resources. I know that that is a matter of concern to a number of committee members.

As I said at stage 1, the bill is the first step in delivering our manifesto commitment to modernise the management structures of salmon and freshwater fisheries. The second step is an independent review, which I anticipate will commence this summer, that is designed to deliver a management system that is robust, sustainable and fit for purpose in the 21st century. The committee’s stage 1 report indicated support for our two-stage approach and recommended a number of areas that might usefully be examined. The committee’s views are helpful and will inform the scoping process.

In the meantime, the bill places on DSFBs good governance obligations that are designed to drive forward and roll out best practice in conducting business. The obligations are founded on behaviours and practices that are well accepted as the norm in the public sector landscape. DSFBs are not public bodies, but their functions are set out in statute and they have statutory responsibilities. The obligations are designed to promote openness, transparency and accountability in the conduct of their affairs.

I have lodged minor amendments to the section on good governance to streamline a particular process to be followed by the clerk to the board and to clarify use of the ministerial power to modify the good governance obligations by order. Improving public access to and involvement in the meetings of DSFBs is a key tool in promoting
transparency and accountability and fostering community involvement in the boards’ activities. It is right that boards are open and accessible to those with an interest in fisheries and that they seek to include the public in their affairs. In addition to a general presumption that all meetings of DSFBs will be open to the public and publicised as such, the bill includes specific requirements to hold an annual public meeting and to notify it and the annual proprietors meeting to the general public, salmon anglers and netsmen and Scottish ministers.

Those notification requirements must, of course, be proportionate and workable in practice. At stage 1, there were discussions about how the clerk to the board might fulfil a notification requirement to inform salmon anglers and tenant netsmen in their district. In response to that feedback, I have lodged an amendment to streamline the notification procedure. It can reasonably be expected that those groups will be informed either by the general notification obligations placed on the clerk or through the representatives who are co-opted on to the board in accordance with schedule 2 to the 2003 act. Amendment 26 removes the specific requirement for DSFBs to give notice of their annual public meeting and the annual meeting of proprietors to salmon anglers and tenant netsmen in their district.

The bill includes a power for Scottish ministers to amend the good governance provisions by order. It is important that there is flexibility for the obligations to be modified to reflect changes in the governance landscape without the need for primary legislation. However, I note the Subordinate Legislation Committee’s observation at stage 1 that the modification power as drafted is too wide in scope and could allow for dilution or, in fact, removal of the requirements. I agree that use of the power should be qualified to bring it into line with the scope of the power contained in new section 46F(1)(b) of the 2003 act to add further requirements. Amendments 27, 28 and 29 will ensure that modification can be made only for specified purposes that are associated with promoting openness, accountability, propriety and good governance.

I move amendment 26.

**Jim Hume:** Amendment 26 will remove the requirement to send notice to salmon anglers and tenant netsmen. I appreciate that it would be difficult to identify all salmon anglers and that that would obviously be quite expensive. I had thought that perhaps an amendment to require notice to be sent to a representative of salmon anglers and tenant netsmen might have been more appropriate, but of course tenant netsmen and salmon anglers are already on district salmon fishery boards. If the minister can assure me that he wants that to continue, I will be happy to support amendment 26.

**Paul Wheelhouse:** I agree with Jim Hume that it is good that the groups that he mentioned are represented on fishery boards. That is a means by which notification can be communicated and I assure him that that is our intention.

**Amendment 26 agreed to.**

**Amendments 27 to 29 moved—[Paul Wheelhouse]—and agreed to.**

**Section 20, as amended, agreed to.**

**Section 21—Duty to consult and report before making certain applications**

**The Convener:** The next group is on applications for orders and regulations under the 2003 act. Amendment 30, in the name of Paul Wheelhouse, is grouped with amendments 32, 3, 4, 33 and 5. If amendment 32 is agreed to, amendment 3 is pre-empted. I ask the minister to move amendment 30 and speak to all the amendments in the group.

**Paul Wheelhouse:** District salmon fishery boards have statutory responsibilities to protect and improve salmon fisheries in their district and a number of powers to draw on to allow them to do so. In keeping with the themes of openness, accountability and transparency, the bill seeks to improve boards’ engagement with all relevant interested parties and the wider public, to promote professional, science-based management. I acknowledge their local management role and responsibilities and my preference is for DSFBs to develop and implement voluntary, locally agreed management measures, without recourse to intervention by national government or to statute.

Of course, that may not always be possible and the 2003 act provides that boards can apply to Scottish ministers for statutory measures. Where such measures are requested, it is my and Parliament’s expectation that the need for and impact of applications should be well evidenced. The bill will introduce a requirement on applicants—which, in practice, will be DSFBs—to consult known interested parties and the general public on management measures that they consider to require statutory backing and give regard to the representations that they receive. I want boards to reach out to the communities in which they operate, to inform and evidence their management plans. The requirement to consult prior to the submission of an application for statutory measures fits with the themes of openness, accountability and transparency.

The amendments in this group deal with the specific issue of how boards engage with the
general public and report back to the wider community. During stage 1, there was discussion of the proportionality of the requirements and the perceived administrative and financial burdens of requiring boards to publish a notice in a local newspaper. I have listened to those concerns and Government amendments 30, 32 and 33 seek to reduce the number of times that a board is required to publish a notice in a local newspaper from three to two. That way, we will reduce the administrative and financial burden on boards but uphold the policy objective of meaningful consultation with the public.

Alex Fergusson’s amendments 3, 4 and 5 would also have the effect of reducing the administrative and financial burden on boards, but I believe that they go too far and would mean that the essence of meaningful consultation would be lost. Relaxing the procedures by which the applicant should report back to the wider public community on the outcome of a consultation represents a loss in the accountability process. I believe that there is a need for safeguards to ensure that there is proper publicity for all interested parties. Removing the requirement to consult after ministers have assessed an application but before the measure is made would remove a vital part of the process in schedule 1 to the 2003 act, which is linked to the potential calling of a local public inquiry. I urge members to resist amendments 3, 4 and 5.

I share the committee’s observation that boards vary in size and resources; Alex Fergusson has made that point on previous occasions. I do not wish to place disproportionate burdens on them, but there is a balance to be struck. I consider the costs that are associated with pre-application consultation, as the process is modified by amendments 30, 32 and 33, to be proportionate, and I encourage members to support those amendments.

I move amendment 30.

Alex Fergusson: I entirely agree that this is indeed a question of proportionality.

As the minister said, section 21 includes a duty on the district salmon fishery boards to consult and report before making certain applications. I do not have a problem with that general principle at all but, without amendment, the requirement will compel district salmon fishery boards to publish or advertise in a newspaper twice during the process—I accept that the minister’s amendments will reduce the number of times on which that has to be done from three to two. However, under schedule 1 to the 2003 act, they will also have to do so once at the end of the process, so there will still be a requirement to publish a notice in a newspaper three times. I feel that that is overly prescriptive, especially for some of the smaller boards and particularly when we consider that it is more than likely that many of the interested parties or stakeholders—if we would like to call them that—will be represented on the boards in the first place.

My amendments would continue the requirement to publish but would remove the necessity and the not inconsiderable cost of having to do so in a newspaper after the first instance. There are ways to publish other than in a newspaper.

I think that my amendments 3 and 4 would fulfil the understandable need for consultation and the provision of information, but in a more proportionate and—if I may say so—slightly less dictatorial manner. Amendment 5 seeks to make a drafting change that would allow ministers to waive the obligation to give notice under paragraph 11(1) of schedule 1 to the 2003 act if they believe that adequate notice has already been given.

Jim Hume: On Alex Fergusson’s amendments 3 and 4 to remove the need to advertise in a newspaper more than once, I think that the minister will know that in the area that both of us cover there are several local newspapers. It would be possible to advertise in a very small newspaper that covered just Selkirk, say—I will use the Selkirk Weekend Advertiser as an example. That might be the cheapest option for the Tweed board, but it would not cover the whole area. Therefore, I have sympathy with what Alex Fergusson is trying to do and will support his amendments.

The Convener: I ask the minister to wind up and to try to get some more product placement into proceedings.

Paul Wheelhouse: Despite being accused of being dictatorial, I will resist the urge to respond, as I think that I have made all the points that I need to make.

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)

Abstentions
Fergusson, Alex (Galloway and West Dumfries) (Con)
The Convener: The result of the division is: For 5, Against 3, Abstentions 1.

Amendment 30 agreed to.

10:45
The Convener: If amendment 32 is agreed to, amendment 3 will be pre-empted.

Amendment 32 moved—[Paul Wheelhouse].

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 32 agreed to.

The Convener: Amendment 4, in the name of Alex Fergusson, has already been debated with amendment 30.

Alex Fergusson: Given that any order on the River Bladnoch would have to be published in The Galloway Gazette, the Stranraer and Wigtownshire Free Press and The Galloway News, I will move amendment 4.

Amendment 4 moved—[Alex Fergusson].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 33 agreed to.

Amendment 5 moved—[Alex Fergusson].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 5 disagreed to.

Section 21, as amended, agreed to.

Section 22—Carcass tagging

The Convener: The next group is on salmon carcass tagging. Amendment 89, in the name of Alex Fergusson, is grouped with amendments 90 and 34.

Alex Fergusson: I think that this is quite a simple issue. In our stage 1 report, the committee very much supported the individual numbering of tags and made it quite clear that any tagging scheme that did not include individually numbered tags would essentially be rendered ineffective.

Any tagging scheme must be about traceability. Returning to the agricultural theme that Tavish
Scott introduced, with his tractor, I should say that as a former sheep farmer I am well aware that every sheep that goes to slaughter must have an ear tag—one in each ear, in fact—for identification purposes. Those tags are individually numbered and every movement of each animal is logged and recorded. As a result, every animal can be identified and is traceable throughout its entire life.

Without the individual numbering of tags and recording of the use of those tags, any wider benefits of a tagging scheme—for example, any scheme to minimise the market for illegally caught fish—will be completely lost. With no traceability and no means of control over tags that had been issued or even copied, the scheme would be wide open to abuse. Amendment 89, therefore, proposes that any tagging scheme that is introduced use individual uniquely numbered tags that must be recorded in a manner to be determined by ministers.

As for amendment 90, new section 21A(4) of the 2003 act, as inserted by section 22, states:

“A person commits an offence if the person ... sells, offers or exposes for sale, or has in the person’s possession, any salmon ... that has not been tagged in accordance with regulations ... or ... from which a tag has been removed”.

However, there is no specific offence of buying an untagged fish.

In sections 16, 17 and 19 of the 2003 act, there are specific offences for buying as well as selling. In proposing amendment 90, I seek to tidy up what I see as a loophole in this legislation that would make it illegal to sell but not illegal to buy a rod-caught salmon.

I move amendment 89.

Paul Wheelhouse: The committee has noted the significant support for the introduction of a carcass-tagging scheme and agreed that an enabling power is the appropriate vehicle to bring that forward. However, although there is considerable support for a scheme, there is no agreement at present between sectors on what the scheme would—or should—look like.

Alex Fergusson’s amendments seek to prescribe the enabling power, restricting the flexibility of Scottish ministers to make provision for a carcass-tagging scheme. That approach presents difficulties and I urge members to resist amendment 89. I appreciate Alex Fergusson’s good intentions, but the amendment presents us with some problems.

The purpose of enabling powers is to allow ministers to make certain provisions. The detail of the carcass-tagging scheme will be set out in regulations in due course—an approach that has been approved by the committee. I have made clear my intention to consult fully on the detail of the scheme before bringing regulations to Parliament. I note the point that Tavish Scott made earlier on the degree of scrutiny hereafter, but I will certainly do whatever I can to ensure that there is appropriate scrutiny of this.

I note the preference of the committee and of others for numbered tags. That will be a key element of the consultation with all interested parties, as will the impact of the scheme on individual businesses.

Seeking to introduce this style of technical detail via primary legislation is not standard practice because of the requirements of the European Union technical standards directive. The directive requires that member states notify the European Commission about any new measures that they introduce that might create a technical barrier to trade. A notified provision is subject to a minimum standstill period before it can come into force, which can be up to 18 months. That notification process would have implications for the bill timetable as a whole if it was enacted.

Turning to amendment 34, in my name, the bill provides that the carcass-tagging regulations may modify part 5 of the 2003 act. Part 5 of the act deals with enforcement, including the powers of bailiffs and wardens. I note and concur with the Subordinate Legislation Committee’s view that affirmative procedure be followed where regulations seek to amend primary legislation. Amendment 34 requires that affirmative procedure is followed if the carcass-tagging regulations seek to amend part 5 of the act to make use of the bailiffing and wardening systems for the scheme. I therefore encourage members to support amendment 34.

Amendment 90 seeks to modify the offence provision that is associated with the carcass-tagging regulations to make the purchase of salmon that is not tagged in accordance with the regulations an offence. I understand that this is due to concerns, as set out by Alex Fergusson, about a perceived loophole in the law with regard to the purchase of rod-caught salmon. The bill as introduced has the potential to close that loophole because the term “possession” includes possession as a result of purchase. I am not persuaded that inclusion of the word “buys” is necessary at this time and therefore I do not support the amendment. If there are wider concerns about the offences that are associated with salmon fishing, they are best considered in the context of the forthcoming work to review more broadly the management of salmon and freshwater fisheries in Scotland. I urge members to resist amendment 90.

Claudia Beamish (South Scotland) (Lab): For the record, I highlight my commitment to trying to
take forward identification by number tags, but in this instance I take the minister’s point—he has clarified how that could proceed. It is extremely important that there is wide-ranging consultation before that comes forward.

**Alex Fergusson:** I am far from convinced that including the requirement for tags to be individually numbered at this stage of the legislation would in any way detract from further negotiations, discussions or consultations on the issue. I hear what the minister says about delaying the bill’s timetable—obviously one does not wish to do that. However, this is a hugely important issue and one on which there is considerable concern and a great level of agreement in the committee.

I am inclined to seek to withdraw amendment 89, because I would like to come back to the matter at stage 3. That is what I propose to do.

On amendment 90, I hear what the minister says. If I understand him correctly, he is saying that “possession” includes possession through purchase. Will the minister clarify that point?

**Paul Wheelhouse:** That is my understanding of what the term in the bill specifies.

**Alex Fergusson:** I am satisfied with that answer, although I still think that the word “buys” leaves no room whatever for dubiety. On that basis, I will move amendment 90 and seek to withdraw amendment 89.

Amendment 89, by agreement, withdrawn.

Amendment 90 moved—[Alex Fergusson].

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 90 disagreed to.

Amendment 34 moved—[Paul Wheelhouse]—and agreed to.

Section 22, as amended, agreed to.

**Sections 23 and 24 agreed to.**

**Section 25—Monitoring and evaluating the effects of orders**

The Convener: The next group is on monitoring and evaluating the effects of the orders. Amendment 6, in the name of Alex Fergusson, is grouped with amendments 7, 35, 8, 9, 36 and 10.

**Alex Fergusson:** Amendments 6, 8 and 10 are principally about proportionality. It is not at all unreasonable that ministers should be able to impose conservation measures on any board or individual proprietor in the right circumstances, and it is right that those measures should be properly monitored and evaluated—I do not have an issue with that.

However, as we are aware, and as I have said with regard to previous amendments, boards vary widely in size, resources and levels of expertise. In such a situation, one size does not necessarily fit all, and a greater degree of proportionality is required in the process.

When a board applies proactively for an order, discussions will take place with the appropriate officials on the required levels of monitoring for proper evaluation even before there is agreement on whether to go ahead with the proposed actions. Under the bill, ministers could take out an order entirely on their own initiative and place a legally binding monitoring requirement on the board or proprietor without any prior discussion or consultation whatsoever. I am not saying that ministers would do so, and I agree with Tavish Scott that the current minister would not, but he will not be there for ever—promotion beckons, I am sure.

It is entirely possible that such an order could be made without there having been any sense locally that it was even needed, and that the measure would therefore be imposed almost unnecessarily. That seems to be rather two-handed in this day and age of openness and consultation. Amendments 6, 8 and 10 would simply ensure that Scottish ministers have a duty to consult the relevant stakeholders prior to taking out any orders, and that those consultations would include the financial implications—the cost, in other words—of any actions to be taken.

I think that we would all want ministers and Government to act fairly, reasonably and responsibly in taking such decisions. If ministers have a duty to consult on the cost of their proposed actions, on which my amendment 6 would insist, there is bound to be a more reasonable outcome in respect of any obligations that are placed on district salmon fishery boards and on individual proprietors.
Amendments 7 and 9 are also about proportionality. Section 25 could criminalise district salmon fishery boards if they failed to monitor the effects of an order. The sanction that has been set is at level 4 on the standard scale. According to the Scottish Government’s website, level 4 is “the lowest that can reasonably be made as an alternative to a custodial sentence” and is “appropriate for offences posing more appreciable or culpable risks to health or safety, such as careless driving.”

I cannot see how that level of sanction will encourage people to give of their time to help in the work of district salmon fishery boards, which rely greatly on voluntary input. Such a sanction can act only as a huge disincentive.

If the Scottish Government believes that a criminal offence is appropriate, surely a level 3 sanction would be more appropriate. According to the same website, level 3 “is commonly the penalty for serious nuisances and is also used for serious breaches of administrative procedures, perhaps motivated by financial or other reward.”

That seems to me to be an altogether more appropriate level of sanction. I strongly emphasise that no one is against monitoring or evaluation of orders. However, I seek to ensure that we keep the issue in perspective.

I move amendment 6.

Paul Wheelhouse: I have already spoken about the role of district salmon fishery boards as local managers of salmon fisheries. I highlighted the Government’s preference for locally agreed voluntary conservation measures where those are needed. I have made clear the expectation that, where statutory measures are sought, the need and impact should be clearly evidenced.

I will pick up on a couple of Alex Fergusson’s points. I recognise where he is coming from, but I emphasise that the Government would never introduce secondary legislation without consultation. I will come on to the fine structure in a moment, but I point out that it is the district salmon fishery boards, and not their individual members, that would be liable for fines. Further, the 2003 act already has similar provisions in place.

I have made it clear that I do not wish to place a disproportionate burden on boards. I recognise that that is the main driver behind Alex Fergusson’s amendments—throughout the process, he has sought to take account of the different sizes and resources of boards. His amendments 6, 8 and 10 would place responsibility on the Scottish ministers to consult on any monitoring and evaluation requirements that they wish to impose on boards, hence my comment about the Government’s approach to secondary legislation. It is hard to argue that, where a national intervention is required to resolve local management issues, there should not be a responsibility on local managers to monitor the impact of that intervention in line with ministers’ expectations. Indeed, if we expect a district salmon fishery board to bring forward a business case, appropriate monitoring and evaluation arrangements should be integral to that.

Monitoring is a recognised way of assessing efficacy and promoting science-based management of fisheries. There is broader interest in the effectiveness of measures that are given statutory approval by the Parliament. All parties have a responsibility to share information widely to aid national understanding of fisheries management tools. In practice, monitoring plans should form part of the case for measures and will be discussed between the board and the Scottish Government during the assessment of the application in each case. That discussion will include financial costs. It is not in anyone’s interest for the Government to impose disproportionate financial burdens on boards. On that basis, I recommend that members resist amendments 6, 8 and 10.

Amendments 7 and 9 would reduce the level of fine that is capable of being levied on conviction for the offence of failing to monitor regulations or orders under sections 33 and 37 of the 2003 act. Monitoring and evaluation of management measures are a key component of fisheries management, so there must be a sanction for failure to comply, and the level of fine must act as a deterrent.

As I said, the fine would apply to the board rather than to individuals. I recognise Alex Fergusson’s point about disincentives in relation to people joining district salmon fishery boards, but it would be the board, not the individual, that would be liable for the fine. I consider that failure to take action to monitor statutory measures is a serious offence that merits a maximum fine of £2,500 rather than £1,000. I therefore urge members to resist amendments 7 and 9.

Amendments 35 and 36, in my name, have been lodged in response to discussion with stakeholders about the nature of the offence of failure to monitor. Due to the nature of the activity and the enforcement systems, a number of offences in the 2003 act can be prosecuted on single witness evidence. However, on reflection, I am of the view that the offences of failure to monitor under sections 33 and 37 of the act should be subject to the usual Scots law rules of
evidence, and that corroboration should therefore be required.

Members will be aware that wider steps will be taken by the justice secretary in the forthcoming criminal justice bill, which will, if passed by Parliament, lead to the abolition of the need for corroborated evidence for all offences. That should not stop members agreeing to my amendments, which deal with a very specific offence. However, members will want to note the wider developments.

I ask members to support amendments 35 and 36.

Alex Fergusson: I hear what the minister says about his willingness to address some of these issues in secondary legislation. However, I come back to the point that has already been made by members: secondary legislation does not receive a sufficient level of scrutiny—if it receives any—in the Parliament. That is not a fault of any Government or individual; it is a fault of the structure of the Parliament. Those of us who have been here long enough realise that is the case. Therefore, I intend to press amendments 6, 8 and 10.

On amendments 7 and 9, I did not find the minister’s answer entirely convincing. I think that he said that individuals would not be required to pay any sanction against them. My understanding is that an order can be taken out against an individual just as it can be taken out against a board, and therefore surely the individual would be liable for any sanction that was imposed. I would be happy if the minister were to clarify that.

Paul Wheelhouse: It comes down to whether a company or, in this case, a board has a legal identity, and that is what would be prosecuted for any offence. That is my understanding. Therefore, the board would be liable for the fine, not the individuals who are members of the board. That is our interpretation of the law, although I appreciate that Mr Fergusson may not agree with that.

Alex Fergusson: It is not that I agree or disagree, but that I find the position unsatisfactory—it is not entirely clear.

Paul Wheelhouse: We can write to the committee to give clarity on that point in advance of stage 3, if that would be beneficial.

The Convener: That would be helpful.

The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 6 disagreed to.

Amendment 7 moved—[Alex Fergusson].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 7 disagreed to.

Amendment 35 moved—[Paul Wheelhouse]—and agreed to.

Amendment 8 moved—[Alex Fergusson].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 8 disagreed to.
Amendment 9 not moved.

Amendment 36 moved—[Paul Wheelhouse]—and agreed to.

Amendment 10 moved—[Alex Fergusson].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 10 disagreed to.

Section 25, as amended, agreed to.

Sections 26 to 28 agreed to.

Section 29—Offences exempted by permission or consent: power to attach conditions etc

The Convener: The next group is on offences exempted by permission or consent. Amendment 60, in the name of Jim Hume, is grouped with amendment 61.

Jim Hume: Amendments 60 and 61 would strengthen the bill. Where district fishery boards are active, there is often a well-established history of electrofishing by those boards. That is of course important in recording the health of our rivers and burns. If others are to electrofish in the same waters as boards, it is important that boards are consulted on that; otherwise, sampling could occur at similar times, which could have a negative effect, especially on juvenile fish and invertebrates. Electrofishing is fairly harmless but, if young stocks were perhaps exposed to it twice on the same day, that could result in a negative consequence.

At present, district fishery boards must request consent to electrofish for research purposes in close times. The same goes for collecting brood stock for hatcheries to restock rivers. That is an anomaly and a waste of valuable Government resource. Electrofishing has no long-term effect on river stock and, as I said, it gives valuable information to help with the health of our rivers; using caught brood stock for hatcheries when that is appropriate also helps. Electrofishing should not be labelled in the same way as rod fishing, which is—rightly—subject to the laws of close times.

Amendment 60 would free up Government resource and stop district fishery boards wasting time and money on continually requesting consents from ministers. Consent for such activities would be allowed at appropriate times throughout the year for scientific and conservation reasons.

I move amendment 60.

Paul Wheelhouse: I clarify for Mr Hume’s benefit that, as I understand it, electrofishing could inadvertently—rather than deliberately—catch species such as the eel, which is protected. That would contravene requirements to protect that species, so electrofishing requires regulation.

In its stage 1 report, the committee endorsed the bill’s general principles. The bill seeks to promote openness, transparency and accountability, as I have said. It seeks to enhance salmon management through a more robust and consistent consenting regime that promotes science-based management.

Amendment 60 does not reflect those general principles or the direction of travel. It would give district salmon fishery boards powers to consent to and carry out activities that would otherwise be illegal during the annual and weekly close times. Close times have a clear and important purpose, which is salmon conservation. They are set out in statute, and variations require ministerial and parliamentary approval.

Ministers therefore have a legitimate interest in the oversight of activities that are undertaken in the periods that are set aside for conservation purposes. I am not persuaded that ministers should relinquish responsibility for that oversight, for the reasons that I have given.

Relevant to the discussion is the stage 1 evidence that the committee received from Scottish Natural Heritage, which had concerns about some boards’ ability to comply with their obligations, particularly in relation to consenting activities. Notably, SNH supports strongly the power in the bill for ministers to revoke, remove, restrict or modify district salmon fishery board powers to consent to salmon introductions. SNH does not support amendment 60.

Given that context, I urge members to resist amendment 60. It would represent a backwards step on openness and transparency and it would dilute ministers’ legitimate interest in activities that are carried out during annual and weekly close times.

Amendment 61 introduces a statutory requirement for boards to be consulted when
someone seeks to obtain permission from Scottish ministers to carry out activities related to non-salmonid fish that would otherwise be illegal. I recognise that the issue behind the amendment is a desire to manage the interaction between the salmon and freshwater fishery sectors. Both sectors carry out activities in the same environment and it is right that there is closer engagement between the two.

However, although the amendment creates a statutory obligation for boards to be consulted on non-salmon activities, there is no parallel obligation on boards to consult with freshwater interests. That would create an imbalance between the sectors, resulting in a hierarchy rather than a level playing field. The issue of how different fisheries interact with one another is a key point for the forthcoming review. I have made it clear that I want to look at the management of Scottish fisheries as a whole, and that will include how they interact with one another.

In the meantime, I consider that greater focus can be placed on encouraging all parties to engage with one another to develop joint approaches to undertaking work on each river. I recommend to members that they resist amendment 61.

11:15

The Convener: I invite Jim Hume to wind up and to indicate whether he will press his amendments.

Jim Hume: I will press both amendments 60 and 61.

I believe that, given their local setting, district fishery boards are in a good position almost to guarantee that electrofishing will not be duplicated in an area, albeit that different species may be involved.

I still believe that there may be a negative impact or unintended consequences. I would appreciate it if the minister would take the two amendments and consider them. I am sure that they will not be agreed to today but I shall press them.

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Abstentions
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.
Amendment 60 disagreed to.

Amendment 61 moved—[Jim Hume].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Abstentions
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 61 disagreed to.

Section 29 agreed to.

After Section 29

The Convener: The next group is on regulations on the right to buy salmon fisheries.
Amendment 62, in the name of Claudia Beamish, is the only amendment in the group.

Claudia Beamish: There is significant potential for netting effort to increase in future, although whether that will happen is uncertain. The high price of wild salmon and sea trout has meant that a number of previously dormant and lightly fished stations have been reopened. Analysis of the district assessors valuation rolls by the ASFB demonstrated that there were at least 129 dormant netting stations of varying sizes, which have the potential to come back into operation.

My view is that when a netting station is put up for sale or is to be leased by a third party, the relevant district salmon fishery board should, in the interests of salmon conservation, have a statutory right of first refusal before any proposed sale or lease of that netting operation could proceed. Such a right would not be prejudicial to the fishery owner, who would still receive appropriate compensation for the value of the
fishery. Therefore, the private heritable rights of the fishery owner would be protected.

That would not prevent such fisheries from continuing to operate but it would prevent a significant increase in commercial exploitation—there is a risk of such an increase—which would fly in the face of internationally accepted best practice. A concern about netting in relation to mixed fisheries has also been raised with us.

During stage 1, the minister emphasised his concern that decommissioned sites remain decommissioned. However, there is currently no mechanism to ensure that that happens.

In cognisance of Willie Cowan’s concern—Mr Cowan is a Scottish Government official—that provision for a scheme to grant to district salmon fishery boards the right to buy salmon fishing rights would be a substantial amendment to the bill at stage 2, amendment 62 is designed simply to give the Scottish ministers the power to introduce such a measure through secondary legislation. I support conferring on the Scottish ministers the power to grant salmon fishery boards the right of first refusal in purchasing dormant coastal fishing rights.

I move amendment 62.

Alex Fergusson: I am broadly supportive of amendment 62. As well as having the many benefits that Claudia Beamish mentioned, it would give district salmon fishery boards the opportunity to purchase salmon netting rights for conservation reasons. Conservation was quite a large feature of the evidence that we took, and its consideration is a good reason for supporting amendment 62.

Paul Wheelhouse: I was a little surprised that amendment 62 was lodged, although I appreciate the explanation that Claudia Beamish has given. In its stage 1 report, the committee signalled its support for my two-stage approach to delivering modernised management structures for salmon and freshwater fisheries. I specifically indicated that the management of coastal netting should be considered in the context of the forthcoming independent review.

I hear what Claudia Beamish is saying about providing enabling powers, which could be used subsequently.

I am committed to salmon conservation—let me be clear about that. The Scottish Government has obligations to the European Union and commitments to the international community, which we take seriously. Such factors are a key driver of the forthcoming review. We must have a management system that is fit for purpose in the 21st century.

The Scottish Government promotes size-based management of fisheries. The ownership of a fishing right is not in itself an evidence-based management tool for the conservation of salmon stocks; ultimately, what matters is how the right is exercised and managed. District salmon fishery boards and the Scottish ministers have a range of tools to manage and control how fishing rights are exercised.

As I made clear, my preference is for locally agreed voluntary conservation measures, where there is evidence that such measures are needed. If local voluntary approaches cannot be agreed, applications for statutory measures can be made. The bill strengthens ministers’ powers to make conservation measures, and we are far from complacent. That is why we view the bill as the first step—I stress “first step”—in modernising the management regime, and it is why I announced the forthcoming independent review.

Given the wider context, I am not convinced that amendment 62 is necessary. I also have reservations about the potential impact of introducing controls over private property rights. I urge members to reject amendment 62.

Claudia Beamish: I listened carefully to the minister and I note what he said about the independent review. I agree with Alex Fergusson that conservation is important. I will press amendment 62, because I would like the enabling power to be provided for in the bill.

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Amendments 0.

Amendment 62 disagreed to.

Sections 30 to 32 agreed to.

Section 33—Power of sheriff to order release of vessels

Amendment 37 moved—[Paul Wheelhouse]—and agreed to.

Section 33, as amended, agreed to.

Sections 34 to 43 agreed to.
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 wilfully 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.

I move amendment 38.

Alex Fergusson: I will speak for once in praise of the minister for introducing these amendments. As he is well aware, they are the product of much lobbying over the past two years and further back, as poaching along the Solway has always been an enormous problem. For many of the reasons that the minister has mentioned, on many occasions the poachers’ gangs have been able to cock a snook at authority and, to all intents and purposes, simply walk off with their ill-gotten gains.

I very much welcome the measures that have been taken, which I believe have already had some effect on the policing of illegal fishing, although it continues and always will. The measures are timely, because there is an open meeting on 3 April in Dumfries to try to come to an agreement on a model of fishery to be opened later this year. That is as welcome as these measures are, and I commend the Government for introducing them. I am so pleased with them that I am not even going to question the other amendments in the group.

11:30

Claudia Beamish: I identify myself with the remarks made by the minister and Alex Fergusson about making the legislation more robust and
enabling the police to do a more effective job in stopping this dreadful illegal trade and the threat that it poses to people out on the very dangerous Solway Firth. However, I seek clarification from the minister on the position with Crown land. I believe that you said that entry on to it is not allowed. What is the reason for that?

Paul Wheelhouse: Most of the foreshore, which as members will know belongs to the Crown Estate, will be covered by the provisions.

Claudia Beamish: I am sorry—I must have misunderstood.

Paul Wheelhouse: However, we are making an exemption for Her Majesty's own properties for security reasons and so on.

Claudia Beamish: Can you clarify why that exemption is being made? I apologise for not framing my initial question appropriately.

Paul Wheelhouse: It is probably in relation to security matters, but we can clarify that for the committee if it assists.

Jim Hume: We should note that every member who has spoken on these amendments—a number of South Scotland MSPs and the MSP for Galloway and West Dumfries—represents the Solway area, is very aware of the huge problems down there and supports what the minister is doing. I presume that we will keep an eye on what happens to ensure that the new powers on circumstantial evidence are not abused—I am sure that they will not be—but I support the minister in his endeavours to tackle illegal cockling.

Paul Wheelhouse: Speaking as another South Scotland MSP, I think that the measure is important and certainly welcome the committee's support for it.

Amendment 38 agreed to.

Amendment 39 moved—[Paul Wheelhouse]—and agreed to.

Schedule 2—Forfeiture under section 41 or 42

Amendment 40 moved—[Paul Wheelhouse]—and agreed to.

Schedule 2, as amended, agreed to.

Section 44—Modification of the Fisheries Act 1981: enforcement of EU rules

Amendments 41 and 42 moved—[Paul Wheelhouse]—and agreed to.

Section 44, as amended, agreed to.

Sections 45 and 46 agreed to.

Section 47—Protection and improvement of shellfish waters

The Convener: The next group is on technical and procedural issues. Amendment 43, in the name of the minister, is grouped with amendments 46 to 48.

Paul Wheelhouse: These amendments are technical and procedural in nature. Amendment 43 is a minor drafting amendment that seeks to alter the way in which the bill amends section 9 of the Water Environment and Water Services (Scotland) Act 2003 to make a clearer distinction between SEPA's objective setting for shellfish water protected areas and objective setting for water bodies in general by referring to those duties in separate subparagraphs. It is expected that separate regulations will be brought forward under section 9 of the 2003 act to deal with, on the one hand, objective setting for shellfish water protected areas and, on the other, objective setting for water bodies in general, and this minor technical amendment will facilitate the drafting of separate regulations while leaving unchanged the legal effect of the amendment made by section 47(4) of the bill.

Amendment 46 to 48 are consequential on amendment 43 and seek to ensure that any regulations in relation to the new powers to impose charging in connection with fisheries functions will be subject to the affirmative procedure. I listened carefully to stakeholder concerns and the comments from both the committee and the Scottish Law Commission, and I believe that this is an appropriate way forward. I invite the committee to agree to amendments 43 and 46 to 48.

I move amendment 43.

The Convener: No other member wishes to speak. I do not think that you need to wind up, minister.

Amendment 43 agreed to.

Section 47, as amended, agreed to.

Section 48 agreed to.

After section 48

Amendments 44 and 45 moved—[Paul Wheelhouse]—and agreed to.

Section 49 agreed to.

The Convener: We will have a short suspension for a comfort break before we proceed with section 50.
Section 50—Power to charge in connection with fisheries functions

The Convener: The next group is on power to charge in connection with fisheries functions. Amendment 78, in the name of Tavish Scott, is grouped with amendments 79, 80, 81, 82, 83, 84, 85, 86, 87, 92 and 88.

Tavish Scott: First, I apologise to the convener for making him read that great long list. I had and the chamber desk been able to draft one amendment that would have done all that I am seeking, believe me we would have done so. However, in moving amendment 78, I want to talk about the Government's ability to charge for the "services", rather than "functions", that it will now need to undertake because of its sweeping powers under the bill.

An important point to reflect on is that Marine Scotland, which is the Government's principal agency for fish farming, has three functions: enforcement of regulation, scientific research and policy. Without a shadow of a doubt, those three functions are distinct and need to be dealt with separately in any proposed charging regime. Otherwise, there will be a self-evident conflict of interest. That is the purpose behind these amendments.

To take one industry example, with the powers that it is taking under the bill Marine Scotland will be able to undertake additional site visits, make requests for information and engage in active day-to-day management scrutiny of the commercial functions of a fish farm. Potentially, all those services could now be charged for, and that is why my amendments seek to separate out the different services.

Last week and today, the Government resisted other amendments in my name that in some way—perhaps not completely—would have restricted the involvement, which will now undoubtedly happen, of Marine Scotland and the Government in the day-to-day management decisions of commercial operations. I think that that was a mistake and the Government will rue the day that it took all those powers, which will surely be on the statute book shortly. A commercial industry that operates in a highly intensive and competitive international market, with a high growth target that has been agreed by the Government, will now have additional bureaucratic and cost hurdles. The purpose of the amendments is to have those costs detailed in respect of the charges that will now be levied for services that Marine Scotland provides. It is important to reflect those charges, the purpose behind the charges, which part of Marine Scotland will charge for the particular services and why the charges are being levied.

The amendments in this group go some way—following the same principle that I have followed for all the other amendments that I have previously lodged at stage 2—towards achieving the necessary degree of transparency for how the Government and Marine Scotland will operate and intervene in commercial decisions. The amendments also assist in ensuring transparency regarding the statutory functions of, for example, the fish health inspectorate and regarding the charges that may be levied without statutory or regulatory underpinning through the powers that the Government is taking.

The Government needs to recognise—and I hope that it wants to recognise—that the industry can buy specialist knowledge and services from third-party contractors, including those that operate in the international marketplace. Where such a service is more cost effectively procured by the industry, I do not believe that it should be forced on the industry that only Marine Scotland should provide that service. However, that is the manner in which the bill is drafted.

Marine Scotland has an important role in ensuring that its charging is transparent and relates to the service—not the function—that it is providing, and that there should be opportunities, where appropriate, for that service to be provided by bodies that are not part of the Government, for reasons to do with the conflict of interest that is inherent in the bill.

I hope that, in lodging this group of amendments in that spirit, I can commend to the committee and other members the principle that, where a charge is being imposed on a commercial industry, the industry should, at the very least, expect the charge to be very detailed and clear.

I move amendment 78.

Alex Fergusson: I am largely supportive of all the amendments in the group, but I wish to ask Tavish Scott about amendment 86. Can he clarify why he believes that such a degree of specificity is so important? I have slight concerns over that, because I do not see an awful lot wrong with the current wording. I ask him to expand on that when he winds up.

Paul Wheelhouse: There are a number of common themes in these amendments, and I recognise the passion with which Tavish Scott is
putting forward the case on behalf of the industry. Amendments 78 to 81, 83 to 85, 87 and 88 seek to replace the principle of charging for the carrying out of fisheries functions with that of charging for the carrying out of fisheries services. I am not altogether clear—at least, I was not clear about it until today—as to which definition of a service was being applied, and I struggle to understand the arguments for why such an approach would be preferable.

As far as I am aware, only one stakeholder has expressed a view similar to that expressed by Tavish Scott today, and that was based on concerns about the principle of the Scottish Government charging for its own core functions or for services that have already been provided by preferred commercial suppliers—and Tavish Scott has picked up on that point. That is not the case, in our view.

As I explained at stage 1, the primary purpose of the provisions is to promote the effective use of resources. As regards any charges that are payable under regulations that are made using the power in the bill, a person is required to pay a charge only if and in so far as the person is someone in relation to whom a fisheries function has been carried out. In addition, the charge may not exceed the reasonable cost that is incurred in carrying out the function. The charge must relate to the function in respect of which it is charged, and it may not generate a surplus.

Amendments 91 and 82 seek to shape any future charging regulations. Amendment 82 is unnecessary, as section 50(1) already requires the regulations to specify the particular fisheries functions in relation to which they apply. Amendment 91—I say this with no disrespect intended—seems to be confused as to whether it is for or against charges for functions rather than charges for services.

I have already made it clear that it is the Scottish Government’s intention to consult fully before any regulations are made under the power. I have heard several times the concerns that Alex Fergusson and Tavish Scott have expressed today about secondary legislation, and I take that on board, but we have committed to having consultation. That commitment has been placed in the bill, and that, along with the fact that the committee has accepted the earlier amendment that will require any regulations that are made to be subject to affirmative procedure, suggests that the detail should be left for that process.

Amendment 86 also seeks to define those whom we should consult. The bill makes clear that, before making regulations,

“Scottish Ministers must consult such persons as they consider appropriate.”

There are already well-established administrative procedures for consultations, and I see no reason why we should not continue in that fashion in the future. In some respects, had a similar approach been taken with some of the amendments that are before us, we might not be discussing them today.

Amendment 92 seeks to place on ministers a requirement to prepare and publish a report on the operation of the regulation within a specific time period. Although I fully accept that it is desirable that the operation of any regulations that are made using the power should be reviewed on a regular basis, I think that the timescale should be determined as part of the wider policy development. On that basis, I think that it would be wrong to determine that period now.

I invite the committee to resist amendments 78 to 81, 91, 82 to 87, 92 and 88.

Tavish Scott: Mr Fergusson makes a reasonable point on amendment 86. Whether the amendment adds to or subtracts from the bill, or does nothing, is a question of balance. I am more than happy to reflect on that point.

On the minister’s arguments, it cannot be the case both that I am making this case on behalf of the industry and that only one stakeholder has responded in support of it. That does not seem to me to be a consistent argument. The minister has constantly said that during this debate. Let me be clear. This industry matters to my part of the world and to Scotland. It also matters to the Government, because every time that Alex Salmond or Richard Lochhead goes overseas to make the case for Scottish food, they make a big thing about salmon. They are right to do so. I applaud that activity. However, you cannot on one hand trot around the world saying that people should buy Scottish salmon and, on the other, impose on the industry a lot of extra costs and bureaucratic hurdles, which is what this bill does. I therefore have grave reservations about the sweeping powers that the Government is taking.

Ministers and Governments—I do not mean just Mr Wheelhouse and just this Government—always say that it is best to leave the detail to subsequent secondary legislation, with all the internal problems that go along with that. The purpose of these amendments is to achieve a degree of clarity in the bill on important areas of Government and Marine Scotland activity that otherwise will not be scrutinised closely. I am sure that the convener and the committee see the relevant bodies reasonably regularly, but that is different from the aspects of those activities being laid down in statute. If at least some of the aspects are not laid down formally in statute, which will allow the formal process of primary legislation to achieve the clarity in the bill that the industry and, I suspect, a lot of stakeholders want, the proposal
The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 78 disagreed to.

Tavish Scott: I will spare the committee the need to vote on the rest of the amendments in the group, as there is no point. Having had the vote on amendment 78, I will not move the rest.

Amendments 79 to 81, 91, 82 to 87, 92 and 88 not moved.

The Convener: I thank Tavish Scott for not moving the remaining amendments in the group, which has helped us enormously, although it has not impeded the essential debate.

Section 50 agreed to.

Section 51—Fixed penalty notices

The Convener: The final group is on reports on fixed-penalty notices. Amendment 64, in the name of Tavish Scott, is the only amendment in the group.

Tavish Scott: The purpose of amendment 64 is to ensure that the Government publishes a record of how many fixed-penalty notices are issued in a period—I suggest three months, although that could be discussed, as I recognise that there will be different views—and the consequences of those fixed-penalty notices. That is important from a number of perspectives, not least of which is the fact that the bill makes a new power with regard to a commercial industry. Such activity used to be handled through the sheriff court. I have some pretty grave concerns about how that was done in the past, as I think a number of us may have. I do not believe that the regulatory authorities did the industry or any industry stakeholder any favours by failing in some circumstances to make appropriate prosecutions when that would have clearly been the right thing to do.

I appreciate that the Government is finding a different way to deal with such matters, but I am not convinced that it is the right one. Frankly, on the basis of what has gone before, there is not much point in worrying about one's personal point of view. I simply suggest that amendment 64 will at least mean that there will be some transparency around what will take place after the bill is passed. I appreciate that the reporting period—in other words, the time when such notices are publicly intimated—could be a different duration.

I move amendment 64.

Paul Wheelhouse: I invite Mr Scott to withdraw amendment 64 for reasons that I will explain. If I do not persuade Mr Scott, I urge the committee to resist amendment 64.

I have no difficulty in principle with the publication of statistical data and I support the principles behind amendment 64. However, the reporting interval of three months that amendment 64 envisages lacks flexibility. Moreover, it is inconsistent with the treatment of statistical data on fixed-penalty notices in other regulatory regimes.

Fixed-penalty notices form part of wider criminal justice disposals. Statistical data on certain road traffic offences and fiscal fines, for example, is published as part of the Scottish Government's statistical bulletins annually. Much of the existing statistical data is published voluntarily and there are not many examples of statutory requirements to publish statistical data relating to the criminal justice system. Section 306 of the Criminal Procedure (Scotland) Act 1995 is one such example, but in that case the requirement is to publish certain relevant information in each year.

The publication of statistical data on fixed-penalty notices relating to the bill should be treated no differently, and to do otherwise by setting a quarterly statutory interval for publication, rather than an annual target, might set an unhelpful precedent that could go beyond the current bill.

As part of the Scottish Government's response to the committee's stage 1 report on the bill, I have given a commitment to publish statistics on fixed-penalty notices, so the general thrust of what is contained in Mr Scott's proposal will be delivered without the need to put the requirement on a statutory footing. I am more than happy to restate our commitment to publish statistical data on the use of fixed-penalty notices. If I have not persuaded Mr Scott to withdraw amendment 64, I urge the committee to resist it.
Tavish Scott: Those are reasonable arguments, although the argument that an amendment would set a precedent that might go further in other areas never wins me over. Our job, as parliamentarians, is to push on such points. Governments can always argue that they do not want such precedents set.

Rather more seriously, the main points that Mr Wheelhouse makes are entirely fair. The only thing that I ask, for the record, is that by the time we get to stage 3 that issue will have been discussed with those who may be affected by it and things will have been broadly agreed. If that will happen, I will be more than happy to withdraw amendment 64.

Amendment 64, by agreement, withdrawn.

Section 51 agreed to.

Section 52—Subordinate legislation

Amendments 46 to 48 moved—[Paul Wheelhouse]—and agreed to.

Section 52, as amended, agreed to.

Sections 53 to 57 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Aquaculture and Fisheries (Scotland) Bill. Members should note that the bill, as amended, will now be reprinted and will be available on the web tomorrow morning.

The Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments with the legislation team at any time. Members will be informed of the deadline for lodging amendments once it has been determined.

I thank the minister and his officials for their contribution and members of the committee for their detailed scrutiny of the bill, which was most welcome.

Meeting closed at 12:01.
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Aquaculture and Fisheries (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

PART 1

AQUACULTURE

CHAPTER 1

FISH FARM MANAGEMENT

1 Fish farm management agreements and statements

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 4 insert—

“Fish farm management agreements and statements

4A Fish farm management agreements and statements

(1) A person who carries on a business of fish farming at a fish farm located within a farm management area must—

(a) be party to a farm management agreement, or prepare and maintain a farm management statement, in relation to the fish farm, and

(b) ensure that the fish farm is managed and operated in accordance with the agreement or (as the case may be) statement.

(2) For the purposes of this section, a “farm management agreement” is an agreement—

(a) between two or more persons who carry on a business of fish farming at fish farms located in a farm management area, and
(b) which contains provision about the matters specified in subsection (4).

(3) For the purposes of this section, a “farm management statement” is a statement—

(a) prepared and maintained by a person who—

(i) carries on a business of fish farming at a fish farm located in a farm management area, and

(ii) is not, in relation to that fish farm, party to a farm management agreement, and

(b) which contains provision about the matters specified in subsection (4).

(4) The matters referred to in subsections (2)(b) and (3)(b) are—

(a) a description of the farm management area and the fish farm or farms to which the agreement or statement applies,

(b) arrangements for—

(i) fish health management,

(ii) management of parasites,

(iii) the movement of live fish on and off the farms,

(iv) the harvesting of fish,

(v) fallowing of the farms after harvesting,

(c) review of the agreement or statement at least every 2 years,

(d) in the case of a farm management agreement, arrangements for persons to become, or cease to be, parties to the agreement.

(5) In this section—

the “Code of Practice” means the document called the Code of Good Practice for Scottish Finfish Aquaculture as issued and revised from time to time by the body known as the Code of Good Practice Management Group,

“farm management area” means an area specified as such in the Code of Practice.

(6) The Scottish Ministers may by order modify the definition of the Code of Practice in subsection (5) so as to—

(a) substitute a reference to another document for the one for the time being referred to in that definition,

(b) substitute a reference to another body for the one for the time being referred to in that definition.

(7) An order under subsection (6) may—

(a) include incidental, supplemental, consequential, transitional, transitory or saving provision,

(b) modify any enactment, instrument or document.
4B Inspections: farm management agreements and statements

(1) An inspector may carry out an inspection of any fish farm to which section 4A(1) applies for the purpose of ascertaining whether that section is being complied with.

(2) In particular, an inspection under subsection (1) may include—

(a) taking samples (including samples of fish or material from fish),

(b) examining, and taking copies of, documents or records.

(3) An inspector may arrange for the carrying out of such tests as the inspector considers necessary, using samples taken during an inspection under subsection (1), for the purpose mentioned in subsection (1).‖.

(3) In section 6 (enforcement notices), for subsection (1) substitute—

“(1) Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming—

(a) does not have satisfactory measures in place for any of the purposes
mentioned in subsection (2), or

(b) in relation to a fish farm to which section 4A(1) applies, has failed or is
failing to comply with that section,

the Scottish Ministers may serve a notice (‘an enforcement notice’) on the
person.”.

(4) In section 43(3) (orders subject to affirmative procedure), in paragraph (a), after “section” insert “4A(6) or”.

2 Escapes, and obtaining samples, from fish farms

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) In section 5 (inspections: containment and escape of fish)—

(a) in subsection (2), after paragraph (b) insert—

“(ba) ascertaining the origin of fish known or believed to have escaped from
the fish farm or any other fish farm,”,

(b) in subsection (3), in paragraph (a), after “equipment” insert “, fish or material
from fish”.

(3) After section 5 insert—

“Sampling

5A Obtaining samples from fish farms

(1) An inspector may take samples of fish, or material from fish, on a fish farm for any of the purposes mentioned in subsection (3).

(2) An inspector may require a person who carries on a business of fish farming to provide the inspector with samples of fish, or material from fish, on the fish farm for a purpose mentioned in subsection (3).

(3) The purposes are—
Chapter 2—Fish farming: equipment and wellboats

3 Technical requirements for equipment used in fish farming

(1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by regulations—

(a) prescribe technical requirements for equipment to be used for or in connection with fish farming, and

(b) make provision for ensuring compliance with the requirements.

(2) The purposes are—

(a) the containment of fish,

(b) the prevention of escape of fish,

(c) the prevention, control or reduction of parasites, pathogens or diseases.

(3) Regulations under subsection (1) may, in particular—

(a) prescribe requirements as to the design, construction (including the materials used in construction), manufacture, installation, maintenance or size of equipment,

(b) provide for the appointment or authorisation of persons (“inspectors”) to inspect equipment for the purpose of ensuring compliance with the regulations,

(c) for that purpose, confer on inspectors—

(i) powers of entry, search and seizure,

(ii) powers to obtain information or evidence,

(d) impose requirements on fish farm operators, or their employees or agents, as to—

(i) the provision of information to inspectors,

(ii) allowing access by inspectors, and

(iii) cooperation with inspectors,

(e) confer powers on inspectors to impose such requirements,
(f) impose requirements on fish farm operators, or their employees or agents, as to—
   (i) the keeping of records in relation to equipment and the making of those records available for inspection,
   (ii) the notification or reporting of failures in equipment,
   (g) create criminal offences in relation to failures to comply with the regulations and make other provision for dealing with such offences, including—
      (i) the provision of defences,
      (ii) evidential matters,
   (h) provide for other sanctions for dealing with such failures,
   (i) provide for procedures (including appeals) for enforcing compliance with the regulations,
   (j) make different provision for different types of fish farming and different species of fish.

(4) Regulations under subsection (1) may prescribe requirements—
   (a) by reference to a document published by or on behalf of the Scottish Ministers or such other person, or person of such description, as is specified in the regulations, or
   (b) by reference to the approval or satisfaction of such person, or person of such description, as is specified in the regulations.

(5) Where regulations under subsection (1) create a criminal offence, they must provide for the offence to be—
   (a) triable summarily, and
   (b) punishable by a fine not exceeding level 4 on the standard scale.

(6) Regulations under subsection (1) may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified in the regulations.

(7) Sanctions provided for under subsection (3)(h) may include suspension or revocation of any authorisations required by fish farm operators to operate as such.

(8) In this section, “fish farm operators” means persons carrying on a business of fish farming.

Wellboats

4 Meaning of “wellboat”

(1) In this Chapter, “wellboat” means a vessel that contains a tank or well for holding water (including sea water)—
   (a) into which live farmed fish may be taken, and
   (b) in which the fish may be subsequently kept, for a purpose mentioned in subsection (2).

(2) The purposes are—
(a) the transportation of farmed fish,
(b) the storage of farmed fish,
(c) the slaughter of farmed fish,
(d) the treatment of farmed fish in connection with health, parasites, pathogens or 
diseases,
(da) the grading of farmed fish.

(3) For the purposes of this section, it is irrelevant whether or not the farmed fish remain 
alive in the course of any activity mentioned in subsection (2).

(4) In this section,
“farmed fish” means fish produced by fish farming, and 
“grading”, in relation to farmed fish, means separating and sorting the fish 
according to size.

5  Control and monitoring of operations of wellboats

(1) The Scottish Ministers may by regulations make provision for or about controlling and 
monitoring the operations of any wellboat in Scotland.

(2) Regulations under subsection (1) may, in particular, include provision for or about—
(a) the measures to be taken to prevent, reduce, remove or otherwise control the risk 
of the spread of parasites, pathogens or diseases as a result of wellboat operations,
(b) the installation of such equipment, or types of equipment, as may be specified—
   (i) to prevent, reduce, remove or otherwise control such a risk,
   (ii) to enable compliance with the regulations to be monitored,
(c) the reporting to the Scottish Ministers of such matters as may be specified.

(3) Regulations under subsection (1) may impose requirements on, and only on—
(a) the master of a wellboat,
(b) an owner of a wellboat,
(c) a charterer of a wellboat.

(4) Regulations under subsection (1) may make different provision for—
(a) different descriptions of wellboat,
(b) different operations,
(c) different species of fish,
(d) different periods of time.

(5) A person commits an offence if the person—
(a) acts in contravention of regulations under subsection (1),
(b) fails to take any action required of that person by such regulations, or
(c) otherwise fails to comply with any requirement imposed on that person by such 
regulations.
(6) No proceedings may be taken or continued against a person for an offence under subsection (5) in respect of a matter in relation to which an enforcement notice under section 6 has been served.

(7) It is a defence for a person charged with an offence under subsection (5)(b) or (c) to show that the person had a reasonable excuse for failing to take any action or (as the case may be) to comply with any requirement mentioned in that subsection.

(8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(9) In this section, “specified” means specified in regulations made under subsection (1).

6 Enforcement notices

(1) This section applies where the Scottish Ministers are satisfied that a person has failed or is failing to comply with any requirement imposed on that person by regulations under section 5(1).

(2) The Scottish Ministers may serve a notice (an “enforcement notice”) on the person.

(3) The enforcement notice must specify—
   (a) the grounds for the service of the notice,
   (b) the action that the person on whom it is served is required to take in order to ensure compliance with the regulations, and
   (c) the date by which that action is to be taken, which must be no earlier than 14 days after the day on which the notice is served.

(4) The Scottish Ministers may publicise the serving of an enforcement notice; and they may do so to such extent, in such manner and in such form as they think fit.

(5) A person on whom an enforcement notice has been served may appeal by way of summary application to a sheriff against the notice.

(6) An appeal under subsection (5) must be made before the expiry of the period of 7 days beginning with the day on which the notice is served.

(7) Where an appeal is made under subsection (5), the enforcement notice has no effect until the appeal is withdrawn or finally determined.

(8) In an appeal under subsection (5)—
   (a) the sheriff may make such order as the sheriff thinks appropriate, and
   (b) the sheriff’s decision is final.

(9) If the appeal is not upheld, the date by which the action specified in the notice is to be taken is such date as the sheriff may specify in the order disposing of the appeal.

(10) A person on whom an enforcement notice has been served commits an offence if the person fails to comply with the requirements of the notice.

(11) It is a defence for a person charged with an offence under subsection (10) to show that the person had a reasonable excuse for failing to comply with such requirements.

(12) A person who commits an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
CHAPTER 3

COMMERCIAL DAMAGING SPECIES

Orders relating to commercial damaging species

8 Specification of commercially damaging species

(1) The Scottish Ministers may, for the purposes of this Chapter, by order specify as a commercially damaging species—
(a) a species of fish or shellfish,
(b) any other species of animal,
(c) a species of plant.
(2) The Scottish Ministers may make an order under subsection (1) in relation to a species only if they consider that the species—

(a) if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and

(b) is itself of little or no commercial value.

9 Movement of species, etc.

(1) The Scottish Ministers may by order make provision for or about the prohibition or control of the movement of—

(a) any commercially damaging species that is present, or suspected of being present, in any body of water,

(b) any other species of animal or plant the movement of which may be associated with the movement of such a commercially damaging species,

(c) any equipment or other material used for or in connection with fish farming or shellfish farming, the movement of which may be so associated,

(d) water in which a commercially damaging species, or a species mentioned in paragraph (b), is present or suspected of being present.

(2) An order under subsection (1) may—

(a) designate an area in respect of which any prohibition or control of movement applies,

(b) make provision in relation to the enforcement of the provisions of the order, including provision for the issue of notices imposing requirements and the action that may be taken in cases where such notices are not complied with,

(c) make provision in relation to appeals against such notices or other actions taken in connection with the enforcement of the provisions of the order,

(d) where the movement of—

(i) a species,

(ii) equipment or other material, or

(iii) water in which a species is present or suspected of being present,

is controlled by the order, specify conditions or requirements in respect of such movement (including conditions that must be satisfied before such movement is permitted),

(e) make different provision for—

(i) different types of commercially damaging species,

(ii) different types of animal or plant as mentioned in paragraph (b) of subsection (1),

(iii) different types of equipment or other material as mentioned in paragraph (c) of that subsection.

(3) A person commits an offence if the person—

(a) acts in contravention of an order under subsection (1),
(b) fails to take any action required of the person by such an order, or

(c) otherwise fails to comply with any requirement imposed on the person by such an order.

(4) It is a defence for a person charged with an offence under subsection (3)(b) or (c) to show that the person had a reasonable excuse for failing to take the action or (as the case may be) to comply with any requirement mentioned in that subsection.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

10 Orders under section 9(1): samples and surveillance

(1) An order under section 9(1) may include provision for or about—

(a) the taking of samples of any fish from a fish farm, or shellfish from a shellfish farm, by a person appointed by the Scottish Ministers (an “appointed person”),

(b) the taking of samples of material from any such fish or shellfish by an appointed person,

(c) the analysis of such fish or shellfish, or such material, by an appointed person for the purposes of ascertaining whether a commercially damaging species is present on the fish farm or shellfish farm,

(d) the powers of an appointed person, including powers to—

(i) enter any land, fish farm or shellfish farm,

(ii) enter any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm,

(iii) require the operator of a fish farm or shellfish farm to provide the appointed person with samples such as are mentioned in paragraph (a) or (b),

(e) the size of any sample such as is mentioned in either of those paragraphs.

(2) Subsection (3) applies to an order under section 9(1) that controls the movement of fish or shellfish that are produced by fish farming or shellfish farming.

(3) The order may include provision for or about—

(a) requiring a person who carries on a business of fish farming or shellfish farming to carry out a programme of surveillance of—

(i) the fish or shellfish the movement of which is controlled by the order,

(ii) any other animal, or any plant, specified in the order that is present at the place to which the fish or shellfish mentioned in sub-paragraph (i) are to be, or have been, moved,

(iii) such conditions of that place as may be specified in the order,

(b) the carrying out by a person appointed by the Scottish Ministers of such a programme of surveillance,

(c) the powers of a person so appointed, including powers to enter—

(i) any land, fish farm or shellfish farm,
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(ii) any premises (other than a dwelling house) associated with the operation or management of a fish farm or shellfish farm,

(d) the matters which such a programme of surveillance is to address, including any risks associated with the movement of the fish or shellfish controlled by the order.

(4) An order under section 9(1) which includes provision conferring a power such as is mentioned in subsection (1)(d)(i) or (ii) or subsection (3)(c) must provide—

(a) for the power to be exercised at a reasonable hour, unless the person exercising it considers the case is one of urgency, and

(b) for any person who proposes to exercise the power to produce, if so required, evidence of the person’s identity and appointment.

11 Offences relating to persons appointed under section 10

(1) A person commits an offence if the person—

(a) fails to comply with a requirement imposed by a person appointed by virtue of subsection (1)(a) or (3)(b) of section 10, or

(b) wilfully obstructs such a person in the exercise of a power conferred by an order under section 9(1).

(2) It is a defence for a person charged with an offence under subsection (1)(a) to show that the person had a reasonable excuse for the failure.

(3) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person who commits an offence under subsection (1)(b) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

12 Notification of presence of commercially damaging species

(1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm must notify the Scottish Ministers as soon as reasonably practicable after the person becomes aware of, or suspects, the presence of a commercially damaging species on the fish farm or shellfish farm.

(2) Subsection (1) applies to any person who is employed, or acts as an agent, in connection with the operation of a fish farm or shellfish farm as it applies to a person mentioned in that subsection; but notification under this subsection need not be given if it has been given under subsection (1).

(3) Notification under subsection (1) or (2) must contain the following—

(a) where the fish farm or shellfish farm is authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), the name and number of the site where the commercially damaging species is present or suspected of being present,

(b) the name and contact details of—

(i) the person providing the notification, and
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(ii) the person carrying on the business of fish farming or shellfish farming at the fish farm or shellfish farm,

(c) the grid reference on the ordnance map of the fish farm or shellfish farm, or part of such farm, where the commercially damaging species is present or is suspected of being present,

(d) the type of commercially damaging species (if known),

(e) the date on which the person providing the notification first became aware of, or suspected, the presence of the commercially damaging species,

(f) the age in months of the commercially damaging species (if known), and

(g) the stage of growth of the commercially damaging species (if known).

(4) A person who fails to give a notification in accordance with subsection (1) or (2) commits an offence.

(5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for failing to give the notification.

(6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Control

13 Control agreements

(1) This section applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm.

(2) The Scottish Ministers must form a preliminary view as to whether and, if so, what measures should be taken to—

(a) remove the species from,

(b) reduce the incidence of the species on,

(c) prevent the spread of the species beyond, or

(d) otherwise control the species on,

the fish farm or shellfish farm.

(3) Where the Scottish Ministers form a preliminary view under subsection (2) that measures should be taken, they must—

(a) serve notice on the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm of the preliminary view, and

(b) consult the person in order to secure agreement—

(i) that measures require to be taken,

(ii) as to what measures require to be taken, and within what time limit,

(iii) as to who is to take such measures, and

(iv) as to such other matters as appear to the Scottish Ministers to be necessary for the purposes of such an agreement.
Where agreement is reached on the matters mentioned in subsection (3)(b), the Scottish Ministers must prepare an agreement (a “control agreement”) specifying—

(a) the parties to it,

(b) the measures which are to be taken in relation to the commercially damaging species,

(c) which of those measures are to be taken—

(i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and

(ii) by the Scottish Ministers, and

(d) the time limits within which any measures specified under paragraph (c) are to be taken.

A control agreement may specify different measures to be taken in respect of different fish farms or shellfish farms.

The Scottish Ministers must send a copy of the control agreement to the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm.

The person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm must take such measures as the agreement may require of that person in accordance with its provisions.

The Scottish Ministers must, at least once in every 18 month period, review a control agreement for the purpose of assessing compliance with its provisions.

Control schemes

Subsection (2) applies where the Scottish Ministers have served a notice under section 13(3)(a) in relation to a commercially damaging species that is present on a fish farm or shellfish farm, and—

(a) either—

(i) the Scottish Ministers are satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out, or

(ii) 6 weeks have elapsed since the Scottish Ministers served the notice and no agreement has been reached on the matters mentioned in section 13(3)(b), and

(b) the Scottish Ministers continue to have the view that measures should be taken to—

(i) remove the species from,

(ii) reduce the incidence of the species on,

(iii) prevent the spread of the species beyond, or

(iv) otherwise control the species on,

the fish farm or shellfish farm.
(2) The Scottish Ministers must make a scheme (a “control scheme”) for the purpose of ensuring that any measures mentioned in subsection (1)(b) which they consider should be taken are taken.

(3) The Scottish Ministers must notify the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made.

(4) A control scheme must—

(a) specify the date on which it is to come into effect (which date must be not less than 14 days after the day on which it was made),

(b) identify the fish farm or shellfish farm to which it relates,

(c) specify the measures that are to be taken in relation to the commercially damaging species or otherwise,

(d) specify which of those measures are to be taken—

(i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and

(ii) by the Scottish Ministers, and

(e) prescribe time limits within which any measures specified under paragraph (d) are to be taken.

(5) A control scheme may—

(a) specify different measures to be taken—

(i) by different persons such as are mentioned in subsection (4)(d),

(ii) in respect of different fish farms or shellfish farms,

(b) provide for the extension of any time limit prescribed in the scheme,

(c) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(6) Schedule 1, which makes provision about the making, variation and revocation of control schemes, and appeals against such matters, has effect.

(7) The person who for the time being carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates must take such measures as the scheme may require of that person in accordance with its provisions.

(8) The Scottish Ministers must, at least once in every 12 month period, review a control scheme for the purpose of assessing compliance with its provisions.

(9) Where the Scottish Ministers are of the opinion that a person has failed to comply with subsection (7), they may carry out the requirement if they are satisfied that it is still necessary to do so.

15 Emergency action notices

(1) This section applies where the Scottish Ministers are satisfied—

(a) that a commercially damaging species is present on a fish farm or shellfish farm, and
(b) that unless urgent action is taken, the commercially damaging species will spread quickly to other areas and have an immediate and significant adverse impact on—

(i) other fish or shellfish or the ability of persons to commercially exploit them, or

(ii) the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming.

(2) No notice under subsection (3) of section 13 need be served on a person mentioned in paragraph (a) of that subsection, and no consultation to secure an agreement with such a person need be carried out under paragraph (b) of that subsection.

(3) But the Scottish Ministers must serve on such a person notice (an “emergency action notice”) of their intention to take urgent action in respect of the commercially damaging species.

(4) An emergency action notice must state—

(a) the type of commercially damaging species that is present on the fish farm or shellfish farm,

(b) the nature of the threat that it poses and the impact mentioned in subsection (1)(b) that it will have,

(c) the measures that the Scottish Ministers propose to take for the purpose of—

(i) removing the species from,

(ii) reducing the incidence of the species on,

(iii) preventing the spread of the species beyond, or

(iv) otherwise controlling the species on, the fish farm or shellfish farm, and

(d) the places where, the times at which and the methods by which the Scottish Ministers intend to carry out such measures.

(5) No earlier than 14 days after the day on which an emergency action notice has been served, the Scottish Ministers may take—

(a) such measures as are specified in the notice,

(b) such steps towards taking such measures as the Scottish Ministers think fit.

16 Appeals in connection with emergency action notices

(1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which an emergency action notice under section 15 relates may appeal by way of summary application to a sheriff against—

(a) the decision of the Scottish Ministers to serve the notice,

(b) the terms of such a notice.

(2) An appeal under subsection (1) must be made within the period of 14 days beginning with the day on which the emergency action notice is served.

(3) In an appeal under subsection (1)—

(a) the sheriff may make such order as the sheriff thinks appropriate, and
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(b) the sheriff’s decision is final.

Powers

17 Power to enter fish farms, shellfish farms, etc.

(1) A person authorised by the Scottish Ministers for a purpose mentioned in subsection (2) has the power to enter—
(a) any land, fish farm or shellfish farm,
(b) any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm.

(2) The purposes for which the Scottish Ministers may authorise a person are—
(a) the obtaining of information by them in connection with satisfying themselves as to matters mentioned in subsection (1) of section 15,
(b) the determination of whether any of their functions under any of sections 13 to 15 should be carried out,
(c) the carrying out of any of those functions,
(d) the determination of how far and in what manner any requirement placed on any person under or by virtue of this Chapter has been complied with.

(3) A power of entry under this section must be exercised at a reasonable hour unless the person exercising it—
(a) is doing so for a purpose mentioned in subsection (2)(a),
(b) is doing so for the purpose of determining whether the Scottish Ministers’ functions under section 15 should be carried out, or
(c) otherwise considers the case is one of urgency.

(4) Any person who proposes to exercise any power of entry conferred by this section must, if so required, produce evidence of the person’s identity and authorisation.

Offences

18 Offences in relation to control agreements, control schemes, etc.

(1) A person commits an offence if the person refuses or fails to comply with any requirement imposed on the person by a control agreement under section 13 or a control scheme under section 14.

(2) A person commits an offence if the person wilfully obstructs any person authorised under subsection (1) of section 17 carrying out any function under that section.

(3) It is a defence for a person charged with an offence under subsection (1) of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who commits an offence under subsection (2) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to a fine.

**Interpretation of Chapter 3**

**19 Interpretation of Chapter 3**

In this Chapter, “commercially damaging species” means a species specified in an order under section 8(1).

**CHAPTER 4**

**Planning permission for marine fish farms**

(1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.

(2) After subsection (2) insert—

“(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—

(a) by order, or

(b) on application to them in accordance with regulations under subsection (8).”.

(3) After subsection (4) insert—

“(4A) Subsection (4B) applies where—

(a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and

(b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.

(4) In subsection (8)—

(a) paragraph (a) is repealed, and

(b) in paragraph (b), for the words “such an application” substitute “an application for planning permission”.
PART 2

SALMON FISHERIES, ETC.

Governance

20 District salmon fishery boards: openness and accountability

5 (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 44 (financial powers and duties of district salmon fishery boards), after subsection (1) insert—

“(1A) As soon as practicable after the annual meeting held under subsection (1) above, the clerk of the board must—

(a) arrange for the final report and audited accounts to be published; and

(b) send a copy of the final report and audited accounts to the Scottish Ministers.

(1B) In subsection (1A) above, the references to the final report and audited accounts are references to—

(a) the report and audited accounts as submitted for consideration at the annual meeting held under subsection (1) above; or

(b) if they are revised following consideration at the meeting, the revised versions of them.”.

(3) After section 46 insert—

“46A Annual report

(1) This section applies in relation to the report to be prepared under section 44(1)(a) of this Act by a district salmon fishery board.

(2) The board must ensure that the report contains, in particular—

(a) a summary of what the board have done in carrying out their functions under this Act, or any other enactment, during the year to which the report relates,

(b) a summary of what the board propose to do in carrying out those functions in the following year,

(c) information about complaints made to the board during the year, including—

(i) the number of complaints, and

(ii) a statement of the nature of each complaint and how it was disposed of, and

(d) a statement as to how the board—

(i) have complied during the year with the good governance requirements, and

(ii) propose to comply with those requirements in the following year.

(3) For the purposes of subsection (2)(d) above, the “good governance requirements” are the requirements under—
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(a) this section,
(b) section 44(1) and (1A) of this Act, and
(c) sections 46B to 46E of this Act.

46B Annual public meeting

(1) A district salmon fishery board—

(a) must hold one public meeting in each year, to be known as the “annual public meeting” of the board, and

(b) may hold other public meetings in the course of the year.

(2) Subject to subsection (4) below, the matters to be considered at the annual public meeting are for the board to determine, but must include the final report and statement of accounts required to be prepared under section 44(1).

(3) The reference in subsection (2) above to the final report and audited accounts is to be construed in accordance with section 44(1B) of this Act.

(4) The board must ensure that members of the public, and others who attend or propose to attend the meeting, are given an opportunity—

(a) to propose matters for consideration at the meeting, and

(b) to speak at the meeting.

46C Further provision about meetings

(1) Subsection (2) below applies in relation to—

(a) the annual meeting of qualified proprietors required to be called by the clerk of a district salmon fishery board under section 44(1) of this Act, and

(b) the annual public meeting of a district salmon fishery board.

(2) The clerk of the board must, no later than 21 days before the day on which the meeting is to be held—

(a) prepare a notice—

(i) specifying the date and time of the meeting and the place where it is to be held,

(ii) containing a list of the matters to be considered at the meeting,

(iii) stating that the meeting is open to the public, and

(iv) in the case of the annual public meeting, providing information as to how salmon anglers, tenant netsmen and other members of the public can submit proposals for matters to be considered at the meeting,

(b) arrange for the notice to be published in such manner as the clerk considers appropriate, and

(c) send a copy of the notice to the Scottish Ministers.

(3) In relation to any other meeting of a district salmon fishery board, the clerk of the board must—
(a) take such steps as the clerk considers appropriate to publicise the
meeting, and
(b) subject to subsection (6) below, ensure that the public are given an
opportunity to attend the meeting.

(4) Subsections (5) to (9) below apply in relation to—

(a) the meetings referred to in subsection (1) above, and
(b) any other meeting of a district salmon fishery board.

(5) Subject to subsection (6) below, the board must ensure that the business at the
meeting is conducted in public.

(6) In the case of a meeting other than the annual public meeting, the board may, if
there is a good reason for doing so, decide to conduct the meeting, or to
consider any particular item of business, in private.

(7) As soon as practicable after the meeting, the clerk of the board must—

(a) prepare a minute of the meeting,
(b) arrange for the minute to be published in such manner as the clerk
considers appropriate, and
(c) in the case of the minutes of the meetings referred to in subsection (1)
above, send a copy of the minutes to the Scottish Ministers.

(8) Subsection (9) below applies where the board decide—

(a) to conduct the meeting in private, or
(b) to consider any item of business at the meeting in private.

(9) The board must state reasons for the decision and ensure that the statement of
reasons is included in the minute of the meeting.

46D Complaints procedure

(1) A district salmon fishery board must maintain, and keep under review, proper
arrangements for dealing with complaints made to the board about the way in
which the board have carried out, or propose to carry out, their functions under
this Act or any other enactment.

(2) A board’s arrangements under subsection (1) above must, in particular, include
provision for dealing with complaints made by—

(a) members of the public,
(b) proprietors of salmon fisheries in the board’s district,
(c) salmon anglers in the board’s district,
(d) tenant netsmen in the board’s district,
(e) members of the board,
(f) other district salmon fishery boards.

(3) The arrangements may make different provision in relation to different
categories of complaint or complainant.

(4) As soon as practicable after making or reviewing arrangements under
subsection (1) above, a district salmon fishery board must—
(a) take such steps to publicise the arrangements as the board consider appropriate in order to bring them to the attention of persons who may wish to make complaints, and

(b) send to the Scottish Ministers a note of the arrangements.

(5) A district salmon fishery board must keep records of complaints made to the board about the way in which they have carried out, or propose to carry out, their functions, including information about how each complaint was disposed of.

46E Members’ interests

(1) A district salmon fishery board must maintain, and keep under review, proper arrangements for the registration and declaration of relevant financial interests of members of the board.

(2) A board’s arrangements under subsection (1) above must, in particular, include provision for—

(a) further defining what are relevant financial interests,
(b) the clerk to keep a register of members’ relevant financial interests,
(c) members to register their relevant financial interests in the register,
(d) members to declare any relevant financial interests before taking part in the board’s consideration of any business,

(e) members to be excluded from taking part in the board’s consideration of any business in which the member has a relevant financial interest.

(3) A district salmon fishery board must ensure that the register of members’ relevant financial interests is made available for public inspection.

(4) In this section, “relevant financial interests”—

(a) means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member’s view on any matter being considered by the board, and

(b) includes such interests held by a member or by another person with whom the member has a personal or business relationship.

46F Ministerial power to modify the good governance requirements

(1) The Scottish Ministers may by order—

(a) modify any of the good governance requirements,

(b) modify this Act so as to impose further requirements on district salmon fishery boards.

(1A) An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (2) below.

(2) The purposes are—
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(a) ensuring that the boards’ affairs are conducted in an open and accountable manner,
(b) ensuring that the boards’ affairs are conducted to appropriate standards of propriety and good governance.

(3) An order under subsection (1) above may include incidental, supplemental, consequential, transitional, transitory or saving provision.

(4) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.

46G Ministerial power to dissolve the committee constituting a board

(1) This section applies where the Scottish Ministers consider that a district salmon fishery board have persistently—
(a) failed to comply with the good governance requirements, or
(b) otherwise contravened the requirements of this Act.

(2) The Scottish Ministers may by order dissolve the committee constituting the board on a date specified in the order.

(3) The dissolution of the committee by an order under subsection (2) above has the same effect in relation to the committee (and the board) as the expiry of the period of three years mentioned in sections 43(3) and 47(1) of this Act.

(4) Accordingly, the references in section 43(3) and 47(1) of this Act to the expiry of the period of three years are to be read, in relation to a committee dissolved by an order under subsection (2) above, as including a reference to the date of dissolution specified in the order.

(5) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.”.

In section 68 (orders and regulations), in subsection (4), after “Act” insert “, and no order is to be made under section 46F(1) of this Act,”.

Duty to consult and report before making certain applications

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In each of the following provisions, for “10” substitute “9B”—
(a) subsection (7) of section 33 (salmon fishing: regulations as to baits and lures),
(b) subsection (3) of section 35 (designation orders),
(c) subsection (4) of section 36 (estuary limits),
(d) subsection (4) of section 37 (annual close times for salmon).

(3) In schedule 1 (procedure for making certain orders and regulations under the Act), before paragraph 10 insert—
“9B (1) This paragraph applies where a person (the “applicant”) proposes to make an application to the Scottish Ministers under paragraph 1, 3, 5 or 7 above.

(2) The applicant must—
(a) give notice in accordance with sub-paragraph (3) below that an application is proposed,

(b) specify in the notice the period within which, and the manner in which, representations or objections with respect to the proposed application may be made,

(ba) specify in the notice details of—

(i) where and how such representations or objections (if any are made) may be viewed, and

(ii) how copies of any such representations or objections that are made may be obtained,

(c) consult persons who, so far as the applicant can reasonably ascertain, have an interest in, or may be affected by, the proposed application, and

(d) specify the period (being not less than 28 days beginning with the date of consultation) within which, and the manner in which, representations or objections with respect to the proposed application may be made by such persons.

(3) A notice of the proposed application must be published at least once in each of two successive weeks in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application.

(4) The period mentioned in sub-paragraph (2)(b) above is a period of not less than 28 days beginning with—

(a) if notice of the proposed application is published only once in the first of the two successive weeks as mentioned in sub-paragraph (3) above, the date on which it is published in that week,

(b) if such notice is published more than once in the first of those two successive weeks, the date on which it is first published in that week.

(5) In deciding whether or not to make the proposed application, the applicant must take into account any representations and objections made in respect of it.

(7) Having decided whether or not to make the proposed application, the applicant must—

(a) publish in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application a notice containing—

(i) a summary of the reasons for the decision,

(ii) details of where and how a written statement of such reasons may be viewed, and

(iii) details of how copies of such a written statement may be obtained, and

(b) send a copy of such a written statement to any person who made representations or objections to the proposed application under this paragraph.

(8) The costs of complying with sub-paragraphs (2) and (7) above are to be met by the applicant.
9C (1) This paragraph applies where an applicant, having complied with the requirements of paragraph 9B above, decides to make an application mentioned in sub-paragraph (1) of that paragraph.

(2) When making the application, the applicant must include a report—

(a) stating that the requirements of paragraph 9B above have been complied with,

(b) explaining how those requirements were complied with,

(c) providing details of the persons consulted,

(d) explaining the substance of any representations and objections made in relation to the application, and the extent to which they were taken into account in deciding to proceed with the application, and

(e) giving the reasons for proceeding with the application.”.

Management

22 Carcass tagging

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 21 insert—

“21A Salmon carcass tagging

(1) The Scottish Ministers may by regulations make provision for or in connection with tagging the carcasses of salmon.

(2) Regulations under subsection (1) above may, in particular, make provision—

(a) about—

(i) the nature and form of tags,

(ii) the information which tags are to contain and the nature and form of that information,

(iii) applications for, and the supply, issue and storage of, tags,

(iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons,

(v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed,

(vi) the circumstances in which, and the time at or by which, tags may be removed,

(vii) the steps to be taken in the event of loss of, or damage to, tags,

(b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the regulations apply (including the form and content of such records),
(c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e) below, by such methods as the regulations may specify, and the steps to be taken in the event of loss of, or damage to, the records,

(d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in paragraph (e) below, including provision about the retention of tags after their removal,

(e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the regulations (including the appointment and functions of such persons),

(f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in paragraph (e) above of salmon—

(i) that have not been tagged, or

(ii) from which a tag has been removed otherwise than, in accordance with the provisions of the regulations,

(g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),

(h) for exemptions and exceptions to the regulations and for matters in respect of which the regulations do not apply.

(3) Regulations under subsection (1) above may make—

(a) different provision for different purposes and areas,

(b) incidental, supplemental, consequential, transitional, transitory or saving provision,

(c) such modifications of Part 5 of this Act as the Scottish Ministers think fit.

(4) A person commits an offence if the person—

(a) sells, offers or exposes for sale, or has in the person’s possession, any salmon—

(i) that has not been tagged in accordance with regulations under subsection (1) above, or

(ii) from which a tag has been removed otherwise than in accordance with such regulations,

(b) acts in contravention of such regulations, or

(c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such regulations.

(5) It is a defence for a person charged with an offence under subsection (4)(c) above to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above—
(a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale,

(b) may be convicted on the evidence of one person.”.

(3) In section 30 (exemptions in relation to fish farming)—

(a) in subsection (1), after “under” insert “section 21A or”;

(b) in subsection (5), after “18(1)(b)” insert “, 21A(4)(a) or (b)”.

(4) In section 68 (orders and regulations), in subsection (4), after “under” insert “subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under”.

**Powers to take fish or samples for analysis, etc.**

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 64 insert—

“64A Powers in relation to salmon and freshwater fisheries: sampling, etc.

(1) A person authorised by the Scottish Ministers (an “authorised person”) may—

(a) for a purpose mentioned in subsection (2)(a) or (b) below, require a person having rights in a salmon fishery or freshwater fishery—

(i) to permit the authorised person to take and retain fish from the fishery,

(ii) to permit the authorised person to take samples of material from fish in the fishery,

(iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,

(b) for a purpose mentioned in subsection (2)(c) below, affix a tag of such type and in such a way as the Scottish Ministers consider appropriate to any fish taken from a salmon fishery or freshwater fishery,

(c) for a purpose mentioned in subsection (2)(d) below, enter on a salmon fishery or freshwater fishery.

(2) The purposes referred to in subsection (1) above are—

(a) carrying out analysis of the fish or samples by any method that the Scottish Ministers consider appropriate,

(b) ascertaining whether an offence has been committed under section 33A of this Act,

(c) tracking or monitoring the fish,

(d) exercising the powers mentioned in paragraphs (a) and (b) of subsection (1) above, or tracking or monitoring fish tagged under paragraph (b) of that subsection.

(3) An authorised person seeking to exercise a power mentioned in subsection (1) above must, if requested, produce evidence of identity and authorisation.

(4) A person having rights in a salmon fishery or freshwater fishery commits an offence if the person—
(a) fails or wilfully refuses to comply with a requirement under paragraph (a) of subsection (1) above, or
(b) obstructs an authorised person in the exercise of any of the powers under paragraph (b) or (c) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(a) above to show that the person had a reasonable excuse for failing or refusing to comply with a requirement as mentioned in that subsection.

(6) A person who commits an offence—
(a) under subsection (4)(a) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
(b) under subsection (4)(b) above is liable on summary conviction—
(i) to a fine not exceeding level 3 on the standard scale,
(ii) to imprisonment for a term not exceeding 3 months, or
(iii) to both such fine and such imprisonment.

(7) In this section, references to a person having rights in a salmon fishery or freshwater fishery are to be construed in accordance with section 64(3) of this Act.”.

24 **Power of Scottish Ministers to conduct inquiries and obtain information**

(1) Section 64 of the Salmon and Freshwater (Consolidation) (Scotland) Act 2003 (power of the Scottish Ministers to conduct inquiries and to obtain information) is amended in accordance with this section.

(2) In subsection (1)—
(a) before paragraph (a) insert—
“(za) require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably request;”,
(b) in paragraph (a), the words from “, provided” to the end of the paragraph are repealed.

(3) In subsection (2), for the words “Any proprietor or occupier of a fishery” substitute “Any person having rights in a salmon fishery or freshwater fishery”.

(4) After subsection (2) insert—
“(3) In this section, a “person having rights in a salmon fishery or freshwater fishery” means—
(a) a proprietor of a salmon fishery;
(b) an occupier of such a fishery;
(c) an owner of land to which a right of fishing for freshwater fish pertains;
(d) an occupier of such a right.”.
25 Monitoring and evaluation of the effects of orders, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (6) insert—

“(6A) Regulations under subsection (1) above may impose requirements on district salmon fishery boards in relation to monitoring and evaluation of the effect of the regulations on salmon stocks.

(6B) A district salmon fishery board commits an offence if the board—

(a) acts in contravention of any such requirements; or

(b) fails to take any action required of the board by any such requirements.

(6C) A board which commits an offence under subsection (6B) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(3) In section 37 (annual close times for salmon)—

(a) in subsection (2), after “below” insert “and to section 38(5)(c) of this Act”,

(b) in subsection (3), at the beginning insert “Without prejudice to section 38(5)(c) of this Act,”,

(c) after subsection (3) insert—

“(3A) An annual close time order may impose requirements on district salmon fishery boards or proprietors of salmon fisheries in relation to monitoring and evaluation of the effect of the order on salmon stocks.

(3B) A district salmon fishery board or proprietor commits an offence if the board or proprietor—

(a) acts in contravention of any such requirements; or

(b) fails to take any action required of the board or proprietor by any such requirements.

(3C) A board which or proprietor who commits an offence under subsection (3B) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(4) In section 38 (salmon conservation regulations)—

(a) in subsection (4), after “subsection (5)(b)” insert “and (c)”,

(b) in subsection (5), after paragraph (b) insert—

“(c) subject to section 37(1) of this Act, prescribe for any salmon fishery district the dates of the annual close time for salmon and the periods within that time when it is permitted to fish for and take salmon by rod and line.”,

(c) in subsection (6), after paragraph (b) insert—

“(ba) impose on district salmon fishery boards or proprietors of salmon fisheries such requirements as the Scottish Ministers consider necessary or expedient in relation to monitoring and evaluation of the effect of the regulations on salmon stocks;”.
Power to vary procedures for orders, etc. relating to certain fisheries

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (7) insert—

“(8) The Scottish Ministers may by order vary the provisions of—

(a) subsections (2) to (5) above;

(b) paragraphs 9B to 15 of schedule 1 to this Act as they apply to the making of regulations under subsection (1) above.”.

(3) In section 35 (designation orders), subsection (4) is repealed.

(4) In section 39 (procedure for making orders and regulations under section 33 and Part 2)—

(a) the existing text becomes subsection (1) of section 39,

(b) after that subsection insert—

“(2) The Scottish Ministers may by order vary the provisions of schedule 1 to this Act.

(3) An order under subsection (2) above may make different provision for different purposes.

(4) Subsection (2) above is without prejudice to section 33(8)(b) of this Act.”.

Offence of fishing for salmon during annual close time

In section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (fishing for salmon during annual close time), in subsection (2), for the words from “by”, where it second occurs, to the end of the subsection substitute “in the district in which the fishing occurs—

(a) by the regulations or byelaws in force in that district;

(b) by a designation order made in respect of that district;

(c) in accordance with the provisions mentioned in section 37(2)(b) of this Act as they apply in respect of that district;

(d) by an annual close time order made in respect of that district; or

(e) by regulations under section 38 of this Act that make provision as mentioned in subsection (5)(c) of that section in respect of that district.”.

Consents for introduction of fish into inland waters

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33A (unauthorised introduction of fish into inland waters)—

(a) in subsection (3), for “this section” substitute “subsection (1) or (2) above”,

(b) after subsection (3) insert—

“(3A) The appropriate authority may, in granting consent for the purposes of subsection (3)(b) above, impose conditions or requirements.
(3B) A person shall be guilty of an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(3C) It is a defence for a person charged with an offence under subsection (3B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.”,

(c) after subsection (4) insert—

“(4A) Subsection (4) is subject to provision made in regulations under section 33B of this Act.”.

(3) After section 33A insert—

“33B Power to modify district salmon fishery boards’ functions under section 33A

(1) This section applies to the functions of the appropriate authority under section 33A(3)(b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.

(2) The Scottish Ministers may by regulations—

(a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,

(b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances,

(c) in relation to an application referred to the Scottish Ministers by virtue of provision made under paragraph (b) above, provide for the Scottish Ministers—

(i) to determine the application and to carry out the consenting functions in relation to the application, or

(ii) to issue directions to the district salmon fishery board to which the application was made about the determination of the application and the carrying out of the consenting functions in relation to the application.

(3) Regulations under subsection (2) above may—

(a) make different provision for different purposes, including different provision for—

(i) different district salmon fishery districts, or

(ii) different inland waters or parts of such waters,

(b) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(4) In subsection (2) above, “specified” means specified in regulations under that subsection.”.

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29 Offences exempted by permission or consent: power to attach conditions etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 27 (exemption from certain offences: salmon)—

(a) after subsection (1) insert—

“(1A) In granting permission under subsection (1) above, a district salmon fishery board or (as the case may be) the Scottish Ministers may impose conditions or requirements.

(1B) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(1C) It is a defence for a person charged with an offence under subsection (1B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(1D) A person who commits an offence under subsection (1B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”,

(b) in subsection (3), after “permitted” insert “, any conditions or requirements imposed under subsection (1A) above”.

(3) In section 28 (exemptions: fish other than salmon), after subsection (2) insert—

“(3) In granting permission under subsection (1) above, the Scottish Ministers may impose conditions or requirements.

(4) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 30 (exemptions in relation to fish farming), after subsection (2) insert—

“(2A) In granting consent under subsection (2) above, the Scottish Ministers may impose conditions or requirements.

(2B) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(2C) It is a defence for a person charged with an offence under subsection (2B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
(2D) A person who commits an offence under subsection (2B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

PART 3
SEA FISHERIES

Enforcement of sea fisheries legislation

Powers of British sea-fishery officers to enforce sea fisheries legislation

(1) For the purposes of enforcing the sea fisheries legislation, a British sea-fishery officer has—

(a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010, and

(b) the powers conferred by sections 31 and 34.

(2) Subject to subsection (3), the powers which a British sea-fishery officer has by virtue of subsection (1) for the purposes of enforcing the sea fisheries legislation may be exercised—

(a) in the Scottish enforcement area, and

(b) in relation to any Scottish fishing boat wherever it may be.

(3) Those powers may not be exercised in relation to any British warship (that is, any ship belonging to Her Majesty and forming part of Her Majesty’s armed forces).

(4) The powers which a British sea-fishery officer has by virtue of subsection (1) are without prejudice to any other powers exercisable by the officer for the purposes of enforcing the sea fisheries legislation.

(5) However, the officer may exercise any such other power only in a case where the officer is unable to exercise a power which the officer has by virtue of subsection (1).

(6) So far as necessary for the purposes, or in consequence, of the exercise of the powers referred to in subsection (1)(a), references in Part 7 of the Marine (Scotland) Act 2010 to a marine enforcement officer are to be read as including references to a British sea-fishery officer.

(7) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—

(a) any reference to a power conferred by Part 7 of that Act included a reference to—

(i) such a power as applied by subsection (1)(a), and

(ii) the powers conferred by sections 31 and 34, and

(b) any reference to a marine enforcement officer’s functions under that Act included a reference to the functions of a British sea-fishery officer under—

(i) Part 7 of that Act as applied by subsection (1)(a), and

(ii) sections 31 and 34.
Detention of vessels in connection with court proceedings

31 Power to detain vessels in connection with court proceedings

(1) This section applies where—

(a) a British sea-fishery officer has reasonable grounds for suspecting that an offence under the sea fisheries legislation has been committed by the master, an owner or a charterer of a vessel (referred to as “A”), and

(b) the officer reasonably believes that—

(i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the vessel is detained under this section, or

(ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.

(2) Where this section applies, a British sea-fishery officer may—

(a) take, or arrange for another person to take, the vessel and its crew to the port that appears to the officer to be the nearest convenient port, or

(b) require any person who is for the time being in charge of the vessel to take it and its crew to that port.

(3) When the vessel has been taken to a port, the officer may—

(a) detain it there, or

(b) require the person for the time being in charge of it to do so.

(4) A British sea-fishery officer who detains a vessel under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the vessel.

(5) The notice must state—

(a) the reasons for detaining the vessel, and

(b) the circumstances in which the vessel may be released.

32 Release of vessel detained under section 31

(1) This section applies where a vessel is being detained under section 31.

(2) The vessel ceases to be detained under that section if one of the following things occurs—

(a) the notice of detention is withdrawn,

(b) a sheriff orders the release of the vessel under section 33,

(c) any proceedings taken against the master, owner or charterer of the vessel have concluded,

(d) the court referred to in section 31(1)(b)(ii) exercises any power it has to order the vessel to be detained.

(3) A notice of detention is withdrawn by the service by a British sea-fishery officer of a further notice on the person who is for the time being in charge of the vessel, stating that the vessel is released.
(4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.

(5) The grounds of release are—

(a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the vessel in respect of any offence in relation to which the vessel was detained,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,

(d) that there are no grounds for believing that the court referred to in section 31(1)(b)(ii) will order the vessel to be detained.

(6) In this section, “notice of detention” means a notice served under section 31(4).

33 **Power of sheriff to order release of vessels**

(1) This section applies where a vessel is being detained under section 31.

(2) If, on an application to a sheriff by the master, an owner or a charterer of the vessel, the sheriff is satisfied as to either of the matters mentioned in subsection (3), the sheriff may order that the vessel be released.

(2A) An application under subsection (2) is to be made by way of summary application.

(3) Those matters are that—

(a) the continued detention of the vessel under section 31 is not necessary to secure that the master, an owner or a charterer of the vessel will attend court, or

(b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.

34 **Inspection and seizure of objects used in commercial sea fishing**

**Power to inspect and seize objects**

(1) A British sea-fishery officer may inspect any object which the officer reasonably believes has been, or is being, used for or in connection with commercial sea fishing.

(2) The officer may lift an object out of the sea for the purpose of inspecting it under this section.

(3) A British sea-fishery officer who has inspected an object under this section may seize the object.

(4) The power conferred by subsection (3) may be exercised only—

(a) for the purpose of determining whether an offence under the sea fisheries legislation has been, or is being, committed, or

(b) in relation to an object that the officer reasonably believes to be evidence of the commission of such an offence.

(5) If, having inspected an object under this section, the officer decides not to seize it under subsection (3), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found.
(6) If it is not reasonably practicable to replace the object in accordance with subsection (5), the officer may seize the object until such time as it may be collected by its owner.

(7) A power conferred by this section to seize an object includes power to seize—
   (a) anything that is attached to the object,
   (b) anything that is contained in the object.

(8) A reference in this section to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea.

(9) Anything seized under this section is to be delivered to the Scottish Ministers as soon as reasonably practicable.

(10) In this section, “commercial sea fishing” means—
   (a) any activity for which a licence is required by virtue of an order under section 4 (licensing of fishing boats) of the Sea Fish (Conservation) Act 1967,
   (b) any activity regulated by an order—
      (i) under section 1 (power to make orders as to fisheries for shellfish) of the Sea Fisheries (Shellfish) Act 1967, and
      (ii) to which section 2 (right of several fishery) or 3 (right of regulating a fishery) of that Act applies, and
   (c) any activity regulated by an order under section 1 (general power to prohibit sea fishing in specified areas) of the Inshore Fishing (Scotland) Act 1984.

(11) The Scottish Ministers may by order modify the definition of “commercial sea fishing” in subsection (10).

35 Reports of inspections under section 34

(1) This section applies where a British sea-fishery officer inspects an object under section 34.

(2) The officer must prepare a report in relation to the inspection.

(3) The report must state—
   (a) the date and time of the inspection,
   (b) the identity of the officer who carried out the inspection, and
   (c) how the officer may be contacted.

(4) In the case of an object seized under section 34(3) or (6), the report must also state—
   (a) what has been seized,
   (b) the reasons for its seizure, and
   (c) any further action that it is proposed will be taken in relation to the object.

(5) Where the object has not been seized under section 34(3) or (6), the officer must, if it is reasonably practicable to do so, attach a copy of the report to the object.

(6) If it is not reasonably practicable to do so, the officer must serve a copy of the report on every person who appears to the officer to be an owner of the object.
(7) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as an owner of the object, the officer must take such steps as the officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it.

(8) Where—

(a) the object has been seized under section 34(3), and
(b) one of the conditions in subsection (9) is satisfied,
the Scottish Ministers must serve a copy of the report on every person who appears to them to be an owner of the object.

(9) The conditions are—

(a) that a procurator fiscal has decided not to take any proceedings in respect of any offence in relation to which the object was seized,
(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
(c) that any proceedings taken in respect of such an offence have concluded.

(10) Where the object has been seized under section 34(6), the Scottish Ministers must serve a copy of the report on every person who appears to the Ministers to be an owner of the object at the same time as they serve a notice of collection on that person under section 37.

(11) In a case where the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object—

(a) the reference in this section to a requirement for the Scottish Ministers to serve a copy of the report on such a person is to be read as a reference to a requirement to take such steps as the Ministers think fit to bring the contents of the report to the attention of persons likely to be interested in it, and
(b) the reference in subsection (10) to serving a notice of collection under section 37 is to be read as a reference to taking the steps referred to in subsection (5) of that section.

Retention of objects seized under section 34(3)

(1) An object seized by a British sea-fishery officer under section 34(3) may be retained by the Scottish Ministers.

(2) If any of the grounds of release in subsection (3) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the object available for collection.

(3) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the object was seized,
(b) where a fixed penalty notice has been issued in respect of such an offence, the appropriate fixed penalty has been paid,
(c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the object.

(4) Subsection (2) does not apply if the object is liable to forfeiture under section 41.
(5) Any reference in this section to an object seized under subsection (3) of section 34 includes a reference to anything seized by virtue of subsection (7) of that section.

37 Disposal of objects seized under section 34

(1) This section applies to—

(a) an object seized under section 34(3) which the Scottish Ministers—

(i) no longer wish to retain for any purpose, or

(ii) are required to make available for collection by virtue of section 36,

(b) an object seized under section 34(6).

(2) In this section “notice of collection” means a notice stating that—

(a) the object specified in the notice is available to be collected from the location specified in the notice, and

(b) if the object is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the object.

(3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the object.

(4) The Scottish Ministers may take any other steps they think fit to notify every such person that the object is available to be collected.

(5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object in order to serve a notice of collection, the Scottish Ministers must take such steps as they think fit to bring the information contained in the notice to the attention of persons likely to be interested in it.

(6) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the object in whatever way they think fit.

(7) Any reference in this section to an object seized under subsection (3) or (6) of section 34 includes a reference to anything seized by virtue of subsection (7) of that section.

Retention and disposal of property seized by BSFOs

38 Retention of property seized by British sea-fishery officers

(1) This section applies to property—

(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, other than an object seized under section 34, and

(b) which was seized—

(i) in the Scottish enforcement area, or

(ii) on board a Scottish fishing boat.

(2) The officer must deliver the property to the Scottish Ministers as soon as reasonably practicable.

(3) Subsection (2) is subject to paragraph 13 of schedule 2.

(4) The Scottish Ministers may retain the property.
(5) If any of the grounds of release in subsection (6) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the property available for collection.

(6) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the property was seized,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

(7) Subsection (5) does not apply if the property is liable to forfeiture under section 41 or 42.

39 Power of Scottish Ministers to sell seized fish in their possession

(1) The Scottish Ministers may sell any fish that are being retained by them under section 38.

(2) Any power which a court has to order the forfeiture of any such fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.

(3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Scottish Ministers until such time as—

(a) a court exercises any power it has to order the forfeiture of the proceeds, or

(b) any of the grounds of release mentioned in subsection (4) applies.

(4) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the fish were seized,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.

(5) If any of the grounds of release mentioned in subsection (4) applies, the Scottish Ministers must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the Scottish Ministers to have been an owner of the fish at the time of the seizure of the fish.

(6) If the proceeds of sale are still in the Scottish Ministers’ possession after the end of the period of 6 months beginning with the date on which the fish were sold, the Scottish Ministers may retain the proceeds and apply them in any manner they think fit.

(7) The Scottish Ministers may exercise their power under subsection (6) to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.

(8) Subject to subsection (11), any fish sold under this section must be sold at auction.

(9) Before selling the fish, the Scottish Ministers must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.
(10) Subsection (11) applies if the owner of the fish requests that the fish be sold—

(a) at a particular auction, or

(b) by a method of sale other than by auction.

(11) The Scottish Ministers must comply with the request unless they consider the request to be unreasonable.

(12) The Scottish Ministers may deduct from the proceeds of sale any reasonable expenses incurred by them in selling the fish.

(13) Where there is more than one owner of the fish, subsection (11) applies only if the request under subsection (10) is made by or on behalf of all the owners.

40 Disposal of property retained by Scottish Ministers under section 38

(1) This section applies to any property being retained by the Scottish Ministers under section 38 which they—

(a) no longer wish to retain for any purpose, or

(b) are required to make available for collection by virtue of that section.

(2) In this section a “notice of collection” is a notice stating that—

(a) the property specified in the notice is available to be collected from the location so specified, and

(b) if the property is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the property.

(3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the property.

(4) The Scottish Ministers may take any other steps they consider appropriate to notify every such person that the property is available to be collected.

(5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property, they must—

(a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and

(b) take such steps as they think fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.

(6) For the purposes of subsection (5) each of the following is an “appropriate person”—

(a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property,

(b) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,

(c) in any other case, the person (if any) from whom the property was seized.

(7) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way they think fit.
Forfeiture

41 Forfeiture of prohibited items

(1) This section applies to any item—
   (a) seized by a British sea-fishery officer in the exercise of any power conferred by
       the sea fisheries legislation, and
   (b) which was seized—
       (i) in the Scottish enforcement area, or
       (ii) on board a Scottish fishing boat.

(2) The item is liable to forfeiture under this section if the use of the item for sea fishing
    would in any circumstances constitute an offence under the law of Scotland.

(3) An item forfeited under this section is to be forfeited to the Scottish Ministers who may
    dispose of it in any manner they think fit.

42 Forfeiture of fish failing to meet size requirements

(1) This section applies to any fish—
   (a) seized by a British sea-fishery officer in the exercise of any power conferred by
       the sea fisheries legislation, and
   (b) which were seized—
       (i) in the Scottish enforcement area, or
       (ii) on board a Scottish fishing boat.

(2) The fish are liable to forfeiture under this section if, by virtue of the fish failing to meet
    requirements as to size, an offence under the law of Scotland has been committed in
    respect of the fish.

(3) Any fish forfeited under this section are to be forfeited to the Scottish Ministers who
    may dispose of the fish in any manner they think fit.

43 Further provision about forfeiture under section 41 or 42

Schedule 2, which makes further provision about forfeiture under section 41 or 42, has
effect.

Inshore sea fishing

43A Contravention of orders prohibiting inshore sea fishing

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—

   “(1B) A person commits an offence if—

       (a) the person is found in, or in the immediate vicinity of, the area specified
           in an order under section 1 of this Act;

       (b) the person is found there at, or about, a time at which the prohibition
           under the order applies;
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(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order, and

(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

(2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—

(a) it is proved that—

(i) the accused was found in, or in the immediate vicinity of, the area specified in the order;

(ii) the accused was found there at, or about, a time at which the prohibition under the order applies, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;

(b) sea fish the fishing for which is prohibited by the order.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;

(ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

43B Powers of entry

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) After section 6 insert—
“6A  Power to enter land

(1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.

(2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, and for that purpose may—

(a) open lockfast places;
(b) remove any objects preventing the officer from gaining access to the land;
(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;
(d) require the owner or occupier of the land to allow the officer access to the land.

(3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer’s identity.

(4) A person commits an offence if the person—

(a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
(b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

(6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.

(7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.

(8) A person who commits an offence under subsection (4) above is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;
(b) on conviction on indictment to a fine.

(9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.

(3) After section 10 insert—

“10A  Crown application: Scotland

(1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
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(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.

(3) No contravention by the Crown of that section makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown,

(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Enforcement of EU rules

44 Modification of the Fisheries Act 1981: enforcement of EU rules

(1) Section 30 of the Fisheries Act 1981 (enforcement of Community obligations) is amended in accordance with this section.

(2) In subsection (1)—

(a) for paragraph (a) substitute—

“(a) if any fishing boat within the Scottish Zone—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the master, the owner and the charterer (if any) are each guilty of an offence;”,

(b) after paragraph (a) insert—

“(aa) if any Scottish fishing boat outside the Scottish Zone—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the master, the owner and the charterer (if any) are each guilty of an offence;

(ab) if any person in Scotland—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the person is guilty of an offence;”,

(c) in paragraph (b), for “such offences” substitute “offences under paragraph (a), (aa) or (ab) of this subsection”,

(d) in subsection (3), after the definition of “the Ministers” insert—
“Scottish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging; “Scottish Zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act).”.

Supplementary

45 Conclusion of proceedings

(1) This section applies for determining when any proceedings have concluded for the purposes of this Part.

(2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded—

(a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or

(b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.

(3) Subsection (2) applies for determining when any proceedings on appeal are concluded for the purposes of paragraph (b) of that subsection as it applies for determining when the original proceedings are concluded.

(4) Any reference in subsection (2) to a decision that terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings.

46 Interpretation of Part 3

(1) In this Part—

“appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty), “fish” includes shellfish, “fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007, “the Scottish enforcement area” means—

(a) Scotland, and

(b) the Scottish Zone, “Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging, “the Scottish Zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act), “sea fisheries legislation” means, subject to subsection (2)—
(a) any enactment relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout, and

(b) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing.

(2) “Sea fisheries legislation” does not include—

(a) the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, or

(b) any Order in Council under section 111 of the Scotland Act 1998 (regulation of Border rivers).

\[ \text{PART 4} \]

\[ \text{SHELLFISH} \]

\[ \text{Protection of shellfish waters} \]

\[ \text{47 Protection and improvement of shellfish waters} \]

(1) The Water Environment and Water Services (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 5 insert—

“\[ 5A \] Shellfish water protected areas

(1) The Scottish Ministers may by order (in this section, a “designation order”) designate an area of coastal water or transitional water as a shellfish water protected area for the purposes of this Part.

(2) An area of coastal water or transitional water may be designated under subsection (1) only if the Scottish Ministers consider it necessary or desirable to do so for the protection or development of economically significant shellfish production.

(3) The Scottish Ministers must review each designation order—

(a) by 22 December 2019, and

(b) by each date falling every 6 years (or such lesser period as the Scottish Ministers may determine) after 22 December 2019.

(4) Subsection (3) applies to a designation order which comes into force after 22 December 2019 as if paragraph (a) were omitted.

(5) A designation order which would, apart from this subsection, fall to be reviewed under subsection (3) by a particular date need not be reviewed by that date if the order came into force less than 6 months before that date; but must otherwise be reviewed in accordance with that subsection.

(6) A designation order may identify the area of coastal water or transitional water by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

(7) The Scottish Ministers must send SEPA a copy of—

(a) a designation order, and

(b) any map prepared in pursuance of subsection (6).”.
(3) In section 7 (register of protected areas), in subsection (3), before paragraph (a) insert—

“(za) any shellfish water protected area,”.

(4) In section 9 (environmental objectives and programmes of measures)—

(a) in subsection (1), in paragraph (a)—

(i) the words “each body of water in the district, and” become sub-paragraph (i) of that paragraph, and

(ii) after that sub-paragraph insert—

“(ii) each shellfish water protected area in the district, and”,

(b) in subsection (7)—

(i) after “objectives”” insert—

“(a) in respect of any body of water,”,

(ii) at the end insert “, and

(b) in respect of a shellfish water protected area, includes (without prejudice to the definition in paragraph (a)) such objectives as SEPA considers necessary or desirable to improve or protect that area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption.”.

(5) In section 11 (river basin management plans: publicity and consultation), in subsection (6), after paragraph (f) insert—

“(fa) where any part of the river basin district has been designated as a shellfish water protected area, the Food Standards Agency,”.

(6) In section 28 (interpretation of Part 1), in subsection (1), after the definition of “SEPA” insert—

“shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish,

“shellfish water protected area” means an area of coastal water or transitional water designated by order under section 5A(1),”.

Orders as to fisheries for shellfish

48 Power to make orders as to fisheries for shellfish

(1) In section 1 of the Sea Fisheries (Shellfish) Act 1967 (power to make orders as to fisheries for shellfish), in subsection (1), for the words from “shellfish” to “Minister” substitute “shellfish of any kind specified in the order”.

(2) In section 15 of the Sea Fisheries Act 1968 (amendments of Sea Fisheries (Shellfish) Act 1967)—

(a) subsection (2) is repealed,

(b) in subsection (3), for “that section” substitute “section 1 of that Act”.

48A Contravention of regulated fishery orders

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.
(2) In section 3 (effect of grant of right of regulating a fishery)—

(a) after subsection (4) insert—

“(4A) Subsection (4B) applies where an order under section 1 of this Act—

(a) confers a right of regulating a fishery for any specified description of shellfish, and

(b) imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery or any part of it.

(4B) A person commits an offence if—

(a) the person is found within the limits of, or in the immediate vicinity of, the regulated fishery,

(b) the person is found there at, or about, a time at which the restrictions imposed or regulations made by the order apply,

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or regulations, and

(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to dredge, fish for and take shellfish in contravention of the restrictions or regulations.

(4C) A person who commits an offence under subsection (4B) is liable on summary conviction to a fine not exceeding £50,000.”,

(b) in subsection (5), after “subsection (3)” insert “or (4B)”, and

(c) in subsection (6), for “Subsection (1) of this section” substitute “This section”.

(3) After section 3 insert—

“3A Contravention of regulated fishery orders: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 3(3) of this Act involving dredging, fishing for and taking shellfish in contravention of restrictions imposed or regulations made by—

(a) an order under section 1 of this Act, or

(b) the grantee of such an order.

(2) It is to be presumed that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations if—

(a) it is proved that—

(i) the accused was found within the limits of, or in the immediate vicinity of, the regulated fishery to which the order relates,

(ii) the accused was found there at, or about, a time at which the restrictions or regulations apply, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and
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(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the order,

(b) shellfish the dredging, fishing for and taking of which is prohibited by the restrictions or regulations.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence within the limits of, or in the vicinity of, the regulated fishery to which the order relates was for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or requirements, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose,

(ii) of shellfish mentioned in paragraph (b) of that subsection, the shellfish were caught or taken in contravention of the restrictions or requirements.”.

48B Enforcement of orders: powers of entry

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) After section 4C insert—

“4CA Power to enter land

(1) For the purposes of exercising the powers conferred by sections 4A to 4C, and of enforcing the restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may at any time enter land (including the foreshore) other than a dwelling house, and for that purpose may—

(a) open lockfast places,

(b) remove any objects preventing the officer from gaining access to the land,

(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object,

(d) require the owner or occupier of the land to allow the officer access to the land.

(2) A British sea-fishery officer may—

(a) exercise the power of entry under subsection (1) on foot or in a vehicle,

(b) when exercising that power, take with the officer—
(i) such persons as appear to the officer to be necessary,
(ii) any equipment or material.

(3) The power of entry under subsection (1)—
(a) may not be exercised in relation to land in respect of which section 4B
confers a power of entry, and
(b) is without prejudice to the power of entry conferred by that section.

(4) A British sea-fishery officer who proposes to exercise the power of entry
conferred by subsection (1) must, if so required, produce evidence of the
officer’s identity.”.

(3) In section 4D—
(a) in subsection (1)—
(i) for the words “or 4B(3) or (12)” substitute “, 4B(3) or (12) or 4CA(2)(b)”,
(ii) for the words “or 4C” substitute “, 4C or 4CA”,
(b) in subsection (2)(a), for the words “or 4B” substitute “, 4B or 4CA”,
(c) after subsection (2) insert—
“(2A) A constable may arrest without warrant any person who the constable
reasonably believes is committing or has committed an offence under
subsection (2) relating to—
(a) a failure to comply with a requirement imposed under a power conferred
by section 4CA,
(b) obstructing a British sea-fishery officer in the exercise of such a power.
(2B) Subsection (2A) above is without prejudice to any power of arrest conferred by
law apart from that subsection.”.

(4) In the title to section 4D, for “4C” substitute “4CA”.

(5) After section 24 insert—
“24A Crown application: Scotland
(1) Section 4CA binds the Crown and applies in relation to Crown land as it
applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in
Her private capacity.
(3) No contravention by the Crown of section 4D(2) in respect of a failure to
comply with a requirement under a power conferred by section 4CA makes the
Crown criminally liable.
(4) But the Court of Session may, on the application of the Lord Advocate, declare
unlawful any act or omission of the Crown which constitutes such a
contravention.
(5) For the purposes of subsection (1), “Crown land” means land an interest in
which—
(a) belongs to Her Majesty in right of the Crown,
(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

### Part 5

#### Miscellaneous

#### Charging

### Power to charge in connection with fisheries functions

(1) The Scottish Ministers may by regulations make provision for or about the imposition of charges in connection with the carrying out of such fisheries functions as are specified in the regulations.

(2) In this section, “fisheries functions” means—

(a) functions of the Scottish Ministers under any legislation relating to—

(i) fish farming or shellfish farming,

(ii) salmon or freshwater fisheries,

(iii) sea fishing, or

(b) functions of any other person under any such legislation so far as the person is appointed or authorised by the Scottish Ministers for the purposes of enforcing, or otherwise ensuring compliance with, the legislation.

(3) Regulations under subsection (1) may include provision—

(a) specifying, or for determining, the amount of charges,

(b) specifying, or for determining, the persons or types of person who are to pay charges,

(c) specifying, or for determining, the circumstances in which charges are payable,

(d) for making the carrying out of specified fisheries functions conditional on the payment of charges,

(e) for the imposition of annual or other recurring charges,
(f) for the reduction or waiver of, or exemptions from, charges,

(g) for the recovery and collection of charges,

(h) for the method and timing of payment of charges,

(i) for determining disputes as to the amount of, or liability for, charges.

(4) Regulations under subsection (1)—

(a) may have the effect of requiring a person to pay a charge only if, and so far as, the person is someone in relation to whom a specified fisheries function has been, or is to be, carried out, and

(b) must not have the effect of imposing a charge in a particular case that exceeds the reasonable costs incurred in the carrying out of a specified fisheries function in that case.

(5) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

(6) Regulations under subsection (1) may make different provision for—

(a) different fisheries functions,

(b) different persons or types of person.

(7) Regulations under subsection (1) do not affect any power that the Scottish Ministers have apart from this section to—

(a) impose fees or charges, or recover costs, in connection with the carrying out of any fisheries functions, or

(b) provide for the imposition of such fees or charges or the recovery of such costs.

(8) In this section, “legislation” means any—

(a) enactment, or

(b) EU instrument containing an enforceable EU obligation or an enforceable EU restriction.

**Fixed penalty notices**

(1) Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 (sea fisheries) is amended in accordance with this section.

(2) In section 25 (issue of fixed penalty notices)—

(a) in subsection (1), for “British sea-fishery” substitute “fixed penalty”,

(b) in subsection (2)—

(i) the words “is an offence” are repealed,

(ii) for paragraphs (a) and (b) substitute—

“(a) is an offence under the Sea Fisheries enactments in respect of which a person mentioned in paragraph (a) of subsection (2A) has functions,

(b) is an offence under the marine protection and nature conservation legislation in respect of which a person mentioned in paragraph (b) of that subsection has functions,
(c) in relation to a person mentioned in any of paragraphs (c) to (f) of that subsection, is an offence in respect of which the person has functions.

(c) after subsection (2) insert—

“(2A) The persons referred to in subsection (2) are—

(a) a British sea-fishery officer,

(b) a marine enforcement officer within the meaning of section 157(1) of the Marine (Scotland) Act 2010,

(c) an inspector within the meaning of section 12 of the Aquaculture and Fisheries (Scotland) Act 2007,

(d) an inspector within the meaning of regulation 3(1) of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85),

(e) an inspector within the meaning of regulation 1(2) of the Animals and Animal Products (Import and Export) Regulations 2007 (S.S.I. 2007/194) who is appointed as mentioned in that regulation by the Scottish Ministers for purposes relating to fish farming or shellfish farming,

(f) an authorised officer within the meaning of regulation 2(1) of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 (S.I. 1997/1729) appointed (whether solely or jointly) by the Scottish Ministers to act in matters arising under those Regulations relating to fish farming or shellfish farming or the products of either such type of farming.

(2B) The Scottish Ministers may by order modify—

(a) subsection (2) so as to amend the definition of “relevant offence”,

(b) subsection (2A) so as to—

(i) add or remove a description of a person to or from those for the time being listed in that subsection,

(ii) vary a description of a person for the time being listed in that subsection.

(2C) In subsection (2A)(e) and (f), “fish farming” and “shellfish farming” have the same meanings as in section 12.

(2D) Despite subsection (1), a fixed penalty officer may not issue a notice in respect of a relevant offence that involves—

(a) assault on a person mentioned in subsection (2A),

(b) obstructing such a person in the exercise of the person’s powers,

(c) failure to comply with a requirement imposed, or instruction given, by such a person.”,

(d) in subsection (3)—

(i) after the definition of “British sea-fisheries officer” insert—

““fixed penalty officer” means a person appointed as such an officer by the Scottish Ministers;”,

(ii) after the definition of “Sea Fisheries enactments” insert—
“the marine protection and nature conservation legislation” has the meaning given in section 132(2) of the Marine (Scotland) Act 2010;”.

(3) In section 27 (amount and payment of fixed penalty)—
   (a) in subsection (1), for “80 per cent of level 4 on the standard scale” substitute “£10,000”,
   (b) in subsection (2), for “British sea-fishery” substitute “fixed penalty”.

(4) In section 31 (withdrawal of fixed penalty notice or expiry of period for paying), in subsection (1), for “British sea-fishery” substitute “fixed penalty”.

(5) For the title of Part 4 substitute “Fixed penalty notices”.

(6) The cross-heading immediately following that title is repealed.

(7) For the cross-heading immediately preceding section 32, substitute the following Part title—
   “PART 4A – MISCELLANEOUS AMENDMENTS OF SEA FISHERIES LEGISLATION”.

PART 6
GENERAL

52 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—
   (a) different provision for different purposes or different areas,
   (b) incidental, supplemental, consequential, transitional, transitory or saving provision.

(2) The following orders and regulations are subject to the affirmative procedure—
   (a) regulations under section 50,
   (b) an order under section 54(1) containing provisions which add to, replace or omit any part of the text of an Act.

(3) All other orders and regulations under this Act are subject to the negative procedure.

(4) This section does not apply to an order under section 56(2).

53 Interpretation

In this Act, unless the context otherwise requires—
“British sea-fishery officer” means a person who is a British sea-fishery officer by virtue of section 7(1) of the Sea Fisheries Act 1968,
“disease” means a clinical or non-clinical infection with one or more aetiological agents in fish,
“enforceable EU obligation” means an obligation to which section 2(1) of the European Communities Act 1972 applies,
“enforceable EU restriction” means a restriction to which that section applies,
“fish” means fish of any kind but does not, except in Part 3, include shellfish,
“fish farm” means any place used for the purposes of fish farming,
“fish farming” means the keeping of live fish with a view to their sale or to their
transfer to other waters; but only where such activity is required to be authorised
as an aquaculture production business under regulation 6 of the Aquatic Animal
Health (Scotland) Regulations 2009 (S.S.I. 2009/85),
“marine enforcement officer” has the same meaning as in section 157(1) of the
Marine (Scotland) Act 2010,
“parasite” has the meaning given in section 4(1) of the Aquaculture and Fisheries
(Scotland) Act 2007,
“pathogen” means an organism that causes or contributes to the development of a
disease,
“shellfish” includes crustaceans and molluscs of any kind, and includes any brood,
ware, half-ware, spat or spawn of shellfish,
“shellfish farm” means any place used for the purposes of shellfish farming,
“shellfish farming” means the cultivation or propagation of shellfish with a view
to their sale or their transfer to other waters or land; but only where such activity
is required to be authorised as an aquaculture production business under
regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I.
2009/85).

Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential,
transitional, transitory or saving provision as they consider necessary or expedient for
the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
(2) An order under this section may modify any enactment (including this Act), instrument
or document.

Crown application

(1) No contravention by the Crown of any provision made by or under this Act makes the
Crown criminally liable.
(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful
any act or omission of the Crown which constitutes such a contravention.
(3) In section 67(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act
2003 (Crown application)—
(a) after “Ministers,” insert “sections 21A, 27, 28, 30, 33, 33A and 33B,”,
(b) after “and 4” insert “and sections 64 and 64A”.

Commencement

(1) This Part (other than section 55(3)), and sections 4, 19 and 46, come into force on the
day after Royal Assent.
(2) The remaining provisions of this Act come into force on such day as the Scottish
Ministers may by order appoint.
(3) An order under subsection (2) may include transitional, transitory or saving provision.
57 **Short title**

The short title of this Act is the Aquaculture and Fisheries (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 14(6))

COMMERCIALY DAMAGING SPECIES: CONTROL SCHEMES

Making a control scheme: procedure

Where the Scottish Ministers propose to make a control scheme, they must serve on every person who carries on a business of fish farming or shellfish farming on whom the scheme proposes to impose any requirement—

(a) a draft of the proposed scheme, and

(b) a notice stating that any such person may, within 14 days of the service of the notice, object to the Scottish Ministers in such manner as may be specified in the notice to the draft control scheme or to any provision contained in it.

If no objection is duly made under paragraph 1, or if all objections so made are withdrawn, the Scottish Ministers may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.

If any objection duly made under paragraph 1 is not withdrawn, the Scottish Ministers—

(a) must consider the objection, and

(b) may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.

A control scheme may not be made with any modifications unless—

(a) every person served with a copy of the draft control scheme under paragraph 1 has been served with a notice of the proposal to make the modification, and

(b) every such person—

(i) has either consented to the proposal, or

(ii) has not, before the expiry of the period of 14 days beginning with the day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Variation or revocation of a control scheme: procedure

(1) The Scottish Ministers may—

(a) make a scheme varying a control scheme, or

(b) revoke a control scheme.

(2) The Scottish Ministers may exercise a power under sub-paragraph (1)—

(a) on the application of a person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement, or

(b) even if no such application is made.
Before making any variation or revocation such as is mentioned in paragraph 5(1), the Scottish Ministers must serve on every person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement—

(a) a draft of the scheme varying the control scheme or (as the case may be) an intimation of the proposed revocation, and

(b) a notice stating that any such person may, within 14 days of the service of the draft scheme or (as the case may be) the intimation, object to the Scottish Ministers in such manner as may be specified in the notice to the variation or revocation of the control scheme.

If no objection is duly made under paragraph 6, or if all objections so made are withdrawn, the Scottish Ministers may vary or revoke the control scheme (as the case may be).

If any objection duly made under paragraph 6 is not withdrawn, the Scottish Ministers—

(a) must consider the objection, and

(b) may—

(i) make the variation, either in the form of the draft or, subject to paragraph 9, with modifications or,

(ii) revoke the control scheme,

as the case may be.

A variation of a control scheme may not be made with any modification unless—

(a) every person served with a copy of the draft scheme by virtue of paragraph 6 has been served with a notice of the proposal to make the modification, and

(b) every such person—

(i) has either consented to the proposal, or

(ii) has not, before the expiry of the period of 14 days beginning with day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Notwithstanding anything in paragraph 3 or 8, the Scottish Ministers may—

(a) require any person who has made an objection to state in writing the grounds for it, and

(b) disregard the objection for the purposes of this schedule if they are satisfied that the objection is frivolous.

On making a control scheme, or on varying or revoking such a scheme, the Scottish Ministers must serve on every person on whom a notice was required to be served under any of the following provisions—
Aquaculture and Fisheries (Scotland) Bill
Schedule 2—Forfeiture under section 41 or 42

(a) paragraph 1(b),
(b) paragraph 4(a),
(c) paragraph 6(b),
(d) paragraph 9(a),
a notice stating that the scheme has been made or (as the case may be) that a variation or revocation of the scheme has been made.

Validity of control schemes
12 Subject to paragraph 13, the validity of a control scheme or of any variation or revocation of such a scheme may not at any time be questioned in any proceedings.

Appeals

13 (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates may appeal by way of summary application to a sheriff against—

(a) a decision of the Scottish Ministers to—

(i) make the control scheme,
(ii) make a scheme varying the control scheme, or
(iii) revoke the control scheme, or
(b) the terms or conditions of the control scheme (including such a scheme as varied).

(2) An appeal under sub-paragraph (1) must be lodged not later than 28 days after the date on which the person making the appeal received a notice under paragraph 11.

(3) On an appeal under sub-paragraph (1), the sheriff may—

(a) affirm the control scheme,
(b) direct the Scottish Ministers to amend the scheme in such manner as the sheriff may specify,
(c) direct the Scottish Ministers to revoke the scheme,
(d) make such other order as the sheriff thinks fit.

(4) A decision of the sheriff on an appeal under sub-paragraph (1) is final except on a point of law.

(5) An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.

SCHEDULE 2
(introduced by section 43)

FORFEITURE UNDER SECTION 41 OR 42

Application of schedule

1 This schedule applies where—
(a) property seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation is being retained by the Scottish Ministers,

(b) the Scottish Ministers are satisfied that there are reasonable grounds for believing that the property is liable to forfeiture under section 41 or 42, and

(c) any of the following applies—

   (i) a procurator fiscal has decided not to take proceedings against any person in respect of any offence in relation to the property,

   (ii) where a fixed penalty notice has been issued in respect of such an offence, the appropriate fixed penalty has been paid, or

   (iii) any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

Notice of intended forfeiture

2 (1) The Scottish Ministers must serve notice of the intended forfeiture of the property (“notice of intended forfeiture”) on each of the following—

   (a) every person who appears to the Scottish Ministers to have been an owner of the property at the time of its seizure,

   (b) in the case of property seized on board a vessel, the master, owner and charterer (if any) of the vessel at that time,

   (c) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,

   (d) in any other case, the person (if any) from whom the property was seized.

(2) The notice of intended forfeiture must set out—

   (a) a description of the property,

   (b) the grounds of the intended forfeiture,

   (c) information about how a person may give a notice of claim under this schedule, and

   (d) the period within which such a notice must be given.

(3) In a case where—

   (a) the property was seized following an inspection carried out in exercise of the power conferred by section 34, and

   (b) the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property,

the reference in sub-paragraph (1) to a requirement to serve notice of intended forfeiture on such a person is to be read as a reference to a requirement to take such steps as the Scottish Ministers think fit to bring the contents of the notice to the attention of persons likely to be interested in it.

(4) Property may be forfeited or taken as forfeited under this schedule only if—

   (a) the requirements of this paragraph have been complied with in respect of the property, or
(b) it was not reasonably practicable for them to be complied with.

Notice of claim

3 (1) A person claiming that the property is not liable to forfeiture under section 41 or 42 must serve notice of the claim (a “notice of claim”) on the Scottish Ministers.

5 (2) A notice of claim must be served—

(a) within one month of the day of the serving of the notice of intended forfeiture, or

(b) if no such notice has been served, within one month of the date of the seizure of the property.

(3) A notice of claim must specify the name and address of the claimant.

10 (4) In a case in which notice of intended forfeiture was served on different persons on different days, the reference in this paragraph to the day on which that notice was served is a reference—

(a) in relation to a person on whom the notice of intended forfeiture was served, to the day on which that notice was served on that person, and

(b) in relation to any other person, to the day on which notice of intended forfeiture was served on the last person on whom such a notice was served.

Automatic forfeiture in a case where no claim is made

4 The property is taken to be forfeited if—

(a) by the end of the period for the serving of a notice of claim in respect of the property, no notice of claim has been served on the Scottish Ministers, or

(b) a notice of claim has been served which does not comply with the requirements of paragraph 3.

Decision whether to apply for order forfeiting property

5 (1) Where a notice of claim in respect of the property is duly served in accordance with paragraph 3, the Scottish Ministers must decide whether to make an application to a sheriff for an order forfeiting the property (a “forfeiture application”).

(2) The decision whether to make such an application must be taken as soon as reasonably practicable after receipt of the notice of claim.

Return of property if no application made to the sheriff

6 (1) If, in a case in which a notice of claim has been duly served, the Scottish Ministers decide not to make a forfeiture application in respect of the property, they must return the property to a person appearing to them to be an owner of the property.

(2) The property must be returned as soon as reasonably practicable after the decision not to make a forfeiture application.

Forfeiture applications

7 (1) This paragraph applies if, in a case in which a notice of claim has been duly served, the Scottish Ministers decide to make a forfeiture application in respect of the property.
A forfeiture application is to be made by way of summary application.

If the sheriff is satisfied that the property is liable to forfeiture under section 41 or 42, the sheriff may order the forfeiture of the property.

If the sheriff is not so satisfied, the sheriff must order the return of the property to a person appearing to the sheriff to be entitled to it.

**Appeal against sheriff’s decision on forfeiture application**

Either party may appeal against the decision of the sheriff on a forfeiture application to the sheriff principal.

Where an appeal has been made to the sheriff principal, the property is to be retained by the Scottish Ministers pending final determination of the appeal.

**Effect of forfeiture**

Where property is taken to be forfeited under this schedule or the property’s forfeiture is ordered by the sheriff under this schedule, the forfeiture is to be treated as having taken effect as from the time of the seizure of the property.

**Disposal of property which is not returned**

This paragraph applies where any property is required to be returned to a person under this schedule.

If the property is still in the Scottish Ministers’ possession after the end of the period of 3 months beginning with the day after the requirement to return it arose, the Scottish Ministers may dispose of it in any manner they think fit.

The Scottish Ministers may exercise their power under this paragraph to dispose of property only if it is not practicable at the time when the power is exercised to dispose of the property by returning it immediately to the person to whom it is required to be returned.

**Provisions as to proof**

In proceedings on a forfeiture application under this schedule in relation to any property, the fact, form and manner of the seizure of the property are to be taken, without further evidence and unless the contrary is shown, to have been as set out in the application.

In any proceedings, the production of—

(a) the sheriff’s order forfeiting any property under this schedule, or

(b) a certified copy of the order purporting to be signed by the sheriff clerk, is sufficient evidence of the forfeiture of property by the sheriff under this schedule.

**Power to destroy fish before forfeiture**

The Scottish Ministers may destroy any fish which they consider to be liable to forfeiture under section 42 even if the fish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.
(2) If, in proceedings on a forfeiture application under this schedule, the sheriff is not satisfied that any fish destroyed under this paragraph were liable to forfeiture under section 42, the Scottish Ministers must, if requested to do so, pay to the claimant a sum of money equal to the market value of the fish at the time of their seizure.

(3) A claimant who accepts a sum of money paid under sub-paragraph (2) has no right of action on account of the seizure, detention or destruction of the fish.

(4) For the purposes of sub-paragraph (2), the market value of the fish at the time of their seizure is taken to be the average of the prices at which fish of the same kind were sold in the calendar month preceding the time of seizure at the designated auction nearest to the place where the fish were landed.

(5) In sub-paragraph (4), “designated auction” means a centre for the auction of fish designated by the Scottish Ministers for the purposes of this paragraph.

Power to return shellfish to the sea before forfeiture

13 (1) This paragraph applies to any shellfish—

(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and

(b) which the officer considers to be liable to forfeiture under section 42.

(2) If the conditions in sub-paragraph (3) are met, the officer may return the shellfish to the sea even though the shellfish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.

(3) The conditions are that—

(a) the shellfish are alive, and

(b) the officer considers it appropriate to return them to the sea to allow their onward growth to maturity.

(4) Sub-paragraphs (2) to (5) of paragraph 12 apply in a case where shellfish have been returned to the sea under this paragraph as they apply where fish have been destroyed under paragraph 12, but as if—

(a) references to the fish were references to the shellfish,

(b) references to the destruction of the fish under paragraph 12 were references to the return of the shellfish to the sea under this paragraph, and

(c) the reference to the place where the fish were landed were a reference to the place where the shellfish would have been landed had they not been returned to the sea.
Aquaculture and Fisheries (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

Introduced by: Richard Lochhead
On: 3 October 2012
Bill type: Government Bill
INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

PART 1 AQUACULTURE

CHAPTER 1 – FISH FARM MANAGEMENT

Section 1 - Fish farm management agreements and statements

4. Section 1 of the Bill makes provision to amend the Aquaculture and Fisheries (Scotland) Act 2007 (the “2007 Act”) with the insertion of provisions for fish farm management agreements and statements.

5. Section 1(2) of the Bill inserts a new section (4A) into the 2007 Act, after section 4. This provision sets out the requirement for fish farm businesses to be party to farm management agreements or to maintain farm management statements. The amendment will enhance the investigative powers currently available to an inspector (within the meaning of section 12 of the 2007 Act) and provide inspectors with additional powers to take samples of fish and
This document relates to the Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2 (SP Bill 17A)

examine/take copies of any documents or records from any fish farm in Scotland. It will also enable the Scottish Ministers to modify the definition of the Code of Practice (within the meaning of subsection (5)) by order.

6. Section 1(3) of the Bill replaces section 6(1) (enforcement notices) of the 2007 Act. This amendment will enable Scottish Ministers to serve enforcement notices on those who have failed or are failing to be party to fish farm management agreements or to maintain fish farm management statements and on those who have failed or are failing to ensure fish farms are managed and operated in accordance with such agreements or statements.

7. Section 1(4) of the Bill amends section 43(3) of the 2007 Act so that an order under section 4A(6) of the 2007 Act is subject to the affirmative procedure in the Scottish Parliament.

Section 2 - Escapes, and obtaining samples, from fish farms

8. Section 2 of the Bill makes provision to amend the 2007 Act to enhance the investigation powers currently available to inspectors and to provide inspectors with additional powers to take or require samples of fish from any fish farm in Scotland. The amendments will allow the Scottish Ministers to determine from which farms fish have escaped. The information obtained as a result of the exercise of the new investigation powers will assist to inform fish farmers on best containment practices, prevention of escapes, improving productivity, increasing sustainability and minimising the potential for adverse impact on wild salmonids.

9. Section 2(2)(a) of the Bill inserts a new paragraph (ba) into subsection (2) of section 5 of the 2007 Act (inspections: containment and escape of fish). The provision will enable an inspector (within the meaning of section 12 of the 2007 Act) to carry out an inspection for the purpose of tracing the origin of any fish known or suspected to have escaped from an inspected farm or any other fish farm.

10. Section 2(2)(b) of the Bill amends section 5(3)(a) of the 2007 Act to clarify that the powers available to an inspector under that section include powers to take samples of fish or material from fish.

11. Section 2(3) of the Bill inserts a new section 5A into the 2007 Act. New section 5A(1) enables an inspector to take samples of fish or material from fish, on a fish farm for a purpose mentioned in new section 5A(3). Section 5A(2) enables an inspector to require persons who carry on the business of fish farming to provide them with samples of fish, or material from fish, on the fish farm.

12. Section 5A(3) specifies the purposes for which the samples referred to in section 5A(1) and (2) may be taken, including assessing the impact of a fish farm’s operations on the environment and for research purposes.
CHAPTER 2 – FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment

Section 3 - Technical requirements for equipment used in fish farming

13. Section 3 of the Bill makes provision for regulations to be made by the Scottish Ministers in relation to technical requirements for equipment to be used for or in connection with fish farming. The regulations will assist fish farmers to contain fish, prevent escapes, improve productivity, increase sustainability, and minimise the potential for any significant adverse impact on wild salmonids.

14. Section 3(1) of the Bill enables the Scottish Ministers to make regulations which will prescribe equipment requirements to be complied with by fish farmers in their farming activities, and to provide for the enforcement of those requirements.

15. Section 3(2) of the Bill specifies the purposes for which the regulations may be made, including for the prevention of escapes of fish.

16. Section 3(3) makes provision for the matters which may be included in the regulations, including arrangements for the appointment of inspectors to enforce the provisions of the regulations (section 3(3)(b)) and for criminal offences associated with non-compliance with the regulations (section 3(3)(h)). Section 3(7) provides that the sanctions that may be specified in the regulations may include the suspension or revocation of any authorisations required by fish farm operators to operate as such, for example, an authorisation under the Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85).

17. Section 3(8) provides for definitions relevant to the provisions of this section.

Wellboats

Section 4 - Meaning of “wellboat”

18. Section 4 of the Bill defines “wellboat” for the purposes of Chapter 2 in Part 1 of the Bill, and “farmed fish” for the purposes of section 4. Section 4(1), as read with section 4(2) and (3), defines “wellboat” as meaning a vessel containing a tank or well for holding water in which live farmed fish may be taken and subsequently kept for transportation, storage, slaughter, grading or treatment. Section 4(4) of the Bill defines “farmed fish” as fish produced by fish farming.

Section 5 - Control and monitoring of operations of wellboats

19. Section 5(1) of the Bill enables the Scottish Ministers to make provision, in regulations, for or about controlling and monitoring the operation of any wellboat in Scotland. Section 5(2) contains provisions detailing the matters which may be provided for in regulations under section 5(1), including the measures that require to be taken to control the risk of the spread of parasites, etc as a result of wellboat operations and the specification of types of equipment that require to be installed in wellboats. Section 5(3) enables regulations under section 5(1) to impose requirements on the master, owner or charterer of a wellboat, as the case may be. Section 5(5) makes it an offence, punishable on summary conviction by a fine of up to level 4 on the standard
scale (section 5(8)), for a person to contravene any of the provisions of section 5(1) regulations, or fails to take any action required of them under those regulations. In cases where a section 6 enforcement notice has been served upon a person charged with an offence under section 5(5) of the Bill, section 5(6) prevents proceedings being taken against that person. Section 5(7) of the Bill creates a reasonable excuse defence for persons charged with an offence under section 5(5) of the Bill. For example, the master of a wellboat may temporarily be unable to comply with requirements under the regulations on equipment where there has been an unforeseen and unpreventable delay in installation, or where installed equipment intended to reduce the spread of parasites is under repair.

Section 6 - Enforcement notices

20. Section 6 of the Bill makes provision for the service of enforcement notices in relation to failure to comply with the requirements of regulations made under section 5(1) of the Bill.

21. Where the Scottish Ministers are satisfied a person has failed or is failing to comply with any requirements imposed upon that person in regulations made under section 5 of the Bill, they may serve an enforcement notice upon that person. That notice must specify the matters referred to in section 6(3), and Ministers may decide to publish its service (section 6(4)). Where an enforcement notice has been served by the Scottish Ministers, the person upon whom it has been served may appeal against the notice to the sheriff within seven days of the service of the notice (section 6(5)). Section 6(6) provides that the lodging of a timeous appeal stops the effect of the notice, until such time as the appeal is withdrawn or determined.

22. Section 6(8) provides that upon hearing an appeal, the sheriff may make such order as he or she considers appropriate as regards the notice, and the sheriff’s decision in the matter is final. Where an appeal is not upheld (i.e. is unsuccessful), section 6(9) of the Bill provides that the sheriff may specify a date by which the action specified in the enforcement notice must be undertaken. For example, an appeal is made in respect of an enforcement notice which specifies 24 April 2015 as the date by which specified works require to be completed. The appeal is not upheld, and the sheriff specifies 26 May 2016 as the new completion date. The latter date prevails, and the specified works will require to be completed by 26 May 2016.

23. It is an offence, punishable upon summary conviction by a fine of up to Level 4 on the standard scale, for a person upon whom an enforcement notice has been served to fail to comply with the requirements of a notice - section 6(10) and (12). Section 6(11) makes provision for a reasonable excuse defence for persons charged with an offence under section 6(10) of the Bill.

Section 7 - Marine enforcement officers’ functions

24. Section 7 of the Bill contains provisions in relation to the enforcement of regulations made under section 5(1) and enforcement notices served under section 6, of the Bill.

25. Section 7(1) enables marine enforcement officers, as defined by section 53 to exercise the powers available in Part 7 and section 150 of the Marine (Scotland) Act 2010, for the purpose of enforcing regulations made under section 5(1) of the Bill. Section 7(2) authorises such officers to take any action the officer considers necessary in order to fulfil the requirements of an enforcement notice served by the Scottish Ministers under section 6 of the Bill. Section 7(6)
enables the Scottish Ministers to recover any costs incurred by the marine enforcement officer in pursuance of the provisions of section 7(2).

26. Section 7(3)(a) of the Bill modifies the effect of sections 151 to 155 of the Marine (Scotland) Act 2010 such that references in those sections to the powers conferred by Part 7 of the 2010 Act are to be read as including a reference to those powers as applied by section 7(1) of the Bill (to enforce section 5 regulations) and as conferred by section 7(2) of the Bill (to take action to meet the requirements of an enforcement notice under section 6 of the Bill). For example, in practice this means that, where a marine enforcement officer wishes to exercise search or examination powers available under Part 7 of the 2010 Act in order to determine whether a person has complied with regulations under section 5 of the Bill, the officer may be required by the person to produce evidence of the officer’s authorisation to exercise the power in question (section 151 of the 2010 Act).

27. Section 7(3)(b) of the Bill makes equivalent provision as regards references to the functions of a marine enforcement officer. Sections 151 to 155 of the Marine (Scotland) Act 2010 are modified such that references in those sections to the functions under the 2010 Act of marine enforcement officers are to be read as including a reference to those functions as applied by section 7(1) of the Bill (to enforce section 5 regulations) and as conferred by section 7(2) of the Bill (to take action to meet the requirements of an enforcement notice under section 6 of the Bill). For example, in practice this means that a marine enforcement officer who takes action to fulfil the requirements of an enforcement notice issued under section 6 of the Bill is not liable in civil or criminal proceedings for anything the officer did as regards that action (section 154 of the 2010 Act).

28. Section 7(4) of the Bill makes provision in relation to the geographical limits of a marine enforcement officer’s powers, specifying that those powers are exercisable in the Scottish marine area (as defined in section 1 of the 2010 Act) and any other part of Scotland. Section 7(7) contains a definition for the purposes of this section.

CHAPTER 3 – COMMERCIALY DAMAGING SPECIES

Orders relating to commercially damaging species

Section 8 - Specification of commercially damaging species

29. Section 8(1), as read with subsection (2), of the Bill provides for the species which the Scottish Ministers may, by order, specify as a commercially damaging species for the purposes of Chapter 3 of the Bill. Section 8(1) defines a commercially damaging species as a species of fish or shellfish, plant, or any other species of animal. It enables Ministers to make an order in respect of such species where they consider the species, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interest of a person who carries on a business of fish farming, and where the species itself of little or no commercial value. For example, the order-making power may be exercised in relation to *Mytilus trossulus*. This species of mussel, which is not commercially viable due to its thin shell and low meat yield, has displaced in some places the commercially viable farming of *Mytilus edulis*. 

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This document relates to the Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2 (SP Bill 17A)

Section 9 - Movement of species, etc.

30. Section 9(1) of the Bill, as read with section 10 (orders under section 9(1): samples and surveillance), enables the Scottish Ministers to make provision, by order, for or about the prohibition or control of the movement of any commercially damaging species that is present, or suspected of being present in any body of water. The power extends to any other species of animal or plant and any equipment, used in connection with fish farming or shellfish farming, the movement of which may be associated with the movement of the commercially damaging species. It also extends to water in which a commercially damaging species is suspected of being present.

31. Section 9(2) of the Bill details the matters that may be included in an order under section 9(1), including the designation of an area in which movement controls apply. For example, this power may be exercised to prevent the movement of stocks from a site known or suspected of having a commercially damaging species. It is an offence for a person to act in contravention of a section 9(1) order, to fail to take any action required by the order or to otherwise fail to comply with any requirement imposed on the person by such an order (section 9(3)). Offences under section 9(3) are punishable on summary conviction by a fine not exceeding level 5 on the standard scale (section 9(5)).

Section 10 - Orders under section 9(1): samples and surveillance

32. Section 10 of the Bill specifies the matters which may be provided for in an order under section 9(1) of the Bill. An order may contain provision which enables an “appointed person” to take samples of fish, shellfish, or material from any fish or shellfish farm and analyse these for the purpose of ascertaining whether a commercially damaging species is present at a fish or shellfish farm. Section 10(1)(d) describes the powers of an “appointed person”, including powers to enter any land, fish farms, shellfish farms or premises associated with the management or operation of such farms and to require the operator of such farms to provide samples. For example, an appointed person may enter onto a fish farm in order to collect samples of mussels to determine whether they are *Mytilus trossulus* or *Mytilus edulis*.

33. Section 10(3) of the Bill contains further provision on the matters that may be provided for in an order under section 9(1), including requiring persons to undertake surveillance programmes or for appointed persons to undertake such action.

Section 11 - Offences relating to persons appointed under section 10

34. Section 11(1) of the Bill specifies the circumstances in which a person commits an offence as regards an appointed person. It is an offence for a person to fail to comply with a requirement imposed by an appointed person or to wilfully obstruct such a person. For example, where a person wilfully obstructs a person appointed by the Scottish Ministers for the purposes of undertaking a programme of surveillance (section 10 (3)(b) of the Bill), the person so obstructing is guilty of an offence.

35. Persons guilty of an offence under section 11(1)(a) of the Bill are liable on summary conviction to a fine not exceeding the statutory maximum (currently £10,000), and persons guilty of an offence under section 11(1)(b) of the Bill are liable on conviction on indictment to a fine (section 11(4) of the Bill).
Section 12 - Notification of presence of commercially damaging species

36. Section 12(1) of the Bill creates an obligation for operators of fish farms and shellfish farms, as soon as reasonably practicable, to notify the Scottish Ministers of the presence of a commercially damaging species on the fish farm or shellfish farm. In terms of section 12(2) of the Bill, the notification obligation also applies to any person who is employed, or acts as an agent as regards the fish farm or shellfish farm.

37. Section 12(3) of the Bill specifies the details that must be included in any notification, including the type of the commercially damaging species, and details of the fish or shellfish farm in question. It is an offence, punishable on summary conviction to a fine not exceeding level 5 on the standard scale, for a person to fail to give a notification (section 12(4) and (6)).

Control

Section 13 - Control agreements

38. Section 13 of the Bill applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm. Section 13(2) of the Bill requires that Scottish Ministers form a preliminary view as to whether measures should be taken to remove the species, to reduce the incidence of the species, to prevent its spread or to control it, and if so, by what means. For example, where a commercially damaging species is found to be present, Ministers may take a preliminary view that the site may be fallowed to control the presence of a commercially damaging species.

39. Where it is decided that measures should be taken, section 13(3) of the Bill requires the Scottish Ministers to give notice to the person who carries on the business of fish farming or shellfish farming at the farm in question, and to consult that person in order to secure their agreement on the measures to be taken, etc. When agreement under 13(3) is reached, the Scottish Minister must prepare a “control agreement”, and section 13(4) specifies the matters that must be contained in such an agreement. Section 13(6) requires the Scottish Minister to send a copy of the control agreement to the person carrying on the business of fish or shellfish farming at the farm in question and section 13(8) makes provision for the control agreement to be reviewed at least once in every 18 months.

Section 14 - Control schemes

40. Section 14 of the Bill applies where Scottish Ministers have given notice under section 13(3)(a) of the Bill in relation to the presence of a commercially damaging species, and are satisfied either that it is not possible to secure a control agreement, or 6 weeks have elapsed since the notice and no agreement has been reached and Ministers remain of the view that measures should be taken to remove, reduce, prevent or otherwise control the commercially damaging species.

41. Section 14(2) of the Bill requires in certain circumstances the Scottish Ministers to make a “control scheme” in order to ensure that any measures they consider necessary to remove, etc the species in question are taken. Where Ministers make a control scheme, they must notify the person who carries on the business to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made (section 14(3)). Section 14(4) and (5)
Section 14 - Control schemes

41. Section 14 applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm and that unless urgent action is taken, the species will spread quickly and have an immediate and significant adverse impact on other fish or shellfish or their commercial exploitability or the commercial or economic interests of fish or shellfish farmers. Where Ministers are so satisfied, section 14(2) provides an exemption to the notice process described in section 13(3) of the Bill, such that no notice or consultation to secure an agreement need be carried out. Instead, section 14(3) of the Bill requires the Scottish Ministers to give an “emergency action notice” which notes their intention to take urgent action in respect of the commercially damaging species. Section 14(4) specifies the matters to be included in an emergency action notice, including the measures proposed to be taken to remove the species from the farm in question. Section 14(5) of the Bill enables Ministers, no sooner than 14 days after the giving of the notice, to take the measures specified in the emergency action notice.

Section 15 - Emergency action notices

42. Section 15 applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm and that unless urgent action is taken, the species will spread quickly and have an immediate and significant adverse impact on other fish or shellfish or their commercial exploitability or the commercial or economic interests of fish or shellfish farmers. Where Ministers are so satisfied, section 15(2) provides an exemption to the notice process described in section 13(3) of the Bill, such that no notice or consultation to secure an agreement need be carried out. Instead, section 15(3) of the Bill requires the Scottish Ministers to give an “emergency action notice” which notes their intention to take urgent action in respect of the commercially damaging species. Section 15(4) specifies the matters to be included in an emergency action notice, including the measures proposed to be taken to remove the species from the farm in question. Section 15(5) of the Bill enables Ministers, no sooner than 14 days after the giving of the notice, to take the measures specified in the emergency action notice.

Section 16 - Appeals in connection with emergency action notices

43. Section 16 creates a statutory right for persons upon whom an emergency action notice has been served to appeal against the notice to a sheriff against the decision to give the notice or its terms. An appeal must be lodged within 14 days of the emergency action notice being given (section 16(2)). Section 16(3) states the actions the sheriff may take on an appeal, and section 16(4) provides that the decision of the sheriff on appeal is final, except on a point of law.

Powers

Section 17 - Power to enter fish farms, shellfish farms, etc

44. Section 17 of the Bill enables persons authorised in writing by the Scottish Ministers, and for a purpose stated in section 17(2), to enter any fish farm or shellfish farm and any premises associated with the management or operation of a fish farm or shellfish farm. Section 17(2) sets out the purposes for which the Scottish Ministers may authorise a person to enter such premises, including in order to obtain information that will enable them to determine whether a commercially damaging species is present on a fish or shellfish farm. Section 17(3) states that the power of entry must be exercised at a reasonable hour, except in the circumstances described in section 17(3)(a), (b) or (c). Section 17(4) provides that where a person proposes to exercise powers of entry, they must if so required, produce evidence of their identity and authorisation.
Offences

Section 18 - Offences in relation to control agreements, control schemes, etc.

45. Section 18 of the Bill makes provision in relation to offences. Section 18(1) of the Bill makes it an offence, without reasonable excuse, for a person to refuse or fail to comply with any requirement imposed on the person by a control agreement (section 13) or a control scheme (section 14). Section 18(2) of the Bill makes it an offence for a person to wilfully obstruct a person authorised under section 17(1) from carrying out any of their functions under section 17.

46. Section 18(4) provides that a person who commits an offence under section 18(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and section 18(5) provides that a person who commits an offence under section 18(2) is liable on summary conviction, to a fine not exceeding the statutory maximum (currently £10,000), and on conviction on indictment, to a fine.

Interpretation

Section 19 - Interpretation of Chapter 3

47. Section 19 provides for definitions used in Chapter 3 of the Bill.

CHAPTER 4 – PLANNING PERMISSION

Planning permission for marine fish farms

48. Section 19A of the Bill amends section 31A of the Town and Country Planning (Scotland) Act 1997 by inserting new subsections (2A), (4A) and (4B) and amending subsection (8).

49. Inserted subsection (2A) enables Scottish Ministers to grant planning permission for the operation of an individual marine fish farm either by order or on an application to them. Inserted subsections (4A) and (4B) ensure that farms for which planning permission had been granted by order are not disadvantaged should the order be revoked before the “appropriate date”. The “appropriate date” is the date after which planning permission is required for the operation of certain marine fish farms and is the later of 31 March 2014 or the date of expiry of the consent in place on 1 April 2007 (under which the fish farm is authorised to operate). The effect is that planning permission will not be required for the farm as a consequence of previous grant of planning permission by the order being revoked until the appropriate date for the fish farm.

50. Section 19A(4) amends subsection (8) of section 31A of the 1997 Act to remove the requirement for regulations to specify in which cases applications must be made.
PART 2

SALMON FISHERIES, ETC

Governance

Section 20 - District salmon fishery boards: openness and accountability

51. Section 20 of the Bill amends sections 44 and 68 of, and inserts new sections 46A to 46G into, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”) to introduce good governance obligations on district salmon fishery boards (“DSFBs”). The Scottish Government intends to issue administrative guidance to DSFBs on these obligations to aid and guide compliance.

52. Section 20(2) inserts a new subsection (1A) into section 44 of the 2003 Act. Section 44(1A) places duties on the clerk of a DSFB in relation to the board’s agreed report and audited accounts, and requires the clerk to publish these documents and to send copies of them to the Scottish Ministers.

53. Section 20(3) of the Bill inserts new sections 46A – 46G into the 2003 Act. Section 46A places obligations on DSFBs in relation to the content of the annual report required to be prepared under section 44(1)(a) of the 2003 Act. New section 46A(2)(d) of the 2003 Act requires the report to contain a statement on how the board complied in the previous year and how it proposes to comply in the coming year with the good governance requirements, and section 46A(3) provides a definition of “good governance requirements” for that purpose and for the purposes of the provisions mentioned in section 46A(3)(a)-(c).

54. Section 46B of the 2003 Act introduces an obligation on DSFBs to hold an annual public meeting and prescribes matters which must be considered at that meeting (section 46B(2)). Section 46B(3) places obligations on DSFBs regarding participation of members of the public and others who attend or propose to attend the annual meeting.

55. Section 46C(2) of the 2003 Act makes further provision about the annual public meeting held by the board under section 46B(1)(a) and the annual meeting of qualified proprietors held under section 44(1) of the 2003 Act. The provisions place duties on the clerk of the DSFB to give advance notice to the public of these meetings and prescribes the manner, timing and circulation of that notice (section 46C(2)). Section 46C(2)(a)(iv) underpins the new section 46B(4) duty on boards by requiring the clerk to notify the public of how they may propose matters for consideration at the annual public meeting. The public will not have an automatic right to speak at the annual meeting of qualified proprietors, unless a DSFB decides to afford such an opportunity.

56. Section 46C(3)-(9) of the 2003 Act makes further provision about meetings of DSFBs, including the annual public meeting, the meeting of qualified proprietors and any other meetings the board may decide to hold. In particular, the clerk is required to prepare and publish minutes of the DSFB meetings.
57. Section 46D of the 2003 Act requires a DSFB to compile, maintain and keep under review a procedure for dealing with complaints, and to publicise its terms. DSFBs must keep records of any complaints received and how they were disposed of (section 46D(5)).

58. Section 46E of the 2003 Act requires a DSFB to maintain and review arrangements for registering and declaring the relevant financial interests of board members. “Relevant financial interests” are defined in subsection (4).

59. Section 46F(1) of the 2003 Act enables the Scottish Ministers to modify, by order, the good governance requirements (as defined in section 46A(3)) of the 2003 Act and to place further requirements on DSFBs for specific purposes. The purposes are specified in subsection (2), and seek to achieve that the order-making power is exercisable so as to ensure the boards’ affairs are conducted in an open and accountable manner and to appropriate standards of propriety and good governance. The order-making power is not exercisable in such a way as would allow Ministers to provide for structural change to DSFBs.

60. Section 46G(3) of the 2003 Act provides that, where Ministers exercise the section 46G(2) reserve power to dissolve, by order, the committee constituting the board, its effect is to prompt the calling of a meeting of qualified proprietors for the purpose of electing a new committee.

61. Section 20(4) of the Bill is a technical amendment in consequence of section 46F(1) of the 2003 Act, as inserted by section 20(3) of the Bill.

Section 21 - Duty to consult and report before making certain applications

62. Section 21 amends the 2003 Act to create an obligation to undertake consultation on proposals to submit specified applications under the 2003 Act. Subsection (2) of section 21 amends sections 33(7), 35(3), 36(4) and 37(4) of the 2003 Act to substitute reference to paragraph 9B of schedule 1 (procedure for making certain orders and regulations under the Act) to the 2003 Act for references to paragraph 10 of that schedule where it occurs in those provisions.

63. Subsection (3) of section 21 amends the 2003 Act to introduce new paragraphs 9B and 9C into schedule 1. Paragraph 9B(1) specifies the applications in respect of which the provisions of paragraph 9B apply, that is: applications under paragraph 1, 3, 5 or 7 of schedule 1 (respectively, applications for designation orders under section 35 of the 2003 Act, estuary limits orders under section 36, annual close time orders under section 37 and salmon conservation regulations under section 38). Paragraphs 9B to 15 of schedule 1 to the 2003 Act also apply to regulations under section 33(1) of the 2003 Act (baits and lures) by virtue of section 33(7) of that Act. Paragraph 9B(2) of schedule 1 provides that where an applicant proposes to make an application for such an order or regulations, the applicant must give notice of the proposed application, specify in that notice the period in which representations or objections may be made on that proposal, undertake consultation with persons who may have an interest in or be likely to be affected by the proposal and give such persons notice of the period in which they may make representations or objections on the proposal.
Paragraph 9B(3) of schedule 1 requires the applicant to give notice of the proposed application in each of two successive weeks in a newspaper circulating in the district concerned, and paragraph 9B(4) of schedule 1 clarifies the length of the period for the purposes of paragraph 9B(2)(b) of schedule 1.

An applicant is required to take into account any timeous representation or objections made on the proposal (paragraph 9B(5)). The applicant must publish a notice containing a summary of reasons for proceeding with the proposed application or not, as the case may be, together with details of where their reasons for this decision may be viewed and how a copy of the reasons may be obtained (paragraph 9B(7)). Paragraph 9B(8) confirms that the costs for compliance with paragraph 9B(2) and (7) are to be paid by the applicant.

Paragraph 9C of schedule 1 to the 2003 Act applies where an applicant determines to proceed with a proposed application. At the time the applicant makes the application, the applicant must submit together with the application a report which confirms: whether the requirements of paragraph 9B have been met and how; explains who was consulted; the content of any representations or objections received; and the reasons for making the application.

Management

Section 22 - Carcass tagging

Section 22(2) of the Bill amends the 2003 Act by inserting a new section 21A to enable the Scottish Ministers to make regulations for or in connection with tagging salmon carcasses.

Section 21A(2) specifies the matters which may be provided for in regulations made under section 21A(1) of the 2003 Act, including the nature and form of tags and the keeping of records in connection with fishing for, taking and tagging of salmon. Section 21A(3) provides that regulations made under section 21A(1) may make different provision for different purposes and different areas, and may modify Part 5 (enforcement) of the 2003 Act. If the carcass tagging regulations seek to modify Part 5 of the 2003 Act then affirmative procedure will be required as provided for in section 68(4) of the 2003 Act (as amended by section 22(4) of the Bill), which will required draft regulations to be laid before and approved by Parliament.

Section 21A(4) makes provision in relation to offences. Subsection (4)(a) of section 21A makes it an offence for a person to sell, offer or expose for sale, or to possess a salmon which has not been tagged in accordance with regulations made under section 21A(1) of the 2003 Act, or which has had a tag removed otherwise than in accordance with the regulations. Subsection (4)(c) makes it an offence for a person to fail to take action required of that person, or to comply with any requirement imposed on that person, by such regulations.

Subsection (5) creates a reasonable excuse defence for a person charged with an offence under section 21A(4)(c) of the 2003 Act. A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale and may be convicted on the evidence of only one witness (subsection (6)).
71. Subsection (3)(a) and (b) of section 22 makes technical amendments to section 30 of the 2003 Act (exemptions in relation to fish farming) in consequence of new section 21A.

Section 23 - Powers to take fish or samples for analysis, etc.

72. Section 23 of the Bill amends the 2003 Act to insert a new section 64A, which provides the Scottish Ministers with powers to take fish and samples of fish for analysis etc, and to undertake tracking and monitoring of fish.

73. Subsection (1)(a) of section 64A provides that an “authorised person” may require a person having rights in a salmon or freshwater fishery to permit them to take and retain fish, and to take samples of material from the fish in the fishery or to have such fish or samples provided to them.

74. Subsection (1)(b) allows an authorised person to affix a tag in order to track or monitor fish (subsection 64A(2)(c)).

75. Subsection (1)(c) provides that an authorised person may enter a salmon fishery or freshwater fishery in order to exercise the powers mentioned in subsection (1)(a) or (1)(b) or in order to track or monitor fish which have been tagged further to the provisions of subsection (1)(b).

76. Subsection (2) (a)-(d) specifies the purposes for which an authorised person may take and retain fish, take samples or require that fish or samples of material from fish are provided to them. These purposes are: analysis of fish or fish samples; ascertaining whether an offence has been committed under section 33A of the 2003 Act (unauthorised introduction of fish into inland waters); tracking or monitoring of fish; and exercising the powers mentioned in subsections (1)(a) or (1)(b).

77. Subsection (4)(a) provides that it is an offence for a person having rights in a salmon fishery or freshwater fishery to fail or wilfully refuse to comply with a requirement made by an authorised officer under subsection (1)(a). Subsection (5) makes provision for a reasonable excuse defence for a person charged with this offence. A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale (subsection (6)).

78. Subsection (4)(b) provides that it is an offence for a person having rights in a salmon fishery or freshwater fishery to obstruct an authorised person in the exercise of their powers under subsection (1)(b) or (c). A person who commits an offence under subsection (4)(b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months, or to both.

79. Subsection (7) defines “a person having rights in a salmon fishery or freshwater fishery” with reference to section 64(3) of the 2003 Act, i.e. as meaning (a) a proprietor of a salmon fishery; (b) an occupier of such a fishery; (c) an owner of land to which a right of fishing for freshwater fish pertains; (d) an occupier of such a right.
Section 24 - Power of the Scottish Ministers to conduct inquiries and obtain information

80. Section 24(2)(a) of the Bill amends section 64 of the 2003 Act (power of the Scottish Ministers to conduct inquiries and obtain information) to insert a new subsection (1)(za), which requires persons having rights in a salmon fishery or freshwater fishery to provide information relating to the fishery to the Scottish Ministers.

81. Section 24(2)(b) amends section 64(1)(a) of the 2003 Act to enable Ministers to exercise their powers under that provision without expressly having to ensure no damage is done to the fishery or no interference is caused to the rights of the owner or occupier of the fishery. It is inevitable that the exercise of the section 64(1)(a) powers will give rise to interference with property rights. But the powers in the 2003 Act (which derive from the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26)), have and will continue to be exercised proportionately and in the vast majority of cases with the full co-operation of the owner, proprietor or occupier of such rights, for the wider public interest of protecting and developing salmon and trout stocks. Accordingly, the amendments secure removal of text no longer considered to be significant as regards exercise of the power.

82. Section 24(3) amends section 64(2) of the 2003 Act to clarify that the provisions of section 64 of the 2003 Act apply to persons “having rights in a salmon fishery or freshwater fishery”. Section 24(4) of the Bill inserts a new subsection (3) into section 64 of the 2003 Act to define that term.

Section 25 - Monitoring and evaluation of the effects of orders, etc.

83. Section 25 of the Bill amends sections 33, 37 and 38 of the 2003 Act to enable the Scottish Ministers to impose requirements to monitor and evaluate the effect of orders and regulations under those sections. The provisions give Ministers powers to ensure that, where measures are granted, appropriate monitoring and evaluation of the effects of such measures on salmon stocks can take place in a consistent manner across Scotland.

84. Section 25(2) of the Bill amends section 33 of the 2003 Act, which enables the Scottish Ministers to make regulations (“baits and lures regulations”) prohibiting the use of specified baits and lures upon application by one or more DSFBs New subsection (6A) enables Ministers, in granting an application for baits and lures regulations, to impose requirements on DSFBs to carry out monitoring and evaluation of the effect of the regulations on salmon stocks. For example, where regulations under section 33 of the 2003 Act prohibit fishing with barbed hooks, a DSFB may be required to monitor and record any incidents of fish mortality resulting from fish that were not effectively released after capture. Subsection (6B) makes it an offence for a DSFB to act in contravention of any requirements imposed under baits and lures regulations or to fail to take any action required of the DSFB under such regulations. Subsection (6C) provides that a DSFB charged with an offence under section 33(6B) is liable on summary conviction to a fine of up to Level 4 on the standard scale. Section 143 of the Criminal Procedure (Scotland) Act 1995 makes provision for the summary prosecution of organisations such as DSFBs.

85. Section 25(3) of the Bill amends section 37 of the 2003 Act which provides for the annual close time for salmon fishery districts in Scotland. Section 25(3)(a) of the Bill makes a technical amendment to section 37(2) of the 2003 Act to include a reference to section 38(5)(c)
This document relates to the Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2 (SP Bill 17A)

of the 2003 Act (which is inserted by section 25(4)(b) of the Bill). This provision enables Ministers to specify in salmon conservation regulations both the annual close time for salmon for a salmon fishery district and a period during that close time in which it is permitted to fish for salmon by rod and line. As a result of these new powers, the qualification to the annual close times specified in section 37(2) of the 2003 Act is amended to include a reference to any period in which it is permitted to fish for salmon by rod and line specified in regulations made by Ministers in reliance of the new powers in section 38(5)(c) of the 2003 Act. A technical amendment is also made to section 37(3) of the 2003 Act in this respect by section 25(3)(b) of the Bill.

86. Subsection 25(3)(c) of the Bill amends section 37 of the 2003 Act to introduce new subsections (3A), (3B) and (3C). Subsection (3A) enables Ministers, in granting an application for a close time order, to impose requirements on DSFBs or proprietors to carry out monitoring and evaluation of the effect of the order on salmon stocks. For example, a DSFB or proprietors may be required to monitor the impact of a season extension (i.e. a period during the annual close time when it is permitted to fish for or to take salmon by rod and line). The programme of monitoring could include: scale sampling; redd counts; and rod catch analysis. Subsection (3B) makes it an offence for a DSFB or a proprietor to act in contravention of any requirements relating to monitoring and evaluation imposed under a close time order, or to fail to take any action required of the DSFB or proprietor by such requirements. Subsection (3C) provides that a DSFB or proprietor charged with an offence under section 37(3B) is liable on summary conviction to a fine of up to Level 4 on the standard scale.

87. Section 25(4) of the Bill amends section 38 of the 2003 Act, which enables the Scottish Ministers to make salmon conservation regulations. Section 25(4)(b) introduces a new subsection (5)(c) into section 38 which gives Ministers powers to prescribe for any salmon fishery district the dates of the annual close time for salmon and the period(s) during which it is permitted to fish for or take salmon by rod and line during the annual close time. This is in line with the powers in section 37 of the 2003 Act and gives Scottish Ministers greater flexibility as regards potential options to best manage salmon stocks. Section 25(4)(e) of the Bill introduces a new subsection (6)(ba) into section 38 which enables Ministers, in granting an application for salmon conservation regulations, to impose on a DSFB or proprietors requirements on monitoring and evaluating the effect of the regulations on salmon stocks as Ministers consider necessary or expedient. For example, Ministers may impose a requirement for a DSFB to assess the effect of catch and release measures on reported rod catches during the period any restrictions apply.

88. Section 38(7) of the 2003 Act makes it an offence, publishable on summary conviction by a fine of up to Level 4 on the standard scale, for a DSFB or a proprietor to act in contravention of salmon conservation regulations or to fail to take any action required of them under, or to fail to comply with any requirement of, such regulations. Section 38(8) provides that a DSFB or proprietor charged with an offence under section 38(7) may be convicted on the evidence of one witness.

Section 26 - Power to vary procedures for orders, etc. relating to certain fisheries

89. Section 26 amends the 2003 Act to clarify the scope of the Scottish Ministers’ powers to vary by order the procedural requirements for applications for designation, estuary limits and
close time orders, and conservation and baits and lures regulations set out in schedule 1 to the 2003 Act. Separate provision is made in relation to the variation of the procedures as regards regulations made under section 33 of the 2003 Act.

90. Section 26(2) adds a new subsection (8) to section 33 of the 2003 Act (baits and lures regulations). New subsection (8)(a) enables the Scottish Ministers to vary section 33(2) to (5) of the 2003 Act, which subsections contain provision in relation to who may make an application for regulations and what an application must comprise. New subsection (8)(b) makes similar provision for Ministers to vary the provisions of paragraphs 9B to 15 of schedule 1 to the 2003 Act, which also make provision for applications for regulations under section 33 of the 2003 Act.

91. Section 26(3) repeals section 35(4) of the 2003 Act. That provision provided Ministers with a power to vary, by order, certain paragraphs of schedule 1 to the 2003 Act. The effect of the amendments under section 26 is to clarify that Ministers’ section 35(4) power was intended to extend to the procedural provisions in schedule 1 to the 2003 Act as regards all orders and regulations that could be made under sections 33 and 35-38 of the 2003 Act. Accordingly, section 35(4) is repealed and clarifying provision is made to amend the 2003 Act in section 26(2) and (4).

92. Section 26(4) amends section 39 of the 2003 Act to add new subsections (2) to (4). Subsection (2) provides that Ministers may by order vary the provisions of schedule 1 to the 2003 Act. The power will enable the Scottish Ministers to vary, for example, prescribed methods of advertisement or consultation to take account of developments in information technology.

Section 27 - Offence of fishing for salmon during annual close time

93. Section 27 is a technical amendment to section 14 of the 2003 Act, which makes it an offence to fish for or to take salmon during the annual close time, and also provides for the circumstances in which the offence does not apply.

94. Section 14(1) of the 2003 Act makes it an offence, punishable on summary conviction by a fine of up to Level 4 on the standard scale, to fish for or take salmon by means of rod and line during the annual close time. Annual close time is defined in section 37 of the 2003 Act. Section 14(2) of the 2003 Act, as substituted by section 27 of the Bill, clarifies the circumstances in which the section 14(1) offence does not apply, including where a person fishes for or takes salmon by rod and line during a period within the annual close time when such fishing is permitted by regulations in force in the salmon fishery district in question.

95. Section 25(4)(b) of the Bill amends section 38 of the 2003 Act to enable the Scottish Ministers to specify in regulations under section 38, periods during the annual close time in which it is permitted to fish for or to take salmon by rod and line. In considering the effect of that amendment, doubt arose whether the reference to “regulations” in section 14(2) of the 2003 Act included a reference to regulations under section 38. The amendment in section 27 is intended to put the matter beyond doubt, and the section amends section 14(2) of the 2003 Act to clarify that the offence in section 14(1) of the 2003 Act does not apply where fishing for or taking salmon by rod and line during the close time is permitted under the measures specified in section 14(2)(a) to (e).
Section 28 - Consents for introduction of fish into inland waters

96. Section 28 of the Bill amends section 33A of the 2003 Act to ensure that, where introductions of fish or fish spawn take place, they are in line with prevailing good practice and that requirements as to record keeping and monitoring can be imposed. Section 28 of the Bill also introduces new section 33B into the 2003 Act to enable the Scottish Ministers to modify, by regulation, DSFBs’ functions with respect to consenting to the introduction of salmon and salmon spawn.

97. Section 28(2)(b) of the Bill amends section 33A of the 2003 Act to introduce new subsections (3A), (3B) and (3C). Subsection (3A) enables Ministers when granting consent to introduce fish or fish spawn to inland waters, and DSFBs when granting consent to introduce salmon or salmon spawn to inland waters within their district, to impose conditions and requirements on the consent. For example, conditions and requirements could include: record keeping; monitoring the impact of the species following its introduction; and bio-security measures. Subsection (3B) makes it an offence, punishable on summary conviction to a fine not exceeding Level 3 on the standard scale (section 33A(5) of the 2003 Act) for a person to act in contravention of any conditions or requirements imposed on a section 33A consent or to fail to take any action required under such condition or requirement. Subsection (3C) makes provision for a reasonable excuse defence for a person charged with an offence under section 33A(3B) of the 2003 Act.

98. Section 28(2)(c) of the Bill amends section 33A of the 2003 Act to insert a new subsection (4A) which provides that the provisions of section 33A(4) apply subject to the provisions of any regulations made under section 33B of the 2003 Act, which is inserted by section 28(3) of the Bill.

99. Section 28(3) of the Bill inserts a new section 33B into the 2003 Act which gives powers to the Scottish Ministers to make regulations in relation to the functions of DSFBs under section 33A(3)(b) and (3A) of the 2003 Act. Section 33B(1), as read with section 33B(2), enables the Scottish Ministers to provide, in regulations, that they instead of a DSFB will exercise the consenting function under section 33A of the 2003 Act with respect to the introduction or possession of salmon and salmon spawn; for applications to be submitted to Ministers instead of a DSFB; and for circumstances in which an application referred to them will be determined by Ministers.

100. Section 33B(3) of the 2003 Act provides flexibility for the Scottish Ministers to, for example, restrict the application of regulations made under section 33B(2) to individual salmon fishery districts or specified inland waters. For example, it might be desirable for applications submitted to a DSFB under section 33A of the 2003 Act for a district which lies in a Special Area of Conservation to be referred to the Scottish Ministers for determination.

Section 29 - Offences exempted by permission or consent: power to attach conditions etc.

101. Section 29 of the Bill amends sections 27, 28 and 30 of the 2003 Act to enable Ministers to attach conditions and requirements to permissions and consents granted under those sections.
102. Section 29(2) amends section 27 of the 2003 Act to introduce new subsections (1A) to (1D). Section 27 of the 2003 Act provides for the circumstances in which a person is exempt from any offence in relation to salmon or salmon roe, where the act or omission otherwise leading to the commission of an offence is for scientific purposes; for protecting, improving and developing stocks of fish; or for the conservation of living creatures, and the person in question has the permission of a DSFB or the Scottish Ministers for the activity in question.

103. Section 27(1A) of the 2003 Act enables the Scottish Ministers, in granting permission for the purposes of section 27(1) of the 2003 Act, to impose conditions and requirements. Section 27(1B) makes it an offence for the holder of such a permission to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 27(1C) makes provision for a reasonable excuse defence for persons charged with a section 27(1B) offence, and section 27(1D) provides that a person guilty of an offence under section 27(1B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

104. Section 29(2)(b) is a technical amendment in consequence of section 28(2)(a) of the Bill.

105. Section 29(3) of the Bill amends section 28 of the 2003 Act to introduce new subsections (3) to (6). Section 28 of the 2003 Act provides for the circumstances in which a person is exempt from an offence in relation to contraventions of the provision mentioned in section 28(2) of the 2003 Act, insofar as fish other than salmon is concerned. Persons will not be guilty of an offence if the act leading to the contravention is for scientific purposes or for protecting, improving or developing stocks of fish and the person in question has the permission of the Scottish Ministers for the activity in question.

106. Section 28(3) of the 2003 Act enables Ministers, in granting permission for the purposes of section 28(1), to impose conditions and requirements. Section 28(4) makes it an offence for the holder of such a permission to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 28(5) makes provision for a reasonable excuse defence for persons charged with a section 28(1) offence, and section 28(6) provides that a person guilty of an offence under section 28(4) is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

107. Section 29(4) of the Bill amends section 30 of the 2003 Act to introduce new subsections (2A) to (2D). Section 30 of the 2003 Act provides for certain exemptions from the offences mentioned in section 30(1) of the 2003 Act if the act or omission concerned takes places within or in the course of the operation of a fish farm, and the Scottish Ministers have consented to the activity in question under section 30(2) of the 2003 Act.

108. Section 30(2A) enables Ministers, in granting consent under section 30(2) of the 2003 Act, to impose conditions and requirements. Section 30(2B) makes it an offence for the holder of such consent to act in contravention of any conditions or requirements imposed or to fail to take any actions required by any such condition or requirement. Section 30(2C) makes provision for a reasonable excuse defence for persons charged with a section 30(2B) offence, and section 30(2D) provides that a person guilty of an offence under section 30(2B) is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.
PART 3 – SEA FISHERIES

Enforcement of sea fisheries legislation

Section 30 – Powers of British sea-fishery officers to enforce sea fisheries legislation

109. Section 30 of the Bill seeks to modernise and provide a comprehensive set of powers for British sea-fishery officers (“BSFOs”) for the purposes of enforcing sea fisheries legislation in the Scottish enforcement area and in relation to Scottish fishing boats anywhere in the world.

110. Section 30(1) makes provision for BSFOs to have access to the common enforcement powers within Part 7 of the Marine (Scotland) Act 2010 and the powers conferred by section 31 (power to detain vessels in connection with court proceedings) and section 34 (power to inspect objects used in commercial sea fishing). In addition BSFOs also have access by virtue of section 30(4) to any other enforcement powers they may have under sea fisheries legislation but constrained by section 30(5) to circumstances where they are unable to exercise a power available to them either as part of the suite of enforcement powers set out in the 2010 Act or the powers contained in sections 31 or 34 of the Bill.

111. Section 30(7) modifies sections 151 to 155 of the 2010 Act with the effect that any reference to a power in Part 7 of the 2010 Act is to be construed as a reference to a power conferred by section 30(1) of the Bill. This will confer a statutory obligation on BSFOs to provide evidence on their authority (section 151 of the 2010 Act), state their name and purpose, etc (section 152 of the 2010 Act). BSFOs would not be liable in any civil or criminal proceedings by virtue of section 154 of the 2010 Act providing certain conditions are met. Section 155 of the 2010 Act creates a number of offences in relation to BSFOs: these include where a person fails to comply with requirements made of them, provides false information, obstructs, assaults a BSFO or pretends to be one.

Detention of vessels in connection with court proceedings

Section 31 – Power to detain vessels in connection with court proceedings

112. Section 31(1) of the Bill makes provision for BSFOs to detain a vessel either to ensure the attendance of the alleged offenders in court where the BSFO believes that the offender will not attend court unless the vessel is detained or believes a court will order the vessel to be detained following a conviction and a fine. This power may be used where a BSFO has reasonable grounds to suspect that an offence has been committed by the owner, master or charterer of a fishing vessel and there is a real risk that the alleged offenders will not attend court unless the vessel is detained in port.

113. Section 31(2) of the Bill provides that a BSFO may take, or may arrange for others to take, a vessel and its crew to the nearest convenient port for the purposes of detaining it. It allows a BSFO to give instructions to anyone who appears to be in charge of the vessel to take it and its crew, to port.

114. Section 31(4)-(5) of the Bill requires a BSFO to serve a notice of detention on the person who appears to be in charge of the vessel, which must include the reasons for detaining it and the
circumstances under which it may be released. A notice of detention under section 31(4) must be withdrawn if any ground of release specified in section 32(5) of the Bill applies.

**Section 32 – Release of vessel detained under section 31**

115. Section 32(2) of the Bill sets out the circumstances under which a vessel detained under section 31 is no longer to be treated as detained under that section. This includes where a notice of detention is withdrawn by a BSFO, where a sheriff orders the release of the vessel under section 33, proceedings taken against the master, owner, or charterer have concluded, or the court has exercised any power it has to order the vessel to be detained.

**Section 33 – Power of sheriff to order release of vessels**

116. Section 33 provides a process allowing the owners of a vessel detained under section 31 to apply to a sheriff for an order releasing the vessel from detention. An owner or charterer of a vessel may apply under section 33(2) of the Bill to a sheriff seeking the release of the vessel from detention. A sheriff may order the release of the vessel if satisfied that any of the grounds given in section 33(3) of the Bill apply. These are that the continued detention of the vessel is no longer necessary to secure the attendance of the master, owner, or charterer at court, or that there are no grounds for believing that the court would order the vessel to be detained at any court proceedings as envisaged under section 31(1)(b)(ii).

**Inspection and seizure of objects used in commercial sea fishing**

**Section 34 – Power to inspect and seize objects**

117. Section 34(1) of the Bill confers inspection powers on BSFOs to allow them to examine objects which they have reasonable grounds to suspect may be being used in connection with commercial sea fishing. This could include objects discovered in the sea, or on land on the foreshore, or in the vicinity of ports and harbours. Section 34(2) provides a power to lift an object out of the sea for the purposes of inspecting it. Having inspected the object, the officer may decide to seize it by virtue of the power conferred by section 34(3) of the Bill. By virtue of Section 34(7), this can include any contents or anything attached to the object. If the officer decides not to seize the object then section 34(5) requires the officer to replace the object where it was found or, in circumstances where it is not possible to replace the object, section 34(6) provides for the seizure of the object until the owner can collect it.

**Section 35 – Powers of inspection under section 34**

118. Section 35 of the Bill requires a report about the inspection to be completed by the officer who has inspected the object using the powers set out in section 34. Section 35(3) sets out the contents of the report, and where the object is seized the additional information set out in section 35(4) must also be included in the report. Section 35(5) of the Bill requires a copy of the report to be attached to an object that has not been seized and if the officer cannot attach a copy of the report to the object, section 35(6) requires the officer to make an attempt to provide this report to whoever appears to be the owner of the object. Section 35(8)-(10) sets out the circumstances where the owner of the object should be served a copy of the report. Where the owner of the object cannot readily be identified, section 35(11) of the Bill substitutes the requirement to serve a copy of the report on the owner of the object with a requirement to take reasonable steps to bring the report to the attention of anyone likely to have an interest in it.
Section 36 – Retention of objects seized under section 34(3)

119. Section 36(1) of the Bill provides that an object seized under section 34(3) may be retained by the Scottish Ministers. However, if either of the grounds set out in section 36(3) apply, the Scottish Ministers must make the object available for collection. These grounds are that either the procurator fiscal has decided that no proceedings will be taken, or that a relevant fixed penalty notice has been paid, or that court proceedings have concluded without an order of forfeiture being made. The Scottish Ministers are not obliged, however, to make the object available for collection if it is liable for forfeiture as a prohibited item under section 41 of the Bill.

Section 37 – Disposal of objects seized under section 34

120. Section 37 of the Bill sets out the process which the Scottish Ministers are required to follow when seeking to either return or dispose of an object. Section 37(2)-(5) defines a notice of collection and requires the Scottish Ministers to serve a copy on every person who appears to be an owner of the object or, in the case that an owner cannot be identified, on persons likely to have an interest in the object. Having served a notice of collection under section 37, the Scottish Ministers may dispose of the object as they see fit at the end of a three-month period.

Retention and disposal of property seized by BSFOs

Section 38 – Retention of property seized by British sea-fishery officers

121. Section 38 of the Bill provides the Scottish Ministers with the power to retain property seized in the Scottish enforcement area or on board a Scottish fishing vessel, by British sea-fishery officers (BSFOs) using powers other than those contained within section 34 of the Bill.

122. Section 38(2) requires BSFOs to deliver seized property to the Scottish Ministers as soon as is reasonably practical. Section 38(4) allows Scottish Ministers to retain said property. In accordance with paragraph 13 of schedule 2 of the Bill, in circumstances where the property is live shellfish, BSFOs may, however, return such animals to the sea to mature, without first delivering them to Scottish Ministers.

123. Section 38(5) requires Scottish Ministers, in certain circumstances, to release seized property and make it available for collection as soon as is practicable. Release of property is required when a procurator fiscal takes no proceedings in respect of an offence where the property was seized, where a fixed penalty notice has been paid in respect of the offence, and for proceedings which have been concluded without the property being subject to any order for forfeiture.

124. The grounds for release of property under sections 38(5) and 38(6) do not apply to property if the use of the property for sea fishing would constitute an offence under the law of Scotland (section 41) or if it relates to fish that are below the minimum size and in respect of which an offence has, as a result, been committed (section 42).
Section 39 – Power of Scottish Ministers to sell seized fish in their possession

125. Section 39 of the Bill gives the Scottish Ministers the power to sell any fish that has been seized by BSFOs and retained by them under section 38 of the Bill. Section 39(3) permits Scottish Ministers to retain the proceeds. These proceeds are to be retained by Ministers until the courts orders forfeiture of the proceeds and, in the absence of the courts making such an order, the Scottish Ministers are required under section 39(5) to return proceeds to owners as soon as is practicable. Return of the funds held is also necessary under section 39(4) if no court proceedings are taken or any fixed penalty notice issued is paid.

126. If the Scottish Ministers have retained the proceeds of any sale for a period of six months (because they have been unable to return the funds to the original owner(s) of the fish) then section 39(6) allows such funds to be retained by Scottish Ministers and used as they see fit. However, the Scottish Ministers can only dispose of such funds in this way where it was not practicable at the time they exercised the power of disposal to immediately return the funds to the original owner.

127. Section 39(8) requires that fish sold by the Scottish Ministers must be sold at auction and under section 38(9) the owner’s views must be taken into account on the manner in which the fish should be sold. Owners may ask for fish to be sold at a particular auction or by a method of sale other than auction. The Scottish Ministers are required by virtue of section 39(11) to take such views into account unless they deem them to be unreasonable.

128. Section 39(12) permits the deduction by the Scottish Ministers of reasonable selling expenses from the proceeds of the sale.

Section 40 – Disposal of property retained by Scottish Ministers under section 38

129. Section 40 of the Bill sets out the process to be followed for the disposal of property retained by the Scottish Ministers under section 38. Section 40(2) defines a notice of collection and section 40(3) requires the Scottish Ministers to serve a copy on every person who appears to be an owner of the object or, in the case that an owner cannot be identified, then the Scottish Ministers should seek to serve a notice of collection on an appropriate person as defined in section 40(6), or on any person likely to be interested in the object. Having complied with the requirements on a notice of collection, the Scottish Ministers may dispose of the object as they see fit at the end of a three-month period from the date of service of the notice if it is not claimed.

Forfeiture

Section 41 – Forfeiture of prohibited items

130. Section 41 of the Bill allows the Scottish Ministers to seek the forfeit of any item which has been seized where it would be illegal under Scots law to use that item for sea fishing. This power is available by virtue of section 41(1) to items lawfully seized by BSFOs under sea fisheries legislation either within the Scottish enforcement area or from on board a Scottish fishing boat wherever it is. Section 41(3) allows the Scottish Ministers to dispose of items forfeited under section 41 in any manner they see fit.
Section 42 – Forfeiture of fish failing to meet size requirements

131. Section 42 of the Bill allows the Scottish Ministers to seek the forfeiture of fish and shellfish which fails to meet minimum size requirements for that species. This power is available by virtue of section 42(1) to items lawfully seized by BSFOs under sea fisheries legislation either within the Scottish enforcement area or from on board a Scottish fishing boat wherever it is. Section 42(3) allows the Scottish Ministers to dispose of items forfeited under section 42 in any manner they see fit.

Section 43 – Further provision about forfeiture under section 41 or 42

132. Section 43 of and schedule 2 to the Bill set out the process to be followed where the Scottish Ministers wish to seek the forfeiture of property under sections 41 and 42 of the Bill, and provide for an appeal process which allows an application regarding forfeiture to be made to a sheriff. Where a sheriff makes a decision on a forfeiture application, that ruling may be appealed to the sheriff principal.

Inshore Sea fishing

133. Sections 43A and 43B of the Bill both make amendments to the Inshore Fishing (Scotland) Act 1984 (“the 1984 Act”) and relate specifically to the order making power at section 1 of that Act. Section 1 allows the Scottish Ministers to prohibit, by order, fishing for a specified description of sea fish (or method of fishing) in a specified area. “Sea fish” is defined as meaning any fish found in the sea including shellfish, salmon and migratory trout (section 9). Failure to comply with any order made under section 1 is an offence by virtue of section 4 of the 1984 Act. In addition the 1984 Act confers enforcement powers on BSFOs at sections 5 and 6. Those powers are exercisable in relation to any British fishing boat within British fishery limits and in relation to any vehicle or equipment all for the purposes of enforcing the provisions of any order made under section 1.

Contravention of orders prohibiting inshore sea fishing

134. Section 43A of the Bill amends the 1984 Act. Section 43A(2) adds a new subsection (1B) to section 4 of the 1984 Act (offences). That provides that a person commits an offence where the facts at paragraphs (a) to (c) are proved and it is reasonable to infer from those facts that the person intended to fish in contravention of a prohibition introduced through an order made under section 1 of the 1984 Act.

135. Section 43A(3) of the Bill amends the 1984 Act by adding a new section 4A. This creates a presumption that applies in proceedings against a person charged with an offence under section 4(1) of the 1984 Act. The presumption is that the person has fished in contravention of an order made under section 1 of the 1984 Act where certain facts, set out at subsections (2) and (3), are proved and it is reasonable to infer from those facts that the person was, or had been, fishing in contravention of the order. New section 4A(4) of the 1984 Act provides that the presumption will not apply where it can be shown that any evidence raises a doubt regarding certain facts.
Powers of entry

136. Section 43B of the Bill provides further amendments to the 1984 Act and these concern powers of enforcement. Section 43B(2) adds a new section 6A to the 1984 Act which provides a power of entry exercisable by BSFOs in respect of any land except dwellinghouses. The power applies for the purposes of enforcing the provisions of any order made under section 1 of the 1984 Act as well as the provisions of section 3. New section 6A(2) provides that BSFOs may do certain things that are necessary to gain entry in relation to any land. This includes opening lockfast places, and removing any obstacles. New section 6A(3) places a duty on BSFOs that, if requested, they must produce evidence of their identity. New section 6A(4) makes provision for an offence where someone willfully obstructs a BSFO or refuses, or fails to, comply with a request made by a BSFO. A constable may arrest without warrant someone suspected of an offence under subsection (4). New section 6A(9) provides BSFOs with certain protection in civil and criminal proceedings for anything done while exercising the new power of entry providing the court is satisfied that they acted in good faith and had reasonable grounds to exercise the power of entry.

Crown application: Scotland

137. Section 43B(3) adds a new section 10A to the 1984 Act which relates to the application of the new section 6A to the Crown. New section 10A(1) applies the new power of entry in section 6A to Crown land. Most of the foreshore around Scotland is owned by the Crown. By virtue of the definition of Crown land in new section 10A(5), Her Majesty’s private estates are exempt from the new power of entry in section 6A and new section 10A(3) exempts the Crown from any criminal liability.

Enforcement of EU rules

Section 44 – Modification of the Fisheries Act 1981: enforcement of EU rules

138. Section 44 makes a technical amendment to section 30(1) of the Fisheries Act 1981 to extend its geographic scope to, and to allow enforcement of EU obligations and restrictions on, Scottish fishing boats outside of the Scottish zone.

139. This amendment will allow for new EU regulations to be fully and properly enforced at the point that they come into effect, not only in respect of all vessels within the Scottish Zone as at present, but also in respect of Scottish fishing vessels wherever they are and any persons in Scotland whose activities are subject to EU rules on the regulation of commercial sea fisheries. The proposed changes will simply alter the legislative basis on which a contravention of EU law would be enforced. In other words EU regulations that would otherwise be enforced through a statutory instrument will be directly enforceable under the 1981 Act through the amendment proposed in the Bill.
PART 4 - SHELLFISH

Protection of shellfish waters

Section 47 - Protection and improvement of shellfish waters

140. Section 47 of the Bill amends the Water Environment and Water Services (Scotland) Act 2003 (the “WEWS Act”) to make provision for the continued protection of shellfish waters following the repeal of the Shellfish Waters Directive (Directive 2006/113/EC).

141. Subsection (2) inserts a new section 5A into the WEWS Act. New section 5A enables the Scottish Ministers, by order, to designate areas of coastal or transitional water as “shellfish water protected areas” where they consider it necessary or desirable to do so for the protection or development of economically significant shellfish production. The Scottish Ministers are required to review any such designations by the dates specified in subsection (3) of new section 5A. These dates are intended to allow the Scottish Ministers to coordinate the process of designating and monitoring shellfish water protected areas with the process of characterising river basin districts under section 5 of the WEWS Act. The new section 5A allows for the Scottish Ministers to identify the coastal water or transitional water to be designated by reference to a map laid before the Scottish Parliament. It also provides that the Scottish Ministers must send copies of any designation order and maps made in pursuance of new section 5A to SEPA.

142. Subsection (3) of section 47 amends section 7 (register of protected areas) of the WEWS Act so that any shellfish water protected area that Ministers have designated is a “protected area” for the purposes of that section and therefore subject to the requirement to be included on the register of protected areas for each river basin district.

143. Subsection (4) amends section 9 of the WEWS Act so that the process of setting environmental objectives for bodies of water in each river basin district, and programmes of measures to achieve those objectives, also applies to shellfish water protected areas. It also clarifies that such objectives for shellfish water protected areas be both necessary or desirable to protect or improve the area to support shellfish life and growth as well as contributing to a high quality of shellfish products fit for human consumption.

144. Paragraph (5) amends section 11 of the WEWS Act to add a requirement for SEPA, where the river basin district contains shellfish water protected area, to consult the Food Standards Agency in relation to the statement, summary, and draft river basin management plan that SEPA is required to prepare under that section.

145. Paragraph (6) amends section 28 of the WEWS Act to add definitions of “shellfish” and “shellfish water protected area” for the purposes of interpreting Part 1 of the WEWS Act.

Orders as to fisheries for shellfish

Section 48 - Power to make orders as to fisheries for shellfish

146. For the purpose of establishing or improving, and of maintaining and regulating, shellfisheries the Scottish Ministers may make several and regulating orders under the Sea
Fisheries (Shellfish) Act 1967 (“the 1967 Act”). The 1967 Act allows for orders to be made in the name of a person or body of persons (a grantee) to restrict the right of fishing in a defined area of sea to that person or body. Orders are made in respect of the species of shellfish as are described in the order and remain in force for a set period.

147. Section 48 of the Bill amends section 1(1) of the 1967 Act to allow for orders to be made for all types of shellfish including those not already listed in subsection (1) of that section and removes the present requirement for regulations to be made each time the Scottish Ministers wish to add a new type of shellfish to the list. The amendment brings the legislation into line in Scotland with that already in place in England and Wales.

148. As a consequence of amending section 1(1), section 15(2) of the Sea Fisheries Act 1968 is repealed.

Contravention of regulated fishery orders

149. Sections 48A and 48B make amendments to the 1967 Act in respect of provisions for regulating fisheries for shellfish. Regulating orders may be granted under the 1967 Act for the regulation and maintenance of fishing for shellfish. Section 3 of the 1967 Act makes provision for the effect of such orders whilst sections 4A to 4D of that Act make provision for enforcement.

150. Section 48A of the Bill amends the 1967 Act by inserting new subsections (4A), (4B) and (4C) to section 3 (effect of grant of right of regulating a fishery). Where an order under section 1 of the 1967 Act confers the right of a regulated fishery and makes regulations relating to the dredging, fishing for and taking of shellfish, new subsection (4B) provides that a person commits an offence where the facts at paragraphs (a) to (c) are proved and it is reasonable to infer from those facts that the person intended to fish in contravention of regulations introduced through an order made under section 1 of the 1967 Act.

151. Section 48A(3) of the Bill further amends the 1967 Act by adding section 3A. This creates a presumption that applies in proceedings against a person charged with an offence under section 3(3) of the 1967 Act. The presumption is that a person has fished in contravention of an order made under section 1 of the 1967 Act where certain facts, set out at subsection (2)(a) of new section 3A, are proved and it is reasonable to infer from those facts that the person intended to fish in contravention of the regulations or restrictions. New section 3A(4) of the 1967 Act provides that the presumption does not apply where any evidence raises a doubt regarding certain facts.

Enforcement of orders: powers of entry

152. Section 48B of the Bill also makes amendments to the 1967 Act. Section 48B(2) adds a new section 4CA to the 1967 Act which provides a power of entry exercisable by BSFOs in relation to any land other than a dwellinghouse. New section 4CA(1) provides that BSFOs may do certain things that are necessary to gain entry in relation to any land. This includes opening lockfast places, and removing any obstacles. New section 4CA(2) makes provisions for BSFOs to enter land on foot or with a vehicle and take any necessary person or equipment with them.
New section 4CA(4) places a duty on BSFOs that, if requested, they must produce evidence of their identity.

Section 48B(3) amends section 4D of the 1967 Act to make provision so that a constable may arrest without warrant someone suspected of failing to comply with a requirement imposed by a BSFO under section 4CA(1), or obstructing a BSFO from exercising the new power of entry.

**Crown application: Scotland**

Section 48B(5) adds a new section 24A to the 1967 Act which relates to the application of the new section 4CA to the Crown. New section 24A(1) applies the new power of entry in section 4CA to Crown land. Most of the foreshore around Scotland is owned by the Crown. By virtue of the definition of Crown land in new section 24A(5), Her Majesty’s private estates are exempt from the new power of entry in section 4CA and new section 24A(3) exempts the Crown from any criminal liability.

**Section 49 - Power to appoint inspectors before making orders as to fisheries for shellfish**

Section 49 of the Bill amends paragraph 4(2) of Schedule 1 to the 1967 Act to clarify the Scottish Ministers’ discretionary power in making decisions on the appointment of an inspector and calling public inquires by removing the requirement to appoint an inspector in cases where an objection raising a material concern is received. The amendment brings the legislation into line with that in England and Wales.

This section also replaces “as soon as conveniently may be” in paragraph 4(2) of Schedule 1 with “as soon as reasonably practicable” and in paragraph 6(1) of Schedule 1 replaces “conveniently may be” with “reasonably practicable”. These amendments modify the language in each case and make no change to the substance of the provisions.

**PART FIVE - MISCELLANEOUS**

**Charging**

**Section 50 - Power to charge in connection with fisheries functions**

Section 50(1) of the Bill confers a power on Scottish Ministers enabling them to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions specified by them in those regulations.

Section 50(2) as read with subsection (1), defines the functions in relation to which the Scottish Ministers may impose a charge. These are functions under legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing. Section 50(8) provides that the term “legislation”, means any enactment or EU instrument which contains an enforceable EU obligation or restriction.

The “fisheries functions” also includes functions of any person appointed by the Scottish Ministers under that legislation to ensure compliance with that legislation (such as an inspector or British sea fishery officer).
160. Section 50(3) of the Bill lists examples of provisions that may be made in any regulations with respect to the payment of charges. These include: provision about the determination of the amount of charge payable, including circumstances where the charge is reduced, waived or need not be paid; the circumstances in which a charge is payable including making the carrying out of specified fisheries functions conditional on payment of a charge, and provision for the recovery and collection of charges; the timing of payment of charges, including provision for annual and recurring charges; and provision setting out by whom a charge is payable. The regulations may also contain provisions about how disputes about the amount or liability for a charge may be determined.

161. Section 50(6) of the Bill also clarifies that regulations under subsection (1) may make different provision for different purposes, which include for different types of fisheries function, different types of person or persons (by whom charges are paid) and with respect to different areas.

162. Section 50(4) of the Bill clarifies the nature of the charges which may be set out in the regulations. There are two parts to this provision. Firstly such regulations may only require persons to pay a charge if and only so far as that person is someone in relation to whom a specified fisheries function has been carried out. Secondly the charge set out in regulations must not in any particular case exceed the cost incurred in the carrying out of that function, in that case. The charges are therefore limited to being a form of cost recovery for the performance of specified statutory functions.

163. Section 50(5) requires Scottish Ministers to consult those people they consider appropriate before making (or amending) regulations under subsection (1).

164. Section 50(7) clarifies that existing powers to charge remain available to the Scottish Ministers and will not be affected by the introduction of the new provisions by the Bill.

Fixed Penalty Notices

Section 51 - Fixed penalty notices

165. A fixed penalty notice is a form of sanction that may be offered in certain circumstances as an alternative to seeking a criminal conviction in court. Where a fixed penalty is accepted and paid within a deadline the matter is concluded. The issuing or payment of a fixed penalty is not recorded as a criminal conviction nor can it be treated as such.

166. An alleged offender has the choice of not accepting the fixed penalty by simply not paying the penalty by the deadline set. In these circumstances the matter is thereafter reported to the procurator fiscal and is dealt with in the criminal courts. Marine Scotland currently offers fixed penalty notices for sea fisheries related offences under the provisions of section 25 of the 2007 Act.

167. Section 51(2) of the Bill amends section 25(2) of the 2007 Act to change the reference to British sea-fishery officer to fixed penalty officer. Fixed penalty officers are persons appointed
by the Scottish Ministers and are defined in section 25(3) of the 2007 Act through an amendment introduced through section 51(2)(d) of the Bill.

168. Section 51(2) of the Bill makes a series of changes to the section 25(2) of the 2007 Act to expand the current definition of what offences are eligible for fixed penalty notices. The offences covered by fixed penalty regime is expanded to include those offences in marine and nature conservation legislation in respect of which enforcement officers specified in section 25(2A) of the 2007 Act have compliance monitoring and enforcement functions. Section 25(2A) of the 2007 Act is introduced through section 51(2)(c) of the Bill.

169. Section 51(2)(c) inserts section 25(2B) is inserted in the 2007 Act to allow the Scottish Ministers to amend the definition of a relevant offence or the specification of different enforcement officers by order.

170. Section 51(3) of the Bill amends section 27 of the 2007 Act to replace the current cap on the maximum fixed penalty notice with one of £10,000.

171. Section 51(4) of the Bill amends section 31 of the 2007 Act to change the reference to British sea-fishery officer to fixed penalty officer. Again this reflects the fact that it will be fixed penalty officers who will issue fixed penalty notices in future rather than British sea-fishery officers as at present.

172. Section 51(4) of the Bill replaces the heading at Part 4 of the 2007 Act with “Fixed penalty notices” to reflect the fact that the fixed penalty provisions in Part 4 will cover areas other than sea fisheries.

PART SIX – GENERAL

Section 52 - Subordinate legislation
173. Section 52 of the Bill sets out the arrangements for subordinate legislation under the Bill.

Section 53 - Interpretation
174. Section 53 of the Bill defines terms that are used frequently in the Bill.

Section 54 - Ancillary provision
175. Section 54 of the Bill provides ancillary order making powers for Scottish Ministers to make consequential, supplemental, incidental, transitional, transitory or saving provisions for the purpose of giving full effect to the Act.

Section 55 - Crown application
176. Section 55 of the Bill deals with the application of the Bill to the Crown.
This document relates to the Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2 (SP Bill 17A)

Section 56 - Commencement

177. Section 56 of the Bill deals with commencement. The majority of the Bill’s provisions would come into force in accordance with orders made by the Scottish Ministers under subsection (2), with some (non-substantive) provisions coming into effect the day after the Bill receives Royal Assent.

Section 57 - Short title

178. Section 57 of the Bill deals with the short title.

Schedule 1 – Commercially damaging species: control schemes

179. Schedule 1(paragraphs 1-13) is introduced by section 14(6) of the Bill and makes further provision in respect of control schemes.

Making a control scheme: procedure

180. Paragraphs 1 to 4 of schedule 1 concern the procedure to be followed by the Scottish Ministers when making a control scheme. It includes procedures to be used when an objection is made and when modifications to a control scheme are required.

Variation or revocation of a control scheme: procedure

181. Paragraphs 5 to 9 of schedule 1 specify the process for Scottish varying or revoking a control scheme, with or without the application of a person who carries on a business of fish farming or shellfish farming, and on whom the control scheme has imposed any requirement. Paragraph 6 makes provision for the documents that the Scottish Ministers must serve on every person on whom the control scheme has imposed any requirement. Paragraphs 7 and 8 makes provision in relation to objections made/ or not made further to paragraph 6. Paragraph 9 provides the steps that must be taken before a variation of a control scheme can be made. This includes serving every person who has been served a copy of the draft scheme under paragraph 6 a notice of the proposal to make the modification and each person consenting to the proposal.

Objections

182. Paragraph 10 of schedule 1 enables the Scottish Ministers to require that an objection must state in writing the grounds for it and enables them to disregard the objection for the purposes of the schedule if they are satisfied that the objections is frivolous.

Making, varying or revoking a control scheme: notices

183. Paragraph 11 of schedule 1 makes provision for Scottish Ministers to serve on every person, on whom a notice was required to be served, a notice stating that the scheme has been made, or that a variation or revocation for the schemes has been made.

184. Paragraph 12 of schedule 1 provides that, apart from in appeals under paragraph 13, the validity of control schemes may not be questioned in legal proceedings. This is not intended to exclude judicial review.
Appeals

185. Paragraph 13 of schedule 1 provides for a right of appeal to the sheriff by a person carrying out a business of fish farming to which a control scheme relates, including a provision that an appeal must be lodged not later than 28 days after the date on which the person making the appeal received a notice. Any appeal on a point of law against the decision of the Sheriff would be to the Court of Session.

Schedule 2 – Forfeiture under section 41 or 42

Application of the Schedule

186. Paragraph 1 of schedule 2 defines the circumstances under which the provisions of schedule 2 are to apply. These are that property is being retained by the Scottish Ministers having been previously lawfully seized by a British sea-fishery officer, and that the property is liable for forfeiture under section 41 or section 42 of the Bill. In addition it also requires that either no proceedings are being taken against anyone in relation to the property, that any fixed penalty notice issued in respect of any relevant offence has been paid, or that relevant court proceedings have concluded without the property in question being forfeited.

Notice of intended forfeiture

187. Paragraph 2 of schedule 2 describes those to whom the Scottish Ministers must give a notice of intended forfeiture and, prescribes what such a notice must contain. Where property has been seized following an inspection conducted under section 34 of the Bill, and the Scottish Ministers have taken reasonable steps to identify the owner, the requirement to give notice is modified to one of taking steps to bring the contents of the notice to the attention of persons who are likely to be interested in it.

188. Paragraph 2(4) of schedule 2 limits the ability to forfeit property under schedule 2 to circumstances where the requirement to give notice of intended forfeiture have been complied with or it was not reasonably practical for this to be complied with.

Notice of claim

189. Paragraph 3 of schedule 2 requires anyone who wishes to dispute that their property should be forfeited to serve a notice on the Scottish Ministers. It places a time constraint of such a notice being within one month from when either the Scottish Ministers gave notice of their intention to forfeit property or, where no notice is given, within one month of the seizure of the property.

Automatic forfeiture in a case where no claim is made

190. Paragraph 4 of schedule 2 provides that where no notice of claim is given to the Scottish Ministers within one month of notice of forfeiture having been given, or where the name or address of the claimant is not specified in the notice of claim, then the property is automatically forfeited.
Decision whether to apply for order forfeiting property

191. Paragraph 5 of schedule 2 makes provision that where a notice of claim is given to the Scottish Ministers, they must decide whether they wish to make a forfeiture application to a sheriff to pursue the forfeiture of the property.

Return of property if no application made to the sheriff

192. Under paragraph 6 of schedule 2, where a notice of claim has been given to the Scottish Ministers and they decide not to make an application for forfeiture to a sheriff, they must return the property to whomever they believe to be the owner.

Forfeiture applications

193. Paragraph 7 of schedule 2 provides that where the Scottish Ministers have made an application for forfeiture to a sheriff and the sheriff is satisfied that the property is liable for forfeiture under sections 41 or 42, the sheriff must order the forfeiture of the property, or its return to the owner where the sheriff is not so satisfied.

Appeal against sheriff’s decision on forfeiture application

194. Paragraph 8 of schedule 2 makes provision for either the Scottish Ministers or the property owner to appeal the sheriff’s decision under paragraph 7 of schedule 2 by applying to the sheriff principal. The Scottish Ministers are required to keep any property during the time required for any appeal.

Effect of forfeiture

195. Paragraph 9 of schedule 2 specifies that the effective timing of any decision under the schedule to forfeit property is to be construed as the time the property was seized.

Disposal of property which is not returned

196. Paragraph 10 of schedule 2 provides that the Scottish Ministers may dispose of property that ought to be returned to its owner after a 3 month period has elapsed and they have not been successful in their attempt to return the property. The Scottish Ministers may dispose of the property in any manner they see fit providing it is not practicable to dispose of it by simply returning it immediately to the owner. This would apply if, for example, the owner of the property was untraceable or did not respond to enquiries.

Provisions as to proof

197. Paragraph 11 of schedule 2 provides that the matters regarding the seizure of property set out in the application for forfeiture under paragraph 7 of schedule 2 are to taken as fact unless they are disputed and that where a sheriff grants an order of forfeiture, the production of that order or a certified copy are to be considered sufficient evidence of the forfeiture decision.

Power to destroy fish before forfeiture

198. Paragraph 12 of schedule 2 allows the Scottish Ministers to destroy fish before they are formally forfeited under section 42 of the Bill. This is essentially a practical consideration where
officers encounter fish which are below minimum reference sizes for their retention, landing, storage, or offering for sale. Such under-sized fish cannot be sold and, as they will almost certainly be dead, cannot simply be returned to the sea. Paragraph 12 (2) of schedule 2 makes provision for a sheriff to order the Scottish Ministers to pay compensation where the sheriff decides in response to an application for forfeiture under paragraph 7 of schedule 2 that the fish should not be forfeited. This may be, for example, where the sheriff was not satisfied that the fish in question were below the legal minimum reference size set. The value of any compensation is to be determined by the likely value such fish would have fetched had they been sold at the nearest fish auction market to the place where they were seized.

**Power to return shellfish to the sea before forfeiture**

199. Paragraph 15 of schedule 2 provides that shellfish which may be liable for forfeiture under section 42 may be returned to the sea to continue to grow and mature even when such shellfish have not yet been forfeited under schedule 2 or ordered forfeit by a sheriff in response to an application made under paragraph 7 of schedule 2. This allows for the likely contingency that shellfish found below any minimum reference sizes may still be alive and could continue to grow and contribute to the biomass of the species if they were returned immediately to the sea. Paragraph 12(2)-(5) of schedule 2, which makes provision for a sheriff to order the Scottish Ministers to pay compensation, also applies to shellfish.
AQUACULTURE AND FISHERIES (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Aquaculture and Fisheries (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 1 - power to modify the definition of the Code of Practice.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

3. Section 1(2) of the Bill inserts a new section 4A into the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”). Subsection (4) of the new section 4A creates a power for the Scottish Ministers to modify, by order, the definition of the “Code of Practice” in subsection (5) of the new section, to substitute a reference to another document and / or body for the current one.

Reason for taking power

4. The new section 4A inserted into the 2007 Act by section 1 of the Bill makes provision about fish farm management agreements and statements. It refers to the existing voluntary Code of Good Practice for Scottish Finfish Aquaculture as issued and revised from time to time by the body known as the Code of Good Practice Management Group. As both organisations and documents can change over time, this provision enables Ministers to amend the definition of “Code of Practice” to reflect such changes as and when they occur.
5. It is appropriate that provision be made by subordinate legislation as the power enables Ministers to respond to such changes more readily and flexibly than if the changes were required to be made in primary legislation.

Choice of procedure

6. Orders under inserted section 4A(6) will be subject to affirmative procedure by virtue of section 43(3) of the 2007 Act, as amended by section 1(4) of the Bill. This procedure is considered appropriate as any order will textually amend provisions in new section 4A of the 2007 Act and has the potential to result in the recommendations of a body on best practice, other than an industry producer organisation, being adopted.

Section 19A(2)

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: no procedure

Provision

7. Section 19A(2) of the Bill inserts new subsection (2A)(a) into section 31A of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). This creates a power for the Scottish Ministers to grant planning permission for the operation of an individual marine fish farm by order.

Reason for taking power

8. Section 31A currently enables the Scottish Ministers to grant planning permission by order in respect of a class of development. The new section 31A(2A)(a) will enable such planning permission to be granted by order in respect of an individual marine fish farm and will enable a more focused and site specific exercise of the power to grant planning permission by order.

Choice of procedure

9. The choice of procedure for the new order making power follows the provisions which apply to the current powers under section 31A for the grant of planning permission by order. Orders under section 31A are not subject to the negative or affirmative procedure but are required to be laid before Parliament in accordance with section 30(2) of the Interpretation and legislative Reform (Scotland) Act 2010. It is appropriate that the procedures for the new order making powers are consistent with the existing provisions.
Section 19A(4)

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

10. Section 19A(4) amends section 31A(8) of the 1997 Act. Section 31A(8) enables the Scottish Ministers to make regulations in relation to the form of application or planning permission under section 31A and procedures to be followed in connection with the consideration of an application. This amendment removes the provision enabling regulations to specify in which cases applications must, rather than may, be made.

Reason for taking power

11. Subsection 31A(8)(a) is revoked in consequence of the new power to grant planning permission by order for individual marine fish farms. Given that new power, it would not be appropriate for regulations to specify cases where an application must be made. That would give rise to the implication that the power to grant planning permission by order is not available for those cases.

Choice of procedure

12. Regulations under section 31A(8) are already subject to the negative procedure and there is nothing in the amendment of section 31A(8) that affects that.

Section 22 – salmon carcass tagging

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure; affirmative procedure where power used to modify Part 5 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

Provision

13. Section 22 of the Bill inserts a new section 21A into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). Section 21A(1) enables the Scottish Ministers to make provision, by regulations, for or in connection with tagging the carcasses of wild salmon, and new section 21A(2) provides examples of the matters that may be provided for under such regulations. Subsection (4) of section 21A was amended at Stage 2 to provide that the regulations will be subject to affirmative procedure where the power at subsection (3)(c) is used (modification of Part 5 of the Salmon and Freshwater Fisheries Consolidation (Scotland) Act 2003).
Reason for taking power

14. The regulation-making power in section 21A(1) of the 2003 Act will enable the Scottish Ministers to put in place a statutory scheme for carcass tagging of wild salmon. A carcass tagging scheme is considered to be a helpful vehicle to implement policy on, for example, enhanced traceability of wild salmon, promotion and identification of a Scottish quality brand and reinforcement of existing statutory measures banning the sale of rod caught salmon (the Conservation of Salmon (Prohibition of Sale) (Scotland) Regulations 2002 (SSI 2002/418)).

15. A regulation-making power is believed to comprise a more flexible delivery mechanism to provide for the technical aspects of the proposed tagging scheme, which is being developed in consultation with relevant stakeholders, and will facilitate any necessary amendments to the scheme in light of operational experience. In addition, it is likely that the specification of requirements as to the tags that have to be affixed to carcasses will engage the provisions of Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services ("the Technical Standards Directive", OJ L 204, 21.7.1998, p37). The Technical Standards Directive requires any measures containing technical standards to be notified to the European Commission in draft and the unpredictable impact of delay associated with this process in relation to the progress of primary legislation through the Scottish Parliament makes it undesirable for certain specifications as regards the carcass tagging scheme to be prescribed in primary legislation.

Choice of procedure

16. Regulations under section 21A(1) of the 2003 Act will be subject to negative procedure by dint of section 68(2) of the 2003 Act (as read with paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp10)). But affirmative procedure will apply where the power at new section 21A(3)(c) is exercised to modify Part 5 of the 2003 Act (section 68(4) is amended by section 22(4)). Negative procedure is considered appropriate as it provides a proportionate and appropriate level of Parliamentary scrutiny of the technical detail of the scheme. In addition, certain provisions of the regulations will have been considered by the European Commission and Member States. Should the regulations make provision in relation to record keeping, etc (section 21A(2)(b)), such provision is considered to comprise administrative matters and therefore negative procedure provides the appropriate degree of scrutiny. Affirmative procedure is considered appropriate where modifications are made to primary legislation.

17. Section 21A(3) provides that regulations made under section 21A(1) may make different provision for different purposes and different areas, and may modify Part 5 of the 2003 Act which deals with enforcement. If the regulations seek to modify Part 5 of the 2003 Act then they will be subject to Affirmative procedure. This is considered to be the appropriate level of Parliamentary scrutiny.
Section 50 – power to make regulations to impose charges for the carrying out of certain fishery functions

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

18. Section 50(1) of the Bill confers a power on the Scottish Ministers which will enable them to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions; which will also be specified in the regulations.

19. Section 50(2) of the Bill, as read with subsection (1), defines the functions in relation to which the Scottish Ministers may impose a charge. These are functions under certain legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing.

20. The regulations will set out the details of the provision made for the amount of charge to be payable, by whom it is payable and when, including setting down the circumstances in which charges may be reduced or waived and exemptions provided for.

21. Subsection (4) provides that the charges payable under regulations made using this power may only require a person to pay a charge if and so far as the person is someone in relation to whom a fisheries function has been carried out. In addition the charge may not exceed the reasonable cost incurred in the carrying out of the function. The charge therefore must relate to the function in respect of which it is charged, and may not generate a surplus.

Reason for taking power

22. The Scottish Ministers are seeking to progress one of the key principles of the Scottish Government’s accounting procedure and practice which requires that charges should be set for all statutory and commercial services. This new power would enable the Scottish Ministers to impose charges in connection with certain specific fishery functions. The power would also acknowledge how these functions contribute to the Scottish Government purpose of sustainable economic growth by ensuring that Scottish Government resources are used effectively, with appropriate costs being recovered wherever possible.

Choice of procedure

23. No changes were made to the substance of the power in section 50 at Stage 2. However, an amendment was made to section 52(2) that has the effect of providing that regulations under section 50 will be subject to the affirmative procedure rather than the negative procedure (as was provided by the Bill on introduction).

24. While Section 50(5) of the Bill requires the Scottish Ministers to consult before making regulations under 50(1), it is considered that the affirmative procedure is appropriate as it provides a proportionate level of Parliamentary scrutiny of the application of these powers.
This document relates to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as amended at stage 2

25. It is anticipated that a wide ranging consultation would be undertaken on those areas where charging would be considered appropriate and reflective of the parameters detailed within the Bill.
Subordinate Legislation Committee

26th Report, 2013 (Session 4)

Aquaculture and Fisheries (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 7 May 2013
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a)  subordinate legislation laid before the Parliament;
    (i) subordinate legislation laid before the Parliament;
    (ii) any Scottish Statutory Instrument not laid before the Parliament but
classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be
drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other
proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 7 May 2013, the Subordinate Legislation Committee considered the delegated powers provisions in the Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2 (“the Bill”). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Aquaculture and Fisheries (Scotland) Bill is a Government Bill which was introduced by Richard Lochhead MSP on 3 October 2012. The Bill makes provision on a number of matters in relation to the management structures for farmed and wild fisheries, and to enhance the regulatory framework for those fisheries.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 62nd report of 2012.

DELEGATED POWERS PROVISIONS

5. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

6. The Committee reports that it does not need to draw the attention of the Parliament to the new delegated powers provisions in section 19A(2) and (4).

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1 Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2 available at: [http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17as4-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17as4-amend.pdf)

or the substantially amended powers in sections 1(2) (inserting section 4A(5) of the Aquaculture and Fisheries (Scotland) Act 2007), 3, section 20 (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003), 22 and 50 (read with section 52(2).

7. The Committee welcomes that the amendment of the powers in sections 3(4) and 20 (inserting section 46F of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003) implement recommendations of the Committee in its Stage 1 Report.

8. The Committee also welcomes the fact that the application of the affirmative procedure to the exercise of the powers in section 50 of the Bill (powers to charge in connection with fisheries functions), achieved by the amendment of section 52(2), implements a recommendation of the Committee in its Stage 1 Report.
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 57  Schedules 1 and 2
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Tavish Scott
8  In section 1, page 1, line 17, after <of> insert <coastal marine>

Tavish Scott
9  In section 1, page 1, line 17, leave out <at a fish farm located within a farm management area>

Claudia Beamish
10 In section 1, page 1, line 18, after <must> insert <, for certain purposes including the improved prevention, control and reduction of parasites, pathogens and diseases>

Claudia Beamish
11 In section 1, page 2, line 15, at beginning insert <coordinated>

Claudia Beamish
12 In section 1, page 2, line 17, leave out <the> and insert <coordinated>

Claudia Beamish
13 In section 1, page 2, line 18, at beginning insert <coordinated>

Alex Fergusson
3  In section 1, page 2, line 18, at end insert—
   <( ) arrangements for the publication of the agreement or statement,>

Claudia Beamish
14 In section 1, page 2, line 18, at end insert—
   <(ba) arrangements for the publication, within 1 month of a weekly count of parasites, of information relating to the number of parasites counted at the farms within the farm management area, including—>
(i) the number of parasites, presented where appropriate as an average across the farm management area, counted on the fish sampled and the stages of the life-cycle of the parasites counted, those stages for *Caligus elongates* being mobiles and for *Lepeophtheirus salmonis* being non-gravid mobiles and gravid females, and

(ii) the period of 7 days within which the counts were made,

(bb) arrangements to ensure that information published in accordance with arrangements under paragraph (ba) remains accessible to the public for the period of 3 years beginning with the date of publication.

Tavish Scott

15 In section 1, page 3, line 3, leave out from <that> to end of line 10 and insert <a farm management agreement or farm management statement is in place.>

Section 3

Jim Hume

16 In section 3, page 4, line 18, at end insert—

<(aa) impose requirements on fish farm operators in relation to the training of their employees or agents in connection with the installation, maintenance or operation of equipment for which requirements are prescribed under paragraph (a), and>

Jim Hume

17 In section 3, page 4, line 19, at end insert <prescribed or imposed by the regulations>

Jim Hume

18 In section 3, page 4, line 28, after <equipment> insert <and records>

Jim Hume

19 In section 3, page 5, line 3, at end insert—

<( ) the keeping of records in relation to training provided or undertaken in pursuance of any requirement imposed under subsection (1)(aa) and the making of those records available for inspection,>

Jim Hume

20 In section 3, page 5, line 14, after <prescribe> insert <or impose>

Section 6

Tavish Scott

21 In section 6, page 7, line 25, leave out <7> and insert <14>
Section 7

Paul Wheelhouse

22 In section 7, page 8, line 8, at end insert <, and

( ) the powers conferred by section (Power to detain wellboats in connection with court proceedings).>

Paul Wheelhouse

23 In section 7, page 8, line 16, at end insert —

<( ) the powers conferred by section (Power to detain wellboats in connection with court proceedings), and>

Paul Wheelhouse

24 In section 7, page 8, line 20, at end insert <, and

( ) a marine enforcement officer’s functions under section (Power to detain wellboats in connection with court proceedings).>

After section 7

Paul Wheelhouse

25 After section 7, insert —

Power to detain wellboats in connection with court proceedings

(1) This section applies where —

(a) a marine enforcement officer has reasonable grounds for suspecting that an offence under section 5(5) has been committed by the master, an owner or a charterer of a wellboat (referred to as “A”), and

(b) the officer reasonably believes that —

(i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the wellboat is detained under this section, or

(ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.

(2) Where this section applies, a marine enforcement officer may —

(a) take, or arrange for another person to take, the wellboat and its crew to the port that appears to the officer to be the nearest convenient port, or

(b) require any person who is for the time being in charge of the wellboat to take it and its crew to that port.

(3) When the wellboat has been taken to port, the officer may —

(a) detain it there, or

(b) require the person for the time being in charge of it to do so.
A marine enforcement officer who detains a wellboat under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the wellboat.

The notice must state—

(a) the reasons for detaining the wellboat, and

(b) the circumstances in which the wellboat may be released.

Paul Wheelhouse

26 After section 7, insert—

<Release of wellboat detained under section (Power to detain wellboats in connection with court proceedings)>

(1) This section applies where a wellboat is being detained under section (Power to detain wellboats in connection with court proceedings).

(2) The wellboat ceases to be detained under that section if one of the following things occurs—

(a) the notice of detention is withdrawn,

(b) a sheriff orders the release of the wellboat under section (Power of sheriff to order release of wellboats),

(c) any proceedings taken against the master, owner or charterer of the wellboat have concluded,

(d) the court referred to in section (Power to detain wellboats in connection with court proceedings)(1)(b)(ii) exercises any power it has to order the wellboat to be detained.

(3) A notice of detention is withdrawn by the service by a marine enforcement officer of a further notice on the person who is for the time being in charge of the wellboat, stating that the wellboat is released.

(4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.

(5) The grounds of release are—

(a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the wellboat in respect of any offence in relation to which the wellboat was detained,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,

(d) that there are no grounds for believing that the court referred to in section (Power to detain wellboats in connection with court proceedings)(1)(b)(ii) will order the wellboat to be detained.

(6) In this section—

“appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),
“fixed penalty notice” means a fixed penalty notice under section 25(1) of that Act (issue of fixed penalty notices),

“notice of detention” means a notice served under section (Power to detain wellboats in connection with court proceedings)(4).>

Paul Wheelhouse

27 After section 7, insert—

<Power of sheriff to order release of wellboats>

(1) This section applies where a wellboat is being detained under section (Power to detain wellboats in connection with court proceedings).

(2) If, on an application to a sheriff by the master, an owner or a charterer of the wellboat, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the wellboat be released.

(3) An application under subsection (3) is to be made by way of summary application.

(4) Those matters are that—

(a) the continued detention of the wellboat under section (Power to detain wellboats in connection with court proceedings) is not necessary to secure that the master, an owner or a charterer of the wellboat will attend court, or

(b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.>

Section 22

Alex Fergusson

4 In section 22, page 24, line 20, at end insert—

<Regs under subsection (1) above must make provision for—>

(a) each tag to bear a unique identification number, and

(b) the recording, in such manner as the Scottish Ministers may prescribe, of the identification number of each tag issued.>

Alex Fergusson

5 In section 22, page 25, line 30, after <sale,> insert <buys,>

Section 25

Alex Fergusson

6 In section 25, page 28, line 13, leave out <4> and insert <3>

Alex Fergusson

7 In section 25, page 28, line 28, leave out <4> and insert <3>
After section 29

Paul Wheelhouse

28 After section 29, insert—

<Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003: Crown application

Application of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to the Crown

For section 67 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (Crown application) substitute—

“67 Application of this Act to the Crown

(1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.

(2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (2), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(b) belongs to an office-holder in the Scottish Administration or a Government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.

(6) The powers conferred by sections 54(1), 64(1)(a) and 64A(1)(c) are exercisable in relation to land an interest in which belongs to Her Majesty in right of Her private estates only with the consent of a person appointed by Her Majesty under the Royal Sign Manual or, if no such appointment is made, by the Scottish Ministers.

(7) In this section—

(a) references to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862,

(b) “Government department” means a department of the United Kingdom government.

(8) For the purposes of this section, “land” includes salmon fisheries.”.>

Section 50

Tavish Scott

29 In section 50, page 50, line 21, leave out <functions> and insert <services>
In section 50, page 50, line 23, leave out <functions> and insert <services>

In section 50, page 50, line 24, leave out <functions> and insert <services>

In section 50, page 50, line 28, leave out <functions> and insert <services>

In section 50, page 50, line 36, leave out <functions> and insert <services>

In section 50, page 51, line 7, leave out <function> and insert <service>

In section 50, page 51, line 10, leave out <function> and insert <service>

In section 50, page 51, line 15, leave out <functions> and insert <services>

In section 50, page 51, line 16, at end insert—

<(6A) Where the Scottish Ministers have made regulations under subsection (1), they must, as
soon as practicable after the end of the review period, prepare and publish a report on
the operation of each such set of regulations.

(6B) A report under subsection (6A) must include—

(a) information on—

(i) the type, level and number of charges that have been imposed during the
review period, and

(ii) the categories of persons on whom they have been imposed, and

(b) an assessment of how the imposition of charges during the review period has
contributed to the economy, efficiency and effectiveness of the carrying out of
fisheries functions.

(6C) In subsections (6A) and (6B), “review period” means the period of 3 years beginning
with the day on which regulations made under subsection (1) come into force.>

In section 50, page 51, line 20, leave out <functions> and insert <services>
Section 51

Paul Wheelhouse

39  In section 51, page 51, line 39, at end insert—

<(  ) is an offence under

(i) Part 4 of the Marine (Scotland) Act 2010 (marine licensing), or
(ii) section 5(5) of the Aquaculture and Fisheries (Scotland) Act 2013
(control and monitoring of operation of wellboats),>

Paul Wheelhouse

40  In section 51, page 52, line 8, leave out <the Aquaculture and Fisheries (Scotland) Act 2007> and insert <this Act>

After section 51

Paul Wheelhouse

41  After section 51, insert—

<Fixed penalty notices and civil sanctions under the Marine (Scotland) Act 2010

(1) Schedule 2 to the Marine (Scotland) Act 2010 (further provision about civil sanctions under Part 4 (marine licensing)) is amended in accordance with this section.

(2) For paragraph 1 (interpretation) substitute—

“1  In this schedule—

“civil sanction” means a fixed monetary penalty or a variable monetary penalty,
“fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,
“fixed penalty officer” has the meaning given in section 25(3) of that Act.”.

(3) In paragraph 2 (fixed monetary penalties: other sanctions), after sub-paragraph (2)(b) insert—

“(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the fixed monetary penalty.”.

(4) In paragraph 3 (variable monetary penalties: other sanctions), after sub-paragraph (b) insert—

“(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the variable monetary penalty.”.

(5) After paragraph 4, insert—

“Civil sanctions and fixed penalty notices
4A (1) Provision under section 46 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—

(a) serve on the person a notice of intent referred to in section 47(2)(a) in relation to an act or omission constituting the relevant offence, or

(b) impose a fixed monetary penalty on the person in relation to an act or omission constituting the relevant offence.

(2) Provision under section 48 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—

(a) serve on the person a notice of intent referred to in section 49(2)(a) in relation to an act or omission constituting the relevant offence, or

(b) impose a variable monetary penalty on the person in relation to an act or omission constituting the relevant offence.

(3) In this paragraph “relevant offence” has the meaning given in section 25(2) of the Aquaculture and Fisheries (Scotland) Act 2007.”.

Section 55

Paul Wheelhouse

42 In section 55, page 54, line 30, at end insert—

<(  ) Despite subsection (1), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.>

Paul Wheelhouse

43 In section 55, page 54, line 31, leave out subsection (3)

Section 56

Paul Wheelhouse

44 In section 56, page 54, line 36, leave out <(other than section 55(3))>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Fish farm management agreements and statements**
8, 9, 10, 11, 12, 13, 3, 15

**Group 2: Duty to publish information on parasites**
14

Debate to end no later than 45 minutes after proceedings begin

**Group 3: Training in relation to equipment used in fish farming**
16, 17, 18, 19, 20

**Group 4: Wellboats: time limit for appeals against enforcement notices**
21

**Group 5: Wellboats: powers to detain in connection with court proceedings**
22, 23, 24, 25, 26, 27

**Group 6: Carcass tagging: regulations and offences**
4, 5

Debate to end no later than 1 hour 20 minutes after proceedings begin
Group 7: Monitoring and evaluating the effects of orders etc: penalty for offences
6, 7

Group 8: Crown application of the 2003 Act and the Bill
28, 42, 43, 44

Group 9: Power to charge in connection with fisheries functions
29, 30, 31, 32, 33, 34, 35, 36, 37, 38

Group 10: Fixed penalty notices
39, 40, 41

Debate to end no later than 1 hour 45 minutes after proceedings begin
Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-06583—That the Parliament agrees that, during stage 3 of the Aquaculture and Fisheries (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 45 minutes
Groups 3 to 6: 1 hour 20 minutes
Groups 7 to 10: 1 hour 45 minutes

The motion was agreed to.

Aquaculture and Fisheries (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 16, 17, 18, 19, 20, 6 and 7.

The following amendments were agreed to (by division)—
22 (For 59, Against 1, Abstentions 45)
23 (For 59, Against 0, Abstentions 46)
24 (For 57, Against 1, Abstentions 46)
25 (For 59, Against 0, Abstentions 46)
26 (For 59, Against 0, Abstentions 46)
27 (For 59, Against 0, Abstentions 46)
28 (For 60, Against 0, Abstentions 45)
39 (For 59, Against 1, Abstentions 45)
40 (For 59, Against 1, Abstentions 45)
41 (For 59, Against 0, Abstentions 46)
42 (For 59, Against 0, Abstentions 46)
43 (For 59, Against 0, Abstentions 45)
44 (For 57, Against 0, Abstentions 46).

The following amendments were disagreed to (by division)—
8 (For 43, Against 63, Abstentions 0)
9 (For 46, Against 63, Abstentions 0)
10 (For 46, Against 63, Abstentions 0)
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The following amendments were moved and, with the agreement of the Parliament, withdrawn: 21 and 4.

The following amendments were not moved: 30, 31, 32, 33, 34, 35, 36, 37 and 38.

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(c).

**Aquaculture and Fisheries (Scotland) Bill:** Paul Wheelhouse moved motion S4M-06544—That the Parliament agrees that the Aquaculture and Fisheries (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Business Motion

14:02

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-06583, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Aquaculture and Fisheries (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Aquaculture and Fisheries (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 45 minutes
Groups 3 to 6: 1 hour 20 minutes
Groups 7 to 10: 1 hour 45 minutes.—[Joe FitzPatrick.]

Motion agreed to.
The Deputy Presiding Officer (John Scott):
The next item of business is stage 3 proceedings on the Aquaculture and Fisheries (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2; the marshalled list and the groupings. As usual, for the first division of the afternoon, the division bell will sound and proceedings will be suspended for five minutes. The period of voting for the first division will be 30 seconds; thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 1—Fish farm management agreements and statements

The Deputy Presiding Officer: Group 1 is on fish farm management agreements and statements. Amendment 8, in the name of Tavish Scott, is grouped with amendments 9 to 13, 3 and 15.

Tavish Scott (Shetland Islands) (LD): In speaking to my amendments in this group, I want to ensure that the Scottish salmon industry, which has been a notable economic success for some years now, continues to be so. My concern about this bill and the Government’s proposed measures is that they add costs and bureaucracy and create the real danger that our industry will be micromanaged. I cannot believe that that can be in the minister’s or indeed the Government’s interests. Even if it were the Government’s intention to micromanage the industry in this way, which I genuinely do not believe to be the case, there is also always the danger of what a future Government might wish to do with the very sweeping powers that this Government will take when, as it assuredly will, it passes the bill with its own amendments.

The industry, which has grown considerably in recent years—indeed, the Government has a target of growing production by 50 per cent by 2020—employs 1,100 jobs directly on farms and 4,000 in processing and, over the past five years, has invested £205 million of capital expenditure. It cannot be in any Government’s never mind the Parliament’s interests to introduce a bill that in my view fails the Government’s own better regulation task force tests. Just the other day, I had it...
explained to me just what the task force has done under successive Governments to reduce unnecessary bureaucracy, cut red tape and ensure that industries across Scotland are more able to compete in very competitive marketplaces—in this case, the food marketplace—against international competitors that have no such regulation.

As I am sure the minister accepts, the industry is very heavily regulated. Many Government bodies, local authorities and others already regulate salmon farming to a considerable extent. With this bill and these particular measures, the Government will through its own department, Marine Scotland, potentially become involved in every aspect of fish farm management. The simple purpose of my amendments in this group is to avoid that very real difficulty.

Those of us who represent communities, islands and the areas of Scotland where this industry has succeeded economically know that these kinds of powers are already being used and agencies are already becoming involved on a day-to-day basis; however, this Government apparently wishes to take more powers in this area. Very real concerns about that aspect of the bill have been expressed to me and other members of all political parties in the chamber. I appreciate that the minister has written to the industry to state that it is not his intention to micromanage the industry and, for what it is worth, I entirely believe him. However, my concern about the bill that will be passed today relates not to an individual minister but to the fact that Government legislation will be on the statute book long after he and I have left this place.

14:45

In considering the various aspects of fish farm management agreements, I would argue that there already are very strong and good working relationships between Government and its agencies and the industry. There has been a progressive approach to how the industry can develop. I do not understand the Government’s justification for the range of additional powers and responsibilities that it wishes to take in respect of the industry and its future operation.

Sampling has been a big issue. As the minister knows, there is potentially a challenge to that under the European convention on human rights. I appreciate that the Government’s line—and that of the Parliament—will be that the bill is legally competent. However, the industry has very real questions about that issue and is taking legal advice.

In considering this group of amendments, I would ask that Parliament considers the balance between an industry achieving the Government’s targets on increasing production in order to export around the world and be a great Scottish success story and the sweeping powers that are being taken here in respect of the day-to-day management of that industry.

I move amendment 8.

Claudia Beamish (South Scotland) (Lab): During stage 1 evidence, the UK Environmental Law Association made a number of comments relating to the effectiveness of farm management agreements and said that it is important to state the intended purpose of farm management agreements and statements

"so that operators are aware of the scope of this obligation."

Amendment 10 would insert a provision in new section 4A of the Aquaculture and Fisheries (Scotland) Act 2007 to say:

“for certain purposes including the improved prevention, control and reduction of parasites, pathogens and diseases”.

That reflects the words used in sections 3(2)(a) and 6(2)(a) of the 2007 act.

Without stating the purpose of FMAs, it would be possible for an FMA to set out arrangements for sea-lice management that did not satisfy the policy intention of the bill and yet comply with the provision as drafted. The purpose of my amendment is to state the purpose and scope of farm management agreements and statements in the new section.

Why do we need amendments 11, 12 and 13? In its stage 1 evidence, the UK Environmental Law Association stated that the

“improved control of sea-lice etc. will best be achieved by the cooperation of all the operators in a farm management area, so the Bill should establish a hierarchy”—

between farm management agreements and farm management statements—

“making FMAs the default”.

That was the basis of amendment 49 at stage 2.

As the bill stands, rather than seeking to ensure that current good practice is promoted throughout the sector, it does no more than to maintain the status quo. According to the Scottish Salmon Producers' Organisation, the basis for area management is that sites operating within defined farm management areas should

“adopt similar and joined up farming practices, for example stocking the same year class of fish and synchronised fallowing of sites at the end of the production cycle.”

My amendments are therefore designed to ensure that FMAs and FMSs contain provisions about the co-ordination of parasite management, harvesting of fish and fallowing of farms after harvest. The intention is to ensure that new
section 4A includes specific reference to the co-ordination of activities.

I believe that Alex Ferguson’s amendment 3 on the publication of FMAs and FMSs would provide transparency in the development of strategies with interested parties, particularly local community interests.

Alex Ferguson (Galloway and West Dumfries) (Con): I listened very carefully to Tavish Scott’s comments because I appreciate that he has a great knowledge of the sector. I agree with him about many things, and many of his amendments to the bill, but I cannot entirely agree that there is no need for greater openness and accessibility for the industry. That is really what my amendment refers to.

I draw the chamber’s attention to an article that was published in the Sunday Herald on 5 May, headed “Pesticides from salmon farms poison Scotland’s lochs”. I accept that we have to cut through the journalistic licence within that headline. What the story highlights, however, is a report by the Scottish Environment Protection Agency on the analysis of samples taken from about 24 fish farms in 2010, 2011 and 2012. SEPA detected residues of pesticides at 19 of the sites tested, with 12 of them—that is, 50 per cent—showing levels in breach of SEPA’s environmental standards. One of those sites, at Loch Shiel in the east of Lewis, showed residues of the pesticide Teflubenzuron, a delousing agent for salmon, that were up to 455 times higher than SEPA’s environmental quality standards for 2012.

In anybody’s language, that situation suggests a problem. I absolutely accept that there is an on-going debate about the extent to which these pesticides harm other species and, indeed, the wider marine environment. Although today is not the time to enter that debate, I believe that reports such as SEPA’s highlight the need for the fish farming industry to be as open and transparent as it can possibly be in this day and age.

My amendment 3 would ensure that farm management agreements and statements are publicly accessible. If they were, scientists in academia, together with non-governmental organisations, particularly those in the wild fish sector, would be far more able to evaluate and consider incidents and reports such as the one that I have highlighted, in the full knowledge of the agreements and statements that exist in relation to the area in question, which would provide them with a contextual background to those incidents. I believe that amendment 3 would greatly improve the relations and understanding between, in particular, the farmed fish and the wild fish sector, which is a key aim of the committee’s deliberations, without carrying any commercial risk or significant cost implications for the producers. I commend my amendment to the chamber.

On the other amendments in the group, we support amendments 8 to 13 on the grounds of simplification and clarification. Although I am very attracted to the simplicity that amendment 15 brings, I need to be convinced of the need to delete the details of inspections that the bill currently contains.

Graeme Dey (Angus South) (SNP): The introduction of the word “coordinated” to this section of the bill would potentially complicate matters, rather than simplify them. By definition, a farm management agreement requires cooperation and the adoption of a degree of practical, sensible, joined-up working practices that also take into account the requirements of retail contracts. We must remember that fish farms are there to meet a consumer demand. The word “coordinated” introduces a degree of confusion, for me, particularly in relation to new subsections (4)(b)(iii) and (4)(b)(iv). The amendments have the potential to be problematic in practice, given that they do not specify what “coordinated” would actually mean.

What would it mean, for example, in relation to the movement of live fish on and off farms and harvesting? Would the bill prescribe that such actions should be carried out simultaneously across all farms in an FMA—regardless, perhaps, of the temporary circumstances on a farm or, indeed, the contractual obligations to be met—or sequentially? If it is the latter, would that mean actions being delivered at individual farms a week apart or a month apart?

I urge members to reject amendments 11, 12 and 13.

The Minister for Environment and Climate Change (Paul Wheelhouse): I welcome the discussion on this part of the bill, as all the provisions relating to fish farm management are fundamental to the wider purpose of the bill and to ensuring that our regulatory regime is appropriate and proportionate and that it complements the principles of sustainable growth. The bill is not, as some might suggest, evidence that the Scottish Government wishes to micromanage the industry, although I take on board Tavish Scott’s kind words that he does not suspect that I am intending to micromanage the industry. Our approach remains that we legislate only where it is necessary to do so.

As at stage 2, Tavish Scott has suggested that there are weaknesses in our intention to work within the framework of the code of good practice in relation to designated geographical areas. I maintain the position that farm management
agreements and statements are best considered within the context of that code.

In amendments 11, 12 and 13, Claudia Beanish has suggested that as part of the development of FMAs and FMSs we should make it a requirement to co-ordinate aspects of fish health management. That seems unnecessary; indeed, Graeme Dey has alluded to some of the concerns that that would raise. By their very nature, agreements are co-ordinated, and co-ordination within a statement is not possible given that only one company is involved.

With amendment 10, Claudia Beamish has suggested that those party to a farm management agreement or statement must have in place measures to improve the “prevention, control and reduction of parasites, pathogens and diseases”.

Although I share Claudia Beamish’s goal, I believe that her amendment is unnecessary because existing powers in the Aquaculture and Fisheries (Scotland) Act 2007 ensure that measures are in place to prevent, control and reduce parasites. In addition, farmed sites are required to follow good biosecurity practice as part of their authorisation conditions granted under the Aquatic Animal Health (Scotland) Regulations 2009, which implement European directive 2006/88/EC, and that requirement is implemented through farms having biosecurity measure plans in place.

As at stage 2, I consider the statutory publication of FMAs and FMSs, as suggested by Alex Fergusson, to be disproportionate in approach and to carry a significant commercial risk if the information is taken out of context or misinterpreted. It would not only impose an unjustified burden but create a distinct disincentive for operators to include substantial detail in their agreement as they might become concerned that a positive approach could be presented out of context.

Alex Fergusson: If the current arrangements and the ones that the minister has described are working so well, why is SEPA finding pesticide deposits that are 455 times its agreed limits?

Paul Wheelhouse: I share the member’s concern about SEPA’s findings but that in itself demonstrates that SEPA is identifying and reporting on a problem and that the regulatory system is in place to tackle it. What we are talking about is publishing in a public format information that is privy to operators in an FMA area, and I suggest that that might provide a disincentive for them to give additional detail over and above the minimum. The concern is that if we force them to publish this information, they will cut back the information that they put in the public domain.

Finally, I admit defeat in my attempts to persuade Tavish Scott that the requirements of FMAs and FMSs will be linked and of the need to make an informed assessment of compliance. Nevertheless, I maintain my position that that is in fact the case.

I invite members to resist amendments 3, 8 to 13 and 15.

Tavish Scott: The minister might admit defeat but he knows that he is going to win anyway. It must be a great position to be in.

I confess that I share the minister’s concerns about Alex Fergusson’s amendment 3 but I think that the minister could have made another point about it. As he and Alex Fergusson have pointed out, SEPA has researched the issue and produced its findings but I think that there are certain fundamental questions that the agency needs to answer. It seems to me that one question that should be posed is this: given that SEPA provides discharge consents for fish farms the length and breadth of Scotland, what happened to the agency’s normal day-to-day monitoring processes that this information came to light only in this way?

The minister talked about taking this information “out of context”, which was a very diplomatic way of describing what might actually happen in practice, and I am sure that Mr Fergusson will accept that someone less charitable than he is might use the information in a very—shall we say—public manner. For that reason, I do not find favour with amendment 3.

I take the minister’s point about my amendments, but I would have been much more minded to withdraw or not to move them had the Government set out—

Alex Fergusson: Does Mr Scott not agree that it is better to access some data rather than none at all?

Tavish Scott: That is a reasonable point but the judgment is about the word “some”—and I appreciate that there will be a difficult judgment call in any of these decisions. Mr Fergusson will remember that in the early 2000s the industry came under enormous pressure from certain lobbies without any justification, and what happened then reminds me of what can go wrong when the word “some” is interpreted by those who take issue with the industry. I am afraid that I will be a bit cautious on that issue.

Although I take the minister’s point with regard to micromanagement, I just wish that the Government would set out clearly how it will avoid it. I repeat that it is not my contention that this minister or his officials—

Paul Wheelhouse: If the suggestion is that there will be a degree of micromanagement by a
future Government, Administration or minister I must point out that there is an onus on all of us in this chamber to hold ministers to account. Indeed, I would expect to be held to account if I overstepped the mark and micromanaged the industry. That is the final sanction that this place has with regard to ministers.

Tavish Scott: That is a very fair response but I repeat that I am concerned not with this minister but with what could happen in the future. Given that those of us charged with passing legislation in this place must express that responsibility with an eye on what is happening not just now but in the future, I will press amendment 8.

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division of the afternoon, I suspend the meeting for five minutes.

15:00

Meeting suspended.

15:05

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 8.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mcinnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glengow) (Lab)
Mline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Allie (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 43, Against 63, Abstentions 0.

Amendment 8 disagreed to.

Amendment 9 moved—[Tavish Scott].

The Deputy Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Ruther Glen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Edinburgh, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Co.ffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, Against 63, Abstentions 0.
Amendment 9 disagreed to.

Amendment 10 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMullen, Sibbhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidder, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk West) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, Against 63, Abstentions 0.

Amendment 10 disagreed to.

Amendment 11 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

The Deputy Presiding Officer: The result of the division is: For 46, Against 63, Abstentions 0.

Amendment 10 disagreed to.

Amendment 11 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The result of the division is: For 46, Against 62, Abstentions 0.

Amendment 11 disagreed to.

Amendment 12 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahons, Siobhan (Central Scotland) (Lab)
Mackenzie, Mike (Highlands and Islands) (SNP)
MacIntosh, Ken (Eastwood) (Lab)
Mallan, Grahame (Central Scotland) (SNP)
Mann, Jenny (North East Scotland) (Lab)
Mann, Mike (East Renfrewshire) (Lab)
Mair, Mary (Central Scotland) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Macleod, Aileen (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Ailean (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Fife) (Lab)
Paterson, Gilbert (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeenshire South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, Against 62, Abstentions 0.

Amendment 11 disagreed to.

Amendment 12 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
Lyle, Richard (Edinburgh Pentlands) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Gibbon, Kenneth (Cunninghame North) (SNP)
Gibson, Robert (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paton, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urdahart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, Against 62, Abstentions 0.

Amendment 12 disagreed to.

Amendment 13 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eade, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Humre, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Gloucester Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McIntyre, Michael (Uddingston and Hightill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McManus, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Miline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adams, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Christian (Midlothian North and Musselburgh) (SNP)
Biagi, Rob (Caithness, Sutherland and Ross) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchan, Lewis (North East Scotland) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Obi (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Kenneth (Cunninghame South) (SNP)
McAndrew, John (Orkney Islands) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gillian (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen North) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watson, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Huzma (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, Against 62, Abstentions 0.

Amendment 13 disagreed to.

Amendment 3 moved—[Alex Fergusson].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McManus, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Amendment 3 disagreed to.

The Deputy Presiding Officer: Group 2 is on the duty to publish information on parasites. [Interruption] Amendment 14, in the name of Claudia Beamish, is the only amendment in the group.

Claudia Beamish: That seemed to cause a bit of a stir, Presiding Officer, but I will just continue.

During stage 1, there was a great deal of discussion about the appropriate resolution of the publication of sea lice data. In the stage 1 report, the committee stated that publication of sea lice data should be at a farm management area level, which is a step further than what is proposed by the SSPO. Publication of such data would allow the industry to demonstrate its management response and performance in relation to sea lice at a resolution that is relevant to the management unit of co-ordinated sea lice treatment: the farm management area.

Under the Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, fish farms are already required to maintain a record of the number of parasites that are counted in the course of the weekly parasite counts. However, there is no current requirement to publish such data. The Aquaculture and Fisheries (Scotland) Act 2007 should therefore be amended to require the publication of parasite counts on a week-to-week basis, averaged over the farm management area. The data should be consistent with the requirements of paragraph (2) of schedule 1 to the record keeping order. The publication should occur within a month, as is the case in Ireland, and the data should remain for inspection and should not be removed at the next reporting period.

That latter point relates to a major failing, in my view, in the current system that the SSPO operates, under which data is available for only three months and then cannot be accessed, even on request.

The text of amendment 14 is slightly different from that of the amendment that was lodged at stage 2. The original wording included the word “compiling” but did not set out how long it should take to compile the data. The fact that the data had not been compiled could have been used to delay publication. I ask the minister to consider amendment 14, even at this late stage, in the interest of the development of good relations among the relevant sectors.
15:15

It is quite clear to me that transparency must be the overriding principle. Nothing that I have heard in evidence over the months has come any way to convincing me that there are counterarguments to invalidate that strong and important principle. There should be a requirement on the face of the bill for openness and transparency. It is not acceptable to play a game of wait and see. My amendment proposes a compromise. I am asking for publication to be at farm management area level, not farm level, and I am not asking for immediate publication. The proposed delay in publication recognises the industry concern that there should be time to put right any difficulties before publication. Surely that should enhance rather than threaten consumer confidence.

In my view, publication is in the public interest. Any arguments about commercial confidentiality simply do not make sense, if the fact that my amendment acknowledges the need for a time delay is taken into account.

Paul Wheelhouse: The member says that the commercial confidentiality arguments do not make sense, but does she accept that, with a farm management area that had a single operator operating in it, divulgence of the data would breach commercial confidentiality and could present a risk to the business?

Claudia Beamish: I understand what the minister says, but there are very few places where there is only a single farm. It is extremely important that I have incorporated a month’s delay. That will enable a farm or a firm to sort out any problems and present its recommendations for management of the fishery, and to give people confidence, when the data is published, that something is being done about the issue.

What other industry is allowed to hide successfully behind commercial confidentiality when the transparent development of scientific research and the public interest are on the other side of the scales? Neither farming nor waste management nor other industries that involve processes that cause air pollution are allowed to do so. Perhaps the minister can name such an industry, even at this late stage.

Of course there is good practice in sea lice management in the aquaculture industry, and it should be possible for that to be publicly shared. Science should be shared, too—not just within Marine Scotland but across academia—as that would enable good practice to be made even better. How can that happen if secrecy is at the heart of the sea lice data challenge?

In my view, amendment 14 will help to build trust in relationships between the relevant sectors, which is essential if we are to have sustainable jobs and sustainable seas here in Scotland.

I move amendment 14.

Graeme Dey: As a member of the Rural Affairs, Climate Change and Environment Committee, I very much agreed with the view that it expressed in its stage 1 report on the bill that it wanted “data to be collated for each Farm Management Agreement, and each Farm Management Statement where an Agreement is not in place”, and with its concern that the current lack of accessible data left an important gap in scientific research. At the time, I was also in accord with the view that what was required was access to farm-by-farm data for scientific purposes and that, at the very least, consideration should be given to publishing that data.

However, that unanimously agreed position was, to some extent, informed by the lack of a credible argument by the Scottish Salmon Producers Organisation against publication of data at a more granular level than the level at which it had offered to publish data, although I recall that, at stage 1, the minister articulated concerns about the possible negative commercial impact of doing that. Since then, we have moved on. Subsequently, the SSPO has engaged more positively, at least by explaining its worries about mischievous and perhaps malicious use of farm-by-farm data. More important, it has demonstrated a willingness to compromise.

Norway is held up as an example of somewhere where sea lice data is published without ill effect on the industry, but we should take account of what happened in Ireland when that course was followed. From a position in which it aspired to grow the fish farming sector from an annual production level of 15,000 tonnes to 50,000 tonnes, Ireland found itself in a position in which 14,000 tonnes a year was produced. It was accepted that the use to which sea lice data was put was a contributory factor, although by no means the only one.

Initially, the SSPO undertook to voluntarily provide sea lice data for 30 areas rather than the six areas for which it had been providing data, but it is now providing Marine Scotland with data for 76 FMAs. Although that data will not be published, it will be available for research purposes. I contend that that represents progress. I support that position, because it represents a balanced, proportionate step forward. Given where we are now, it is a sensible compromise. Data are to be published at a 30-area level, providing a degree of transparency that offers reassurance to the public and access to information that can be utilised to better direct the science.
As I understand it, the situation can be kept under review through the ministerial group on aquaculture. The Scottish Government has the power under the 2007 act to legislate if the voluntary approach is not working. That is a fair and balanced approach, which sends the message that we are treating the sea lice issue seriously while being supportive of an industry that employs around 6,000 people, directly and indirectly. I encourage the Parliament to endorse that approach.

**Alex Fergusson:** At stage 2, I lodged an amendment that would have ensured the regular publication of sea lice data on a farm-by-farm basis. It was ably spoken to and moved by my colleague Jamie McGrigor while I was on hard-working parliamentary duty in Malawi. Despite Jamie’s almost irresistible arguments, somehow the minister found a way of resisting them, and the amendment was rejected. The same fate befell an amendment from Claudia Beamish to reach a compromise by seeking—as does amendment 14 today—the publication of data on a farm management area basis.

Every scientist in the field wants farm-by-farm data for analytical purposes. However, if that is not to be—the Scottish Government has made it very clear that it will not countenance that—amendment 14 surely provides the most sensible compromise that has come forward so far.

Farm management areas are already the agreed management units for the industry. They are accepted as such, to the extent that, as Graeme Dey has just indicated, the industry itself has voluntarily agreed to make the data available at farm management area level to Marine Scotland science for the purpose of scientific research. I think that the minister verified that at stage 2.

If that is to be the case, surely the data that are held by Marine Scotland science must be publicly available through freedom of information legislation. Why not just go the whole hog and, as somebody once said, publish and be damned? The information is going to be available anyway, as far as I can see.

If the industry does not take that final step, the unfortunate question of what there is to hide will continue to hang over it. I say that in the genuine belief that it is an industry of which we all want to be proud. I do not wish to denigrate the industry in any way, as it has a huge role to play in rural employment and in the whole economy of the country, but the subject will keep coming back until the industry is completely open and accessible. I believe that amendment 14 goes a long way towards helping that, and we strongly support it.

**Tavish Scott:** I am concerned that amendment 14 is farm by farm by the back door, for the reason that the minister outlined in his intervention on Claudia Beamish earlier. I know of farms in my constituency that would be identified without a shadow of a doubt. That is the reality. The commercial consequences of that would be considerable. Some people may not believe that commercial arguments are relevant to the debate, and that is one point of view, but I do not share it.

Graeme Dey made some observations about the industry moving forward, which I think was in response to a helpful push from the Rural Affairs, Climate Change and Environment Committee. That has been the right approach. The industry has announced a fish health management report just in the past couple of days, and I think that it has been submitted to the minister. That is a sensible and constructive way forward.

In addition, the science project that the industry, the SSPO and the Government are undertaking must be the basis for what is done, even for Claudia Beamish and Alex Fergusson, with their observations about how the industry has to be as transparent as possible. That science project means that there should be an independent assessment of the impact of the industry on other species. I suspect that that is what Claudia Beamish and Alex Fergusson are driving at. That seems to be a reason to allow the process to continue in the way in which Graeme Dey has suggested. That would provide a balanced and proportionate approach to the challenge, while ensuring that we do not get embroiled in what I think are pretty significant issues of commercial confidentiality, which any industry would have very strong views about were the Parliament to impose the provisions of what is, no doubt, a well-meaning but misjudged amendment.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** I wish to speak briefly to amendment 14, which is in the name of my colleague Claudia Beamish. As members will recall from earlier stages of the bill, there has been much debate about the publication of sea lice data. At stage 2, the minister indicated that the ministerial group on aquaculture will keep the matter under review. I would like to hear from the minister how he will judge whether the arrangements for the reporting of data are fit for purpose.

By calling for publication of such data by farm management area and by specifying publication dates, amendment 14 strikes the necessary balance between making the data available and acknowledging the concerns of the industry. More important, the proposed requirement would mean...
that we would not need to wait for an element of failure or non-compliance from the industry before the data were published.

I am pleased to support amendment 14.

Paul Wheelhouse: As members will be aware, this subject has been debated several times as the bill has progressed through Parliament. As Claudia Beamish acknowledged, in response to a very similar amendment that she lodged at stage 2 I noted that we now have a commitment from the SSPO for enhanced voluntary reporting of sea lice data for 30 areas based on recognised wild fish catchments. The data will be published every quarter, with the first publication—covering January to March—being issued at the end of May. In addition, the SSPO will provide Marine Scotland science with access to sea lice information at farm management area level to support defined research projects. Those commitments are very welcome.

Alex Fergusson rose—

Paul Wheelhouse: If I may make some progress, I will come back to Mr Fergusson.

However, that voluntary sea lice public reporting approach must be seen as part of an overall package that allows us to ensure the environmental sustainability of fish farms. That is not the means by which compliance is judged. That is for a robust regulatory system—which the bill enhances—that is overseen by the fish health inspectorate, SEPA and others. Of course, fish health inspectors may also access farm-level data and, indeed, inspect fish cages during their inspections.

Alex Fergusson: The minister has confirmed that the data will be made available to Marine Scotland science on request. Can he also confirm that, once the information is in the hands of Marine Scotland science, it will be accessible under freedom of information legislation?

Paul Wheelhouse: I certainly acknowledge the issue that Mr Fergusson raises. I think that the key test is whether the data is retained by Marine Scotland staff. Obviously, we can discuss this issue at length in the Rural Affairs, Climate Change and Environment Committee, but my understanding is that the information would not necessarily be subject to FOI if the data is not retained by Marine Scotland.

On the issue of commercial confidentiality, I was reminded just last week of the commercial risk to companies where data is published and then used selectively and out of context to suit other agendas. I appreciate that amendment 14 is well intentioned, but it would pose a significant risk—as Tavish Scott acknowledged—for particular companies, especially where a single company operates in a farm management area, as I said to Claudia Beamish earlier.

We need to balance the need for public reassurance with the commercial challenges under which the salmon farming industry operates while taking into consideration the broader regulatory regime that exists. In that context, I believe that the enhanced SSPO proposals offer a balanced and proportionate step forward, as Graeme Dey indicated. For the first time, the data will allow comparison with wild fish catch and effort statistics, which will allow us to develop a better understanding of the potential impacts from fish farming.

At stage 2, I noted our commitment to reviewing the success of the voluntary arrangement within this session of Parliament, and I reiterate that commitment today. We will keep the issue under review through the ministerial group on sustainable aquaculture. On Jayne Baxter’s point, the ministerial group includes wild fisheries interests and environmental non-governmental organisations, so the group has the opportunity to go beyond the industry’s view on the issue to take on board points from others.

If it appears that the voluntary arrangement is not operating as expected and cannot be improved by voluntary means, we will use the existing powers in the 2007 act to legislate. I believe that the voluntary arrangements that I have outlined will address the concerns that Claudia Beamish has expressed both today and during previous stages of the bill. On that basis, I urge Parliament to resist amendment 14.

Claudia Beamish: I have listened with care to the comments that have been made by members from across the chamber.

In response to Graeme Dey’s concern that such a granular level of transparency has contributed to the contraction of the industry in Ireland, I note that that was not stated as the reason in any of the written or oral evidence that the committee received or during any of the visits that we undertook. Graeme Dey says that it might have been a contributory factor, but I am not convinced, having seen no evidence on that.

In relation to the science, it still perplexes me how research, in its broadest sense, can be shared across academia if the information is not made public. Marine Scotland might have the information, but the discussions that we have heard in the chamber today between Alex Fergusson and the minister about whether that information would be accessible through a freedom of information request seem to have highlighted some concerns. It is extraordinary that such information will not be available openly, especially in view of the delay. I acknowledge that
the SSPO offer is a step in the right direction and I am in no way seeking to knock an industry in which there is very good practice. However, the SSPO offer does not go far enough.

15:30

Paul Wheelhouse: Does the member accept that we have the powers under the 2007 act to legislate and make proposals through secondary legislation if necessary to provide an alternative to the voluntary arrangement if that is proving ineffective? Does that not reassure the member that we are taking the issue seriously? I assure her that we would do that if necessary.

Claudia Beamish: I appreciate the minister’s commitment and I have listened carefully to what he has said. However, I still do not believe that it goes far enough and I would like to see amendment 14 made to the bill.

The delay will also help with the argument that information that is published could be used selectively and out of context. I cannot think of any other industry in which—as I understand it, and perhaps the minister will correct me if I am mistaken—the suggestion is that the information could be used inappropriately in any campaigns that might come up. I do not believe that that is a reason not to be open and transparent. An industry that uses good practice has nothing to hide, and I think that the amendment should be passed.

I have two final points. The planning permission issue is important and we need to be aware that the publication of data on sea lice might inform future planning permission in particular estuaries. Also, the issue of the consumer’s right to know came up during the recent horsemeat scandal. We need to pursue as much transparency as possible around our food, albeit that the industry mainly has nothing to hide.

I press amendment 14.

The Deputy Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)

Against
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewar (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen North) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 40, Against 65, Abstentions 0.

Amendment 14 disagreed to.

Amendment 15 moved—[Tavish Scott].

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Hume, Jim (South Scotland) (LD)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
Scott, Tavish (Shetland Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Michael (Perthshire North) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)

Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fee, Mary (West Scotland) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christina (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
Abstentions
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 4, Against 90, Abstentions 13.
Amendment 15 disagreed to.

Section 3—Technical requirements for equipment used in fish farming

The Deputy Presiding Officer: Group 3 is on training in relation to equipment that is used in fish farming. I point out that we are several minutes behind, so brevity is of the essence. Amendment 16, in the name of Jim Hume, is grouped with amendments 17 to 20.

Jim Hume (South Scotland) (LD): I will try to be as brief as possible, Presiding Officer.

The Deputy Presiding Officer: I am grateful.

Jim Hume: I will knock my remarks down to perhaps a couple of thousand words, rather than the 20,000 words that I had prepared.

I lodged amendments 16 to 20 at stage 3 with alterations that I am assured will make them more workable in law than the similar amendments that I lodged at stage 2. The minister was happy with the principle behind and the need for my amendments at stage 2, so I hope that he and his fellow members will recognise that and will accept amendments 16 to 20, as he has already signalled to me that he will.

The containment working group recognised that 29.5 per cent of escapes of farmed fish are due to human error rather than equipment failure. My amendments will mean that training to use equipment is part of the developing technical standard. The Scottish Aquaculture Research Forum recommended

“That protocols for operational control, supervision, management and training from a containment perspective are developed”

and that those protocols

“should ... become a legal requirement.”

I thank the minister and the Government for working constructively with me on amendments 16 to 20. I hope that fellow members recognise their importance. They will address concerns regarding human error in fish escapes and will lessen the chance of escapes in the future.

I move amendment 16.

Nigel Don (Angus North and Mearns) (SNP): I support Mr Hume, not only because of the need to contain fish—although that is the primary reason—but because training is essential in any industrial process. Otherwise, we invariably run into health and safety issues. Out on cold water—the committee has been there—one can readily see that the issues might be considerable. Therefore, it is extremely important that people should be trained on specific bits of equipment in those circumstances. I also recognise that retaining a record of the training is an important part of ensuring that it has taken place. I commend amendments 16 to 20 to members.

Claudia Beamish: I highlight that there is much good practice in the aquaculture industry, not least that which the committee saw on its visits to fish farms. I support Jim Hume’s amendments, which relate not only to human error but to the health and safety of employees on fish farms in what are often dangerous situations, as Nigel Don highlighted.

Paul Wheelhouse: I will try to keep my comments briefer than I otherwise would have done, Presiding Officer.

I thank Jim Hume for lodging amendments 16 to 20 and I am pleased to support them. As I said at stage 2, I recognise the reasoning behind the amendments. He is right that such training would seek to reduce escapes as a result of human error and is therefore welcome protection for the marine environment. The amendments are a good response to the points that the committee raised in its stage 1 report and we are pleased to support them.

Training is as important an aspect of the work to develop technical standards as the requirement for equipment to meet technical specifications. That work will also cover operational procedures, codes of practice, operators manuals and the training of operatives to ensure that equipment is used appropriately and that procedures are followed correctly. That work is being done through the ministerial group on sustainable aquaculture and, I hope, support the implementation of Jim Hume’s amendments.

We are already working with the industry to ensure that staff are appropriately trained, which builds on the industry’s best-practice workshops and in-house schemes, and I have asked the newly established ministerial group on sustainable aquaculture’s containment working group to consider training to prevent escapes as a result of human error. Finally, I understand that work on a recognised training qualification is well advanced.
I hope that everyone in the chamber will join me in supporting Jim Hume’s amendments 16 to 20.

Jim Hume: I welcome the support that my amendments have received and Nigel Don’s kind words about health and safety. Claudia Beamish is right to say that there is a lot of good practice in aquaculture. It is not as if everyone is indulging in bad practice or has not been trained but, given that 29.5 per cent of escapes are down to human error, there is an issue to address.

I welcome the support of the minister and his Government team and the moves that he has announced, and I will press amendment 16.

Amendment 16 agreed to.

Amendments 17 to 20 moved—[Jim Hume]—and agreed to.

Section 6—Enforcement notices

The Deputy Presiding Officer: Group 4 is on wellboats: time limit for appeals against enforcement notices. Amendment 21, in the name of Tavish Scott, is the only amendment in the group.

Tavish Scott: Amendment 21 seeks clarity from the Government about a difference between sections 16 and 6. I raised this issue at stage 2 and again seek an explanation from the minister, because I have spent some time looking at the issue and for the life of me have not been able to find the other legislation that he mentioned in his response at stage 2.

Section 16, which concerns emergency action notices, allows a 14-day period for appeal, while in section 6 the appeal period is only seven days. If the minister can clarify the reason for that difference, I will be more than happy to withdraw the amendment.

I move amendment 21.

Paul Wheelhouse: I will take up Mr Scott’s challenge. At stage 2, he said that, if I could illustrate that the bill is consistent in respect of section 6, which specifies a seven-day appeal period, and section 16, which specifies a 14-day appeal period, he would be more than happy to withdraw his amendment. He has reiterated that this afternoon, so I hope that I can persuade him of the case this time around.

I reassure Mr Scott that the bill is consistent. The crucial point is that the number of days allowed for an appeal in section 6 is deliberately different from that allowed in section 16 because the appeals relate to quite different situations. I will try to explain why. Section 6 replicates the provisions in section 6(7) of the 2007 act and provides for seven days to appeal against an enforcement notice. An enforcement notice will be issued only if the Scottish ministers are satisfied that the person in question has failed or is failing to comply with any requirement that has been imposed by regulations. A seven-day appeal period is reasonable and indeed was accepted for the 2007 act.

However, section 16 of the bill deals with a situation outwith the control of the person being issued with the notice. No failure to comply with regulations is implied and there is no assumption that it is the person’s fault that a commercially damaging species has been found on his or her fish or shellfish farm. That is why an emergency action notice is issued and why we consider it reasonable to give the person 14 days to appeal against the decision to serve the notice and the notice’s terms. As a result, I see no need for the two sections to be consistent with each other. For those reasons, which I hope make clear the rationale behind and the need for differing provisions, I ask Mr Scott not to press amendment 21.

Tavish Scott: I am grateful to the minister for putting that full explanation on the record. As I am content with it, I will withdraw amendment 21.

Amendment 21, by agreement, withdrawn.

Section 7—Marine enforcement officers’ functions

The Deputy Presiding Officer: Group 5 is on powers to detain wellboats in connection with court proceedings. Amendment 22, in the name of the minister, is grouped with amendments 23 to 27.

Paul Wheelhouse: The amendments make similar provision for the detention of wellboats in connection with court proceedings as appears in sections 31 to 33 for the detention of fishing vessels. Wellboats that operate in Scotland tend to be foreign owned and flagged. Marine enforcement officers have the power to direct or take a wellboat to port to facilitate their investigations. The rationale for the power to detain a wellboat in relation to court proceedings is to avoid the vessel sailing and accused persons attempting to evade justice.

There is ambiguity about the scope of existing statutory provisions to detain vessels beyond the point at which a report has been submitted to the procurator fiscal. Amendment 22 is designed to put the matter beyond doubt.

With that in mind, I move amendment 22.

Tavish Scott: The minister might correct me on this, but I am concerned that the amendments have not been subject to parliamentary scrutiny.
They will, I think, insert new measures in the bill and they will create significant new powers, as will some of the minister’s later amendments. As I recollect, we discussed wellboats at stage 2, but the discussion was about the definition of a wellboat and not about the powers of enforcement or the powers of the fiscal in relation to charges, although I am happy to be corrected on that, too.

The Parliament has no mechanism whatsoever for reviewing legislation if an amendment that is new to the Parliament is lodged at stage 3. As far as I can tell, the committee has not looked at the subject of the amendments in the past. I am therefore concerned that what the amendments will introduce is a new measure that has not gone through consultation. The bill was consulted on last year, which is some time ago. The issue must cause concern about how we adequately scrutinise legislation in the Parliament.

Claudia Beamish: I align myself with Tavish Scott’s remarks. We support the policy intention, but it is very serious that Parliament has not been able to scrutinise the amendments previously. The committee and stakeholders have not seen any evidence; there might have been questions about funding implications in relation to marine enforcement officers.

The issue did not come up during the pre-consultation and consultation stages. I appreciate that it is likely that the minister is trying to ensure that the bill is as robust as possible, but I am seriously concerned about the scrutiny issue.

The Deputy Presiding Officer: Alex Fergusson, briefly please.

Alex Fergusson: I can be very brief because I simply want to associate myself with the remarks that Claudia Beamish and Tavish Scott made. It is regrettable that three groupings of amendments are being introduced into the bill three completely different sets of provisions that we have not had a chance to scrutinise and on which stakeholders have not had a chance to make their opinions known. There might be other consequences of which we are not yet aware.

The position is difficult because I do not disagree with the intention of any of the three groupings of amendments, but I very much regret the fact that the committee has not had a chance to scrutinise them in the way that committees of the Parliament are uniquely supposed to. It is the committees that hold the Government to account. I very much regret that we have not had an opportunity to do so.

Paul Wheelhouse: I have listened to the points that members have made and I take on board the issue about the lateness of the proposals’ introduction. The amendments represent a serious effort to reduce the potential for our enforcement of a legal matter to be prevented by our inability to detain a vessel. Amendment 22 is a sincerely meant effort to balance the provisions on fishing vessels, which have been consulted on, with those that cover wellboats. Having said that, I press the amendment.

The Deputy Presiding Officer: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biągii, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Amendment 23 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 23 agreed to.

Amendment 24 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Claire (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffee, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)

Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (North West Scotland) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Campbell, Roderick (North East Fife) (SNP)

Abstentions

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mall, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mctaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
The Deputy Presiding Officer: The result of the division is: For 57, Against 1, Abstentions 46.

Amendment 24 agreed to.

After section 7

Amendment 25 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Glackmannan and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Euan (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen North West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrence, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Edinburgh) (Lab)
Lamont, Johann (Glasgow Cathcart) (Lab)
Lamont, John (Edinburgh Western) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McEwen, Margaret (North East Scotland) (Lab)
McInnes, Alan (Perthshire East) (SNP)
McLennan, Aileen (Clydesdale) (SNP)
McKee, John (Glasgow) (SNP)
McKee, Patrick (Uddingston and Bellshill) (Lab)
McMorrow, Stephen (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McQueen, Alistair (East Kilbride) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Milestone, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Torrance, Derek (Aberdeen North) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacAskill, Eilean (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 25 agreed to.

Amendment 26 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The next question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannan and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Forthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)

Amendment 26 agreed to.

The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 27 moved—[Paul Wheelhouse].
The Deputy Presiding Officer: The final question for now is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh West) (SNP)
MacKay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Niel, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robison, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

Against
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Birdby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Ruther Glen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Eltlixir, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Central Scotland) (Con)
Pentland, John (Motherwell and Wishaw) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 27 agreed to.

Section 22—Carcass tagging

The Deputy Presiding Officer: Group 6 is on carcass tagging regulations and offences. Amendment 4, in the name of Alex Fergusson, is grouped with amendment 5.

Alex Fergusson: The Rural Affairs, Climate Change and Environment Committee's stage 1 report on the bill strongly supported the individual numbering of tags, which it believed "would be an essential part of making the tagging scheme effective".

The Deputy Presiding Officer: The final question for now is, that amendment 27 be agreed to. Are we agreed?
as would the recording of those tags for the sake of complete traceability. Such schemes are in place in every other part of the United Kingdom and in the Republic of Ireland. For once, sadly, Scotland is lagging behind the rest.

Despite the robust recommendations in the committee’s report, the minister actually said very little about a tagging scheme during the stage 1 debate, so I was a little taken aback that it was not until my amendment on this subject was being debated at stage 2 that the minister came up with the theory that, if that amendment were accepted, the bill would need to be referred to Europe under the technical standards directive, with a consequential delay to the timetable. I am not entirely persuaded by that argument, because I am also advised that notification would need to be made only when the regulations themselves were made.

Therefore, it seems to me that the issue is that any scheme under section 22 that was not accepted by the EU would be rendered unworkable and ultra vires. Can the minister say on what possible grounds he thinks the EU might reject such a scheme, given that schemes involving individually numbered and recorded tags are already in operation in England, Wales and Northern Ireland and, indeed, in the Republic of Ireland?

Furthermore, if in some extraordinary way the scheme was indeed rejected by the EU, I cannot see how that would matter, because a scheme that does not use numbered and recorded tags is of no use to anybody at all. Therefore, ministers would no longer require the power to create a scheme that is given to them in section 22. I find it very hard to believe that accepting my amendment would constitute any real threat to the bill.

I am grateful to the minister for the time that he gave to discuss the issue with me last week, and I will listen carefully to what he has to say. I very much hope that he will at the very least commit to making an individually numbered and recorded tagging scheme the central or principal proposal in the consultation that is to take place later this year. If he can do so, I will happily consider withdrawing amendment 4.

On amendment 5, I am afraid that the minister and his advisers have somehow been overtaken by conspiracy theories. For instance, I have been asked whether the amendment is for the policy purposes of controlling trade in the interests of salmon conservation as a whole as opposed to being something fundamentally designed for the carcass tagging scheme in particular. I can say only that I am innocent of all such charges. The amendment is purely and simply about consistency of language. In no section of the 2003 act is there reference to the word “selling” without the addition of the word “buying”. If the amendment is not accepted, section 22 will be the only part of the resultant act that refers to selling without an equal reference to buying. This is no conspiracy; it is simply a request for consistency.

I move amendment 4.

16:00

The Deputy Presiding Officer: Once again, as we are nearing the agreed time limit, under rule 9.8.4A I consider it necessary to allow the debate on this group to continue beyond the limit in order to avoid the debate being unreasonably curtailed.

Claudia Beamish: In relation to amendment 4, I find it quite odd to contemplate such a scheme without numbers. Although I respect the need for stakeholder consultation—which has not happened here—I would still be looking for a commitment from the minister today to consideration of numbered tags.

As I understand it, by inserting the word “buys” amendment 5 simply brings consistency with previous legislation. If someone cannot sell, why should they be allowed to buy?

The Deputy Presiding Officer: Minister, as briefly as you can, please.

Paul Wheelhouse: I apologise, Presiding Officer. I may have to take longer than I would have hoped.

As members have acknowledged, there has been considerable interest in the issue of carcass tagging during the passage of the bill. The bill creates enabling powers to make a scheme, the detail of which is to be set out in secondary legislation. I have maintained that point all along. That is the appropriate and routine approach for provisions of a technical nature.

Amendment 4 presents difficulties in terms of compliance with the technical standards directive and prejudges the outcome of a consultation process to which I have already committed. Crucially, if any submission to the European Commission were rejected, as the member has acknowledged, the entire section of the bill could be rendered ultra vires and thereby invalidated. I take the point that the member has made in relation to whether the section would have any validity. I accept that he has a position on that, but the Government has taken the view that we would rather not have that section and the bill fall. The risk of rejection may be low but we should not take that risk; we should instead follow due process.

I recognise that many people have views about what the carcass tagging scheme should look like and how it should operate. A key issue will be whether it should make use of individual
numbered tags and create recording requirements. I am aware of the views of the members of the Rural Affairs, Climate Change and Environment Committee, including members from my own benches, on the issue. I have also listened to Mr Fergusson’s points today.

I have already committed to a full consultation scheme and can confirm that numbered tags and recording will be an option set out in the consultation. Other issues to be considered are how the scheme will be administered, how it will be funded and how it will be enforced. I look forward to engaging with stakeholders, including the Scottish Parliament, on this issue. There are differing opinions about the scheme and we must engage across the sector to deliver a scheme that is fit for purpose and proportionate. Consultation will commence this calendar year and I will bring regulations to Parliament before next year’s summer recess.

**Alex Fergusson:** I think that the minister said that he would bring the timetable for consultation forward. If that is the case, I appreciate that. He also said that a scheme with individually numbered tags would be an option in the consultation. Will that be the principal option that will be consulted on?

**Paul Wheelhouse:** I believe that there is a logic to having numbered tags. I mentioned at stage 2 that I felt that there was no technical reason why numbered tags would not be possible. However, we must consult stakeholders and take their views on whether that is the appropriate way of dealing with the problem. I certainly see it as being a key measure in the consultation exercise. There will potentially be others. We cannot close off the options at this stage. However, in recognising the views of the committee and Parliament, I would see that being a key part of the consultation.

I hope that I have offered sufficient reassurance to Mr Fergusson and other members on that point. The issue of numbered tags and recording will be considered fully as part of the process of developing secondary legislation. On that basis, and for the technical reasons that I mentioned earlier, I ask Mr Fergusson to recognise the commitment that I have given today and not to press amendment 4.

In the interests of conservation, I support strict regulation on the trade of wild salmon. Amendment 5 seeks to add the word “buys” to the offence associated with carcass tagging. That would make no material difference to the offence as the term “possession”, already included in the provision, covers possession as a result of purchase.

If Mr Fergusson wishes to see greater consistency and comprehensive offence provisions in the trade of wild salmon, I consider that there are more suitable vehicles in this amendment. For example, a conservation regulation could be made to prohibit the sale of all rod-caught salmon. I am happy to consider the option further and to engage with him and the committee on our proposal should we progress it.

I therefore ask Mr Fergusson not to press amendment 5.

**Alex Fergusson:** I said that I would listen very carefully to what the minister said, and I did. I am grateful to the minister for taking an intervention. He has said enough to satisfy me that a scheme involving individually numbered and recorded tags will be a central part of the consultation that is to come. Therefore I do not intend to press amendment 4. However, I intend to press amendment 5, when it is the right time to do so, because I think that it is important to have consistency in any legislation.

**Amendment 4, by agreement, withdrawn.**

**Amendment 5 moved— [Alex Fergusson].**

**The Deputy Presiding Officer:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Ballie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Erskine, Buch Iso and Birkshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGirgor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Sitting) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robinson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 42, Against 64, Abstentions 0. Amendment 5 disagreed to.

Section 25—Monitoring and evaluation of the effects of orders, etc

The Deputy Presiding Officer: Group 7 is on monitoring and evaluating the effects of orders, etcetera, and penalty for offences. Amendment 6, in the name of Alex Fergusson, is grouped with amendment 7.

Alex Fergusson: Section 25 allows district salmon fishery boards to be criminalised for failing to monitor the effects of an order. One of the points that I made at stage 2 was that the level of penalty that the Scottish Government is proposing could have a deterrent effect, especially for some individuals who might wish to be involved in one of the smaller boards across the country. The minister was at pains then to point out that the impact could only be on boards as a whole, rather than on any individual. I draw the minister's attention to section 25, page 28, line 27, which states that

“A board which or proprietor who commits an offence”

will be impacted—so I beg to differ on that point.

My purpose in lodging the amendments is not to protect either a board or an individual. It is simply to seek a degree of proportionality in the level of penalty that is to be applied. A level 4 penalty, as is suggested in the bill, is the lowest that can be applied as an alternative to a custodial sentence; in other words, the alternative would be prison. It is normally applied to offences that pose

“more appreciable and culpable risks to health and safety, such as careless driving”

using a mobile phone while driving a heavy goods vehicle or speeding on a motorway. The equivalent custodial sentence is about three months' imprisonment. With the best will in the world, I do not think that we can equate the failure to monitor the effects of an order with serious misdemeanours such as careless driving and using a mobile phone while driving an HGV. Therefore I appeal to the minister, this last time on an amendment in my name, to let his sensitive side come out and to bring a more realistic degree of proportionality to the crime that we are about to establish.

I move amendment 6.
The Deputy Presiding Officer: Minister, sensitively, please.

Paul Wheelhouse: I feel Mr Fergusson’s pain and will show great sensitivity.

Monitoring and evaluation management measures are a fundamental element of fisheries management. I want to make clear my expectation that monitoring will be built into any case for statutory measures. How else can efficacy be judged and practice shared? It is right that there is a sanction for failure to comply with monitoring requirements, and that sanction must act as a deterrent to committing an offence. However, I have listened to Mr Fergusson’s arguments about the appropriate level of fine and have reflected on where the offence sits in relation to Scottish Government guidance. On balance, and given the power of Mr Fergusson’s arguments, I accept his view and recommend that amendments 6 and 7 be agreed to.

The Deputy Presiding Officer: I call Alex Fergusson to wind up.

Alex Fergusson: I am so overcome by the minister’s sensitivity that I have nothing further to say, other than to express my gratitude.

Amendment 6 agreed to.

Amendment 7 moved—[Alex Fergusson]—and agreed to.

After section 29

The Deputy Presiding Officer: Group 8 is on application to the Crown of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 and the bill. Amendment 28, in the name of the minister, is grouped with amendments 42 to 44.

Paul Wheelhouse: After almost an hour and a half of debate, members will be on the edge of their seats, but I must apologise in advance, because group 8 covers a number of technical amendments that deal with the application of the legislation to the Crown, which, by its nature, is a particularly dry subject. Her Majesty’s private office is aware of the amendments.

I signalled in my letter of 8 May to the convener of the Rural Affairs, Climate Change and Environment Committee my intention to lodge amendments to clarify the application of salmon and freshwater fisheries legislation to the Crown. Crown application is determined on a case-by-case basis in the context of policy needs. The Crown in all its forms owns and manages a number of salmon fisheries in Scotland. It is therefore important in the interests of national consistency that salmon and fisheries legislation applies to the Crown and Crown land. The 2003 act makes some provision for Crown application, but it is desirable that the provision be reworked to aid understanding and enforcement of the law.

Amendment 28 will apply the 2003 act to the Crown and to Crown land. That means that offences will apply in relation to Crown land and that those in the public service of the Crown can be held liable. Statutory provision is also made in relation to exercising access rights to Her Majesty’s private estate. Those who are appointed by the Scottish ministers to carry out sampling or investigation activity under section 64 of the 2003 act will be required to obtain written permission where access is required to the private estates. Those provisions give statutory effect to administrative arrangements. The requirement to obtain written permission will also apply to bailiffs’ powers of entry, which will provide clarity on local enforcement of the legislation.

At this point in particular, I ask my colleagues across the chamber for their forbearance, as I put the following on the record. I might even say, “Listen carefully, I shall say this only once, for all our sakes.”

Alex Johnstone (North East Scotland) (Con): Was that in tribute to the member’s new French colleague?

Paul Wheelhouse: Indeed—Mr Johnstone picked that up well. I spared Mr Allard the accent, though.

Section 55(1) of the bill provides immunity from prosecution for the Crown. Amendment 42 will provide that the immunity does not extend to public servants of the Crown. That applies to the standalone offences that are created by or under the bill, which relate mainly to aquaculture issues. The provision brings consistency of approach in the bill in relation to Crown liability.

Amendment 43 will remove section 55(3) of the bill, which would have amended section 67 of the 2003 act. As section 67 is rewritten and inserted into the 2003 act by amendment 28, section 55(3) is no longer necessary. Amendment 44, which removes a cross-reference to section 55(3), is consequential on amendment 43.

After all that, it might be a blessed relief to colleagues when I say that I move amendment 28.

Alex Fergusson: I will be brief. Again, I have no issue with the outcome or intention of amendment 28 or the other amendments in the group. My concern is that the normal scrutiny processes of the committee have been bypassed. I will not rehearse the arguments, as they have already been rehearsed but, for that reason alone, I cannot allow the measures to simply be nodded through.

Paul Wheelhouse: I accept Mr Fergusson’s view on consultation and the need to ensure that
Parliament has its say on the issue, and I am happy to let the matter take its course.

The Deputy Presiding Officer: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Alcan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beatson, John (Glasgow Cathcart) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Willie (Kilmarnock and Irvine Valley) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Col (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, James (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banshie and Bute) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguuson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hume, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mclnnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

16:15
The Deputy Presiding Officer: The result of the division is: For 60, Against 0, Abstentions 45.

Amendment 28 agreed to.

Section 50—Power to charge in connection with fisheries functions

The Deputy Presiding Officer: Group 9 is on the power to charge in connection with fisheries functions. Amendment 29, in the name of Tavish Scott, is grouped with amendments 30 to 38.

Tavish Scott: The debate on this group is simply about the minister and the Government taking the power to charge for services that will
now be provided by various Government agencies, notably Marine Scotland. As we know—some of us have dealt with this matter over some years—Marine Scotland has three distinct functions: enforcement of regulation, policy and research. The contention and the concern of many people across the industry are that, in instigating the charging regime, there is an inherent conflict of interest in respect of the Government and its agencies, and that there is therefore a need for transparency. That is what my amendments seek to provide.

There are two other practical points. First, the industry can procure some services from other sources—it does not need to buy in those services only from Government. There is considerable concern that the way in which the bill is now drafted means that there will effectively be no choice, and that the Government will state what services and functions have to be undertaken and how it will charge for them, and that is that. I seek, particularly in amendment 37, to ensure that there is some transparency in that process.

Secondly, the fish health inspectorate of course plays an important role, but it fulfils one of the three functions within Marine Scotland, which I think creates a pretty clear conflict of interest. The inspectorate is able to charge for services that are not underpinned by statute or secondary legislation such as a ministerial order. The Government is taking a very considerable power under the bill, which will come through via secondary legislation—the minister was gracious enough to admit that—and I rather suspect that the Parliament will scrutinise those provisions a lot less than it would if they were in the form of proposed primary legislation.

There seem to be some basic points around transparency that are important in the context of the Government taking a power to charge an industry for services that the Government provides. My amendments seek to ensure that that transparency is there, and that there is some clarity in the process.

I move amendment 29.

Paul Wheelhouse: I must confess to some surprise that we have been asked again to consider these amendments in the name of Tavish Scott, although I hear what he says about concerns over scrutiny.

I explained our position at stage 2, and I have provided several reassurances about our commitment to consultation on any proposals. Through a Government-lodged amendment, we endorsed the recommendation of the Rural Affairs, Climate Change and Environment Committee and the Subordinate Legislation Committee that any regulations emerging from our exercising the power would be subject to the affirmative procedure.

During stage 2, Mr Scott helpfully outlined the purpose behind his amendments, namely that he considered that Marine Scotland’s “three functions” of “enforcement of regulation, scientific research and policy” are “distinct and need to be dealt with separately in any proposed charging regime. Otherwise, there will be a self-evident conflict of interest.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 27 March 2013; c 2023.]

I do not necessarily agree with that view but, as I have said before, it is clear that the basis for any charging regime will be informed by the consultation that is provided for in section 50(5).

As I have outlined previously, the primary purpose of the provisions is to promote the effective use of resources. Any charges that are payable under regulations that are made using the power “may have the effect of requiring a person to pay a charge only if, and so far as, the person is someone in relation to whom a specified fisheries function”—that is, functions under any legislation relating to fish farming, shellfish farming, salmon or freshwater fisheries or sea fishing—“has been ... carried out”.

The provisions also encompass enforcement and compliance.

Fundamentally, the charge may not “exceed the reasonable costs incurred in the carrying out of the function. The charge therefore must relate to the function in respect of which it is charged, and it may not generate a surplus.

Tavish Scott: I am grateful for that clarity. Will the minister reflect on the point about the industry procuring services from a different source?

Paul Wheelhouse: I noted Mr Scott’s comments in that respect. The consultation received only one substantive response about the issue, which in fact covers a wider area than was addressed by that respondent. However, even though only one response expressed concern, I certainly assure Mr Scott that we will have clarity on the matter.

Amendment 37 is another amendment that is familiar to me from stage 2. Mr Scott seeks to place in the bill a requirement for ministers to conduct a review and then prepare and publish a report on the operation of any regulation within a
specific time period. Although I fully agree that any new regulations should be reviewed, I do not think that the parameters of that process should be determined or restricted before any wider policy development or public consultation takes place.

I urge members to resist amendments 29 to 38.

Tavish Scott: There is a fundamental point about the Government's taking the power, which is why there is an onus on us in Parliament to seek to instigate in primary legislation a reporting mechanism that allows for the transparency and clarity that I am trying to achieve in my amendments. Indeed, we have no alternative but to do so. The minister has only reflected on the point about the industry procuring services from a different source, but there are potentially a considerable number of ways of doing that, and I would have hoped for a stronger answer to my point.

I will press amendment 29 because I believe that it sets out an important principle that we should adopt.

The Deputy Presiding Officer: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Lewis (North East Scotland) (Con)
McIntosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Lintlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Lintlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
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MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 17, Against 88, Abstentions 0.
Amendment 29 disagreed to.

The Deputy Presiding Officer: I call amendment 30, which has already been debated with amendment 29.

Tavish Scott: If it will help, Presiding Officer, I say now that I will not move the rest of the amendments in the group.

The Deputy Presiding Officer: Thank you very much, Mr Scott, but I am afraid that I will still have to call each amendment and you will have to tell me whether you wish to move it.

Amendments 30 to 38 not moved.

Section 51—Fixed penalty notices

The Deputy Presiding Officer: As we are once again nearing the agreed time limit, I consider it necessary under rule 9.8.4A of the standing orders to allow the debate on the next group to continue beyond the limit to avoid the debate being unreasonably curtailed.

Group 10 is on fixed-penalty notices. Amendment 39, in the name of the minister, is grouped with amendments 40 and 41.

Paul Wheelhouse: Amendments 39 and 41 bring offences that are associated with the control of wellboat activities in section 5(5) of the bill within the scope of the fixed-penalty notice regime under the Aquaculture and Fisheries (Scotland) Act 2007, as amended by the bill.

Wellboats used in aquaculture treatments are one of a number of marine activities that are routinely licensed under part 4 of the Marine (Scotland) Act 2010. To complete the enforcement regime, therefore, the amendments also bring marine licensing offences within the scope of the fixed-penalty notice regime.

Fixed-penalty notices provide the option of a non-court disposal in advance of prosecution. If a fixed-penalty notice is not paid within the deadline set, a report is submitted to the procurator fiscal. The 2010 act, which also provides for civil sanctions for the infringement of the marine licensing regime, is amended to add in safeguards that prevent civil penalties from being imposed in circumstances where a fixed-penalty notice has been offered.

The amendments complement and complete other measures taken in the bill and help to ensure robust wellboat controls and wider marine management measures. At the same time, they provide options for operators to deal with business regulatory non-compliance outwith the criminal justice system.

Amendment 40 is a minor drafting amendment to correct a reference to the 2007 act.
I move amendment 39.

The Deputy Presiding Officer: I call Alex Fergusson—briefly, please.

Alex Fergusson: Sadly, this is the third group of amendments that the Government has chosen to lodge without proper committee scrutiny. I do not need to go over all the arguments. I get the impression that the minister rather regrets the fact that he has had to introduce the measures in that way. Again, we do not disagree with the outcome but, on a point of principle, I simply cannot let the amendments go unopposed.

Paul Wheelhouse: The amendments are consistent with the basis on which we consulted on other fixed-penalty notices. I appreciate Mr Fergusson’s point, but the general principle of how such measures are applied has been consulted on.

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Rodenick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lochhead, Richard (Moray) (SNP)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Rodenick (North East Fife) (SNP)
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Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lochhead, Richard (Moray) (SNP)
McMillan, Siobhan (Central Scotland) (Lab)
McDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen North) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
MacNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 59, Against 1, Abstentions 45.

**Amendment 39 agreed to.**

**Amendment 40 moved—[Paul Wheelhouse].**

**The Deputy Presiding Officer:** The question is, that amendment 40 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against
McGrigor, Jamie (Highlands and Islands) (Con)

Abstentions
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Dundee City East) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 59, Against 1, Abstentions 45.
Amendment 40 agreed to.

After section 51
Amendment 41 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Ferguson (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Dumfries and Galloway) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 41 agreed to.

Section 55—Crown application

Amendment 42 moved—[Paul Wheelhouse].

16:30

The Deputy Presiding Officer: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 42 agreed to.

Amendment 43 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beatle, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)

Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lochhead, Richard (Highlands and Islands) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow North East Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (Central Scotland) (Lab)
McGrigor, Jamies (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Miline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scalan, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 46.

Amendment 42 agreed to.

Amendment 43 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beatle, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 59, Against 0, Abstentions 45.
Amendment 43 agreed to.

Section 56—Commencement
Amendment 44 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The final question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biaggi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alieen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahan, George (Midlothian South, Tweeddale and Lauderdale) (SNP)
Heburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
The Deputy Presiding Officer: The result of the division is: For 57, Against 0, Abstentions 46.

Amendment 44 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. Thank you all very much.

The Minister for Environment and Climate Change (Paul Wheelhouse): I am pleased to open this stage 3 debate on the Aquaculture and Fisheries (Scotland) Bill. At the outset, my thanks go to the Rural Affairs, Climate Change and Environment Committee for its thorough consideration of the bill; to all those who provided written and oral evidence to the committee, as well as those who responded to the Government consultations; and to everyone who has worked with us throughout the legislative process, including our stakeholder reference group. My thanks are also due to the Subordinate Legislation Committee for its scrutiny of and reports on the bill.

I also record my thanks to Scottish Government officials—in particular, those in the bill team—who have worked extremely hard to bring the bill to this point today. I must say that I have thoroughly enjoyed taking my first bill through Parliament. Things may have got a bit ropey at points when Mr Fergusson was questioning me, but I am glad that I got there.

Alex Fergusson (Galloway and West Dumfries) (Con): Surely not.

Paul Wheelhouse: That is very kind of you, Mr Fergusson.

I am sure that every member in the chamber will agree that Scotland is fortunate in having a
thriving aquaculture industry, world-renowned salmon fishing rivers and a diverse marine and coastal environment. That places a responsibility on all of us to ensure that our marine ecosystems continue to provide economic, social and wider benefits for people, industry and society.

That responsibility underpins the primary purpose of the bill, which is to ensure that farmed and wild fisheries—and their interactions with each other—continue to be managed effectively as both sectors thrive. Critically, we wish to maximise their combined contribution to supporting sustainable economic growth in rural areas, but with due regard to the wider marine environment. Many and varied interests use and enjoy Scotland’s marine environment, and the quality of the environment is a key element of the market appeal of farmed salmon, trout and shellfish. Maintaining that shared pristine marine environment requires good neighbourliness.

Last week, I chaired the first meeting of the refreshed ministerial group on sustainable aquaculture. I hope and believe that the group will continue to be a forum where such consensus on shared issues can be reached. I have formed an interactions working group as part of the MGSA, and I believe that the group represents a new opportunity to move forward the shared agenda and to put aside some of the friction of the past. I expect the group to establish closer productive working relationships between wild fish interests and farmed fish interests, both locally and Scotland-wide, and to consider more broadly the significant benefits that both sectors can bring to rural and remote communities.

To what do those benefits equate? Well, we are dealing with a £600 million aquaculture sector that employs some 1,800 people in aquaculture production and almost 3,000 people in salmon processing. Similarly, game and coarse angling supports 2,800 full-time equivalent jobs and is worth £134 million in expenditure to the Scottish economy.

Much has been said—not least by the RACCE Committee—about the individual interests and positions that have been taken by stakeholders. I believe that that highlights the need to ensure that we get things right. I want to underline our intention to balance the many interests in the public interest, rather than responding in isolation to single-issue campaigns.

The Rural Affairs, Climate Change and Environment Committee and others have asked for reassurance that the Scottish Government has actively engaged with stakeholders on the provisions in the bill. I confirm that stakeholder engagement has been an important part of our work since the consultation began and will continue to be so long after the provisions of the bill have been implemented.

For example, the wellboats working group has recently been established. Members of the group include wellboat operators, representatives of the fish farming companies, academics, the Royal Society for the Prevention of Cruelty to Animals—in respect of its Freedom Food Ltd assurance scheme—and the code of good practice management committee. The wellboats working group will work to establish the technical requirements for filters to control sea lice on all wellboats operating in Scotland, and for the facilities that will be needed for the new bigger wellboats that will be used in the future.

Colleagues have on occasion thrown—I am sure with good intent—what might usefully be described as a lifeline to save me from what they considered would be unintended consequences of the bill. Although I am always grateful for any such well-intentioned efforts to save me from danger, I consider that in this context the efforts have not been required. The bill has been developed over considerable time with substantial input from others and has rightly been subject to considerable scrutiny by Parliament. I assure members that, in formulating our amendments, we have given serious consideration to, and acted on, the issues that were raised. In my opinion, the bill is fit for purpose.

Part 1 of the bill will strengthen the regulatory framework for the fin-fish sector. Our aim is to support that industry as it continues to deliver its sustainable growth—using a 2011 baseline—of 50 per cent in volume to 2020 and beyond. That means a further 32 per cent growth from now.

During the passage of the bill, it was suggested—unfortunately, Tavish Scott is not in the chamber—that the provisions on farm management agreements are tantamount to micromanaging salmon farms. Although I share the desire to avoid micromanaging the sector, which Tavish Scott suggested might happen, I have not been convinced by that argument. I believe that the bill will not result in micromanagement; I stand by my conviction that the bill is balanced and proportionate.

The provisions will require that all fish farms in a farm management area be party to a farm management agreement or a farm management statement. Such agreements or statements must specify arrangements for a number of critical matters relating to fish health and welfare; namely fish health management, management of parasites, movement of live fish on and off farms, harvesting of fish, and fallowing of farms after harvesting.
At present, 98 per cent of fish farms are signed up to the industry code of good practice and are parties to agreements or statements. If the bill is passed, the provisions will apply to all marine finfish farm operators and will set the criteria that we consider are essential for managing the health of farmed fish within an area.

The issue of public reporting of sea lice has been discussed at considerable length during the progress of the bill and again today. I fully recognise that it is an issue of great concern to members. I hope that, even if members do not agree with the Government’s position, they will agree that we have clearly and consistently explained it.

We remain convinced that voluntary public reporting is the right route and that the proposals that the Scottish Salmon Producers Organisation has committed to taking forward—which it helpfully reaffirmed in a recent communication to all members—are appropriate from all perspectives: transparency, compliance, science and justifiable commercial interest. However, I repeat the commitment that I gave earlier to review the success or otherwise of the voluntary arrangement in the current session of Parliament. Crucially, we already have powers under the Aquaculture and Fisheries (Scotland) Act 2007 to implement a mandatory reporting arrangement, should that prove necessary.

Part 2 of the bill will improve the governance of district salmon fishery boards and strengthen management of salmon fisheries. Those are the first steps in delivering our manifesto commitment to modernise the management structures for salmon fisheries and freshwater fisheries, which is a complex area that has been the subject of numerous reports and investigations over the years. The committee took considerable interest in the issues on which more work was needed and provided helpful comments on what the forthcoming review should cover. Work is under way to scope the independent review that will be undertaken. My intention is that it will commence this summer, and I look forward to engaging with colleagues across Parliament and with all other interested parties on that.

Part 4 of the bill will introduce provisions to ensure continued protection of good water quality, which is necessary for a sustainable shellfish industry. We believe that the sector has potential, if it is managed with sensitivity to the environment. The shellfish industry, especially in respect of mussels, is looking to expand from a 2011 baseline by 100 per cent by 2020, which is another 80 per cent growth from now.

Work is under way to build on those provisions, with the aim of consulting on draft regulations for introduction in the autumn. The regulations will introduce a system of quality standards that will bring together environmental standards for good water quality with the food hygiene standards that are required for high-quality shellfish products. That will be a first in Europe and will help to cement Scotland’s reputation for the quality of its produce.

It is a rare treat for any minister to be praised by the Opposition for introducing legislation, so I shall treasure Alex Fergusson’s comments during the committee’s consideration of the Solway cockles provisions. That reflects the genuine consensus that there is a serious issue that merits Government action. I was pleased to see widespread coverage in the media of police and Marine Scotland officers stepping up the patrols to tackle illegal cockling on the Solway Firth. I am sure that we would all prefer to deter people from illegal and potentially dangerous cockling than to use the powers that we seek in the bill, but it has, regrettably, proved to be necessary to take decisive steps to address the issue.

It would perhaps be remiss of me, while speaking about Solway cockles, not to mention the wider improvements in enforcement measures that are included in the bill. The Fisheries Act 1705 makes certain provisions for the “good subjects of this Kingdom”, or the people of Scotland, to fish in the seas around our coastline. That act of the old Scottish Parliament perhaps underlines how important Scotland’s seas are to the people of Scotland.

The Presiding Officer: I need you to bring your remarks to a close.

Paul Wheelhouse: I apologise, Presiding Officer.

Effective monitoring and enforcement of marine and fishing laws is vital if we are to protect Scotland’s valuable marine areas and fisheries in order to benefit the many fisheries-dependent communities around the Scottish coast. The bill is essential to deliver those steps.

I move,

That the Parliament agrees that the Aquaculture and Fisheries (Scotland) Bill be passed.

16:43
Claudia Beamish (South Scotland) (Lab): Scottish Labour recognises the significance and importance of the Aquaculture and Fisheries (Scotland) Bill, and of regulation and the wild fisheries review, to present and future employment in what are often fragile rural and coastal communities. There are jobs in wild fisheries, scientific research, aquaculture and—of course—fish processing, retailing and exporting. An
excellent example of how the whole production chain can be vertically integrated is that of the co-operative Scottish Shellfish Marketing Group. It gives the customer reassurance about provenance, which is important in the wake of the horsemeat scandal, from which lessons must be learned.

The Scottish Parliament information centre tells us that Scotland is already the largest salmon producer in the European Union and the third largest in the world, after Norway and Chile. I have looked with interest at the cabinet secretary’s drive to promote exports of Scottish salmon and shellfish. Salmon is Scotland’s largest food export, accounting for a third of the value of all food exports. Scottish salmon is exported to more than 50 countries, with the EU and US markets being particularly important. As the minister and cabinet secretary will know, after agreement with the Chinese Government was reached in 2011, a new market opened up in China. Figures show that exports of salmon to the far east went up from 682 tonnes in 2010 to 8,675 tonnes in 2012.

Although there is little doubt about the highly lucrative nature of the exports for Scotland in the short-term, I ask the minister to clarify how that drive in exports can be reconciled with the Scottish Government’s commitment to sustainable seas. The cabinet secretary stated:

“The Scottish salmon industry is committed to nurturing a responsible, sustainable and environmentally aware future based on strong fishing heritage and traditions.”

As the minister has said, our clean waters are “pristine”—or, to use my word, quintessential. That drives us towards the environmental imperative. The biodiversity of our seas, sea lochs, rivers and burns is fundamental to our very future and to the future of the species and habitats for which we have responsibility.

Sustainable development is the key. I seek further assurances from the minister that, if the bill is passed today in spite of the failure of the bill’s policy memorandum to fulfil its potential in that regard, there will be a continuing assessment of sustainable development.

Scotland’s national marine plan, which has been delayed, is fundamental in underpinning the way forward. This summer’s consultations concern sustainable development not just in relation to the employment opportunities that I have highlighted, but in relation to how other industries in the marine sectors—which I do not have time to list—can fit together and be developed sustainably.

At stage 1, I stressed that:

“All potential development in our seas ... must be judged in the context of marine carrying capacity.”—[Official Report, 28 February 2013; c 17200.]

The Scottish Government must always remember that the Marine (Scotland) Act 2010 gives us a legally binding obligation to enhance our seas. That sets us a responsibility to recover damaged species, as well as maintaining the status quo.

At stage 1, I highlighted the significance of climate change, so I ask the minister, in his closing speech, to give Parliament and all interested groups reassurance that the bill and the ensuing regulations will be climate change proofed, and reassurance about how that will be monitored. The review of marine protected areas in 2018 will be significant as the science develops.

The health of our rivers and burns is also in need of protection, for the same reasons as our seas are. Can the minister tell Parliament how funding will be made available in the future for the range of initiatives that are needed, such as the Dee tree-planting scheme, which the Rural Affairs, Climate Change and Environment Committee visited.

On wild fisheries, I note:

“The recent increase in rod catch, coupled with the high levels of catch and release, is regarded as evidence of increases in the number of fish entering fresh waters.”

There is still a concern about spring salmon, however. As a sea trout champion, I have concerns about the decline in numbers that Marine Scotland has identified.

If we are to move forward sustainably, science is essential and must be shared. How can science be shared if it is not fully and publicly available to share among Marine Scotland, academia and the range of industries concerned? An honest and full assessment of the industry is needed if we are to achieve our shared aquaculture and shellfish targets.

Scottish Labour is disappointed and perplexed by the final position in the bill on publication of sea lice data. I note the minister’s comments, which are in some sense reassuring, but there should still be an overriding principle of transparency. Our seas are not private property. Moreover, whatever waste comes from fish farms does not stop at the barrier of the cage, any more than diffuse farm pollution stops at a fence near a burn.

The development of effective regulation accompanying the eventual act, the wild fisheries review and the work of the ministerial group on aquaculture will be the make or break of future sustainable activity. The minister’s words today are reassuring on that. Furthermore, there is agreement about the RACCE Committee’s important recommendation at stage 1 that, if there are breakdowns in relationships, a “fully accessible and fit for purpose ... mediation service” should be available.
Claudia Beamish: I will do so, Presiding Officer. The building of good relationships is perhaps more important than anything else, and it is an absolute imperative for the future. Scottish Labour supports the bill, and I ask the minister for reassurance that support for nurturing those relationships will be a priority in the future.

Alex Fergusson (Galloway and West Dumfries) (Con): The passage of the Aquaculture and Fisheries (Scotland) Bill has been a long and arduous process, and I begin my speech at stage 3 in the same way that I began my speech in the stage 1 debate, by thanking the clerks to the Rural Affairs, Climate Change and Environment Committee, who have made the process much easier and considerably more enjoyable than it might otherwise have been.

We heard and read an enormous amount of evidence at stage 1. If I have one main regret about where we are today, it is that the bill does not do more to reflect some of the serious issues that we all basically agreed on during stage 1. I suspect it was bound to be thus because, as the committee said in its stage 1 report, “the Scottish Government could have been clearer in its consultation document ... in order to better manage understanding and expectations amongst stakeholders and the wider public.”

I do not recall the Government ever disagreeing with that statement. The result was that expectations among a range of stakeholders were probably raised to an unachievable level, which is probably not a very helpful way in which to embark on a bill.

The minister described the bill to the committee as future proofing the industry in the light of current growth targets and potential new operators coming to Scotland. Although there is much that I welcome in the bill, I fear that those words will almost certainly come back to haunt him. I say that not to disparage in any way the bill or the minister, but to highlight the inherent missed opportunities.

For instance, the opportunity to have lanced once and for all the boil that is the publication of sea lice data has been missed. The industry has shifted its position, which I welcome, but I suspect that it has not done so enough to satisfy the non-governmental organisations, other organisations and individuals that have called for it and will continue to do so. To be frank, why should they not? The first voluntary publication of a report on sea lice management and control, which was agreed by the industry and the minister, should have been published last Monday, which was six weeks after the end of the first reporting period. By 1 o’clock this afternoon it had not been published: members can read into that what they will. The issue will not go away with passage of the bill, and Parliament missed a huge opportunity to address it more realistically when it rejected Claudia Beamish’s amendment 14 this afternoon.

A properly worked-out tagging scheme should have been in the bill, but I take the minister at his word and look forward to what he will introduce in the consultation.

Sadly, the bill will not do very much—if anything—to bring the wild fish and farmed fish sectors closer together, which was a desired aim of the bill. That is a real shame, because a continued stand-off is in no one’s interests—certainly, it is not in the interests of our inshore marine environment. I have no doubt that those issues will have to be returned to—I fear probably sooner rather than later.

That said, I want to finish on a positive note. I very much welcome the inclusion at stage 2, as the minister has mentioned, of measures to toughen up actions that can be taken against suspected illegal cockle poachers, principally along the Solway coast. That has been long awaited and is greatly welcomed. Although it will not solve the problem—I believe that only the creation of a legal fishery will achieve that—it heralds a vast improvement on where we are today. I thank the Government for taking the opportunity to introduce those measures on the back of the bill.

On that—I hope—positive note, I am pleased to say that we will support the bill at decision time. Despite my reservations about the Government’s introductions of substantive sections at stage 3, which thus bypassed parliamentary scrutiny, I congratulate the minister on steering his first bill through Parliament. If he thinks that I give him a tough time in questions, I say only that I suspect he ain’t seen nothing yet.

The Presiding Officer: We now move to a very short open debate. I am afraid that, in order to be able to call all members, I cannot give you any more than three minutes. If you could confine your remarks to less time than that, I would be most grateful.

Angus MacDonald (Falkirk East) (SNP): As a relatively new member of the Rural Affairs, Climate Change and Environment Committee, I am pleased to have been able to take part in scrutiny of the bill from the start.

Given the constraints of time, I will skip my preamble and go direct to the issue of carcass
tagging. I am pleased to acknowledge the minister’s commitment to consult fully on that issue. I also note the minister’s recent explanation to the committee that had the amendment that sought to include the requirement for carcass tags to be individually numbered been successful, “it would have restricted our ability to progress regulations which adequately reflect the differing views from ... stakeholders, both in terms of application and potential impact on business.”

The minister also said at stage 2 that any specific requirement would be subject to the EU technical standards directive, which would mean that the European Commission would have to be notified if the measure created a “technical barrier to trade”, which would result in a standstill period of 18 months before it could come into effect. That would impact on the whole bill. I note the failure of Alex Fergusson to have been convinced by the EU technical standards directive argument, although he withdrew amendment 4 in group 6. I ask the minister to detail when the consultation of stakeholders on carcass tagging will be complete.

I had hoped that there would be a clear and unambiguous statement from the minister today that any subsequent system will use individually numbered tags and that the system will be in place for the start of the 2014 season. I note the minister’s commitment that that would be an option, but the committee sought further assurances in that respect.

The committee spent considerable time on public reporting of sea lice data and noted the minister’s confirmation during stage 2 of the SSPO’s plans to increase the voluntary public reporting of sea lice data from six to 30 areas and his comment that the SSPO’s voluntary proposal was “a significant development and an appropriate balance between public reassurance and commercial interests at this time.”

In addition, the SSPO confirmed that it would give Marine Scotland access to sea lice data at farm management area level. I recognise that a number of stakeholders—including the Association of Salmon Fishery Boards, which would have preferred publication of all sea lice data on a farm-by-farm basis—were considerably disappointed by that, but I am encouraged by the minister’s commitment this afternoon to review the success or otherwise of the voluntary arrangement during the current parliamentary session.

With that in mind, I welcome the formation of the ministerial group—

**The Presiding Officer:** You must bring your remarks to a close, please.

**Angus MacDonald:** Thank you, Presiding Officer.

We should never lose sight of the fact that whether we are talking about farmed or wild salmon, this is a good news story for Scotland. From angling on royal Deeside to salmon farming in the Western Isles, we have a lot to thank the humble salmon for. However, the aquaculture industry’s excellent prospects can be realised only if the industry observes the best environmental husbandry and governance standards. We will all be watching extremely closely.

16:56

**Elaine Murray (Dumfriesshire) (Lab):** I have not been involved in the bill’s passage but, although I recognise the concerns that members have expressed, I want to use the very short time that I have to welcome the provisions on the Solway cockle beds that the minister did not really have the time to describe in his speech.

The Solway cockle beds have had a very chequered history, having been overfished in the early 2000s and closed in 2002. The Solway Shellfish Management Association, which was formed in 2006 by a statutory instrument from this place, was given the unenviable task of regulating the cockle fishery when it was reopened, as well as certain enforcement powers. However, of the more than 100 licences that were granted by the association, 50 per cent were local and the other 50 per cent were not. There was a huge stand-up load of people turned up at my surgeries to complain about licences and all the rest of it. Unfortunately, despite those actions, cockle stocks declined further. No more licences were issued after 2007-08 and the beds had to be closed again in 2011.

Enforcement has always been extremely difficult. In past centuries, the Solway was infamous for the activities of pirates and smugglers and the physical features that aided those individuals—that coastline of bays and coves with few points of access to the sea from public roads and many crossing private land—also aided the illegal cocklers. Before and after the reopening of the fishery, I received reports from constituents living near the coast of possible illegal activity, including vehicles on the beach, caravans on private land that seemed to contain what might have been migrant workers and boats being launched from private access points. Although those reports were passed to the police and the SSMA, it was very difficult to follow them up.

Of course, such activity is not only illegal but potentially extremely dangerous. The incoming tide in the Solway is famously known as being faster than a galloping horse—in other words, more than 25 to 30mph. It is certainly faster than a person can run and faster than a vehicle can drive in soft sand, with the result that those who are...
exposed to illegal cockling are also in great danger of losing their lives. Indeed, we remember the events in Morecambe Bay in 2004, when 23 people lost their lives in a gang incident. The same thing could easily happen on the Solway.

At stage 2 we passed amendments to allow the courts to consider circumstantial evidence pointing to illegal activity—

The Presiding Officer: You must bring your remarks to a close, please.

Elaine Murray: Moreover, police now have powers of access to private land and can enforce that right in order to investigate the reports of possible illegal activity that I have received in the past. That was not possible before and it will be extremely important in detecting and preventing such activity.

Some campaigners think that the bill should have gone further, but I am pleased that the need for action has been recognised and that these measures have been included in the bill.

16:59

Jim Hume (South Scotland) (LD): To claim that the bill’s progress through its committee stages was without controversy would be pushing it, to say the least. I believe that it marks the first time that the phrase “tit for tat” has been used in a committee report and, if I remember correctly, I also think that it was the first time I have heard anyone accuse a Conservative member of wishing to nationalise an industry.

Today we expressed concern about late amendments from the Government, which the committee did not have enough time to scrutinise. It is essential that all proposed legislation is properly scrutinised—legislating in haste often results in repenting at leisure. We did not vote against the Government’s amendments. However, we abstained, because we could not be confident that the lack of proper scrutiny would not have unintended consequences. However, all those abstentions have helped all our voting records.

I was concerned about the amendments in Alex Fergusson’s name on the numbered tagging of fish. I have been wary of such methods in some aspects of agriculture. Such an approach might constitute overregulation and be difficult to implement, so I am glad that Alex Fergusson did not press his amendments and that the minister promised to look into the issue.

The importance to Scotland’s economy of wild fishing, as well as fish farming, was made clear during the bill process. Wild fishing is important in my region. I understand that fees are up to £30,000 a week for five rods at the junction pool in Kelso. The Government wants fish farming to increase, to contribute to its economic growth agenda, but it is right that we protect what we have.

I share the ambition for growth in the fish farm industry. Scottish smoked salmon achieves a premium in the marketplace, and deservedly so.

At stage 2 I lodged amendments, the principle of which was accepted by the minister. We worked on the matter, and I am glad that members accepted that there needs to be regulation in training. It is obvious that training needs to be part of the developing technical standard, as the Scottish Aquaculture Research Forum acknowledged. The improved containment working group has shown that about 29.5 per cent of fish escapes are due to human error.

I do not have time to go into detail on record keeping in relation to sea lice, or on the potential of triploids—

The Presiding Officer: No, you do not. You need to bring your remarks to a close as quickly as possible.

Jim Hume: I am glad that we have produced a bill that provides for training requirements on equipment. In anticipation of the bill’s being passed at decision time, I congratulate Paul Wheelhouse.

17:02

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I am the convener of the Rural Affairs, Climate Change and Environment Committee, which has had long oversight of the bill and welcomes its progress.

I was pleased that the bill gives the Scottish Government’s ministerial group on sustainable aquaculture oversight of the code of good practice for aquaculture. Will the minister undertake to consider the provision that genetically modified organisms should not be introduced to fish farms, with a view to changing “should” to “must” as soon as possible?

The urgency of my request is underlined by the relaxation of the rules on the use of GM soya feed for animals and fish by a string of leading retailers, with the exception of Waitrose. Will the minister assure the Parliament that Scottish food authenticity will be a priority? The natural provenance of Scottish produce is not helped by the use of GM soya feed. Waitrose and other European producers have procured GMO-free soya and are labelling their products GMO free, thereby earning a premium for the products, in response to widespread consumer concern that GM ingredients are not welcome in our food.
I am pleased that in summer the Scottish Government will launch a consultation on the further democratisation of district salmon fishery boards. Wider access to our rivers for salmon angling should be a facet of the sustainable management of all species in the total catchment area management approach. Angling is a big—and can be a bigger—contributor to fragile rural economies such as those in my constituency. It can also contribute to climate change mitigation. The matter was discussed and further work will flow from the bill’s successful passage. We wish the bill and what follows well.

17:04

Jamie McGrigor (Highlands and Islands) (Con): I refer members to my entry in the register of members’ interests, in relation to fisheries.

There is widespread recognition of the importance of aquaculture and wild fisheries to Scotland’s economy. In my region, the Highlands and Islands, fish farming helps to underpin many communities. The fact that farmed Scottish salmon has the much-coveted label rouge demonstrates its excellence. At the same time—as the minister stressed—Scotland, with its lochs and rivers, is a world-famous location for wild fishing.

As part of the European and External Relations Committee’s inquiry into the China plan, I recently visited the Marine Harvest processing factory at Fort William, which is a significant employer in Lochaber. I had not visited a salmon processing factory for several years, and the improvement in the quality of the fish over that time was plain to see. All Marine Harvest’s fish are processed in one factory, picked up by lorry, taken to Heathrow and flown out, which means that they can be in China in a very short time. The potential for growth in the Chinese market is great. The labelling on the boxes gives total traceability—it is possible to tell not only what cage on which site the fish came from, but which individual packed the box.

Given that there is no lack of transparency on that side of aquaculture, it is disappointing that, despite lobbying from many sides, the Scottish Government decided not to accept the well-thought-out amendments of my friend Alex Fergusson that proposed that sea lice data should be published on a farm-by-farm basis, as happens in Norway, Chile and Ireland. I invite the minister to explain why that lack of transparency does not exist in other fish farming countries.

A big theme in the stage 1 debate and the Rural Affairs, Climate Change and Environment Committee’s scrutiny of the bill and its report was the need for the wild fish and the fish farming sectors to work together more constructively. The bill represented an opportunity to improve working methods and public relations. People in the aquaculture industry to whom I spoke were not alarmed by the request for greater transparency, so why is the Scottish Government so intransigent on sea lice? That will leave the wild fish industry disappointed. Indeed, the Salmon & Trout Association is calling the bill a missed opportunity to protect and conserve Scotland’s wild fish heritage. Can the minister say something to relieve those concerns?

The disappointment stems from the Government’s failure to accept amendments at stage 2—and further amendments from Claudia Beamish at stage 3—that would have increased the amount of publicly available information on sea lice. Will the minister at least instruct Marine Scotland to analyse Scotland-wide sea lice data at a farm management area level on a quarterly basis, so that it can assess the performance on sea lice management and test the SSPO reporting system?

I think that all of us recognise that we want and need to achieve the sustainable coexistence of the wild fish and fish farming industries. That is what I have argued for throughout my time in the Parliament. We know that that can best be achieved when both sectors trust each other. It remains to be seen whether the bill will help us to make progress towards that aim, but ministers need to continue to strive to address the concerns of wild fishery interests, particularly in the west and north-west, where genuine concerns still exist about the decline in wild fish numbers and the reasons behind it. The Scottish Conservatives will continue to speak up on such issues, while supporting the sustainable growth of our aquaculture producers.

17:07

Claire Baker (Mid Scotland and Fife) (Lab): The bill has been an attempt to address some of the issues surrounding wild fisheries and the aquaculture sector. Although the debate is an opportunity to reflect on what has been agreed, it is also—as other members have highlighted—the time to turn to questions of implementation and what happens next. Following the initial consultation, a number of contentious issues were not taken forward in the bill—for example, carcass tagging and salmon netting rights—but they must be addressed, and the future work streams that others who are involved in wild fisheries and sustainable aquaculture have highlighted are essential.

As the minister said, 98 per cent of fish farms are signed up to good practice, which raises the question whether the bill is about consolidating what already happens rather than addressing some of the key issues that Alex Fergusson
highlighted. We have a growing aquaculture sector that makes a significant contribution to Scotland’s economy nationally and locally. It is a business that provides employment in rural areas—more than 6,000 people are employed, often in long-term, skilled jobs. The amendments on training were welcome. We recognise that people work in difficult conditions, and that standards of training and health and safety must be high.

Achieving the target of increasing the production of all farmed fish by 50 per cent from a 2011 baseline by 2020 is ambitious. If we are to achieve that rate of expansion, we need to be sure that the regulatory system that is in place is robust and has the confidence of consumers and wider interests. In recent weeks, there have been reports that pesticides from 12 salmon farms have contaminated lochs around Scotland’s coast in breach of safety limits. Since 2010, such incidents have been the subject of an annual report by the Scottish Environment Protection Agency, which consistently raises questions about the environmental impact of fish farming.

Labour has sought to take a proportionate approach to the bill. At stage 1, the committee debated at length the publication of sea lice data. There was certainly recognition that there could be greater transparency and information sharing, and Labour lodged a consensus amendment, so it is disappointing that, once again, the evidence that was heard at stage 1 and supported in the stage 1 report has been rejected at the amendment stage on the minister’s recommendation. We have seen committee members twisting and turning on the issue this afternoon.

We recognise that the industry is to increase its reporting to 30 areas of data, but the international perception of Scottish salmon relies on its reputation for comparatively high standards of health and welfare for farmed fish. Greater transparency should be nothing to fear and would only strengthen its reputation. The industry and the minister raise concerns regarding commercial risk, but it is argued that no other industry is protected in this way, and the strongest comments on the matter came from SEPA. It is disappointing that those concerns have not been addressed in the bill and there has been such reluctance on the Government’s part to take a stronger lead on the issue. Although the minister has given a commitment to review the success or otherwise of the SSPO proposals on sea lice data publication, it is not clear how that success will be judged. He might want to give an indication of that in his closing remarks.

It is crucial that the right level of regulation is in place for the sector. No one in the debate today wants regulation that would damage the industry, but there have been calls for proportionate regulation that protects consumer confidence, in recognition of the fact that across our food chain there is—perhaps now more than ever—a need for transparency and robust governance.

The Presiding Officer: I call Paul Wheelhouse to wind up the debate. You have five minutes, minister.

17:11

Paul Wheelhouse: I will try my best, Presiding Officer.

I thank all members for their contributions to today’s debate. One thing that I did not mention earlier but which I would like to mention is that I came to the post late in the pre-legislative stage of the bill, and I thank Stewart Stevenson for all his early work in his ministerial capacity. The road that we have travelled since then has not been without its challenges. There have been occasions on which the debate has been less constructive, as the Rural Affairs, Climate Change and Environment Committee noted in its stage 1 report.

The bill provides us with the legislative tools to ensure that farmed and wild fisheries and their interactions with each other continue to be managed effectively, maximising their combined contribution to supporting economic growth but, crucially, with due regard to the wider marine environment. The bill also provides a foundation on which to move forward and better manage our relationships and build trust.

The refreshed ministerial group on sustainable aquaculture has engaged the minds of our stakeholders, and there is a tide of optimism that proactive activity will take place over the coming months and years. Members of the MGSA helped to inform many of the provisions that we have debated in the past few months. The group met for the first time a couple of weeks ago, as I said earlier, and everyone is keen to look forward and not back. They recognise the need to address any negative perceptions that may have emerged, and there is also genuine acceptance that the debate has often excluded the many positive activities that take place. It is important that we do not lose sight of the many good examples of local engagement that already exist.

Improved governance arrangements for our fisheries boards and enhanced salmon management through the bill, coupled with the planned fisheries management review, will bring many opportunities. I encourage all our stakeholders to reflect on how they might better promote those and other positive examples of their work. As I speak here today, I am confident in saying that the bill is proportionate and strikes the right balance.
Time forbids me from saying too much, but I would like to turn to a few points that were made in the debate. Important points were made on carcass tagging by both Angus MacDonald and Alex Fergusson, who sought clarity about the timescales that are involved. The consultation will run for the standard 12-week period, and we will look to run it in parallel with the notification to the EU. The EU approval timetable is for the EU to determine, of course. It can be up to 18 months, but only if the EU has issues with what is proposed. I hope that it will be faster than that.

Rob Gibson made an important point about the potential for GM feed to get into the food chain. The Government intends to bring forward a debate as soon as possible after the summer recess to assess food authenticity and food labelling in recognition of the issue that the member has raised. I welcome his support for the management review that we propose as phase 2 of this important development of the wild fisheries and aquaculture sector.

Jamie McGrigor asked what evidence we have to demonstrate why transparency is a risk. I recognise that the point that Graeme Dey made is open to challenge from others because more than one factor is involved, but it indicated that publication of sea lice data damaged the Irish aquaculture sector. However, I will certainly look more closely at that.

On the measures that we have discussed today, I recognise that some people have reservations about the approach that we have taken to the voluntary reporting of data. Those reservations were evident in the earlier debate. However, I sincerely believe that encouraging the voluntary sharing of information—not just in the context of sea lice—along with appropriate explanatory text, is the right way forward. To repeat what I said previously, we will not seek to legislate where we do not need to, and I believe that this is an example of that. It is clearly for others to demonstrate that the Government’s support for voluntary measures has been well placed—I think that we all know who I mean. Equally clear is our existing ability to progress through secondary legislation if the voluntary approach does not work as expected.

Claire Baker raised the issue of how we will test whether the approach has worked. The publication of data will show us that, because if there is a persistent pattern of sea lice infestations in fish farms across Scotland, we will know that the approach is not working to drive down the numbers. I will certainly keep her informed on what we are doing in that regard.

I was pleased to support the amendments that Jim Hume lodged in relation to training on equipment that is used in fish farming. I thank him for his willingness to engage on the drafting and for the opportunity to explore what might best deliver a result on which we could all agree.

I want to end the debate on a really positive note. Everyone here recognises the enormous benefits to Scotland and the people of Scotland of successful and thriving aquaculture and wild fisheries sectors that can develop. The improved governance arrangements for our fishery boards and enhanced salmon management through the bill, coupled with the planned fisheries management group, will bring many opportunities. I therefore encourage all stakeholders to reflect on how they might better promote those. Now is the time to look forward, to be positive and to begin to build relationships that allow us to prosper in future. We have a clear implementation plan. There is much to do and the bill provides the foundations for that. I ask the Parliament to agree that the Aquaculture and Fisheries (Scotland) Bill be passed.

The Presiding Officer: I thank all members for their co-operation in what was a very short space of time.
Aquaculture and Fisheries (Scotland) Bill
[AS PASSED]

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Aquaculture and Fisheries (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

PART 1
AQUACULTURE
CHAPTER 1
FISH FARM MANAGEMENT

1 Fish farm management agreements and statements
(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.
(2) After section 4 insert—

“Fish farm management agreements and statements

4A Fish farm management agreements and statements
(1) A person who carries on a business of fish farming at a fish farm located within a farm management area must—
   (a) be party to a farm management agreement, or prepare and maintain a farm management statement, in relation to the fish farm, and
   (b) ensure that the fish farm is managed and operated in accordance with the agreement or (as the case may be) statement.
(2) For the purposes of this section, a “farm management agreement” is an agreement—
   (a) between two or more persons who carry on a business of fish farming at fish farms located in a farm management area, and
(b) which contains provision about the matters specified in subsection (4).

(3) For the purposes of this section, a “farm management statement” is a statement—

(a) prepared and maintained by a person who—

(i) carries on a business of fish farming at a fish farm located in a farm management area, and

(ii) is not, in relation to that fish farm, party to a farm management agreement, and

(b) which contains provision about the matters specified in subsection (4).

(4) The matters referred to in subsections (2)(b) and (3)(b) are—

(a) a description of the farm management area and the fish farm or farms to which the agreement or statement applies,

(b) arrangements for—

(i) fish health management,

(ii) management of parasites,

(iii) the movement of live fish on and off the farms,

(iv) the harvesting of fish,

(v) fallowing of the farms after harvesting,

(c) review of the agreement or statement at least every 2 years,

(d) in the case of a farm management agreement, arrangements for persons to become, or cease to be, parties to the agreement.

(5) In this section—

the “Code of Practice” means the document called the Code of Good Practice for Scottish Finfish Aquaculture as issued and revised from time to time by the body known as the Code of Good Practice Management Group,

“farm management area” means an area specified as such in the Code of Practice.

(6) The Scottish Ministers may by order modify the definition of the Code of Practice in subsection (5) so as to—

(a) substitute a reference to another document for the one for the time being referred to in that definition,

(b) substitute a reference to another body for the one for the time being referred to in that definition.

(7) An order under subsection (6) may—

(a) include incidental, supplemental, consequential, transitional, transitory or saving provision,

(b) modify any enactment, instrument or document.
4B Inspections: farm management agreements and statements

(1) An inspector may carry out an inspection of any fish farm to which section 4A(1) applies for the purpose of ascertaining whether that section is being complied with.

(2) In particular, an inspection under subsection (1) may include—
    (a) taking samples (including samples of fish or material from fish),
    (b) examining, and taking copies of, documents or records.

(3) An inspector may arrange for the carrying out of such tests as the inspector considers necessary, using samples taken during an inspection under subsection (1), for the purpose mentioned in subsection (1).

(3) In section 6 (enforcement notices), for subsection (1) substitute—

“(1) Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming—
    (a) does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), or
    (b) in relation to a fish farm to which section 4A(1) applies, has failed or is failing to comply with that section,

the Scottish Ministers may serve a notice (“an enforcement notice”) on the person.”.

(4) In section 43(3) (orders subject to affirmative procedure), in paragraph (a), after “section” insert “4A(6) or”.

2 Escapes, and obtaining samples, from fish farms

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) In section 5 (inspections: containment and escape of fish)—
    (a) in subsection (2), after paragraph (b) insert—

        “(ba) ascertaining the origin of fish known or believed to have escaped from the fish farm or any other fish farm,”,

    (b) in subsection (3), in paragraph (a), after “equipment” insert “, fish or material from fish”.

(3) After section 5 insert—

“Sampling

5A Obtaining samples from fish farms

(1) An inspector may take samples of fish, or material from fish, on a fish farm for any of the purposes mentioned in subsection (3).

(2) An inspector may require a person who carries on a business of fish farming to provide the inspector with samples of fish, or material from fish, on the fish farm for a purpose mentioned in subsection (3).

(3) The purposes are—
(a) assisting any investigations into escapes of fish from fish farms that may require to be carried out,

(b) analysing the samples mentioned in subsections (1) and (2) for scientific or other research,

(c) assessing the impact of—
   (i) the operations of fish farms on the environment,
   (ii) escapes of fish from fish farms on stocks of fish other than those on fish farms, and

(d) developing methods of tracing the origins of fish that escape from fish farms.

(4) This section is without prejudice to sections 4B and 5.”.

CHAPTER 2

FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment

3 Technical requirements for equipment used in fish farming

(1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by regulations—
   (a) prescribe technical requirements for equipment to be used for or in connection with fish farming,

   (aa) impose requirements on fish farm operators in relation to the training of their employees or agents in connection with the installation, maintenance or operation of equipment for which requirements are prescribed under paragraph (a), and

   (b) make provision for ensuring compliance with the requirements prescribed or imposed by the regulations.

(2) The purposes are—

   (a) the containment of fish,

   (b) the prevention of escape of fish,

   (c) the prevention, control or reduction of parasites, pathogens or diseases.

(3) Regulations under subsection (1) may, in particular—

   (a) prescribe requirements as to the design, construction (including the materials used in construction), manufacture, installation, maintenance or size of equipment,

   (b) provide for the appointment or authorisation of persons (“inspectors”) to inspect equipment and records for the purpose of ensuring compliance with the regulations,

   (c) for that purpose, confer on inspectors—

      (i) powers of entry, search and seizure,

      (ii) powers to obtain information or evidence,

   (d) impose requirements on fish farm operators, or their employees or agents, as to—

      (i) the provision of information to inspectors,
(ii) allowing access by inspectors, and
(iii) cooperation with inspectors,
(e) confer powers on inspectors to impose such requirements,
(f) impose requirements on fish farm operators, or their employees or agents, as to—
   (i) the keeping of records in relation to equipment and the making of those records available for inspection,
   (ia) the keeping of records in relation to training provided or undertaken in pursuance of any requirement imposed under subsection (1)(aa) and the making of those records available for inspection,
   (ii) the notification or reporting of failures in equipment,
(g) create criminal offences in relation to failures to comply with the regulations and make other provision for dealing with such offences, including—
   (i) the provision of defences,
   (ii) evidential matters,
(h) provide for other sanctions for dealing with such failures,
(i) provide for procedures (including appeals) for enforcing compliance with the regulations,
(j) make different provision for different types of fish farming and different species of fish.

(4) Regulations under subsection (1) may prescribe or impose requirements—
   (a) by reference to a document published by or on behalf of the Scottish Ministers or such other person, or person of such description, as is specified in the regulations, or
   (b) by reference to the approval or satisfaction of such person, or person of such description, as is specified in the regulations.

(5) Where regulations under subsection (1) create a criminal offence, they must provide for the offence to be—
   (a) triable summarily, and
   (b) punishable by a fine not exceeding level 4 on the standard scale.

(6) Regulations under subsection (1) may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified in the regulations.

(7) Sanctions provided for under subsection (3)(h) may include suspension or revocation of any authorisations required by fish farm operators to operate as such.

(8) In this section, “fish farm operators” means persons carrying on a business of fish farming.
Wellboats

4 Meaning of “wellboat”

(1) In this Chapter, “wellboat” means a vessel that contains a tank or well for holding water (including sea water)—
   (a) into which live farmed fish may be taken, and
   (b) in which the fish may be subsequently kept,
for a purpose mentioned in subsection (2).

(2) The purposes are—
   (a) the transportation of farmed fish,
   (b) the storage of farmed fish,
   (c) the slaughter of farmed fish,
   (d) the treatment of farmed fish in connection with health, parasites, pathogens or diseases,
   (da) the grading of farmed fish.

(3) For the purposes of this section, it is irrelevant whether or not the farmed fish remain alive in the course of any activity mentioned in subsection (2).

(4) In this section, “farmed fish” means fish produced by fish farming, and “grading”, in relation to farmed fish, means separating and sorting the fish according to size.

5 Control and monitoring of operations of wellboats

(1) The Scottish Ministers may by regulations make provision for or about controlling and monitoring the operations of any wellboat in Scotland.

(2) Regulations under subsection (1) may, in particular, include provision for or about—
   (a) the measures to be taken to prevent, reduce, remove or otherwise control the risk of the spread of parasites, pathogens or diseases as a result of wellboat operations,
   (b) the installation of such equipment, or types of equipment, as may be specified—
      (i) to prevent, reduce, remove or otherwise control such a risk,
      (ii) to enable compliance with the regulations to be monitored,
   (c) the reporting to the Scottish Ministers of such matters as may be specified.

(3) Regulations under subsection (1) may impose requirements on, and only on—
   (a) the master of a wellboat,
   (b) an owner of a wellboat,
   (c) a charterer of a wellboat.

(4) Regulations under subsection (1) may make different provision for—
   (a) different descriptions of wellboat,
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(b) different operations,
(c) different species of fish,
(d) different periods of time.

(5) A person commits an offence if the person—
(a) acts in contravention of regulations under subsection (1),
(b) fails to take any action required of that person by such regulations, or
(c) otherwise fails to comply with any requirement imposed on that person by such regulations.

(6) No proceedings may be taken or continued against a person for an offence under subsection (5) in respect of a matter in relation to which an enforcement notice under section 6 has been served.

(7) It is a defence for a person charged with an offence under subsection (5)(b) or (c) to show that the person had a reasonable excuse for failing to take any action or (as the case may be) to comply with any requirement mentioned in that subsection.

(8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(9) In this section, “specified” means specified in regulations made under subsection (1).

6 Enforcement notices

(1) This section applies where the Scottish Ministers are satisfied that a person has failed or is failing to comply with any requirement imposed on that person by regulations under section 5(1).

(2) The Scottish Ministers may serve a notice (an “enforcement notice”) on the person.

(3) The enforcement notice must specify—
(a) the grounds for the service of the notice,
(b) the action that the person on whom it is served is required to take in order to ensure compliance with the regulations, and
(c) the date by which that action is to be taken, which must be no earlier than 14 days after the day on which the notice is served.

(4) The Scottish Ministers may publicise the serving of an enforcement notice; and they may do so to such extent, in such manner and in such form as they think fit.

(5) A person on whom an enforcement notice has been served may appeal by way of summary application to a sheriff against the notice.

(6) An appeal under subsection (5) must be made before the expiry of the period of 7 days beginning with the day on which the notice is served.

(7) Where an appeal is made under subsection (5), the enforcement notice has no effect until the appeal is withdrawn or finally determined.

(8) In an appeal under subsection (5)—
(a) the sheriff may make such order as the sheriff thinks appropriate, and
(b) the sheriff’s decision is final.
(9) If the appeal is not upheld, the date by which the action specified in the notice is to be taken is such date as the sheriff may specify in the order disposing of the appeal.

(10) A person on whom an enforcement notice has been served commits an offence if the person fails to comply with the requirements of the notice.

(11) It is a defence for a person charged with an offence under subsection (10) to show that the person had a reasonable excuse for failing to comply with such requirements.

(12) A person who commits an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

7 Marine enforcement officers’ functions

(1) For the purpose of enforcing regulations under section 5(1), a marine enforcement officer has—

(a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010,

(b) the power conferred by section 150 of that Act (power to require information relating to certain substances and objects),

(c) the power conferred by subsection (2), and

(d) the powers conferred by section 7A.

(2) Where the requirements of an enforcement notice under section 6 have not been complied with, a marine enforcement officer may take such action as the officer considers necessary to fulfil the requirements.

(3) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—

(a) any reference to a power conferred by Part 7 of that Act included a reference to—

(i) such a power as applied by subsection (1),

(ii) the power conferred by subsection (2), and

(iii) the powers conferred by section 7A, and

(b) any reference to a marine enforcement officer’s functions under that Act included a reference to—

(i) such functions as applied by subsection (1),

(ii) a marine enforcement officer’s function under subsection (2), and

(iii) a marine enforcement officer’s functions under section 7A.

(4) The powers which a marine enforcement officer has for the purposes of enforcing regulations under section 5(1) may be exercised in the Scottish marine area and in any other part of Scotland.

(5) A marine enforcement officer may take action as mentioned in subsection (2) whether or not proceedings have been taken for an offence under section 6(10).

(6) The Scottish Ministers may recover any expenses reasonably incurred by a marine enforcement officer in taking action as mentioned in subsection (2) from the person on whom the enforcement notice was served.
(7) In this section, “Scottish marine area” has the same meaning as in section 1 of the Marine (Scotland) Act 2010.

7A Power to detain wellboats in connection with court proceedings

(1) This section applies where—

(a) a marine enforcement officer has reasonable grounds for suspecting that an offence under section 5(5) has been committed by the master, an owner or a charterer of a wellboat (referred to as “A”), and

(b) the officer reasonably believes that—

(i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the wellboat is detained under this section, or

(ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.

(2) Where this section applies, a marine enforcement officer may—

(a) take, or arrange for another person to take, the wellboat and its crew to the port that appears to the officer to be the nearest convenient port, or

(b) require any person who is for the time being in charge of the wellboat to take it and its crew to that port.

(3) When the wellboat has been taken to port, the officer may—

(a) detain it there, or

(b) require the person for the time being in charge of it to do so.

(4) A marine enforcement officer who detains a wellboat under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the wellboat.

(5) The notice must state—

(a) the reasons for detaining the wellboat, and

(b) the circumstances in which the wellboat may be released.

7B Release of wellboat detained under section 7A

(1) This section applies where a wellboat is being detained under section 7A.

(2) The wellboat ceases to be detained under that section if one of the following things occurs—

(a) the notice of detention is withdrawn,

(b) a sheriff orders the release of the wellboat under section 7C,

(c) any proceedings taken against the master, owner or charterer of the wellboat have concluded,

(d) the court referred to in section 7A(1)(b)(ii) exercises any power it has to order the wellboat to be detained.
(3) A notice of detention is withdrawn by the service by a marine enforcement officer of a further notice on the person who is for the time being in charge of the wellboat, stating that the wellboat is released.

(4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.

(5) The grounds of release are—

(a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the wellboat in respect of any offence in relation to which the wellboat was detained,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,

(d) that there are no grounds for believing that the court referred to in section 7A(1)(b)(ii) will order the wellboat to be detained.

(6) In this section—

“appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),

“fixed penalty notice” means a fixed penalty notice under section 25(1) of that Act (issue of fixed penalty notices),

“notice of detention” means a notice served under section 7A(4).

7C Power of sheriff to order release of wellboats

(1) This section applies where a wellboat is being detained under section 7A.

(2) If, on an application to a sheriff by the master, an owner or a charterer of the wellboat, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the wellboat be released.

(3) An application under subsection (3) is to be made by way of summary application.

(4) Those matters are that—

(a) the continued detention of the wellboat under section 7A is not necessary to secure that the master, an owner or a charterer of the wellboat will attend court, or

(b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.

CHAPTER 3

COMMERCIALmäßig DAMAGING SPECIES

Orders relating to commercially damaging species

8 Specification of commercially damaging species

(1) The Scottish Ministers may, for the purposes of this Chapter, by order specify as a commercially damaging species—
(a) a species of fish or shellfish,
(b) any other species of animal,
(c) a species of plant.

(2) The Scottish Ministers may make an order under subsection (1) in relation to a species only if they consider that the species—

(a) if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and
(b) is itself of little or no commercial value.

9 Movement of species, etc.

(1) The Scottish Ministers may by order make provision for or about the prohibition or control of the movement of—

(a) any commercially damaging species that is present, or suspected of being present, in any body of water,
(b) any other species of animal or plant the movement of which may be associated with the movement of such a commercially damaging species,
(c) any equipment or other material used for or in connection with fish farming or shellfish farming, the movement of which may be so associated,
(d) water in which a commercially damaging species, or a species mentioned in paragraph (b), is present or suspected of being present.

(2) An order under subsection (1) may—

(a) designate an area in respect of which any prohibition or control of movement applies,
(b) make provision in relation to the enforcement of the provisions of the order, including provision for the issue of notices imposing requirements and the action that may be taken in cases where such notices are not complied with,
(c) make provision in relation to appeals against such notices or other actions taken in connection with the enforcement of the provisions of the order,
(d) where the movement of—

(i) a species,
(ii) equipment or other material, or
(iii) water in which a species is present or suspected of being present, is controlled by the order, specify conditions or requirements in respect of such movement (including conditions that must be satisfied before such movement is permitted),
(e) make different provision for—

(i) different types of commercially damaging species,
(ii) different types of animal or plant as mentioned in paragraph (b) of subsection (1),
(iii) different types of equipment or other material as mentioned in paragraph (c) of that subsection.

(3) A person commits an offence if the person—

(a) acts in contravention of an order under subsection (1),
(b) fails to take any action required of the person by such an order, or
(c) otherwise fails to comply with any requirement imposed on the person by such an order.

(4) It is a defence for a person charged with an offence under subsection (3)(b) or (c) to show that the person had a reasonable excuse for failing to take the action or (as the case may be) to comply with any requirement mentioned in that subsection.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

10 Orders under section 9(1): samples and surveillance

(1) An order under section 9(1) may include provision for or about—

(a) the taking of samples of any fish from a fish farm, or shellfish from a shellfish farm, by a person appointed by the Scottish Ministers (an “appointed person”),
(b) the taking of samples of material from any such fish or shellfish by an appointed person,
(c) the analysis of such fish or shellfish, or such material, by an appointed person for the purposes of ascertaining whether a commercially damaging species is present on the fish farm or shellfish farm,
(d) the powers of an appointed person, including powers to—

(i) enter any land, fish farm or shellfish farm,
(ii) enter any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm,
(iii) require the operator of a fish farm or shellfish farm to provide the appointed person with samples such as are mentioned in paragraph (a) or (b),

(c) the size of any sample such as is mentioned in either of those paragraphs.

(2) Subsection (3) applies to an order under section 9(1) that controls the movement of fish or shellfish that are produced by fish farming or shellfish farming.

(3) The order may include provision for or about—

(a) requiring a person who carries on a business of fish farming or shellfish farming to carry out a programme of surveillance of—

(i) the fish or shellfish the movement of which is controlled by the order,
(ii) any other animal, or any plant, specified in the order that is present at the place to which the fish or shellfish mentioned in sub-paragraph (i) are to be, or have been, moved,
(iii) such conditions of that place as may be specified in the order,
(b) the carrying out by a person appointed by the Scottish Ministers of such a programme of surveillance,

(c) the powers of a person so appointed, including powers to enter—

(i) any land, fish farm or shellfish farm,

(ii) any premises (other than a dwelling house) associated with the operation or management of a fish farm or shellfish farm,

(d) the matters which such a programme of surveillance is to address, including any risks associated with the movement of the fish or shellfish controlled by the order.

(4) An order under section 9(1) which includes provision conferring a power such as is mentioned in subsection (1)(d)(i) or (ii) or subsection (3)(c) must provide—

(a) for the power to be exercised at a reasonable hour, unless the person exercising it considers the case is one of urgency, and

(b) for any person who proposes to exercise the power to produce, if so required, evidence of the person’s identity and appointment.

11 Offences relating to persons appointed under section 10

(1) A person commits an offence if the person—

(a) fails to comply with a requirement imposed by a person appointed by virtue of subsection (1)(a) or (3)(b) of section 10, or

(b) wilfully obstructs such a person in the exercise of a power conferred by an order under section 9(1).

(2) It is a defence for a person charged with an offence under subsection (1)(a) to show that the person had a reasonable excuse for the failure.

(3) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person who commits an offence under subsection (1)(b) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

12 Notification of presence of commercially damaging species

(1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm must notify the Scottish Ministers as soon as reasonably practicable after the person becomes aware of, or suspects, the presence of a commercially damaging species on the fish farm or shellfish farm.

(2) Subsection (1) applies to any person who is employed, or acts as an agent, in connection with the operation of a fish farm or shellfish farm as it applies to a person mentioned in that subsection; but notification under this subsection need not be given if it has been given under subsection (1).

(3) Notification under subsection (1) or (2) must contain the following—
(a) where the fish farm or shellfish farm is authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), the name and number of the site where the commercially damaging species is present or suspected of being present,

(b) the name and contact details of—
   (i) the person providing the notification, and
   (ii) the person carrying on the business of fish farming or shellfish farming at the fish farm or shellfish farm,

(c) the grid reference on the ordnance map of the fish farm or shellfish farm, or part of such farm, where the commercially damaging species is present or is suspected of being present,

(d) the type of commercially damaging species (if known),

(e) the date on which the person providing the notification first became aware of, or suspected, the presence of the commercially damaging species,

(f) the age in months of the commercially damaging species (if known), and

(g) the stage of growth of the commercially damaging species (if known).

(4) A person who fails to give a notification in accordance with subsection (1) or (2) commits an offence.

(5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for failing to give the notification.

(6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Control agreements

(1) This section applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm.

(2) The Scottish Ministers must form a preliminary view as to whether and, if so, what measures should be taken to—
   (a) remove the species from,
   (b) reduce the incidence of the species on,
   (c) prevent the spread of the species beyond, or
   (d) otherwise control the species on,
   the fish farm or shellfish farm.

(3) Where the Scottish Ministers form a preliminary view under subsection (2) that measures should be taken, they must—
   (a) serve notice on the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm of the preliminary view, and
   (b) consult the person in order to secure agreement—
      (i) that measures require to be taken,
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(4) Where agreement is reached on the matters mentioned in subsection (3)(b), the Scottish Ministers must prepare an agreement (a “control agreement”) specifying—

(a) the parties to it,

(b) the measures which are to be taken in relation to the commercially damaging species,

(c) which of those measures are to be taken—

(i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and

(ii) by the Scottish Ministers, and

(d) the time limits within which any measures specified under paragraph (c) are to be taken.

(5) A control agreement may specify different measures to be taken in respect of different fish farms or shellfish farms.

(6) The Scottish Ministers must send a copy of the control agreement to the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm.

(7) The person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm must take such measures as the agreement may require of that person in accordance with its provisions.

(8) The Scottish Ministers must, at least once in every 18 month period, review a control agreement for the purpose of assessing compliance with its provisions.

14 Control schemes

(1) Subsection (2) applies where the Scottish Ministers have served a notice under section 13(3)(a) in relation to a commercially damaging species that is present on a fish farm or shellfish farm, and—

(a) either—

(i) the Scottish Ministers are satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out, or

(ii) 6 weeks have elapsed since the Scottish Ministers served the notice and no agreement has been reached on the matters mentioned in section 13(3)(b), and

(b) the Scottish Ministers continue to have the view that measures should be taken to—

(i) remove the species from,

(ii) reduce the incidence of the species on,

(iii) prevent the spread of the species beyond, or
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(iv) otherwise control the species on,

the fish farm or shellfish farm.

(2) The Scottish Ministers must make a scheme (a “control scheme”) for the purpose of ensuring that any measures mentioned in subsection (1)(b) which they consider should be taken are taken.

(3) The Scottish Ministers must notify the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made.

(4) A control scheme must—

(a) specify the date on which it is to come into effect (which date must be not less than 14 days after the day on which it was made),

(b) identify the fish farm or shellfish farm to which it relates,

(c) specify the measures that are to be taken in relation to the commercially damaging species or otherwise,

(d) specify which of those measures are to be taken—

(i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and

(ii) by the Scottish Ministers, and

(e) prescribe time limits within which any measures specified under paragraph (d) are to be taken.

(5) A control scheme may—

(a) specify different measures to be taken—

(i) by different persons such as are mentioned in subsection (4)(d),

(ii) in respect of different fish farms or shellfish farms,

(b) provide for the extension of any time limit prescribed in the scheme,

(c) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(6) Schedule 1, which makes provision about the making, variation and revocation of control schemes, and appeals against such matters, has effect.

(7) The person who for the time being carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates must take such measures as the scheme may require of that person in accordance with its provisions.

(8) The Scottish Ministers must, at least once in every 12 month period, review a control scheme for the purpose of assessing compliance with its provisions.

(9) Where the Scottish Ministers are of the opinion that a person has failed to comply with subsection (7), they may carry out the requirement if they are satisfied that it is still necessary to do so.

15 Emergency action notices

(1) This section applies where the Scottish Ministers are satisfied—
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(a) that a commercially damaging species is present on a fish farm or shellfish farm, and

(b) that unless urgent action is taken, the commercially damaging species will spread quickly to other areas and have an immediate and significant adverse impact on—

(i) other fish or shellfish or the ability of persons to commercially exploit them, or

(ii) the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming.

(2) No notice under subsection (3) of section 13 need be served on a person mentioned in paragraph (a) of that subsection, and no consultation to secure an agreement with such a person need be carried out under paragraph (b) of that subsection.

(3) But the Scottish Ministers must serve on such a person notice (an “emergency action notice”) of their intention to take urgent action in respect of the commercially damaging species.

(4) An emergency action notice must state—

(a) the type of commercially damaging species that is present on the fish farm or shellfish farm,

(b) the nature of the threat that it poses and the impact mentioned in subsection (1)(b) that it will have,

(c) the measures that the Scottish Ministers propose to take for the purpose of—

(i) removing the species from,

(ii) reducing the incidence of the species on,

(iii) preventing the spread of the species beyond, or

(iv) otherwise controlling the species on,

the fish farm or shellfish farm, and

(d) the places where, the times at which and the methods by which the Scottish Ministers intend to carry out such measures.

(5) No earlier than 14 days after the day on which an emergency action notice has been served, the Scottish Ministers may take—

(a) such measures as are specified in the notice,

(b) such steps towards taking such measures as the Scottish Ministers think fit.

16 **Appeals in connection with emergency action notices**

(1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which an emergency action notice under section 15 relates may appeal by way of summary application to a sheriff against—

(a) the decision of the Scottish Ministers to serve the notice,

(b) the terms of such a notice.

(2) An appeal under subsection (1) must be made within the period of 14 days beginning with the day on which the emergency action notice is served.
(3) In an appeal under subsection (1)—
   (a) the sheriff may make such order as the sheriff thinks appropriate, and
   (b) the sheriff’s decision is final.

Powers

17 Power to enter fish farms, shellfish farms, etc.

(1) A person authorised by the Scottish Ministers for a purpose mentioned in subsection (2) has the power to enter—
   (a) any land, fish farm or shellfish farm,
   (b) any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm.

(2) The purposes for which the Scottish Ministers may authorise a person are—
   (a) the obtaining of information by them in connection with satisfying themselves as to matters mentioned in subsection (1) of section 15,
   (b) the determination of whether any of their functions under any of sections 13 to 15 should be carried out,
   (c) the carrying out of any of those functions,
   (d) the determination of how far and in what manner any requirement placed on any person under or by virtue of this Chapter has been complied with.

(3) A power of entry under this section must be exercised at a reasonable hour unless the person exercising it—
   (a) is doing so for a purpose mentioned in subsection (2)(a),
   (b) is doing so for the purpose of determining whether the Scottish Ministers’ functions under section 15 should be carried out, or
   (c) otherwise considers the case is one of urgency.

(4) Any person who proposes to exercise any power of entry conferred by this section must, if so required, produce evidence of the person’s identity and authorisation.

Offences

18 Offences in relation to control agreements, control schemes, etc.

(1) A person commits an offence if the person refuses or fails to comply with any requirement imposed on the person by a control agreement under section 13 or a control scheme under section 14.

(2) A person commits an offence if the person wilfully obstructs any person authorised under subsection (1) of section 17 carrying out any function under that section.

(3) It is a defence for a person charged with an offence under subsection (1) of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(5) A person who commits an offence under subsection (2) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to a fine.

Interpretation of Chapter 3

19 Interpretation of Chapter 3
In this Chapter, “commercially damaging species” means a species specified in an order under section 8(1).

CHAPTER 4
PLANNING PERMISSION

19A Planning permission for marine fish farms
(1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.

(2) After subsection (2) insert—
“(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—
(a) by order, or
(b) on application to them in accordance with regulations under subsection (8).”.

(3) After subsection (4) insert—
“(4A) Subsection (4B) applies where—
(a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and
(b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.

(4) In subsection (8)—
(a) paragraph (a) is repealed, and
(b) in paragraph (b), for the words “such an application” substitute “an application for planning permission”.

PART 2
SALMON FISHERIES, ETC.

Governance

20 District salmon fishery boards: openness and accountability

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 44 (financial powers and duties of district salmon fishery boards), after subsection (1) insert—

“(1A) As soon as practicable after the annual meeting held under subsection (1) above, the clerk of the board must—

(a) arrange for the final report and audited accounts to be published; and

(b) send a copy of the final report and audited accounts to the Scottish Ministers.

(1B) In subsection (1A) above, the references to the final report and audited accounts are references to—

(a) the report and audited accounts as submitted for consideration at the annual meeting held under subsection (1) above; or

(b) if they are revised following consideration at the meeting, the revised versions of them.”.

(3) After section 46 insert—

“46A Annual report

(1) This section applies in relation to the report to be prepared under section 44(1)(a) of this Act by a district salmon fishery board.

(2) The board must ensure that the report contains, in particular—

(a) a summary of what the board have done in carrying out their functions under this Act, or any other enactment, during the year to which the report relates,

(b) a summary of what the board propose to do in carrying out those functions in the following year,

(c) information about complaints made to the board during the year, including—

(i) the number of complaints, and

(ii) a statement of the nature of each complaint and how it was disposed of, and

(d) a statement as to how the board—

(i) have complied during the year with the good governance requirements, and

(ii) propose to comply with those requirements in the following year.

(3) For the purposes of subsection (2)(d) above, the “good governance requirements” are the requirements under—
(a) this section,
(b) section 44(1) and (1A) of this Act, and
(c) sections 46B to 46E of this Act.

46B Annual public meeting

5 (1) A district salmon fishery board—

(a) must hold one public meeting in each year, to be known as the “annual public meeting” of the board, and

(b) may hold other public meetings in the course of the year.

(2) Subject to subsection (4) below, the matters to be considered at the annual public meeting are for the board to determine, but must include the final report and statement of accounts required to be prepared under section 44(1).

(3) The reference in subsection (2) above to the final report and audited accounts is to be construed in accordance with section 44(1B) of this Act.

(4) The board must ensure that members of the public, and others who attend or propose to attend the meeting, are given an opportunity—

(a) to propose matters for consideration at the meeting, and

(b) to speak at the meeting.

46C Further provision about meetings

(1) Subsection (2) below applies in relation to—

(a) the annual meeting of qualified proprietors required to be called by the clerk of a district salmon fishery board under section 44(1) of this Act, and

(b) the annual public meeting of a district salmon fishery board.

(2) The clerk of the board must, no later than 21 days before the day on which the meeting is to be held—

(a) prepare a notice—

(i) specifying the date and time of the meeting and the place where it is to be held,

(ii) containing a list of the matters to be considered at the meeting,

(iii) stating that the meeting is open to the public, and

(iv) in the case of the annual public meeting, providing information as to how salmon anglers, tenant netsmen and other members of the public can submit proposals for matters to be considered at the meeting,

(b) arrange for the notice to be published in such manner as the clerk considers appropriate, and

(c) send a copy of the notice to the Scottish Ministers.

(3) In relation to any other meeting of a district salmon fishery board, the clerk of the board must—
(a) take such steps as the clerk considers appropriate to publicise the meeting, and
(b) subject to subsection (6) below, ensure that the public are given an opportunity to attend the meeting.

(4) Subsections (5) to (9) below apply in relation to—
(a) the meetings referred to in subsection (1) above, and
(b) any other meeting of a district salmon fishery board.

(5) Subject to subsection (6) below, the board must ensure that the business at the meeting is conducted in public.

(6) In the case of a meeting other than the annual public meeting, the board may, if there is a good reason for doing so, decide to conduct the meeting, or to consider any particular item of business, in private.

(7) As soon as practicable after the meeting, the clerk of the board must—
(a) prepare a minute of the meeting,
(b) arrange for the minute to be published in such manner as the clerk considers appropriate, and
(c) in the case of the minutes of the meetings referred to in subsection (1) above, send a copy of the minutes to the Scottish Ministers.

(8) Subsection (9) below applies where the board decide—
(a) to conduct the meeting in private, or
(b) to consider any item of business at the meeting in private.

(9) The board must state reasons for the decision and ensure that the statement of reasons is included in the minute of the meeting.

46D Complaints procedure

(1) A district salmon fishery board must maintain, and keep under review, proper arrangements for dealing with complaints made to the board about the way in which the board have carried out, or propose to carry out, their functions under this Act or any other enactment.

(2) A board’s arrangements under subsection (1) above must, in particular, include provision for dealing with complaints made by—
(a) members of the public,
(b) proprietors of salmon fisheries in the board’s district,
(c) salmon anglers in the board’s district,
(d) tenant netsmen in the board’s district,
(e) members of the board,
(f) other district salmon fishery boards.

(3) The arrangements may make different provision in relation to different categories of complaint or complainant.

(4) As soon as practicable after making or reviewing arrangements under subsection (1) above, a district salmon fishery board must—
(a) take such steps to publicise the arrangements as the board consider appropriate in order to bring them to the attention of persons who may wish to make complaints, and  

(b) send to the Scottish Ministers a note of the arrangements.

(5) A district salmon fishery board must keep records of complaints made to the board about the way in which they have carried out, or propose to carry out, their functions, including information about how each complaint was disposed of.

46E  Members’ interests

(1) A district salmon fishery board must maintain, and keep under review, proper arrangements for the registration and declaration of relevant financial interests of members of the board.

(2) A board’s arrangements under subsection (1) above must, in particular, include provision for—

(a) further defining what are relevant financial interests,

(b) the clerk to keep a register of members’ relevant financial interests,

(c) members to register their relevant financial interests in the register,

(d) members to declare any relevant financial interests before taking part in the board’s consideration of any business,

(e) members to be excluded from taking part in the board’s consideration of any business in which the member has a relevant financial interest.

(3) A district salmon fishery board must ensure that the register of members’ relevant financial interests is made available for public inspection.

(4) In this section, “relevant financial interests”—

(a) means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member’s view on any matter being considered by the board, and

(b) includes such interests held by a member or by another person with whom the member has a personal or business relationship.

46F  Ministerial power to modify the good governance requirements

(1) The Scottish Ministers may by order—

(a) modify any of the good governance requirements,

(b) modify this Act so as to impose further requirements on district salmon fishery boards.

(1A) An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (2) below.

(2) The purposes are—
(a) ensuring that the boards’ affairs are conducted in an open and accountable manner,
(b) ensuring that the boards’ affairs are conducted to appropriate standards of propriety and good governance.

3 An order under subsection (1) above may include incidental, supplemental, consequential, transitional, transitory or saving provision.

4 In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.

46G Ministerial power to dissolve the committee constituting a board

1 This section applies where the Scottish Ministers consider that a district salmon fishery board have persistently—
(a) failed to comply with the good governance requirements, or
(b) otherwise contravened the requirements of this Act.

2 The Scottish Ministers may by order dissolve the committee constituting the board on a date specified in the order.

3 The dissolution of the committee by an order under subsection (2) above has the same effect in relation to the committee (and the board) as the expiry of the period of three years mentioned in sections 43(3) and 47(1) of this Act.

4 Accordingly, the references in section 43(3) and 47(1) of this Act to the expiry of the period of three years are to be read, in relation to a committee dissolved by an order under subsection (2) above, as including a reference to the date of dissolution specified in the order.

5 In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.”.

21 Duty to consult and report before making certain applications

1 The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

2 In each of the following provisions, for “10” substitute “9B”—
(a) subsection (7) of section 33 (salmon fishing: regulations as to baits and lures),
(b) subsection (3) of section 35 (designation orders),
(c) subsection (4) of section 36 (estuary limits),
(d) subsection (4) of section 37 (annual close times for salmon).

3 In schedule 1 (procedure for making certain orders and regulations under the Act), before paragraph 10 insert—

“9B (1) This paragraph applies where a person (the “applicant”) proposes to make an application to the Scottish Ministers under paragraph 1, 3, 5 or 7 above.

(2) The applicant must—
(a) give notice in accordance with sub-paragraph (3) below that an application is proposed,

(b) specify in the notice the period within which, and the manner in which, representations or objections with respect to the proposed application may be made,

(ba) specify in the notice details of—

(i) where and how such representations or objections (if any are made) may be viewed, and

(ii) how copies of any such representations or objections that are made may be obtained,

(c) consult persons who, so far as the applicant can reasonably ascertain, have an interest in, or may be affected by, the proposed application, and

(d) specify the period (being not less than 28 days beginning with the date of consultation) within which, and the manner in which, representations or objections with respect to the proposed application may be made by such persons.

(3) A notice of the proposed application must be published at least once in each of two successive weeks in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application.

(4) The period mentioned in sub-paragraph (2)(b) above is a period of not less than 28 days beginning with—

(a) if notice of the proposed application is published only once in the first of the two successive weeks as mentioned in sub-paragraph (3) above, the date on which it is published in that week,

(b) if such notice is published more than once in the first of those two successive weeks, the date on which it is first published in that week.

(5) In deciding whether or not to make the proposed application, the applicant must take into account any representations and objections made in respect of it.

(7) Having decided whether or not to make the proposed application, the applicant must—

(a) publish in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application a notice containing—

(i) a summary of the reasons for the decision,

(ii) details of where and how a written statement of such reasons may be viewed, and

(iii) details of how copies of such a written statement may be obtained, and

(b) send a copy of such a written statement to any person who made representations or objections to the proposed application under this paragraph.

(8) The costs of complying with sub-paragraphs (2) and (7) above are to be met by the applicant.
9C (1) This paragraph applies where an applicant, having complied with the requirements of paragraph 9B above, decides to make an application mentioned in sub-paragraph (1) of that paragraph.

(2) When making the application, the applicant must include a report—

(a) stating that the requirements of paragraph 9B above have been complied with,

(b) explaining how those requirements were complied with,

(c) providing details of the persons consulted,

(d) explaining the substance of any representations and objections made in relation to the application, and the extent to which they were taken into account in deciding to proceed with the application, and

(e) giving the reasons for proceeding with the application.”.

Management

22 Carcass tagging

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 21 insert—

“21A Salmon carcass tagging

(1) The Scottish Ministers may by regulations make provision for or in connection with tagging the carcasses of salmon.

(2) Regulations under subsection (1) above may, in particular, make provision—

(a) about—

(i) the nature and form of tags,

(ii) the information which tags are to contain and the nature and form of that information,

(iii) applications for, and the supply, issue and storage of, tags,

(iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons,

(v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed,

(vi) the circumstances in which, and the time at or by which, tags may be removed,

(vii) the steps to be taken in the event of loss of, or damage to, tags,

(b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the regulations apply (including the form and content of such records),
(c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e) below, by such methods as the regulations may specify, and the steps to be taken in the event of loss of, or damage to, the records,

(d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in paragraph (e) below, including provision about the retention of tags after their removal,

(e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the regulations (including the appointment and functions of such persons),

(f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in paragraph (e) above of salmon—
   (i) that have not been tagged, or
   (ii) from which a tag has been removed otherwise than in accordance with the provisions of the regulations,

(g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),

(h) for exemptions and exceptions to the regulations and for matters in respect of which the regulations do not apply.

(3) Regulations under subsection (1) above may make—

(a) different provision for different purposes and areas,

(b) incidental, supplemental, consequential, transitional, transitory or saving provision,

(c) such modifications of Part 5 of this Act as the Scottish Ministers think fit.

(4) A person commits an offence if the person—

(a) sells, offers or exposes for sale, or has in the person’s possession, any salmon—
   (i) that has not been tagged in accordance with regulations under subsection (1) above, or
   (ii) from which a tag has been removed otherwise than in accordance with such regulations,

(b) acts in contravention of such regulations, or

(c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such regulations.

(5) It is a defence for a person charged with an offence under subsection (4)(c) above to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above—
(a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale,
(b) may be convicted on the evidence of one person.”.

(3) In section 30 (exemptions in relation to fish farming)—

(a) in subsection (1), after “under” insert “section 21A or”,
(b) in subsection (5), after “18(1)(b)” insert “, 21A(4)(a) or (b)”.

(4) In section 68 (orders and regulations), in subsection (4), after “under” insert “subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under”.

Powers to take fish or samples for analysis, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 64 insert—

“64A Powers in relation to salmon and freshwater fisheries: sampling, etc.

(1) A person authorised by the Scottish Ministers (an “authorised person”) may—

(a) for a purpose mentioned in subsection (2)(a) or (b) below, require a person having rights in a salmon fishery or freshwater fishery—

(i) to permit the authorised person to take and retain fish from the fishery,

(ii) to permit the authorised person to take samples of material from fish in the fishery,

(iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,

(b) for a purpose mentioned in subsection (2)(c) below, affix a tag of such type and in such a way as the Scottish Ministers consider appropriate to any fish taken from a salmon fishery or freshwater fishery,

(c) for a purpose mentioned in subsection (2)(d) below, enter on a salmon fishery or freshwater fishery.

(2) The purposes referred to in subsection (1) above are—

(a) carrying out analysis of the fish or samples by any method that the Scottish Ministers consider appropriate,

(b) ascertaining whether an offence has been committed under section 33A of this Act,

(c) tracking or monitoring the fish,

(d) exercising the powers mentioned in paragraphs (a) and (b) of subsection (1) above, or tracking or monitoring fish tagged under paragraph (b) of that subsection.

(3) An authorised person seeking to exercise a power mentioned in subsection (1) above must, if requested, produce evidence of identity and authorisation.

(4) A person having rights in a salmon fishery or freshwater fishery commits an offence if the person—
(a) fails or wilfully refuses to comply with a requirement under paragraph (a) of subsection (1) above, or
(b) obstructs an authorised person in the exercise of any of the powers under paragraph (b) or (c) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(a) above to show that the person had a reasonable excuse for failing or refusing to comply with a requirement as mentioned in that subsection.

(6) A person who commits an offence—
(a) under subsection (4)(a) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
(b) under subsection (4)(b) above is liable on summary conviction—
(i) to a fine not exceeding level 3 on the standard scale,
(ii) to imprisonment for a term not exceeding 3 months, or
(iii) to both such fine and such imprisonment.

(7) In this section, references to a person having rights in a salmon fishery or freshwater fishery are to be construed in accordance with section 64(3) of this Act.”.

24 Power of Scottish Ministers to conduct inquiries and obtain information

(1) Section 64 of the Salmon and Freshwater (Consolidation) (Scotland) Act 2003 (power of the Scottish Ministers to conduct inquiries and to obtain information) is amended in accordance with this section.

(2) In subsection (1)—
(a) before paragraph (a) insert—
“(za) require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably request;”,
(b) in paragraph (a), the words from “, provided” to the end of the paragraph are repealed.

(3) In subsection (2), for the words “Any proprietor or occupier of a fishery” substitute “Any person having rights in a salmon fishery or freshwater fishery”.

(4) After subsection (2) insert—
“(3) In this section, a “person having rights in a salmon fishery or freshwater fishery” means—
(a) a proprietor of a salmon fishery;
(b) an occupier of such a fishery;
(c) an owner of land to which a right of fishing for freshwater fish pertains;
or
(d) an occupier of such a right.”.
Monitoring and evaluation of the effects of orders, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (6) insert—

“(6A) Regulations under subsection (1) above may impose requirements on district salmon fishery boards in relation to monitoring and evaluation of the effect of the regulations on salmon stocks.

(6B) A district salmon fishery board commits an offence if the board—

(a) acts in contravention of any such requirements; or

(b) fails to take any action required of the board by any such requirements.

(6C) A board which commits an offence under subsection (6B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) In section 37 (annual close times for salmon)—

(a) in subsection (2), after “below” insert “and to section 38(5)(c) of this Act”,

(b) in subsection (3), at the beginning insert “Without prejudice to section 38(5)(c) of this Act,”,

(c) after subsection (3) insert—

“(3A) An annual close time order may impose requirements on district salmon fishery boards or proprietors of salmon fisheries in relation to monitoring and evaluation of the effect of the order on salmon stocks.

(3B) A district salmon fishery board or proprietor commits an offence if the board or proprietor—

(a) acts in contravention of any such requirements; or

(b) fails to take any action required of the board or proprietor by any such requirements.

(3C) A board which or proprietor who commits an offence under subsection (3B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 38 (salmon conservation regulations)—

(a) in subsection (4), after “subsection (5)(b)” insert “and (c)”,

(b) in subsection (5), after paragraph (b) insert—

“(c) subject to section 37(1) of this Act, prescribe for any salmon fishery district the dates of the annual close time for salmon and the periods within that time when it is permitted to fish for and take salmon by rod and line.”,

(c) in subsection (6), after paragraph (b) insert—

“(ba) impose on district salmon fishery boards or proprietors of salmon fisheries such requirements as the Scottish Ministers consider necessary or expedient in relation to monitoring and evaluation of the effect of the regulations on salmon stocks;”.

Aquaculture and Fisheries (Scotland) Bill
Part 2—Salmon fisheries, etc.
26 **Power to vary procedures for orders, etc. relating to certain fisheries**

   (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

   (2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (7) insert—

   “(8) The Scottish Ministers may by order vary the provisions of—

   (a) subsections (2) to (5) above;

   (b) paragraphs 9B to 15 of schedule 1 to this Act as they apply to the making of regulations under subsection (1) above.”.

   (3) In section 35 (designation orders), subsection (4) is repealed.

   (4) In section 39 (procedure for making orders and regulations under section 33 and Part 2)—

   (a) the existing text becomes subsection (1) of section 39,

   (b) after that subsection insert—

   “(2) The Scottish Ministers may by order vary the provisions of schedule 1 to this Act.

   (3) An order under subsection (2) above may make different provision for different purposes.

   (4) Subsection (2) above is without prejudice to section 33(8)(b) of this Act.”.

27 **Offence of fishing for salmon during annual close time**

In section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (fishing for salmon during annual close time), in subsection (2), for the words from “by”, where it second occurs, to the end of the subsection substitute “in the district in which the fishing occurs—

(a) by the regulations or byelaws in force in that district;

(b) by a designation order made in respect of that district;

(c) in accordance with the provisions mentioned in section 37(2)(b) of this Act as they apply in respect of that district;

(d) by an annual close time order made in respect of that district; or

(e) by regulations under section 38 of this Act that make provision as mentioned in subsection (5)(c) of that section in respect of that district.”.

28 **Consents for introduction of fish into inland waters**

   (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

   (2) In section 33A (unauthorised introduction of fish into inland waters)—

   (a) in subsection (3), for “this section” substitute “subsection (1) or (2) above”,

   (b) after subsection (3) insert—

   “(3A) The appropriate authority may, in granting consent for the purposes of subsection (3)(b) above, impose conditions or requirements.”.
(3B) A person shall be guilty of an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(3C) It is a defence for a person charged with an offence under subsection (3B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection."

(c) after subsection (4) insert—

“(4A) Subsection (4) is subject to provision made in regulations under section 33B of this Act.”.

(3) After section 33A insert—

“33B Power to modify district salmon fishery boards’ functions under section 33A

(1) This section applies to the functions of the appropriate authority under section 33A(3)(b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.

(2) The Scottish Ministers may by regulations—

(a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,

(b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances,

(c) in relation to an application referred to the Scottish Ministers by virtue of provision made under paragraph (b) above, provide for the Scottish Ministers—

(i) to determine the application and to carry out the consenting functions in relation to the application, or

(ii) to issue directions to the district salmon fishery board to which the application was made about the determination of the application and the carrying out of the consenting functions in relation to the application.

(3) Regulations under subsection (2) above may—

(a) make different provision for different purposes, including different provision for—

(i) different district salmon fishery districts, or

(ii) different inland waters or parts of such waters,

(b) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(4) In subsection (2) above, “specified” means specified in regulations under that subsection.”.
29 Offences exempted by permission or consent: power to attach conditions etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 27 (exemption from certain offences: salmon)—

(a) after subsection (1) insert—

“(1A) In granting permission under subsection (1) above, a district salmon fishery board or (as the case may be) the Scottish Ministers may impose conditions or requirements.

(1B) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(1C) It is a defence for a person charged with an offence under subsection (1B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(1D) A person who commits an offence under subsection (1B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”,

(b) in subsection (3), after “permitted” insert “, any conditions or requirements imposed under subsection (1A) above”.

(3) In section 28 (exemptions: fish other than salmon), after subsection (2) insert—

“(3) In granting permission under subsection (1) above, the Scottish Ministers may impose conditions or requirements.

(4) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 30 (exemptions in relation to fish farming), after subsection (2) insert—

“(2A) In granting consent under subsection (2) above, the Scottish Ministers may impose conditions or requirements.

(2B) A person commits an offence if the person—

(a) acts in contravention of any such condition or requirement; or

(b) fails to take any action required of the person by any such condition or requirement.

(2C) It is a defence for a person charged with an offence under subsection (2B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
(2D) A person who commits an offence under subsection (2B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003: Crown application

29A Application of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to the Crown

For section 67 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (Crown application) substitute—

“67 Application of this Act to the Crown

(1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.

(2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (2), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(b) belongs to an office-holder in the Scottish Administration or a Government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.

(6) The powers conferred by sections 54(1), 64(1)(a) and 64A(1)(c) are exercisable in relation to land an interest in which belongs to Her Majesty in right of Her private estates only with the consent of a person appointed by Her Majesty under the Royal Sign Manual or, if no such appointment is made, by the Scottish Ministers.

(7) In this section—

(a) references to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862,

(b) “Government department” means a department of the United Kingdom government.

(8) For the purposes of this section, “land” includes salmon fisheries.”.
PART 3

SEA FISHERIES

Enforcement of sea fisheries legislation

30 Powers of British sea-fishery officers to enforce sea fisheries legislation

(1) For the purposes of enforcing the sea fisheries legislation, a British sea-fishery officer has—
   (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010, and
   (b) the powers conferred by sections 31 and 34.

(2) Subject to subsection (3), the powers which a British sea-fishery officer has by virtue of subsection (1) for the purposes of enforcing the sea fisheries legislation may be exercised—
   (a) in the Scottish enforcement area, and
   (b) in relation to any Scottish fishing boat wherever it may be.

(3) Those powers may not be exercised in relation to any British warship (that is, any ship belonging to Her Majesty and forming part of Her Majesty’s armed forces).

(4) The powers which a British sea-fishery officer has by virtue of subsection (1) are without prejudice to any other powers exercisable by the officer for the purposes of enforcing the sea fisheries legislation.

(5) However, the officer may exercise any such other power only in a case where the officer is unable to exercise a power which the officer has by virtue of subsection (1).

(6) So far as necessary for the purposes, or in consequence, of the exercise of the powers referred to in subsection (1)(a), references in Part 7 of the Marine (Scotland) Act 2010 to a marine enforcement officer are to be read as including references to a British sea-fishery officer.

(7) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—
   (a) any reference to a power conferred by Part 7 of that Act included a reference to—
      (i) such a power as applied by subsection (1)(a), and
      (ii) the powers conferred by sections 31 and 34, and
   (b) any reference to a marine enforcement officer’s functions under that Act included a reference to the functions of a British sea-fishery officer under—
      (i) Part 7 of that Act as applied by subsection (1)(a), and
      (ii) sections 31 and 34.

Detention of vessels in connection with court proceedings

31 Power to detain vessels in connection with court proceedings

(1) This section applies where—
(a) a British sea-fishery officer has reasonable grounds for suspecting that an offence under the sea fisheries legislation has been committed by the master, an owner or a charterer of a vessel (referred to as “A”), and

(b) the officer reasonably believes that—

(i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the vessel is detained under this section, or

(ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.

(2) Where this section applies, a British sea-fishery officer may—

(a) take, or arrange for another person to take, the vessel and its crew to the port that appears to the officer to be the nearest convenient port, or

(b) require any person who is for the time being in charge of the vessel to take it and its crew to that port.

(3) When the vessel has been taken to a port, the officer may—

(a) detain it there, or

(b) require the person for the time being in charge of it to do so.

(4) A British sea-fishery officer who detains a vessel under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the vessel.

(5) The notice must state—

(a) the reasons for detaining the vessel, and

(b) the circumstances in which the vessel may be released.

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32 Release of vessel detained under section 31

(1) This section applies where a vessel is being detained under section 31.

(2) The vessel ceases to be detained under that section if one of the following things occurs—

(a) the notice of detention is withdrawn,

(b) a sheriff orders the release of the vessel under section 33,

(c) any proceedings taken against the master, owner or charterer of the vessel have concluded,

(d) the court referred to in section 31(1)(b)(ii) exercises any power it has to order the vessel to be detained.

(3) A notice of detention is withdrawn by the service by a British sea-fishery officer of a further notice on the person who is for the time being in charge of the vessel, stating that the vessel is released.

(4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.

(5) The grounds of release are—
Aquaculture and Fisheries (Scotland) Bill

Part 3—Sea fisheries

33 Power of sheriff to order release of vessels

(1) This section applies where a vessel is being detained under section 31.

(2) If, on an application to a sheriff by the master, an owner or a charterer of the vessel, the sheriff is satisfied as to either of the matters mentioned in subsection (3), the sheriff may order that the vessel be released.

(2A) An application under subsection (2) is to be made by way of summary application.

(3) Those matters are that—

(a) the continued detention of the vessel under section 31 is not necessary to secure that the master, an owner or a charterer of the vessel will attend court, or

(b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.

Inspection and seizure of objects used in commercial sea fishing

34 Power to inspect and seize objects

(1) A British sea-fishery officer may inspect any object which the officer reasonably believes has been, or is being, used for or in connection with commercial sea fishing.

(2) The officer may lift an object out of the sea for the purpose of inspecting it under this section.

(3) A British sea-fishery officer who has inspected an object under this section may seize the object.

(4) The power conferred by subsection (3) may be exercised only—

(a) for the purpose of determining whether an offence under the sea fisheries legislation has been, or is being, committed, or

(b) in relation to an object that the officer reasonably believes to be evidence of the commission of such an offence.

(5) If, having inspected an object under this section, the officer decides not to seize it under subsection (3), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found.

(6) If it is not reasonably practicable to replace the object in accordance with subsection (5), the officer may seize the object until such time as it may be collected by its owner.

(7) A power conferred by this section to seize an object includes power to seize—
(a) anything that is attached to the object,
(b) anything that is contained in the object.

(8) A reference in this section to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea.

(9) Anything seized under this section is to be delivered to the Scottish Ministers as soon as reasonably practicable.

(10) In this section, “commercial sea fishing” means—
(a) any activity for which a licence is required by virtue of an order under section 4 (licensing of fishing boats) of the Sea Fish (Conservation) Act 1967,
(b) any activity regulated by an order—
(i) under section 1 (power to make orders as to fisheries for shellfish) of the Sea Fisheries (Shellfish) Act 1967, and
(ii) to which section 2 (right of several fishery) or 3 (right of regulating a fishery) of that Act applies, and
(c) any activity regulated by an order under section 1 (general power to prohibit sea fishing in specified areas) of the Inshore Fishing (Scotland) Act 1984.

(11) The Scottish Ministers may by order modify the definition of “commercial sea fishing” in subsection (10).

35 Reports of inspections under section 34

(1) This section applies where a British sea-fishery officer inspects an object under section 34.

(2) The officer must prepare a report in relation to the inspection.

(3) The report must state—
(a) the date and time of the inspection,
(b) the identity of the officer who carried out the inspection, and
(c) how the officer may be contacted.

(4) In the case of an object seized under section 34(3) or (6), the report must also state—
(a) what has been seized,
(b) the reasons for its seizure, and
(c) any further action that it is proposed will be taken in relation to the object.

(5) Where the object has not been seized under section 34(3) or (6), the officer must, if it is reasonably practicable to do so, attach a copy of the report to the object.

(6) If it is not reasonably practicable to do so, the officer must serve a copy of the report on every person who appears to the officer to be an owner of the object.

(7) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as an owner of the object, the officer must take such steps as the officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it.

(8) Where—
(a) the object has been seized under section 34(3), and
(b) one of the conditions in subsection (9) is satisfied,
the Scottish Ministers must serve a copy of the report on every person who appears to
them to be an owner of the object.

(9) The conditions are—

(a) that a procurator fiscal has decided not to take any proceedings in respect of any
offence in relation to which the object was seized,
(b) where a fixed penalty notice has been issued in respect of such an offence, that the
appropriate fixed penalty has been paid,
(c) that any proceedings taken in respect of such an offence have concluded.

(10) Where the object has been seized under section 34(6), the Scottish Ministers must serve
a copy of the report on every person who appears to the Ministers to be an owner of the
object at the same time as they serve a notice of collection on that person under section
37.

(11) In a case where the Scottish Ministers, after taking reasonable steps to do so, are unable
to identify any person as an owner of the object—

(a) the reference in this section to a requirement for the Scottish Ministers to serve a
copy of the report on such a person is to be read as a reference to a requirement to
take such steps as the Ministers think fit to bring the contents of the report to the
attention of persons likely to be interested in it, and
(b) the reference in subsection (10) to serving a notice of collection under section 37
is to be read as a reference to taking the steps referred to in subsection (5) of that
section.

36 Retention of objects seized under section 34(3)

(1) An object seized by a British sea-fishery officer under section 34(3) may be retained by
the Scottish Ministers.

(2) If any of the grounds of release in subsection (3) applies, the Scottish Ministers must, as
soon as is reasonably practicable, make the object available for collection.

(3) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any
offence in relation to which the object was seized,
(b) where a fixed penalty notice has been issued in respect of such an offence, the
appropriate fixed penalty has been paid,
(c) that any proceedings taken in respect of such an offence have concluded without
an order for forfeiture having been made in respect of the object.

(4) Subsection (2) does not apply if the object is liable to forfeiture under section 41.

(5) Any reference in this section to an object seized under subsection (3) of section 34
includes a reference to anything seized by virtue of subsection (7) of that section.

37 Disposal of objects seized under section 34

(1) This section applies to—
Retention and disposal of property seized by BSFOs

38 Retention of property seized by British sea-fishery officers

(1) This section applies to property—

(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, other than an object seized under section 34, and

(b) which was seized—

(i) in the Scottish enforcement area, or

(ii) on board a Scottish fishing boat.

(2) The officer must deliver the property to the Scottish Ministers as soon as reasonably practicable.

(3) Subsection (2) is subject to paragraph 13 of schedule 2.

(4) The Scottish Ministers may retain the property.

(5) If any of the grounds of release in subsection (6) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the property available for collection.

(6) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the property was seized,
(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

(7) Subsection (5) does not apply if the property is liable to forfeiture under section 41 or 42.

39 Power of Scottish Ministers to sell seized fish in their possession

(1) The Scottish Ministers may sell any fish that are being retained by them under section 38.

(2) Any power which a court has to order the forfeiture of any such fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.

(3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Scottish Ministers until such time as—

(a) a court exercises any power it has to order the forfeiture of the proceeds, or

(b) any of the grounds of release mentioned in subsection (4) applies.

(4) The grounds of release are—

(a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the fish were seized,

(b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,

(c) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.

(5) If any of the grounds of release mentioned in subsection (4) applies, the Scottish Ministers must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the Scottish Ministers to have been an owner of the fish at the time of the seizure of the fish.

(6) If the proceeds of sale are still in the Scottish Ministers’ possession after the end of the period of 6 months beginning with the date on which the fish were sold, the Scottish Ministers may retain the proceeds and apply them in any manner they think fit.

(7) The Scottish Ministers may exercise their power under subsection (6) to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.

(8) Subject to subsection (11), any fish sold under this section must be sold at auction.

(9) Before selling the fish, the Scottish Ministers must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.

(10) Subsection (11) applies if the owner of the fish requests that the fish be sold—

(a) at a particular auction, or

(b) by a method of sale other than by auction.
(11) The Scottish Ministers must comply with the request unless they consider the request to be unreasonable.

(12) The Scottish Ministers may deduct from the proceeds of sale any reasonable expenses incurred by them in selling the fish.

(13) Where there is more than one owner of the fish, subsection (11) applies only if the request under subsection (10) is made by or on behalf of all the owners.

40 Disposal of property retained by Scottish Ministers under section 38

(1) This section applies to any property being retained by the Scottish Ministers under section 38 which they—

(a) no longer wish to retain for any purpose, or

(b) are required to make available for collection by virtue of that section.

(2) In this section a “notice of collection” is a notice stating that—

(a) the property specified in the notice is available to be collected from the location so specified, and

(b) if the property is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the property.

(3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the property.

(4) The Scottish Ministers may take any other steps they consider appropriate to notify every such person that the property is available to be collected.

(5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property, they must—

(a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and

(b) take such steps as they think fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.

(6) For the purposes of subsection (5) each of the following is an “appropriate person”—

(a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property,

(b) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,

(c) in any other case, the person (if any) from whom the property was seized.

(7) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way they think fit.

Forfeiture

41 Forfeiture of prohibited items

(1) This section applies to any item—
(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and

(b) which was seized—
   (i) in the Scottish enforcement area, or
   (ii) on board a Scottish fishing boat.

(2) The item is liable to forfeiture under this section if the use of the item for sea fishing would in any circumstances constitute an offence under the law of Scotland.

(3) An item forfeited under this section is to be forfeited to the Scottish Ministers who may dispose of it in any manner they think fit.

Forfeiture of fish failing to meet size requirements

(1) This section applies to any fish—
   (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
   (b) which were seized—
      (i) in the Scottish enforcement area, or
      (ii) on board a Scottish fishing boat.

(2) The fish are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence under the law of Scotland has been committed in respect of the fish.

(3) Any fish forfeited under this section are to be forfeited to the Scottish Ministers who may dispose of the fish in any manner they think fit.

Further provision about forfeiture under section 41 or 42

Schedule 2, which makes further provision about forfeiture under section 41 or 42, has effect.

Inshore sea fishing

Contravention of orders prohibiting inshore sea fishing

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—
   “(1B) A person commits an offence if—
      (a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;
      (b) the person is found there at, or about, a time at which the prohibition under the order applies;
      (c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order, and
(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

(2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—

(a) it is proved that—

(i) the accused was found in, or in the immediate vicinity of, the area specified in the order;

(ii) the accused was found there at, or about, a time at which the prohibition under the order applies, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;

(b) sea fish the fishing for which is prohibited by the order.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;

(ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

43B Powers of entry

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) After section 6 insert—
"6A  Power to enter land

(1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.

(2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, and for that purpose may—

(a) open lockfast places;
(b) remove any objects preventing the officer from gaining access to the land;
(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;
(d) require the owner or occupier of the land to allow the officer access to the land.

(3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer’s identity.

(4) A person commits an offence if the person—

(a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
(b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

(6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.

(7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.

(8) A person who commits an offence under subsection (4) above is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;
(b) on conviction on indictment to a fine.

(9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.

(3) After section 10 insert—

“10A  Crown application: Scotland

(1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.

(3) No contravention by the Crown of that section makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown,

(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Enforcement of EU rules

44 Modification of the Fisheries Act 1981: enforcement of EU rules

(1) Section 30 of the Fisheries Act 1981 (enforcement of Community obligations) is amended in accordance with this section.

(2) In subsection (1)—

(a) for paragraph (a) substitute—

“(a) if any fishing boat within the Scottish Zone—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the master, the owner and the charterer (if any) are each guilty of an offence;”,

(b) after paragraph (a) insert—

“(aa) if any Scottish fishing boat outside the Scottish Zone—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the master, the owner and the charterer (if any) are each guilty of an offence;

(ab) if any person in Scotland—

(i) fishes in contravention of any such restriction; or

(ii) fails to comply with any such obligation,

the person is guilty of an offence;”,

(c) in paragraph (b), for “such offences” substitute “offences under paragraph (a), (aa) or (ab) of this subsection”,

(d) in subsection (3), after the definition of “the Ministers” insert—
“Scottish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging;

“Scottish Zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act).”.

Supplementary

45 Conclusion of proceedings

(1) This section applies for determining when any proceedings have concluded for the purposes of this Part.

(2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded—

(a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or

(b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.

(3) Subsection (2) applies for determining when any proceedings on appeal are concluded for the purposes of paragraph (b) of that subsection as it applies for determining when the original proceedings are concluded.

(4) Any reference in subsection (2) to a decision that terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings.

46 Interpretation of Part 3

(1) In this Part—

“appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),

“fish” includes shellfish,

“fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,

“the Scottish enforcement area” means—

(a) Scotland, and

(b) the Scottish zone,

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging,

“the Scottish zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act),

“sea fisheries legislation” means, subject to subsection (2)—
(a) any enactment relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout, and
(b) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing.

(2) “Sea fisheries legislation” does not include—
(a) the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, or
(b) any Order in Council under section 111 of the Scotland Act 1998 (regulation of Border rivers).

**PART 4**

**SHELLFISH**

**Protection of shellfish waters**

(1) The Water Environment and Water Services (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 5 insert—

“5A Shellfish water protected areas

(1) The Scottish Ministers may by order (in this section, a “designation order”) designate an area of coastal water or transitional water as a shellfish water protected area for the purposes of this Part.

(2) An area of coastal water or transitional water may be designated under subsection (1) only if the Scottish Ministers consider it necessary or desirable to do so for the protection or development of economically significant shellfish production.

(3) The Scottish Ministers must review each designation order—

(a) by 22 December 2019, and

(b) by each date falling every 6 years (or such lesser period as the Scottish Ministers may determine) after 22 December 2019.

(4) Subsection (3) applies to a designation order which comes into force after 22 December 2019 as if paragraph (a) were omitted.

(5) A designation order which would, apart from this subsection, fall to be reviewed under subsection (3) by a particular date need not be reviewed by that date if the order came into force less than 6 months before that date; but must otherwise be reviewed in accordance with that subsection.

(6) A designation order may identify the area of coastal water or transitional water by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

(7) The Scottish Ministers must send SEPA a copy of—

(a) a designation order, and

(b) any map prepared in pursuance of subsection (6).”.
(3) In section 7 (register of protected areas), in subsection (3), before paragraph (a) insert—

“(za) any shellfish water protected area,”.

(4) In section 9 (environmental objectives and programmes of measures)—

(a) in subsection (1), in paragraph (a)—

(i) the words “each body of water in the district, and” become sub-paragraph (i) of that paragraph, and

(ii) after that sub-paragraph insert—

“(ii) each shellfish water protected area in the district, and”;

(b) in subsection (7)—

(i) after “objectives” insert—

“(a) in respect of any body of water,”,

(ii) at the end insert “, and

(b) in respect of a shellfish water protected area, includes (without prejudice to the definition in paragraph (a)) such objectives as SEPA considers necessary or desirable to improve or protect that area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption.”.

(5) In section 11 (river basin management plans: publicity and consultation), in subsection (6), after paragraph (f) insert—

“(fa) where any part of the river basin district has been designated as a shellfish water protected area, the Food Standards Agency,”.

(6) In section 28 (interpretation of Part 1), in subsection (1), after the definition of “SEPA” insert—

““shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish,

“shellfish water protected area” means an area of coastal water or transitional water designated by order under section 5A(1),”.

Orders as to fisheries for shellfish

48 Power to make orders as to fisheries for shellfish

(1) In section 1 of the Sea Fisheries (Shellfish) Act 1967 (power to make orders as to fisheries for shellfish), in subsection (1), for the words from “shellfish” to “Minister” substitute “shellfish of any kind specified in the order”.

(2) In section 15 of the Sea Fisheries Act 1968 (amendments of Sea Fisheries (Shellfish) Act 1967)—

(a) subsection (2) is repealed,

(b) in subsection (3), for “that section” substitute “section 1 of that Act”.

48A Contravention of regulated fishery orders

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.
(2) In section 3 (effect of grant of right of regulating a fishery)—

(a) after subsection (4) insert—

“(4A) Subsection (4B) applies where an order under section 1 of this Act—

(a) confers a right of regulating a fishery for any specified description of shellfish, and

(b) imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery or any part of it.

(4B) A person commits an offence if—

(a) the person is found within the limits of, or in the immediate vicinity of, the regulated fishery,

(b) the person is found there at, or about, a time at which the restrictions imposed or regulations made by the order apply,

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or regulations, and

(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to dredge, fish for and take shellfish in contravention of the restrictions or regulations.

(4C) A person who commits an offence under subsection (4B) is liable on summary conviction to a fine not exceeding £50,000.”,

(b) in subsection (5), after “subsection (3)” insert “or (4B)”, and

(c) in subsection (6), for “Subsection (1) of this section” substitute “This section”.

(3) After section 3 insert—

“3A Contravention of regulated fishery orders: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 3(3) of this Act involving dredging, fishing for and taking shellfish in contravention of restrictions imposed or regulations made by—

(a) an order under section 1 of this Act, or

(b) the grantee of such an order.

(2) It is to be presumed that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations if—

(a) it is proved that—

(i) the accused was found within the limits of, or in the immediate vicinity of, the regulated fishery to which the order relates,

(ii) the accused was found there at, or about, a time at which the restrictions or regulations apply, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and
(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the order,

(b) shellfish the dredging, fishing for and taking of which is prohibited by the restrictions or regulations.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence within the limits of, or in the vicinity of, the regulated fishery to which the order relates was for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or requirements, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose,

(ii) of shellfish mentioned in paragraph (b) of that subsection, the shellfish were caught or taken in contravention of the restrictions or requirements.”.

48B   Enforcement of orders: powers of entry

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) After section 4C insert—

“4CA   Power to enter land

(1) For the purposes of exercising the powers conferred by sections 4A to 4C, and of enforcing the restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may at any time enter land (including the foreshore) other than a dwelling house, and for that purpose may—

(a) open lockfast places,

(b) remove any objects preventing the officer from gaining access to the land,

(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object,

(d) require the owner or occupier of the land to allow the officer access to the land.

(2) A British sea-fishery officer may—

(a) exercise the power of entry under subsection (1) on foot or in a vehicle,

(b) when exercising that power, take with the officer—
(i) such persons as appear to the officer to be necessary,
(ii) any equipment or material.

(3) The power of entry under subsection (1)—
(a) may not be exercised in relation to land in respect of which section 4B
confers a power of entry, and
(b) is without prejudice to the power of entry conferred by that section.

(4) A British sea-fishery officer who proposes to exercise the power of entry
conferred by subsection (1) must, if so required, produce evidence of the
officer’s identity.”.

(3) In section 4D—
(a) in subsection (1)—
(i) for the words “or 4B(3) or (12)” substitute “, 4B(3) or (12) or 4CA(2)(b)”,
(ii) for the words “or 4C” substitute “, 4C or 4CA”,
(b) in subsection (2)(a), for the words “or 4B” substitute “, 4B or 4CA”,
(c) after subsection (2) insert—
“(2A) A constable may arrest without warrant any person who the constable
reasonably believes is committing or has committed an offence under
subsection (2) relating to—
(a) a failure to comply with a requirement imposed under a power conferred
by section 4CA,
(b) obstructing a British sea-fishery officer in the exercise of such a power.

(2B) Subsection (2A) above is without prejudice to any power of arrest conferred by
law apart from that subsection.”.

(4) In the title to section 4D, for “4C” substitute “4CA”.

(5) After section 24 insert—

“24A Crown application: Scotland

(1) Section 4CA binds the Crown and applies in relation to Crown land as it
applies in relation to other land.

(2) Nothing in that section is to be taken as in any way affecting Her Majesty in
Her private capacity.

(3) No contravention by the Crown of section 4D(2) in respect of a failure to
comply with a requirement under a power conferred by section 4CA makes the
Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare
unlawful any act or omission of the Crown which constitutes such a
contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in
which—
(a) belongs to Her Majesty in right of the Crown,
(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

49 Power to appoint inspectors before making orders as to fisheries for shellfish

(1) In Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 (provisions with respect to making of orders under section 1)—

(a) in paragraph 4(2), for the words from “may” to “be” substitute “may as soon as reasonably practicable”,

(b) in paragraph 6(1), for the words “conveniently may be” substitute “reasonably practicable”.

(2) The amendment made by subsection (1)(a) does not apply in relation to any application made for an order under section 1 of the Sea Fisheries (Shellfish) Act 1967 before the coming into force of this section.

50 Power to charge in connection with fisheries functions

(1) The Scottish Ministers may by regulations make provision for or about the imposition of charges in connection with the carrying out of such fisheries functions as are specified in the regulations.

(2) In this section, “fisheries functions” means—

(a) functions of the Scottish Ministers under any legislation relating to—

(i) fish farming or shellfish farming,

(ii) salmon or freshwater fisheries,

(iii) sea fishing, or

(b) functions of any other person under any such legislation so far as the person is appointed or authorised by the Scottish Ministers for the purposes of enforcing, or otherwise ensuring compliance with, the legislation.

(3) Regulations under subsection (1) may include provision—

(a) specifying, or for determining, the amount of charges,

(b) specifying, or for determining, the persons or types of person who are to pay charges,

(c) specifying, or for determining, the circumstances in which charges are payable,

(d) for making the carrying out of specified fisheries functions conditional on the payment of charges,

(e) for the imposition of annual or other recurring charges,
(f) for the reduction or waiver of, or exemptions from, charges,
(g) for the recovery and collection of charges,
(h) for the method and timing of payment of charges,
(i) for determining disputes as to the amount of, or liability for, charges.

(4) Regulations under subsection (1)—
(a) may have the effect of requiring a person to pay a charge only if, and so far as, the person is someone in relation to whom a specified fisheries function has been, or is to be, carried out, and
(b) must not have the effect of imposing a charge in a particular case that exceeds the reasonable costs incurred in the carrying out of a specified fisheries function in that case.

(5) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

(6) Regulations under subsection (1) may make different provision for—
(a) different fisheries functions,
(b) different persons or types of person.

(7) Regulations under subsection (1) do not affect any power that the Scottish Ministers have apart from this section to—
(a) impose fees or charges, or recover costs, in connection with the carrying out of any fisheries functions, or
(b) provide for the imposition of such fees or charges or the recovery of such costs.

(8) In this section, “legislation” means any—
(a) enactment, or
(b) EU instrument containing an enforceable EU obligation or an enforceable EU restriction.

Fixed penalty notices

51 Fixed penalty notices

(1) Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 (sea fisheries) is amended in accordance with this section.

(2) In section 25 (issue of fixed penalty notices)—
(a) in subsection (1), for “British sea-fishery” substitute “fixed penalty”,
(b) in subsection (2)—
(i) the words “is an offence” are repealed,
(ii) for paragraphs (a) and (b) substitute—
“(a) is an offence under the Sea Fisheries enactments in respect of which a person mentioned in paragraph (a) of subsection (2A) has functions,”
“(b) is an offence under the marine protection and nature conservation legislation in respect of which a person mentioned in paragraph (b) of that subsection has functions,”
(ba) is an offence under—
   (i) Part 4 of the Marine (Scotland) Act 2010 (marine licensing), or
   (ii) section 5(5) of the Aquaculture and Fisheries (Scotland) Act 2013
        (control and monitoring of operation of wellboats),
   (c) in relation to a person mentioned in any of paragraphs (c) to (f) of that
       subsection, is an offence in respect of which the person has functions.”,

(c) after subsection (2) insert—
“(2A) The persons referred to in subsection (2) are—
   (a) a British sea-fishery officer,
   (b) a marine enforcement officer within the meaning of section 157(1) of the
       Marine (Scotland) Act 2010,
   (c) an inspector within the meaning of section 12 of this Act,
   (d) an inspector within the meaning of regulation 3(1) of the Aquatic Animal
       Health (Scotland) Regulations 2009 (S.S.I. 2009/85),
   (e) an inspector within the meaning of regulation 1(2) of the Animals and
       Animal Products (Import and Export) Regulations 2007 (S.S.I.
       2007/194) who is appointed as mentioned in that regulation by the
       Scottish Ministers for purposes relating to fish farming or shellfish
       farming,
   (f) an authorised officer within the meaning of regulation 2(1) of the
       Animals and Animal Products (Examination for Residues and Maximum
       Residue Limits) Regulations 1997 (S.I. 1997/1729) appointed (whether
       solely or jointly) by the Scottish Ministers to act in matters arising under
       those Regulations relating to fish farming or shellfish farming or the
       products of either such type of farming.

(2B) The Scottish Ministers may by order modify—
   (a) subsection (2) so as to amend the definition of “relevant offence”,
   (b) subsection (2A) so as to—
      (i) add or remove a description of a person to or from those for the
          time being listed in that subsection,
      (ii) vary a description of a person for the time being listed in that
          subsection.

(2C) In subsection (2A)(e) and (f), “fish farming” and “shellfish farming” have
the same meanings as in section 12.

(2D) Despite subsection (1), a fixed penalty officer may not issue a notice in respect
of a relevant offence that involves—
   (a) assault on a person mentioned in subsection (2A),
   (b) obstructing such a person in the exercise of the person’s powers,
   (c) failure to comply with a requirement imposed, or instruction given, by
       such a person.”,

(d) in subsection (3)—
   (i) after the definition of “British sea-fisheries officer” insert—
“‘fixed penalty officer’ means a person appointed as such an officer by the Scottish Ministers;”,

(ii) after the definition of “Sea Fisheries enactments” insert—

“‘the marine protection and nature conservation legislation’ has the meaning given in section 132(2) of the Marine (Scotland) Act 2010;”.  

(3) In section 27 (amount and payment of fixed penalty)—

(a) in subsection (1), for “80 per cent of level 4 on the standard scale” substitute “£10,000”,

(b) in subsection (2), for “British sea-fishery” substitute “fixed penalty”.

(4) In section 31 (withdrawal of fixed penalty notice or expiry of period for paying), in subsection (1), for “British sea-fishery” substitute “fixed penalty”.

(5) For the title of Part 4 substitute “Fixed penalty notices”.

(6) The cross-heading immediately following that title is repealed.

(7) For the cross-heading immediately preceding section 32, substitute the following Part title—

“PART 4A – MISCELLANEOUS AMENDMENTS OF SEA FISHERIES LEGISLATION”.

51A Fixed penalty notices and civil sanctions under the Marine (Scotland) Act 2010

(1) Schedule 2 to the Marine (Scotland) Act 2010 (further provision about civil sanctions under Part 4 (marine licensing)) is amended in accordance with this section.

(2) For paragraph 1 (interpretation) substitute—

“1 In this schedule—

“civil sanction” means a fixed monetary penalty or a variable monetary penalty,

“fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,

“fixed penalty officer” has the meaning given in section 25(3) of that Act.”.

(3) In paragraph 2 (fixed monetary penalties: other sanctions), after sub-paragraph (2)(b) insert—

“(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the fixed monetary penalty.”.

(4) In paragraph 3 (variable monetary penalties: other sanctions), after sub-paragraph (b) insert—

“(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the variable monetary penalty.”.

(5) After paragraph 4, insert—
“Civil sanctions and fixed penalty notices

4A (1) Provision under section 46 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—

(a) serve on the person a notice of intent referred to in section 47(2)(a) in relation to an act or omission constituting the relevant offence, or

(b) impose a fixed monetary penalty on the person in relation to an act or omission constituting the relevant offence.

(2) Provision under section 48 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—

(a) serve on the person a notice of intent referred to in section 49(2)(a) in relation to an act or omission constituting the relevant offence, or

(b) impose a variable monetary penalty on the person in relation to an act or omission constituting the relevant offence.

(3) In this paragraph “relevant offence” has the meaning given in section 25(2) of the Aquaculture and Fisheries (Scotland) Act 2007.”.

PART 6
GENERAL

52 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—

(a) different provision for different purposes or different areas,

(b) incidental, supplemental, consequential, transitional, transitory or saving provision.

(2) The following orders and regulations are subject to the affirmative procedure—

(a) regulations under section 50,

(b) an order under section 54(1) containing provisions which add to, replace or omit any part of the text of an Act.

(3) All other orders and regulations under this Act are subject to the negative procedure.

(4) This section does not apply to an order under section 56(2).

53 Interpretation

In this Act, unless the context otherwise requires—

“British sea-fishery officer” means a person who is a British sea-fishery officer by virtue of section 7(1) of the Sea Fisheries Act 1968,

“disease” means a clinical or non-clinical infection with one or more aetiological agents in fish,

“enforceable EU obligation” means an obligation to which section 2(1) of the European Communities Act 1972 applies,
“enforceable EU restriction” means a restriction to which that section applies,
“fish” means fish of any kind but does not, except in Part 3, include shellfish,
“fish farm” means any place used for the purposes of fish farming,
“fish farming” means the keeping of live fish with a view to their sale or to their
transfer to other waters; but only where such activity is required to be authorised
as an aquaculture production business under regulation 6 of the Aquatic Animal
Health (Scotland) Regulations 2009 (S.S.I. 2009/85),
“marine enforcement officer” has the same meaning as in section 157(1) of the
Marine (Scotland) Act 2010,
“parasite” has the meaning given in section 4(1) of the Aquaculture and Fisheries
(Scotland) Act 2007,
“pathogen” means an organism that causes or contributes to the development of a
disease,
“shellfish” includes crustaceans and molluscs of any kind, and includes any brood,
ware, half-ware, spat or spawn of shellfish,
“shellfish farm” means any place used for the purposes of shellfish farming,
“shellfish farming” means the cultivation or propagation of shellfish with a view
to their sale or their transfer to other waters or land; but only where such activity
is required to be authorised as an aquaculture production business under
regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I.
2009/85).

Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential,
transitional, transitory or saving provision as they consider necessary or expedient for
the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment (including this Act), instrument
or document.

Crown application

(1) No contravention by the Crown of any provision made by or under this Act makes the
Crown criminally liable.

(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful
any act or omission of the Crown which constitutes such a contravention.

(2A) Despite subsection (1), any provision made by or under the provisions of this Act
applies to persons in the public service of the Crown as it applies to other persons.

Commencement

(1) This Part, and sections 4, 19 and 46, come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish
Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.
57 Short title

The short title of this Act is the Aquaculture and Fisheries (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 14(6))

COMMERCIAL DAMAGING SPECIES: CONTROL SCHEMES

Making a control scheme: procedure

1 Where the Scottish Ministers propose to make a control scheme, they must serve on every person who carries on a business of fish farming or shellfish farming on whom the scheme proposes to impose any requirement—
   (a) a draft of the proposed scheme, and
   (b) a notice stating that any such person may, within 14 days of the service of the notice, object to the Scottish Ministers in such manner as may be specified in the notice to the draft control scheme or to any provision contained in it.

2 If no objection is duly made under paragraph 1, or if all objections so made are withdrawn, the Scottish Ministers may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.

3 If any objection duly made under paragraph 1 is not withdrawn, the Scottish Ministers—
   (a) must consider the objection, and
   (b) may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.

4 A control scheme may not be made with any modifications unless—
   (a) every person served with a copy of the draft control scheme under paragraph 1 has been served with a notice of the proposal to make the modification, and
   (b) every such person—
      (i) has either consented to the proposal, or
      (ii) has not, before the expiry of the period of 14 days beginning with the day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Variation or revocation of a control scheme: procedure

5 (1) The Scottish Ministers may—
   (a) make a scheme varying a control scheme, or
   (b) revoke a control scheme.

   (2) The Scottish Ministers may exercise a power under sub-paragraph (1)—
   (a) on the application of a person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement, or
   (b) even if no such application is made.
Before making any variation or revocation such as is mentioned in paragraph 5(1), the Scottish Ministers must serve on every person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement—

(a) a draft of the scheme varying the control scheme or (as the case may be) an intimation of the proposed revocation, and

(b) a notice stating that any such person may, within 14 days of the service of the draft scheme or (as the case may be) the intimation, object to the Scottish Ministers in such manner as may be specified in the notice to the variation or revocation of the control scheme.

If no objection is duly made under paragraph 6, or if all objections so made are withdrawn, the Scottish Ministers may vary or revoke the control scheme (as the case may be).

If any objection duly made under paragraph 6 is not withdrawn, the Scottish Ministers—

(a) must consider the objection, and

(b) may—

(i) make the variation, either in the form of the draft or, subject to paragraph 9, with modifications or,

(ii) revoke the control scheme,

as the case may be.

A variation of a control scheme may not be made with any modification unless—

(a) every person served with a copy of the draft scheme by virtue of paragraph 6 has been served with a notice of the proposal to make the modification, and

(b) every such person—

(i) has either consented to the proposal, or

(ii) has not, before the expiry of the period of 14 days beginning with day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Notwithstanding anything in paragraph 3 or 8, the Scottish Ministers may—

(a) require any person who has made an objection to state in writing the grounds for it, and

(b) disregard the objection for the purposes of this schedule if they are satisfied that the objection is frivolous.

On making a control scheme, or on varying or revoking such a scheme, the Scottish Ministers must serve on every person on whom a notice was required to be served under any of the following provisions—
(a) paragraph 1(b),
(b) paragraph 4(a),
(c) paragraph 6(b),
(d) paragraph 9(a),

a notice stating that the scheme has been made or (as the case may be) that a variation or revocation of the scheme has been made.

Validity of control schemes

Subject to paragraph 13, the validity of a control scheme or of any variation or revocation of such a scheme may not at any time be questioned in any proceedings.

Appeals

Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates may appeal by way of summary application to a sheriff against—

(a) a decision of the Scottish Ministers to—

(i) make the control scheme,
(ii) make a scheme varying the control scheme, or
(iii) revoke the control scheme, or

(b) the terms or conditions of the control scheme (including such a scheme as varied).

An appeal under sub-paragraph (1) must be lodged not later than 28 days after the date on which the person making the appeal received a notice under paragraph 11.

On an appeal under sub-paragraph (1), the sheriff may—

(a) affirm the control scheme,
(b) direct the Scottish Ministers to amend the scheme in such manner as the sheriff may specify,
(c) direct the Scottish Ministers to revoke the scheme,
(d) make such other order as the sheriff thinks fit.

A decision of the sheriff on an appeal under sub-paragraph (1) is final except on a point of law.

An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.

SCHEDULE 2
(introduced by section 43)

FORFEITURE UNDER SECTION 41 OR 42

Application of schedule

This schedule applies where—
Schedule 2—Forfeiture under section 41 or 42

(a) property seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation is being retained by the Scottish Ministers,

(b) the Scottish Ministers are satisfied that there are reasonable grounds for believing that the property is liable to forfeiture under section 41 or 42, and

(c) any of the following applies—

(i) a procurator fiscal has decided not to take proceedings against any person in respect of any offence in relation to the property,

(ii) where a fixed penalty notice has been issued in respect of such an offence, the appropriate fixed penalty has been paid, or

(iii) any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

Notice of intended forfeiture

2 (1) The Scottish Ministers must serve notice of the intended forfeiture of the property (“notice of intended forfeiture”) on each of the following—

(a) every person who appears to the Scottish Ministers to have been an owner of the property at the time of its seizure,

(b) in the case of property seized on board a vessel, the master, owner and charterer (if any) of the vessel at that time,

(c) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,

(d) in any other case, the person (if any) from whom the property was seized.

(2) The notice of intended forfeiture must set out—

(a) a description of the property,

(b) the grounds of the intended forfeiture,

(c) information about how a person may give a notice of claim under this schedule, and

(d) the period within which such a notice must be given.

(3) In a case where—

(a) the property was seized following an inspection carried out in exercise of the power conferred by section 34, and

(b) the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property,

the reference in sub-paragraph (1) to a requirement to serve notice of intended forfeiture on such a person is to be read as a reference to a requirement to take such steps as the Scottish Ministers think fit to bring the contents of the notice to the attention of persons likely to be interested in it.

(4) Property may be forfeited or taken as forfeited under this schedule only if—

(a) the requirements of this paragraph have been complied with in respect of the property, or
Notice of claim

3 (1) A person claiming that the property is not liable to forfeiture under section 41 or 42 must serve notice of the claim (a “notice of claim”) on the Scottish Ministers.

5 (2) A notice of claim must be served—

(a) within one month of the day of the serving of the notice of intended forfeiture, or

(b) if no such notice has been served, within one month of the date of the seizure of the property.

(3) A notice of claim must specify the name and address of the claimant.

10 (4) In a case in which notice of intended forfeiture was served on different persons on different days, the reference in this paragraph to the day on which that notice was served is a reference—

(a) in relation to a person on whom the notice of intended forfeiture was served, to the day on which that notice was served on that person, and

(b) in relation to any other person, to the day on which notice of intended forfeiture was served on the last person on whom such a notice was served.

Automatic forfeiture in a case where no claim is made

4 The property is taken to be forfeited if—

(a) by the end of the period for the serving of a notice of claim in respect of the property, no notice of claim has been served on the Scottish Ministers, or

(b) a notice of claim has been served which does not comply with the requirements of paragraph 3.

Decision whether to apply for order forfeiting property

5 (1) Where a notice of claim in respect of the property is duly served in accordance with paragraph 3, the Scottish Ministers must decide whether to make an application to a sheriff for an order forfeiting the property (a “forfeiture application”).

(2) The decision whether to make such an application must be taken as soon as reasonably practicable after receipt of the notice of claim.

Return of property if no application made to the sheriff

6 (1) If, in a case in which a notice of claim has been duly served, the Scottish Ministers decide not to make a forfeiture application in respect of the property, they must return the property to a person appearing to them to be an owner of the property.

(2) The property must be returned as soon as reasonably practicable after the decision not to make a forfeiture application.

Forfeiture applications

7 (1) This paragraph applies if, in a case in which a notice of claim has been duly served, the Scottish Ministers decide to make a forfeiture application in respect of the property.
(1A) A forfeiture application is to be made by way of summary application.

(2) If the sheriff is satisfied that the property is liable to forfeiture under section 41 or 42, the sheriff may order the forfeiture of the property.

(3) If the sheriff is not so satisfied, the sheriff must order the return of the property to a person appearing to the sheriff to be entitled to it.

Appeal against sheriff’s decision on forfeiture application

8 (1) Either party may appeal against the decision of the sheriff on a forfeiture application to the sheriff principal.

(2) Where an appeal has been made to the sheriff principal, the property is to be retained by the Scottish Ministers pending final determination of the appeal.

Effect of forfeiture

9 Where property is taken to be forfeited under this schedule or the property’s forfeiture is ordered by the sheriff under this schedule, the forfeiture is to be treated as having taken effect as from the time of the seizure of the property.

Disposal of property which is not returned

10 (1) This paragraph applies where any property is required to be returned to a person under this schedule.

(2) If the property is still in the Scottish Ministers’ possession after the end of the period of 3 months beginning with the day after the requirement to return it arose, the Scottish Ministers may dispose of it in any manner they think fit.

(3) The Scottish Ministers may exercise their power under this paragraph to dispose of property only if it is not practicable at the time when the power is exercised to dispose of the property by returning it immediately to the person to whom it is required to be returned.

Provisions as to proof

11 (1) In proceedings on a forfeiture application under this schedule in relation to any property, the fact, form and manner of the seizure of the property are to be taken, without further evidence and unless the contrary is shown, to have been as set out in the application.

(2) In any proceedings, the production of—

(a) the sheriff’s order forfeiting any property under this schedule, or

(b) a certified copy of the order purporting to be signed by the sheriff clerk, is sufficient evidence of the forfeiture of property by the sheriff under this schedule.

Power to destroy fish before forfeiture

12 (1) The Scottish Ministers may destroy any fish which they consider to be liable to forfeiture under section 42 even if the fish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.
(2) If, in proceedings on a forfeiture application under this schedule, the sheriff is not satisfied that any fish destroyed under this paragraph were liable to forfeiture under section 42, the Scottish Ministers must, if requested to do so, pay to the claimant a sum of money equal to the market value of the fish at the time of their seizure.

(3) A claimant who accepts a sum of money paid under sub-paragraph (2) has no right of action on account of the seizure, detention or destruction of the fish.

(4) For the purposes of sub-paragraph (2), the market value of the fish at the time of their seizure is taken to be the average of the prices at which fish of the same kind were sold in the calendar month preceding the time of seizure at the designated auction nearest to the place where the fish were landed.

(5) In sub-paragraph (4), “designated auction” means a centre for the auction of fish designated by the Scottish Ministers for the purposes of this paragraph.

**Power to return shellfish to the sea before forfeiture**

13 (1) This paragraph applies to any shellfish—

(a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and

(b) which the officer considers to be liable to forfeiture under section 42.

(2) If the conditions in sub-paragraph (3) are met, the officer may return the shellfish to the sea even though the shellfish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.

(3) The conditions are that—

(a) the shellfish are alive, and

(b) the officer considers it appropriate to return them to the sea to allow their onward growth to maturity.

(4) Sub-paragraphs (2) to (5) of paragraph 12 apply in a case where shellfish have been returned to the sea under this paragraph as they apply where fish have been destroyed under paragraph 12, but as if—

(a) references to the fish were references to the shellfish,

(b) references to the destruction of the fish under paragraph 12 were references to the return of the shellfish to the sea under this paragraph, and

(c) the reference to the place where the fish were landed were a reference to the place where the shellfish would have been landed had they not been returned to the sea.
Aquaculture and Fisheries (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

Introduced by: Richard Lochhead
On: 3 October 2012
Bill type: Government Bill