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.
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
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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
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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.
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(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(97) 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 – COMMERCIALLY 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 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)).
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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.
61. 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.

62. 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.

63. 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

64. 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.

65. 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.

66. 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.

67. 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)).
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.
These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 3 October 2012

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
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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
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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
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 scheme 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)\(^1\).

**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\(^2\) 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](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\(^3\), 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.

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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 escapes\(^5\), 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.

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.

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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 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.

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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

The 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\(^{11}\)) growing on commercial mussel ropes within Loch Etive.

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\(^{12}\)), providing total annual profits of £235,800. As a consequence of M. trossulus, commercial mussel production in Loch Etive dropped to nil, and the cost of the loss of production fell entirely on the private operators.

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\(^{13}\) and a

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\(^{11}\) [http://en.wikipedia.org/wiki/Mytilus_trossulus](http://en.wikipedia.org/wiki/Mytilus_trossulus)


\(^{13}\) Based on average staff costs of a B2 member of staff/240 days of the year
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
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.

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
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
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 be 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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{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.

\textsuperscript{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 salaris 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.
### 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(^{19}) 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(^{20}) 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>
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</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

<table>
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<tr>
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<td>Management - carcass tagging (para 271-276)</td>
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<tr>
<td>Sampling and Information (para 277-285)</td>
<td>Additional cost for court proceedings around £2,400 per case.</td>
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<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>
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<tr>
<td>Introductions (para 291-296)</td>
<td>Potential additional costs of around £12,500.</td>
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</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>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>
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<th>Proposals/Costs</th>
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</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>
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<tr>
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<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

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<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>
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</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>
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**PART 2: SALMON AND FRESHWATER FISHERIES**

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<tr>
<td>Governance (paragraph 265-270)</td>
<td>No costs.</td>
<td>n/a</td>
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<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**

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<tr>
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<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>
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PART 4: SHELLFISH

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<tr>
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</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>
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<tr>
<th>Proposals/Costs</th>
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</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.”