Written submission from Beauly District Fishery Board

We refer to the request for written evidence to be submitted to the Committee in relation to the above Bill. **The Beauly District Fishery Board would wish to endorse paragraphs 12-23 of the submission made by the Association of Salmon Fishery Boards (ASFB).**

In addition, we would also wish to query the stipulation regarding declaration of Members' financial interests. Whilst we understand the principles behind this, if is not clear how this can work as defined in the Bill given that Board members are elected from amongst the proprietors of fishing rights in any given District. The definition given in the Bill: - "**means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member's view on any matter being considered by the board**" would on face value prevent the Board making any decisions that affect the District fishery. As proprietors, members by definition have a potential pecuniary interest in the decisions of the Board.

The ASFB response as endorsed by Beauly District Fishery Board is given below.

Section 20: Section 20 includes a number of amendments to the 2003 Act in relation to good governance. Whilst many of these provisions look reasonable, we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation. The consultation asked three questions in relation to these issues: **Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?**; **Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?**; **If yes, do you think such a Code of Good Practice should be statutory or non-statutory?**

We have no difficulty with the principle of publishing annual reports and audited accounts and indeed we encourage our members to do so via the DSFB's Code of Good Practice. We would note that whilst we have no difficulty with providing copies of these documents to Scottish Ministers, this aspect was not consulted on.

Whilst we have no difficulty with the principle of open meetings, it is important and legitimate that some aspects of meetings can be held in private (e.g. when discussing deployment of bailiffs, CCTV cameras, staff wages etc.). It is also important that DSFBs are able to raise contentious ideas, which may never be taken forward, without concern that these would be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting. Without clear guidance about what it is acceptable to discuss in private, this provision could have the result of inhibiting discussion within meetings. Ultimately, potential Board members in districts in which there are particularly contentious issues to be faced may even be put off from volunteering and giving up their time. We are aware that this is already an issue in some districts. The RACCE Committee will discuss its Stage 1 report in private but we are not aware that the Committee operates under a requirement to state their reasons for meeting in private as is set out in the Bill for DSFBs. We would again note that, although the consultation document stated that a Code of Good practice could include recommendations for Boards to hold meetings in public, there was no consultation on a legal requirement to do so. The cost of moving these meetings to a venue with sufficient capacity for members of the public,
would involve a significant expense, which may prove disproportionate for many of the smaller DSFBs. In addition, some DSFBs operate over considerable geographical areas. For example, if the Argyll DSFB (total income through privately-funded levy system - £58,000) was required to advertise 4 meetings a year in all three local papers within that district, the annual cost of such advertisement would be £3,200. We would therefore seek clarity on exactly how such meetings should be publicised. A partial solution would be that the annual meeting should be a public meeting, and that there should be an opportunity for the public to attend part of all other meetings and submit proposals to be considered.

If necessary ASFB will work with Marine Scotland to help DSFBs set up a formal complaints procedure, where such a procedure is not already in operation. However, it should be noted that the processing of such complaints will usually be undertaken by the clerk. In the case of smaller boards, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue ‘campaigns’) becomes arduous, this will result in resources being diverted from other areas of operation. It is worth noting however, that this provision was not consulted on, or even mentioned in the consultation document, and indeed, there is a fundamental question as to why such a statutory provision is necessary. Should such a procedure be deemed necessary, we are not aware of any public bodies operating under a requirement to publish the number of complaints and a statement of the nature of each complaint and how it was disposed of. This aspect of the proposal appears to be unnecessarily prescriptive.

Section 20 includes an open-ended power for Scottish Ministers to modify the good governance requirements by order. We do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny. If, for example, this power is used to prescribe DSFB functions in legislation, DSFB donations to Fishery Trusts (which totalled £610K in 2010) would have to be linked to specific services and therefore subject to VAT. This, coupled with the potential additional costs outlined above, could have a significant negative effect on the core funding of fishery trusts across Scotland.

The Aquaculture and Fisheries (Scotland) Act 2007 contains a provision that Scottish Ministers may by order approve any code of practice issued for the aquaculture industry. In our consultation response, we supported a similar approach being adopted towards the DSFB Code of Good Practice, and indeed this approach was specifically highlighted by Marine Scotland in the consultation. In the interests of fairness and equality between the two sectors, we would therefore suggest that this approach would be more proportionate and would allow us to deal with some of the issues highlighted above. We would of course be very happy to work with Marine Scotland officials to ensure that the ASFB Code is consistent with the principles outlined in the Bill. We would be content for the Ministerial Power to dissolve the committee constituting a board to remain, in an amended form, to reflect the above approach.

Section 21 includes a duty to consult and report before making certain applications. We have no difficulty with this provision.
We welcome the inclusion of a power to introduce a carcass tagging system in Scotland but we believe that this provision should be delivered in primary legislation. Carcass tagging was a clear recommendation of the mixed stock fisheries working group and there was overwhelming support for this provision in the consultation. Whether delivered via primary or secondary legislation, we would seek a clear assurance that a statutory system, using individually numbered, recorded tags, will be in place in time for the 2014 salmon fishing season. Any system which does not use numbered tags would not allow verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act). Equally, DSFBs are strongly in support of a national carcass tagging system for all rod caught fish not returned to the river. We believe that carcass tagging of rod caught fish would be a useful tool to aid DSFBs in ensuring compliance with their conservation policies.

We welcome the inclusion of a power to take fish or samples for analysis. Genetic analysis is a key tool in modern fisheries management and will enable rational management decisions to be made. We believe that genetic samples can be taken without killing the fish in question but where such sampling would be likely to involve killing fish we consider that the local DSFB should be fully consulted prior to sampling taking place.

Section 25 provides that Scottish Ministers can impose requirements on DSFBs and proprietors in relation to the monitoring of certain orders. We believe that monitoring of such orders is consistent with evidence-based management and on that basis we are supportive of this in principle. However, this section also makes failure to monitor and evaluate the effects of an order a criminal offence, on which a DSFB may be convicted on the evidence of one witness. This appears to be totally disproportionate, and again, may result in potential Board members being put off from volunteering and giving up their time. We understand that the inclusion of the provision that the Board may be convicted on the evidence of one witness is a drafting error, but we would highlight again that this is disproportionate in the case of a Board failing to meet a monitoring requirement. Finally, we believe that there would need to be a degree of proportionality in placing monitoring requirements on a DSFB, due to the potential expense and/or expertise required to carry out such monitoring, particularly in the case of smaller Boards. We would be concerned if Scottish Ministers were to take out an order at their own initiative, and then impose a legally binding requirement to monitor such an order on that Board. We therefore believe that s25 should only apply where a DSFB or proprietors have applied to Scottish Ministers for such an order.

Section 26 includes an open-ended power for Scottish Ministers to vary the procedures for various orders. As we stated earlier, we do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny.

Section 28 includes a power for Scottish Ministers to modify DSFBs functions with respect to consenting of introductions (stocking). Such regulations may specify
circumstances or cases where the consenting function is to be exercised by Scottish Ministers (as is currently the case for all other freshwater fish species) or when applications for consent should be referred to them. We note that Scottish Ministers already have jurisdiction over fish introductions in those parts of Scotland which are not covered by DSFBs. In addition, Scottish Ministers have jurisdiction over introductions of other freshwater species throughout Scotland. However, we are not aware of any evidence to suggest that the use of such regulatory powers is significantly better in those areas of Scotland under the jurisdiction of Scottish Ministers. Indeed, we would argue that some of the most concerning examples of questionable practice occur in these areas. We therefore believe that, should this power be exercised, that all decisions on stocking (all species) should be considered by a panel of independent stakeholders, prior to the granting of consent.