Written submission from the Highland Council

The Highland Council welcomes the opportunity to respond to the call for views on the Aquaculture and Fisheries (Scotland) Bill. The Council contributed a full response to the previous Marine Scotland Consultation on proposals for the Bill.

The Council acknowledges the importance of the Scottish aquaculture industry in a Highland, Scottish and European context. In particular it notes the Scottish Government aspiration of 50% expansion in Salmon production by 2020, as set out in the consultation on the Draft Marine Bill. In supporting the aquaculture industry in Highland the Council also recognises that there may be legitimate environmental concerns regarding the on-going expansion of the industry. These include but are not limited to latent capacity held on sites that are unused. The impact of salmon farming on biodiversity within the environs of the sites, and the landscape impacts of developments which are continuing to increase in scale.

In commenting on the Bill as introduced The Council is pleased to note that it finds the majority of the proposed legislative changes set out in the Bill as introduced to be broadly acceptable in as far as its interests are concerned. It is, however, disappointing that a number of the proposals set out in the consultation have not been carried forward into the Bill as introduced. There is no indication within the consultation analysis whether these aspects will be further considered and we comment on issues of concern in more detail below.

Part 1 – Aquaculture

Chapter 1 – Fish Farm Management - Farm Management Areas

The Council wishes to reiterate its comments regarding the setting of Farm Management Areas. The relationship between the Management Areas advocated by Marine Scotland and the Farm Management Areas as set out in the CoGP remains unclear. Many of the FMAs depicted within the CoGP are very small containing only one farm. This does not, provide for whole loch management.

The Council welcomes legislation proposed to make Farm Management Areas and Farm Management Plans mandatory. It is not, however felt that it is appropriate for these areas to be set and controlled by the industry. This would not in our view allow Local Authorities to effectively consider Farm Management Areas as part of a mitigation package when considering planning applications for Marine Fish Farms. The FMA could potentially change during the life of the site. The Council would favour the establishment of compulsory Farm Management Areas set along similar boundaries to those Management Areas currently set out by Marine Scotland. Once set these boundaries should be fixed to allow them to be effectively utilised in development management. However, it is also felt that wild fisheries interests should be included in the development of Farm Management Plans. We make this comment on the basis of consistent advice from Marine Scotland Science that maintaining sea lice numbers at the levels set within the CoGP may not prevent large numbers of sea lice being discharged from the site and having an impact on wild salmonid populations. In our experience there were considerably fewer differences of opinion between fish farmers and wild fisheries interest in those areas where Area Management Agreements had been set up under the guidance of the
Tripartite Working Group. The Council long expressed the view that the AMA’s should be statutory, and we feel that our concerns in relation to the proposed process are consistent with that view.

**Existing consents**

In drafting the Bill the opportunity has not been taken to resolve the disquiet expressed by many stakeholders regarding the presence of undeveloped sea bed leases previously granted by the Crown Estate.

The Council had every expectation that the Review and Audit of pre April 2007 sites that has been “in process” by Scottish Government since 2007 would have dealt with the serious concerns regarding the presence of undeveloped sea bed leases previously granted by the Crown Estate. Our main concern is that the presence of existing undeveloped capacity forms a constraint to new development in many of Scotland’s sea lochs. For example, it is difficult to support developments for new shellfish farms in lochs where on paper at least there are existing consents for extensive salmon farms.

In practice the Review and Audit has compounded the problem. As part of the process Scottish Government issued a Permitted Development Order in February 2011 granting blanket planning permission for existing sites within named sea lochs. Almost two years later we continue to await vital, yet basic, information from Scottish Government such as the specific sites included in the order, and the site areas. In responding to the consultation the Council suggested that if such information was not available then the Permitted Development Order should be revoked. It has been suggested that this would not be possible as it would remove Planning Permissions and would be open to legal challenge. This response in itself suggests it must be know what has been granted by the order. It is difficult to fathom why Scottish Government is unable to furnish Local Authorities with the appropriate information.

Highland Council would urge Scottish Ministers to consider the role of the 2011 Permitted Development Order and to determine whether or not that Order was fit for purpose and if necessary seek to repeal the Order through the Aquaculture and Fisheries (Scotland) Bill. We consider that clarity regarding which existing developments should be entered into Local Authority Planning registers is vital in ensuring the sustainable development of the industry going forward.

**Time limiting of consents**

The consultation considered the issue of seeking to time limit consents for fish farms. The aquaculture industry has stated that to have a consent granted for a limited period reduces investor confidence. We have some difficulty in accepting that this is the case. If sites are operated in accordance with their planning permissions in compliance with the industry CoGP thereby minimising the impact on the receiving environment there should be no reason why time limited consents would not readily be renewed. In addition time limiting consents provides for the site to become a development opportunity if it is not used. The Council is of the view that over time the ability to time limit consents it would remove the number of dormant sites and latent capacity within the Scottish aquaculture industry.
Chapter 2 – Fish Farming Equipment and Wellboats

The Council welcomes the introduction of enabling legislation related to the implementation of a Scottish technical standard for cage construction. In addition to the stated provisions of regulations the Council is of the view that there should be provision for cages to be fitted with a manufacturers plate along the lines of those required in the manufacture of boats. This would allow improved traceability. Any technical standard developed and supported by regulations should recognise that there are situations where square cages are preferable to circular ones and a maximum cage size should be specified.

Part 4 - Shellfish

Protection of shellfish waters

The Bill as introduced provides for the designation of shellfish water protected areas. The Council suggests that within these provisions there should be the specific ability to rule a shellfish harvesting area out of designation as a shellfish water protected area in the event that the designation would present a significant constraint to onshore economic development. For example the Shellfish designation may require additional sewage treatment infrastructure to upgrade discharges to the water body. If funds are not available to carry out this upgrade this may lead to developments not being able to proceed due to lack of infrastructure.

There is also a need for consistency in the definition of shellfish. This would avoid potential confusion and provide clarity on the licencing requirements and procedures to be followed for aquaculture development proposals. The Council has a specific concern in relation to the farming of sea urchins. Echinoderms are specifically included within the definition of “shellfish” within the planning acts. They are however ruled out of the definition of shellfish proposed in line 12, page 43 of the Bill as introduced, as they are neither crustaceans nor molluscs.

Orders as to fisheries for shellfish

The point made above in relation to consistency in the definition of shellfish also applies in this section.