Written submission from the Scottish Environment Protection Agency (SEPA)

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to provide Written Evidence with regard to the above Bill. SEPA welcomes the draft Aquaculture and Fisheries Bill and accompanying documentation and has the following comments on these:

The consultation on proposals for the Aquaculture and Fisheries Bill discussed a number of major areas of particular interest to SEPA. These relate particularly to unused consents, biomass control and the regulation of well-boats. Following discussions with a number of interested parties, SEPA is of the opinion that the former two issues can be satisfactorily dealt with using existing legislative provisions. The issues highlighted by SEPA relating to well-boats appear to remain outstanding and are not addressed by the provisions of the Bill.

The main concerns raised by SEPA around the issue of well-boats relate to the current arrangements whereby release of medicine residues from cages at fish farm premises are regulated by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 but releases of the same residues from well-boats at or around fish farm premises are regulated by Marine Scotland under the Marine (Scotland) Act 2010. These arrangements pose a number of significant problems with regard to regulation and enforcement but are also unnecessarily bureaucratic, costly and burdensome on the aquaculture industry.

The difficulties with regulation and enforcement stem from the problems that either regulator may have in taking action where a breach of the conditions relating to medicine residue releases set out in permits has occurred but there is a lack of clarity over how such releases may have been made. For example, the collection of evidence by inspectors under the powers provided under either the Water Environment (Controlled Activities) (Scotland) Regulations 2011 or the Marine (Scotland) Act 2010 may not be admissible under proceedings taken under the alternative regime making enforcement action more difficult, in what is an already complex regulatory arena.

As far as bureaucracy, administrative burden and costs are concerned, the current approach requires farm operators to have two licences in place for what is essentially the same activity – releasing medicine residues following the treatment of fish.

A Marine Licence for well-boat releases at fish farms costs in excess of £1000 and requires renewal after 1 or 3 years. When issued, the licence contains exactly the same conditions limiting releases from the well-boat as SEPA has derived for cage based releases. Thus fish farm operators are paying for an additional licence and application process with associated consultations and related processes for a permit to undertake an activity which in most cases they are already licensed to undertake under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. The only difference being that the additional licence allows the flexibility of using vessel to undertake the treatment.
The authorisation of such releases under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 could be done as an “administrative” variation to existing licences for a nominal fee. Once integrated into the licence such variations essentially last in perpetuity, avoiding the need for a costly re-application, unless the operator seeks further variation or SEPA chooses to change such licence conditions as a result of periodic review. There is however currently a legislative impediment to SEPA authorising releases from well-boats as activities requiring authorisation under the Marine (Scotland) Act 2010 are specifically excluded from control under the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

The change in legislation required to bring licensing of well-boats within the scope of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 could be achieved through a change to the definition of “licensable activities” set out in the Marine (Scotland) Act 2010 – by amending section 21. A change in the definition of licensable activities could be achieved by Order, (s21 of the Marine Act makes specific provision for this) or by an amendment included in the Aquaculture and Fisheries (Scotland) Act. In either case, the result would be the occlusion of a legislative and enforcement gap, and a simplification of the regulatory landscape and reduction in costs for operators working in the aquaculture sector.

As for the provisions for well-boats that are discussed in the Bill, SEPA is supportive of improved engineering and equipment to reduce the possibility of disease and parasite transmission and allow the monitoring of the activities of these vessels.

A number of further issues were detailed in the Bill consultation that are less directly within SEPA’s role but are nonetheless of interest to the Agency. These include the publication of sea louse data. Although the publication of sea louse data does not feature in the Bill, SEPA retains the view expressed in our consultation response that sea louse data from fish farms should be published, on a site by site basis in as near to real time as practicable. There are various reasons for our belief that this is the correct approach.

There is considerable discussion and anecdotal evidence around the issue of resistance developing in sea lice to some of the products used to deal with them. Clinical decisions as to the appropriate treatment to use on any given occasion should be informed by an awareness of which treatments may or may not have been effective in the vicinity of the farm where treatment is proposed. This can be ascertained by bioassay – testing the sensitivity of the lice on the farm to the available products but also can be informed by the effectiveness of recent treatments undertaken on other sites in the same area or waterbody. Reasonable communication takes place between some but by no means all operators, so having information on the effectiveness of treatments available publically would make treatment decisions easier.

As well as clear clinical reasons, there is a philosophical disconnect in terms of public interest where sea louse data is not published. Sea louse infestations on farmed fish are dissimilar to routine diseases or parasite infestations in terrestrial animals because unlike these afflictions, the presence of lice on farmed salmon is almost ubiquitous and there is a strong likelihood that the sea lice arising from farmed fish may impact upon the interests of others – for example, those who own or
enjoy Scotland’s wild salmonid fisheries. In a general sense, in most other areas and sectors, the impacts of those who benefit from the use of the Scottish environment and whose practices may impinge upon the interests of others are exposed to public scrutiny. There seems to be no coherent reason why sea louse data should be treated any differently. Further, most of the companies operating in Scotland also operate under regimes in foreign countries where publication of such data is routinely required. SEPA therefore continues to support the publication of near real time sea louse data and considers that the lack of proposals in the Bill to address this issue is a significant omission.

SEPA would also support a reporting requirement relating to the numbers of fish mortalities on a farm-by-farm basis. This would allow the FHI to monitor patterns of mortality and respond appropriately.

The sharing of information on fish health issues is an important element in ensuring that sister regulatory agencies work together cooperatively. This might be facilitated either by legislative provisions or through policy development and close liaison between relevant agencies.

We note and welcome, in the Explanatory Notes, as part of the Financial Memorandum at Part 4 on Shellfish, under the Protection of shellfish waters, at paras 318-319, the proposals to continue to protect water quality in designated shellfish waters and to create a legislative framework that enables the continued designation of shellfish water protected areas following the repeal of the Shellfish Waters Directive in 2013. We also note and welcome the proposal at para 322 to align the process of designation and de-designation of shellfish waters with the RBMP timescale (i.e. every 6 years) and to set up a working group to take forward a range of supporting actions.

SEPA hopes the comments above assist in the discussions around the Aquaculture and Fisheries (Scotland) Bill and is content to provide further information, input and clarification as required either by correspondence or before the Rural Affairs, Climate Change and Environment Committee on 5 December.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record.