Written submission from the Scottish Salmon Producers’ Organisation

Submission endorsed by: Marine Harvest

Overview

The Scottish Salmon Producers’ Organisation (SSPO), whose members are responsible for some 98% of salmon production in Scotland, would like to raise with the Committee a number of points where the Bill (as presented) requires revision. These mainly relate to technical matters that are fundamental to the Bill being relevant and workable in practice, and a few matters of regulatory principle. These points have already been raised with the Scottish Government's Bill Management Team and we hope that, as part of the Bill’s development, Ministers will bring forward revised text to address the points we have highlighted.

Our concerns relate to seven specific areas of the Bill that relate to aquaculture but we also wish to raise a few matters relating to freshwater fisheries where we believe the Bill has missed significant considerations.

Aquaculture: Bill Matters

1. Fish farm management agreements and statements (This includes Sections 1, 4A and 4B of the Bill)

The SSPO, its forerunner organisations, and its members pioneered the development of the Farm Management Area (FMA) approach and Farm Management Agreements (FMAg), beginning in the early 1990s. These approaches have been fundamental to the development of the Scottish salmon farming industry and have allowed the industry to develop effective area management approaches and biosecurity systems. More recently, the industry has introduced Farm Management Statements (FMS) as a means of embedding the FMA approach in single operator areas. The industry is therefore already wholly committed to the FMA/FMAg/FMS approach and has no objection in principle to this being incorporated into the regulations.

However, the Bill as presented is not sufficiently comprehensive in its area coverage and contains errors of fact and understanding about key elements of the approach. The provisions of the Bill (as presented) are, therefore, too limited, and also would be wholly unfeasible to adopt in practice.

We, therefore, wish to see:

a) The scope of the regulation extended to include all coastal marine fish farming.

b) Recognition on the face of the Bill that the Farm Management Agreements (FMAg) and FMS are plans, which must necessarily be flexible to meet the needs of different businesses and the day to day requirements of farm management. The point of statutory assessment is, therefore, the requirement for an FMAg or FMS to be in place.
c) The present reference to the Code of Good Practice for Scottish Finfish Aquaculture is incorrect. The CoGP is owned and managed by the Code of Good Practice Management Group and deals primarily with industry practice rather than statutory compliance. SSPO recommends that annual reporting on the CoGP (which was abandoned by Marine Scotland during changes to the Strategic Framework arrangements) should be re-established.

2. Escapes, and obtaining samples from fish farms (This includes Bill Section 2 and 5A)

SSPO finds it difficult to justify the provisions in this part of the Bill against the background that scientific research has unequivocally shown that introgression is of very little significance generally, and in Scotland in particular.

However, the Bill (as presented) has a number of technical problems which we consider must be addressed.

   a) In section 2 the present wording means that any farm fish found in the wild can potentially trigger samples of fish being taken from every farm in Scotland. This is clearly neither logical nor proportionate. We, therefore, consider powers to sample farms should be limited to those within the catchment area which might be implicated in the escape.

   b) In Section 5A

      i. Reference to ‘fish or material from fish’ needs to be corrected to the biologically precise ‘fish or fish tissues’.

      ii. The purposes for which fish may be sampled should be limited to the purpose of the provision intended, which is to assist in investigations of escaped fish and the risk of impact of escapes from farms on stocks of fish other than those on farms. Speculative excursions in the provisions that go beyond that raise human rights, legal ownership, intellectual property, and commercial competition considerations for business within and beyond fish farming.

3. Technical requirements for equipment used in fish farming (This includes Chapter 2, Section 3).

This section of the bill relates to the development of Scottish Technical Standards specifically for containment, which is being taken forward by an industry led joint working group with the Scottish Government.

We believe that the Bill’s provisions should focus specifically on this rather than on equipment in general.

The section raises two important technical flaws:

   a) The reference to ‘technical requirements’ in paragraph (1a) and elsewhere needs to be replaced by ‘technical standards’, which is the appropriate point of focus for regulatory control.
b) The reference to ‘-- for equipment’ in paragraph 1(a) is too all-embracing and not consistent with the approach to developing standards. It should be replaced by ‘---- for specified equipment’. This would then properly reflect the Scottish Standards approach.

4. **Wellboats (This includes Chapter 2, Sections 4-7)**

The main issue in this part of the Bill relates to the meaning of ‘wellboat’.

The definition in the Bill (as presented) is not adequate. As stated, it will include not only conventional wellboats but almost all small workboats used on fish farms. This is neither the intention in the regulation, nor is it a tenable position since it would render fish farms almost inoperable.

We have proposed as a definition 'live fish carrier requiring to have permanent operational life support systems'  

5. **Commercially Damaging Species (This includes Chapter 3)**

On the basis that this proposal relates specifically and solely to Mytilus trossulus we have no comment to make on this section.

6. **Charging (This includes PART 5, Section 50)**

There are matters of principle concerning government attempts to charge for its own core functions or seeking to make mandatory charges for services which are already supplied by industry-preferred commercial suppliers.

The Bill is flawed in attempting to introduce new highly-controversial ‘function charges’ on aquaculture and other sectors through secondary legislation made under the negative procedure. We consider that it is essential that the Bill is modified so that each new ‘service’ for which a charging regime is proposed is subject to proper consultation and full Scottish Parliamentary scrutiny through regulations subject to the affirmative procedure.

7. **Fixed Penalty Notices (This includes PART 5, Section 51)**

The salmon farming industry is unconvinced about FPNs, which seem to be being introduced for the convenience of Marine Scotland rather than for any sound legal or financial reason. However, Marine Scotland officials have stated that FPNs will be subject to the same levels of legal rigour as actions to be raised by the Procurator Fiscal.

We believe that the Scottish Government needs to address this matter by: (i) a clear up-front statement of the specific offences to which FPNs will apply; and (ii) by a commitment in the Bill to publish annual statistics relating to FPNs, broken down by type of offence and by industry sector

*Aquaculture: Missed Opportunities*
We regret that the development of the Bill has not taken the opportunity to review the entire regulatory process for aquaculture as a whole and considered it in line with other Scottish Government policy intentions to promote better regulation. The Bill fails to address issues that would support sustainable industry development and which have been raised by industry. In particular, we identify:

a) Addressing the regulatory overlap between Marine Scotland and SEPA in the regulation of controlled releases of substances from wellboats at pen locations;

b) Opportunities for Ministers to take powers to allow them to instruct SEPA to vary CAR licences where there is a need to treat fish, but where the existing CAR licence prevents this;

c) Addressing the long-standing issue of failure to regard wild fish hatcheries as Aquaculture Production Businesses, thus creating trade discrimination barriers between different types of hatcheries and increasing the risk of introduction of diseased fish into open water.

Salmon Fisheries: Missed Opportunities

The salmon farming companies are becoming increasingly involved in assisting west coast and island fisheries through provision of expertise, facilities and, in some cases, project funding. Also, farmers have an understandable neighbourly interest in wild fisheries management.

We strongly support the principle of developing policy based on scientific evidence rather than unsound, anecdotal information. With regard to the Bill, we believe that provisions could have been included to provide robust scientific investigation to determine if and why wild salmon numbers are declining. The Bill could also make provision to gather river management information, for example, catch statistics in the context of fishing effort which would enable fuller understanding of the environment in which we operate and more sustainable management practices.