Rural Affairs, Climate Change and Environment Committee

1st Report, 2013 (Session 4)

Stage 1 Report on the Aquaculture and Fisheries (Scotland) Bill

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Rural Affairs, Climate Change and Environment Committee
1st Report, 2013 (Session 4)

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Rural Affairs, Climate Change and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs & the Environment.

Membership:

Jayne Baxter (from 12 December 2012)
Claudia Beamish
Graeme Dey (Deputy Convener)
Nigel Don
Alex Fergusson
Rob Gibson (Convener)
Jim Hume
Richard Lyle
Angus MacDonald
Margaret McDougall (until 12 December 2012)

Committee Clerking Team:

Clerk to the Committee
Lynn Tullis

Senior Assistant Clerk
Nick Hawthorne

Assistant Clerk
Alison Wilson

Committee Assistant
Ross Fairbairn
Rural Affairs, Climate Change and Environment Committee

1st Report, 2013 (Session 4)

Stage 1 Report on the Aquaculture and Fisheries (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY

1. In scrutinising this important piece of legislation at Stage 1, and examining whether the general principles of the Bill are fit for purpose, the Committee took a great deal of evidence from as wide a group of people as possible, representing all sides of the many debates involved. Through fact-finding visits to salmon rivers, wild fisheries hatcheries, coastal netting stations, fish farms in both fresh and sea water, scientific stations, and processing plants, and through extensive written and oral evidence, the Committee built up a detailed picture and understanding of both the aquaculture and wild fisheries sectors.

2. However, the Committee’s work was hindered by some of the more adversarial, “tit-for-tat” engagement of sections of both the aquaculture and wild fisheries sectors, which resulted in the Committee receiving an excessive number of communications from both sectors making claims and counter-claims. This made it difficult at times for the Committee to assess the best way forward. As important as this legislation is, perhaps of equal significance for Scotland in the long-term, is improving the current relationship between the wild and farmed fishing sectors, with a view to establishing closer, productive, cooperative working relationships for the overall benefit of the people of Scotland and the environment.

3. It is clear to the Committee that both the aquaculture and the wild fisheries sectors are of considerable importance to Scotland, in terms of economic, environmental and social contributions and impacts. Both sectors need legislation which enables them to develop sustainably and to co-exist as harmoniously as possible. The Committee wants this legislation to set the framework, in the short, medium and long-term for both a sustainable aquaculture industry, and a sustainable wild fisheries sector.

4. The Committee agrees with the view expressed by Steve Bracken, of Marine Harvest, who said—
“[…s] salmon farming and wild fisheries are both vital industries for the coast and inland parts of Scotland. I am absolutely sure that we can go on and become bigger and better in both areas.”

5. The Committee regrets that this legislation has been necessary so soon after the last piece of primary legislation in this area, in 2007, and at least as far as the aquaculture provisions are concerned, wants to ensure this Bill is fit for purpose for many years to come. The Committee notes the wild fisheries part of the Bill is seen by the Scottish Government as being the “first step” in a wider review of wild fisheries management in Scotland which will run beyond the consideration of this Bill. The Committee calls on all involved in that review, and the implementation of any resulting outcomes, to ensure it establishes a coherent wild fisheries management structure for Scotland that is fit for purpose for the 21st century.

6. The Committee is of the view that the broad balance between sustainable (both economically and environmentally), accountable and transparent aquaculture and wild fisheries sectors as outlined in the Bill is appropriate. The Committee therefore recommends the Scottish Parliament supports the general principles of the Bill.

7. However, the Committee is also of the view that the current draft of the Bill is very much the starting point, and should the Bill reach Stage 2 it will require amendment in order to make it more robust and to take account of evidence received by the Committee throughout its Stage 1 scrutiny. The Committee is pleased to note that the Scottish Government has already indicated areas it intends to amend at Stage 2, should the Bill reach that Stage, and recommends that the Scottish Government continues to consult with stakeholders on ways to further improve the Bill.

8. The Committee has made a number of specific recommendations relating to each part of the Bill, and has also considered relevant issues not included in the Bill which it believes will contribute towards ensuring the Bill is as robust and fit for purpose as possible. These are outlined in the main body of the report which it draws to the attention to the Scottish Government.

INTRODUCTION

9. To assist readers of this report, a Glossary of acronyms used most frequently has been provided at Annexe A.

Parliamentary scrutiny

10. The Aquaculture and Fisheries (Scotland) Bill was introduced in the Scottish Parliament on 3 October 2012. The Bill was accompanied by Explanatory Notes.

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3 Aquaculture and Fisheries (Scotland) Bill, as introduced (SP Bill 17, Session 4 (2012)). Available at: http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17s4-introd.pdf.
which include a Financial Memorandum, and by a Policy Memorandum,\(^5\) as required by the Parliament’s \textit{Standing Orders}.\(^6\)

11. Under Rule 9.6 of \textit{Standing Orders}, on 23 October 2012 the Parliamentary Bureau referred the Bill to the RACCE Committee\(^7\) to consider and report on the general principles.

12. No secondary committee was appointed to scrutinise the Bill. However, the Finance Committee did seek views on the Financial Memorandum to the Bill, and subsequently wrote to the Committee, appending the two responses it received. The Committee notes and comments on the responses to the Finance Committee later in this report. The Subordinate Legislation Committee (SLC) considered the Delegated Powers Memorandum\(^8\) and reported to the RACCE Committee. The Committee notes and comments on the report made by the SLC later in this report. A link to the SLC’s report can be found at Annexe C.

13. The Committee agreed its approach to consideration of the Bill at Stage 1 at its meeting on 24 October 2012. A call for views\(^9\) on the general principles of the proposed Bill was subsequently issued and closed on Monday 26 November 2012.

14. In addition, the Minister for Environment and Climate Change, Paul Wheelhouse MSP, wrote\(^10\) to the Committee on 26 November 2012 to—

- provide early sight of possible amendments that the Scottish Government would be proposing to the Bill at Stage 2, should the Bill proceed to that Stage;
- provide the Committee with an updated response to the consultation document;

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\(^5\) Aquaculture and Fisheries (Scotland) Bill. Policy Memorandum (SP Bill 17-PM, Session 4 (2012)) Available at: http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17s4-introd-pm.pdf.


• draw the Committee’s attention to a recently published two page note on the provisions in the Bill in respect of fixed penalty notices (FPN); and

• inform the Committee that the Scottish Salmon Producers’ Organisation (SSPO) have committed to broaden their reporting of information on sea lice management and control from 1 January 2013.

15. The Committee thanks the Minister for this correspondence which proved very helpful during its Stage 1 consideration of the Bill.

16. The Scottish Parliament Information Centre published a briefing\(^{11}\) on the Bill which proved very helpful to the Committee throughout its scrutiny.

Witnesses

17. The Committee took oral evidence from the Scottish Government’s Bill Team on 28 November 2012, and then held three evidence sessions with a wide range of stakeholders, on a themed basis, based on the parts of the Bill (fish farm management; salmon and freshwater fisheries; sea fisheries; and shellfish) as follows—

**Wednesday 5 December, fish farm management**

• a roundtable consisting of academics, representatives from both the farmed and fresh water fishery sectors, and bodies such as The Crown Estate, environmental groups and local authorities.

**Wednesday 12 December, salmon and freshwater fisheries**

• two panels of salmon and freshwater fishery witnesses, examining both the state of resource and the fisheries.

**Wednesday 19 December, sea fisheries and shellfish**

• a roundtable of witnesses on sea fisheries and shellfish. This session also took evidence on the Scottish Government’s intention to bring forward an amendment at Stage 2, should the Bill reach that Stage, on cockle fishing in the Solway.

18. The Committee’s oral evidence-taking concluded with a session with the Minister for Environment and Climate Change on 9 January 2013.

19. Extracts from the minutes of all the meetings at which the Bill was considered are attached at Annexe B. Links to the *Official Report* of the relevant meetings can be found at Annexe D, along with links to all written submissions, including supplementary written submissions and correspondence.

20. **The Committee extends its thanks to all those who gave evidence on the Bill.** This detailed and wide-ranging evidence has enabled the Committee to properly appreciate and understand the issues involved and to identify appropriate responses and ways forward on aspects of the Bill.

**Fact-finding visits**

21. The Committee carried out two fact-finding visits\(^{12}\) to inform the Committee’s Stage 1 scrutiny of the Bill.

22. The first took place on 9-10 November 2012, and focussed on the salmon and freshwater fisheries aspects of the Bill, visiting the Upper Dee Riparian\(^{13}\) Scheme to look at salmon fishery issues, which included seeing salmon spawning in the river. The trip included a visit to the Marine Scotland Science Girock Burn Research Facility that monitors marine survival of Atlantic salmon. The visit was hosted by the Dee District Salmon Fishery Board and River Dee Trust and the Association of Salmon Fishery Boards (ASFB).

23. The trip also included a visit to the Usan Salmon Fisheries Ltd in Montrose to meet the netsmen and look at relevant interaction issues between netting and district salmon fishery boards. The fishery is a member of the Salmon Net Fishing Association of Scotland (SNFAS).

24. The second visit took place on 16-17 November, and focussed on the aquaculture aspects of the Bill. It involved visiting Marine Harvest operated salmon farms in Glenfinnan (freshwater) and Leven (sea water); their new smolt unit at Lochailort; and the Blar Mhor Salmon Processing Plant outside Fort William.

25. The trip also included a visit to the Lochaber hatchery, a project run by the River Lochy Association in partnership with Marine Harvest, EWOS Feeds, Hvalpsund Nets and MERK International. The Committee was hosted by ASFB and the Lochaber District Salmon Fishery Board.

26. **The Committee thanks those involved in hosting the visits which – by virtue of allowing members an opportunity to see matters relevant to the Bill first hand and discuss a variety of pertinent issues with practitioners – were invaluable in furnishing it with a fuller understanding and appreciation of the operations of the aquaculture and wild fisheries sectors.**

**BACKGROUND TO AND PURPOSE OF THE BILL**

**Contents of the Bill**

27. The Policy Memorandum which accompanies the Bill states that the policy objective of the Bill is to—

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\(^{13}\) A riparian area is the bank of a river – i.e. the relationship between a piece of land and a river or stream.
“[…] 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. It also aims to amend the Fisheries Act 1981 and modernise existing enforcement provisions to ensure that sufficient powers are in place to enable British Sea Fishery Officers to enforce sea fisheries regulations; introduce legislative provisions to safeguard shellfish water protected areas; make provision for charges for a number of fishery functions; and to extend the scope of offences that could be subject to a fixed penalty notice.”

28. Giving evidence to the Committee, Willie Cowan from the Scottish Government expanded on the aquaculture aspects of the Bill, stating—

“[…] a regulatory framework is already in place and working well, and we have a successful aquaculture industry that has been growing for the past decade or so. The purpose of the bill is to take us to the next stage. The Government supports the aquaculture industry’s ambitions to grow, and there are pressures from the European Commission and its common fisheries policy to increase aquaculture production across the European Union, partly to become self-sufficient and reduce the importation of fish products from other parts of the world and partly to contribute to global food production, which is clearly an issue given the rising population and the limited land resources on which to grow protein.”

29. The Minister gave further detail to the Committee, confirming that the Scottish Government supports the aquaculture industries’ aims to grow by a further 32% by 2020 (around 4% per year).

30. In terms of wild fisheries, the purpose of the Bill was said by the Minister to be the “first step” in modernising the management of Scotland’s salmon and freshwater fisheries.

31. The Bill is presented in six parts and two schedules as follows—

- Part 1 – aquaculture (fish farm management, fish farming: equipment and wellboats, commercially damaging species, control, powers, offences, interpretation);
- Part 2 – salmon fisheries (governance and management);
- Part 3 – sea fisheries (enforcement of legislation, detention of vessels in connection with court proceedings, inspection and seizure of objects used in commercial sea fishing, retention and disposal of property seized by British sea-fishery officers, forfeiture, and enforcement of EU rules);
- Part 4 – shellfish (protection of shellfish waters and orders as to fisheries for shellfish);

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14 Aquaculture and Fisheries (Scotland) Bill. Policy Memorandum, paragraph 2.
• Part 5 – miscellaneous (charging and FPNs);
• Part 6 – general (subordinate legislation, interpretation, ancillary provision, Crown application, Commencement and short title);
• Schedule 1 – commercially damaging species: control schemes; and
• Schedule 2 – forfeiture under section 41 or 42 (sea fisheries).

32. The Committee’s report below on specific issues mirrors the structure of the Bill as detailed above for ease of reference.

Background

Scottish Government consultation

33. The Scottish Government’s consultation\(^\text{17}\) on the possible contents of a draft bill ran from December 2011 until April 2012 and generated a total of 1,342 responses\(^\text{18}\). 1,193 of these were classified as “Interest Group Responses” which gave general comment or were endorsing other organisations’ views, and 149 were classified as “Detailed Responses” which focussed on the consultation questions. The Detailed Responses were used as the basis for the analysis of the consultation which the Scottish Government produced in both Full Report\(^\text{19}\) and Summary\(^\text{20}\) format.

34. Most of the responses analysed were, in general, supportive of the proposals. However, the consultation also received a number of critical responses, predominantly from the aquaculture industry, which was concerned about the possible negative economic impact of increased regulation, much of which many in the industry believed was unnecessary.

35. Some proposals which were included in the consultation document are not included in the Bill, and the Scottish Government published a formal response\(^\text{21}\) to the consultation on 4 October 2012, indicating how it will take forward (or not) the parts of the consultation that are not in the Bill. In addition, the Minister wrote to the Committee on 26 November 2012, as mentioned above, to update this response in light of further evidence to the Committee and other developments.

36. Several policy issues raised in the consultation, but not contained in the Bill, were the focus of much comment and discussion during the Committee’s scrutiny, such as the issue of the effects of sea lice on wild and farmed fish and publication of data on the issue, and the interaction between coastal netting for salmon and rod and line salmon fisheries. These are discussed later in the report, together with other relevant issues not included in the Bill.

37. The Committee noted that the 1,193 “Interest Group Responses” were not directly included in the Consultation Analysis and asked Scottish Government officials how these responses had been taken into account. The Committee was told that several issues raised in these responses were given consideration and had a direct impact on the drafting of the Bill such as FPNs and strict liability, both of which resulted in a change in approach by the Scottish Government.

38. In terms of issues raised which were not pursued in the Bill, such as sea lice data provision, Scottish Government officials told the Committee there had, in their view, been a confusion in the consultation process that everything that was consulted upon was intended for primary legislation, which the Bill Team Leader, Jeff Gibbons, stressed was not the case—

“it was self-evident that many of the individuals who took the time to respond to the various proposals in the consultation were not clear that the proposals did not all relate to primary legislation. We acknowledge that we needed to get that point across. There was some confusion and a belief that the natural progression would be for the proposals to move to primary legislation. However, some of the questions in the consultation were about how we could proceed using existing powers, or whether we needed to use existing powers or could achieve the level of data that we might require using alternative means. As a consequence, we thought it appropriate to use the summer period to get out and about to engage more directly with stakeholders. We established a stakeholder reference group to explain some of the proposals in more detail and the rationale behind some of the objectives, and to allow us to understand some of the responses more fully.”

39. Specific areas where witnesses commented on the consultation process are discussed in the main body of the report where relevant.

40. The Committee appreciates that the Scottish Government carried out a thorough and wide-ranging consultation process in advance of bringing forward the Bill.

41. However, the Committee notes the title of the consultation document was “Aquaculture and Fisheries Bill Consultation Document”, and stated—

“The possibility of an Aquaculture and Fisheries Bill during the current Parliament provides an opportunity for us to take these issues forward. We are therefore consulting, at this early stage in the new Parliament, on key issues and priority areas for possible legislation.”

42. It is evident to the Committee that there was a degree of confusion and misunderstanding about the status and intention of the consultation amongst some stakeholders, which was also acknowledged by Scottish Government officials.

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43. The Committee believes the Scottish Government could have been clearer in its consultation document, and in its publicising of that document, about the framework of the consultation and its possible outcomes, in order to better manage understanding and expectations amongst stakeholders and the wider public. The Committee urges the Scottish Government to learn lessons from its consultation process on this Bill to ensure future consultations provide appropriate clarity about process and potential outcomes.

Legislative background
44. The Bill primarily amends three other Acts (two Acts of the Scottish Parliament and one UK Act)—

- the Aquaculture and Fisheries (Scotland) Act 2007\(^{23}\) (“the 2007 Act”);
- the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003\(^{24}\) (“the 2003 Act”); and

45. The Committee considered the background to the current Bill, in order to understand why new legislation had been brought forward only five years after the last piece of primary legislation on these issues and returns to this point at appropriate parts of the report.

46. The Committee sought to establish whether certain aspects of the 2007 Act were fully effective. Particular areas of interest for the Committee in this regard were sea lice (both tackling the problem and the provision and publication of data) and escapes from fish farms. These issues are dealt with elsewhere in this report.

47. The Minister told the Committee the 2007 Act very much sets the foundation for legislation on aquaculture in particular, and the Bill takes forward issues which have been identified since 2007 which require legislative action. He also described the Bill as future-proofing\(^{26}\) the industry in light of the current growth targets and potential new operators coming to Scotland. The Minister stressed the Scottish Government’s presumption was not to legislate unless completely necessary to do so.\(^{27}\)

48. The Committee accepts the legislation which currently regulates the aquaculture and wild fishery sectors is in need of updating and improvement, given experiences since enactment of the 2007 Act. The Committee also accepts the Bill is an opportunity for the Scottish

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Government to bring forward other proposals, such as those on charging and fixed penalty notices, which concern the marine environment more generally.

49. However, the Committee regrets there seems to have been limited progress in some areas since the 2007 Act, and that with some issues, such as improvements to the structure and operation of district salmon fisheries boards, progress has been slow over a long period and further work is still required. The Committee very much hopes the legislation which emerges from this process (including the Scottish Government’s planned review of wild fisheries management) is appropriately robust, sustainable and fit for purpose in the long-term.

Further Scottish Government work

50. The Minister informed the Committee the Scottish Government has refreshed its Ministerial Group on Aquaculture (MGA) which will take forward on-going issues relating to the industry, including issues included in the Bill. In a letter to the Committee, sent on 17 January 2013, the Minister stated—

“I have tasked the MGA to look in the round at what needs to be done to ensure sustainable growth within Scottish aquaculture in the context of the 2020 objectives, and that includes issues of capacity, interactions, science and potential information gaps.”

51. The Scottish Government also informed the Committee it intends to carry out a full review of wild fisheries management in Scotland, to build on the “first step” provisions included in the Bill. The Minister told the Committee—

“The policy memorandum signals that we are committed to carrying out further work to modernise the management structure for salmon and freshwater fisheries during the current session of Parliament. The bill is the first step, but not the final one, in taking forward our manifesto commitment on the issue.

We have asked officials to draw up proposals for the scope of that further work and we will be in a position to announce our next steps once we have considered that advice. The intention is to establish a baseline review of where we sit so that, as minister, I have an understanding of the mix of the boards that we have and of their capabilities, size and coverage before we move on to develop options, if there are options for further review. Any measures that are proposed would be consulted on fully—there would not be a precipitate change in arrangements—but I would not want to prejudge any review of the governance arrangements, which would be undertaken independently of ministers, because that would be prejudicial to the report. I

28 Minister for Environment and Climate Change. Written correspondence, 17 January 2013. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2013.01.17_-_Letter_from_the_Minister_follow_up_evidence_from_16_Jan_meeting.pdf.
would like to see what the industry and stakeholders think is the best configuration to deliver the right result for the sector.”

52. The Committee is pleased to note that a Ministerial Group on Aquaculture will continue to work with the industry on implementing the provisions in the Bill, and also to work on other relevant issues. However, with regard to wild fisheries, the Committee is conscious that a significant number of issues remain unresolved and will be subject to further review, and potentially further legislation.

Policy Memorandum and sustainable development

53. Perhaps the pivotal word in considering all parts of this Bill is “sustainable”. It is important that the Bill ensures sustainable wild and farmed fishing sectors, in all senses of that word – economical, environmental and social. The Committee was therefore keen to explore with witnesses whether they thought the Bill demonstrated appropriate consideration of sustainability issues, and, more importantly, whether it would contribute positively to the sustainable economic growth of both sectors.

54. The assessment of sustainable development in the Policy Memorandum was criticised in evidence to the Committee by Colin Reid, a professor of Environmental Law at Dundee University—

“[...] the assessment of the impact of the Bill for sustainable development [...] is woefully inadequate. Surely many of the Bill's provisions will have a much more profound economic, social and environmental impact, especially for rural communities? The inadequacy of the consideration of sustainable development is a widespread failing [...] and it does seem a real lost opportunity that the Parliament is not using this device as a means of thinking carefully about what the measures we pass today will mean for the future.”

55. The Committee pursued this issue with Scottish Government officials, and Willie Cowan, the deputy director of performance, aquaculture and recreational fisheries, told the Committee—

“Ministers consider that the policy memorandum and other documents cover the area. One of the issues is the question of what is sustainability. Ministers’ position is that they want to encourage a sustainable, growing industry that minimises its impact on the broader marine environment. The economic benefits for local communities, through jobs, income and cohesion, are a by-product of getting that right. I think that what concerns most stakeholders is the question whether growth is environmentally sustainable, and I think that ministers would say that the documents that accompany the bill are perfectly adequate.”

30 Professor Colin T Reid. Written submission.
Rural Affairs, Climate Change and Environment Committee, 1st Report, 2013
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56. The Minister outlined to the Committee how he felt sustainable development issues had been reflected in the Bill—

“We believe that the bill is underpinned by good understanding of the science, which we think is key to the matter. The work will continue through initiatives [...] which will look at the sector’s future sustainable growth to facilitate a greater understanding of what can be sustained at a local level and to consider what constitutes sustainable development when a planning application is submitted for additional biomass in a particular location.

I recognise that sustainable development encompasses a number of facets—economic, environmental and social. That is foremost in our minds and is part of the balancing exercise in a bill such as we are considering, in which we must take account of the legitimate aspirations of a sector to grow, ensuring that that happens in a framework that means that the breadth of civic Scotland can be confident that growth is sustainable. That approach is reflected in the provisions in the bill. The clear message is that growth must be sustainable.”


57. The Committee found the Policy Memorandum which accompanied the Bill to be broadly helpful in setting out its policy objectives, why the approaches taken in the Bill were favoured over possible alternatives, and possible effects on various groups and organisations.

58. However, the Committee notes the concerns raised by Professor Reid, of Dundee University, regarding the specific inadequacy of the section in the Policy Memorandum on sustainable development. It asks the Scottish Government to consider whether the assessment of sustainable development in the Policy Memorandum fulfils its potential as a means of ensuring a consistent and thorough regard for the environmental, economic and social impacts of the changes proposed by the Bill and the alternatives.

59. The Committee also notes that no adverse effects or trade-offs between economic, social and environmental aims are identified in the assessment of sustainable development in the Policy Memorandum, and is of the view that that section of the Policy Memorandum might have been strengthened by the inclusion of such information. The Committee recommends the Scottish Government gives consideration to these issues when preparing sustainable development sections of future policy memoranda.

General principles of the Bill

60. The Committee makes specific comment on the provisions in the Bill, and other issues that were raised during its scrutiny, in the main body of this report below. However, as stated in the Summary at the start of this report, the Committee broadly welcomes the proposals contained in the Bill and recommends the Scottish Parliament support the general principles of the Bill at Stage 1, to allow the Bill to pass to Stage 2.
OTHER COMMITTEE WORK RELEVANT TO THE BILL

Petition PE1336

61. The Committee has a petition open which it has previously agreed to consider as part of its scrutiny of the Bill.

62. Petition PE1336\(^{33}\), brought forward by Lawson Devery on behalf of the Salmon and Trout Association (STA) calls on the Scottish Parliament—

“[…] to urge the Scottish Government to take immediate action to protect wild salmon and sea trout stocks from inappropriate commercial fish farm activities by taking action to ensure that (a) all sea-based fish farms are moved away from the estuaries of major wild salmon rivers to reduce the impact of sea lice and (b) ban salmon smolt farms from operating within any wild salmon river system.”

63. The issues raised in the petition were taken into account by the Committee throughout the Stage 1 process. In addition, a great deal of evidence was received on this issue and detailed comment is made on the issue of sea lice elsewhere in this report.

64. The Committee will consider the petition once the Bill has completed its passage through Parliament. At that time, the Committee will take a view on whether it wishes to close the petition or keep it open, and if it is kept open, what further action it wishes to take.

Climate change

65. The Committee’s remit includes consideration of climate change policy and issues, which focuses on the Scottish Government’s work to meet its statutory climate change targets as set out in the Climate Change (Scotland) Act 2009.\(^{34}\)

66. The Committee therefore considered the impact the Bill may have on climate change, and took evidence on whether the Bill had been suitably “climate proofed”.

67. Climate change may have many implications for aquaculture and fisheries in Scotland. For example, in the case of salmon fisheries increasing river temperatures may cause reduced reproduction of salmon due to physiological stress and increased susceptibility to disease; and cause young salmon to migrate to sea earlier, resulting in a disconnect with the availability of their marine food sources. Reductions in summer rainfall will reduce summer flows which will increase water temperatures further while making it more difficult for salmon to migrate upstream, whilst increased winter flows may scour the gravels in salmon spawning beds (redds) resulting in the loss or damage to eggs.


68. One of the Committee’s fact-finding visits included a visit to the Upper Dee Riparian Scheme, where the Committee learned first-hand about the efforts being made to increase tree cover along parts of the river in order to mitigate the effects of rising water temperatures, due to climate change, at times when salmon will be spawning. The scheme seemed to have a good chance of delivering positive mitigation of climate change on the river, but the Committee heard that in other parts of the country, riparian woodlands are being cut down to allow better access to the river for anglers.

69. The Committee was impressed by the proactive work being undertaken by those managing and operating the Upper Dee Riparian Scheme and believes it is a good example of the sort of long-term planning required to mitigate the possible effects of climate change on the fisheries sectors.

70. However, if other schemes of this nature are to make a contribution to climate change mitigation and adaptation then a more strategic assessment and approach needs to be taken regarding riparian habitat and landscape management measures across Scotland, rather than in one particular area. The Committee therefore recommends the Scottish Government examines, as part of its review of wild fisheries management, how the experiences in the Upper Dee scheme and other best practice measures can be rolled out across the country.

71. Ken Whelan, the Research Director at the Atlantic Salmon Trust, suggested that there was a need for legislation to be adaptive to the needs of climate change—

“There is clear evidence from the work that I have been involved in—we are just about to publish a major publication that looks at 50 years of data—that our bays are changing quite quickly. That poses a challenge to the committee in relation to the legal basis of various acts. Whereas it might have been sufficient in the past to put in place something that was expected to last for perhaps 10 or 20 years, the dynamic of what is happening in the bays is such that it is essential that the bill takes account of the environment in which the industry functions and that there is a clear overview of that.”

72. Mr Whelan went on to outline two specific components within that. Firstly, the effect a changing climate may have on the capacity of inshore bays for large amounts of fish, and secondly, the effect climate change may have on sea lice cycles.

73. Dr John Armstrong, of the Freshwater Fisheries Team and Programme Leader in Marine Scotland, part of the Scottish Government, told the Committee that the higher mortality of salmon at sea which is currently being experienced may also be one of the early signs of the effects of climate change.

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74. Dr Colin Bean, the Science and Policy Adviser at Scottish Natural Heritage (SNH), reassured the Committee on the ability of salmon to adapt in such circumstances—

“[…] we should also remember that these animals have gone through quite a number of changes in temperature over the past 10,000 years since they first arrived in the UK. They are very adaptable—probably more adaptable than we might think—and probably more adaptable than some other species.”

75. And on the issue of climate proofing the Bill, Dr Bean acknowledged it was not a straightforward issue to consider—

“I am not entirely sure what we can do to improve the bill and proof it for climate change—that is a more difficult question. However, allocating powers to the Scottish ministers—for example, to vary close times for seasons—might well be what we will require in the future in order to protect certain life history types or genetic types of animals.”

76. The Minister told the Committee that it was—

“[…] right to identify climate change as a major, major issue. My discussions with fisheries managers suggest to me that river temperatures and the health of our wild fish stocks are a significant problem. I am not a scientist in that respect, but I understand that there is already a gap between recorded river temperatures in summer and the ideal temperature for fish stocks, and that the problem is getting worse, partly because of the removal of trees along river banks, which has reduced cooling capacity for waters, but mainly because of the environmental impact of climate change.”

77. The Minister provided further information on how he felt the Bill was, in places, driven by, and contributing to, climate change mitigation, listing the provisions on taking genetic samples; changes to annual close times; and introductions.

78. The Committee notes the comments made by witnesses with regard to “climate proofing” the Bill. The Committee agrees with the views expressed that this is not a straightforward task, and it will always be a challenge for legislation to prepare for variable future outcomes as a result of the effects of climate change.

79. However, the Committee was encouraged by the practical examples given of how proposals in the Bill could positively contribute towards climate change mitigation and adaptation in fisheries sectors. The Committee recommends the Scottish Government gives careful consideration to ensuring the Bill, and any guidance provided, takes full

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account of climate change mitigation measures, to ensure the aquaculture and wild fisheries sectors contribute to helping Scotland meet its statutory climate change targets and are able to continue to adapt to the emerging effects of climate change.

PART ONE – AQUACULTURE

80. Part 1 of the Bill seeks to improve the regulatory regime for aquaculture, mainly by amending the 2007 Act.

Chapter 1 – fish farm management

81. Chapter 1 introduces a legal requirement for the currently voluntary Fish Management Agreements (FMAg) or Fish Management Statements (FMS) for all fish farms within a Farm Management Area (FMA). It also provides for inspections of farms and the taking of samples, or whole fish, to determine the origins of a fish escape.

Fish farm management agreements and statements - differences

82. A FMAg is an agreement between two or more persons fish farming within a management area. Where there is no FMAg – if there is only one farm in a management area or no agreement has been reached – fish farms must have a FMS. A FMS or FMAg must cover arrangements for fish health management; management of parasites; movement of live fish on and off the farms; harvesting of fish; and fallowing of farms after harvesting. The Bill includes a provision to allow inspections to be carried out and enforcement notices to be served if the measures above are not satisfied.

83. The terms FMAg and FMS reflect those used in the SSPO’s Scottish Finfish Code of Good Practice (CoGP)39 and the Bill states that, so far as possible, the FMAgs and FMSs which will become a legal requirement should reflect the recommendations of the CoGP. This already requires fish farms to operate under a FMAg or, where this is not possible, a FMS. It is believed that the majority of farms comply with the code, however it is currently voluntary (though audited). There was some confusion in evidence given to the Committee about the differences between a FMAg and an FMS. Dr Alan Wells, the Policy and Planning Director with the ASFB, told the Committee—

“There is [...] some confusion around the hierarchy between a farm management agreement and a farm management statement. My understanding is that a farm management agreement functions when there is more than one operator in an area, and the operators agree how that area is to be organised, whereas a farm management statement functions when there is only one operator in an area. However, it has not necessarily been made clear that an area with more than one operator might have a farm

management statement if the operators cannot agree on a farm management agreement. I would look for more clarity about that.”

84. Alex Adrian of the Crown Estate sought to provide some clarity, telling the Committee—

“[…] the statement describes an area that has one farming incumbent, and that if a separate company was to come in, it would agree to adhere to the terms of the statement, which at that point would stop being a statement and become an agreement.”

85. The Committee is clear about the difference between a Farm Management Agreement and a Farm Management Statement. However, the Committee notes the issue raised by the Association of Salmon Fishery Boards, and seeks clarification from the Scottish Government on whether farms in an area where a Farm Management Agreement could not be agreed would have an individual Farm Management Statement.

Fish farm management agreements and statements – statutory requirement

86. The Committee explored the issue of whether it was necessary to place FMAs and FMAs on a statutory footing, rather than continue with the current voluntary status.

87. Willie Cowan, from the Scottish Government, told the Committee—

“[…] fish farms will be required to have farm management agreements or statements. In most cases just now, those or similar arrangements happen voluntarily, but the Government wanted to ensure that they happened in every instance to protect the whole industry and, indeed, the broader environment.”

88. Professor Phil Thomas, Chairman of the SSPO, told the Committee that 98% of fish farms in Scotland were members of the SSPO, and it was a requirement of SSPO membership that members be signed up to the CoGP which contains details of FMAs and FMs. Professor Thomas also stated that compliance with the CoGP was, in terms of a percentage, “in the high nineties”.

89. He explained that the remaining 2% of fish farms—

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“[…] are on the tips of islands in distant areas of the country. They do not formally operate in a farm management statement situation because they are single farms in particular areas, but they abide by SSPO requests.”

90. Members sought clarity from Scottish Government officials on what the timescales would be for farms to sign up to statutory agreements and statements. Willie Cowan told the Committee—

“We have to consider transitional arrangements, as we do with all new legislation. Given that the majority of fish farmers currently undertake that type of arrangement, we do not anticipate that for the majority it will be a huge burden to revise their agreements so that they comply with the new law. We will work with the industry to understand the gap for farmers who currently have no agreement and the timescale for putting one in place.

At a practical level, it is about co-ordination of stock, treatment and harvesting, so if the bill is passed it will probably make sense for the requirements to come into effect at the beginning of the next production cycle in each area.”

91. However, the Scottish Wildlife Trust was of the view that a FMS in itself would not promote the coordination which was at the heart of a FMAg and was concerned therefore that FMAgs and FMSs were presented in the Bill on an equal footing, rather than FMAgs being more desirable. The Scottish Wildlife Trust also felt agreements and statements should be made publicly available.

92. Professor Phil Thomas was not sympathetic to the call for the publication of statements and agreements, telling the Committee—

“I see no benefit from companies making that information publicly available and I would envisage an additional cost to and burden on companies from doing so.”

93. The Committee received evidence which was concerned that a possible result of the Bill could be that FMSs and FMAgs were not flexible enough to rapidly respond to unexpected circumstances.

94. One other issue which emerged in relation to FMAgs in particular was the need for mediation if agreement could not be reached within a particular FMA. Professor Phil Thomas told the Committee that the SSPO already provides this service where required.

95. The Committee questioned the Minister on this issue and he said that independent arbitration was appropriate in both the establishment of FMAgs and

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also once FMAgs were operating. Willie Cowan confirmed that the SSPO currently has a role to provide this service.

96. The Committee supports the Bill placing the requirements for Farm Management Agreements and Farm Management Statements on a statutory footing. The Committee is also of the view that, as a significant majority of fish farms in Scotland are already operating within this system on a voluntary basis, there should not be an issue in terms of transition from the current to the new arrangements. The focus should therefore be on the farms which are not currently signed up to either a Farm Management Agreement or a Farm Management Statement, to ensure they comply with the new legislation as quickly as possible.

97. The Committee notes that the Scottish Salmon Producers’ Organisation currently provides a mediation service to assist with Farm Management Agreement where there has been a breakdown in relations, and recommends the Scottish Government works with the Scottish Salmon Producers’ Organisation to ensure this service is fully accessible and fit for purpose.

Escapes and obtaining samples from fish farms
98. Section 2 makes changes to the 2007 Act to allow inspections and the taking of samples or whole fish to trace the origins of escaped fish. The current provisions in Section 5 of the 2007 Act allow inspections on farms where an escape has been reported. The new provisions would include powers to take samples from any fish farm to determine the origin of escapes.

99. During its fact-finding visits, both to salmon rivers, and to fish farms, the Committee heard a range of opinions on the number, cause and effects of escapes of fish from fish farms on the wider environment. The Committee saw, first-hand, the efforts being taken by some fish farms to improve equipment and practice to reduce the risk of escapes, and heard about the effects that large scale escapes can have on wild fisheries and on the wider freshwater and marine environment.

100. The Committee heard that there are two main types of escape, the first relating to an identifiable incident, such as extreme weather conditions, human error, or an attack by a predator (e.g. a seal chewing through a net), and the second being the leakage of fish without any specific incident occurring.

101. The Scottish Government wrote to the Committee on 4 December 2012 with data on the number of reported escapes from fish farms since statutory reporting was introduced in 2002. This data showed that, between 2002 and 2012, 2,652,416 fish of all species had been reported as having escaped from fish farms. The Committee is encouraged that the most recent figure for 2012 is 15,334, the lowest recorded figure to date. However, the Committee notes that in the previous year, 2011, the figure was 416,454, which, together with a history of significantly fluctuating figures year-on-year, demonstrates that there is no room for complacency.
102. Dr Alan Wells reminded the Committee that it was important to keep in mind that the statistics detail reported escapes but there is additional anecdotal evidence showing that the number of unreported escapes is not insignificant.

103. It was also noted that some lochs contain hatcheries for both wild and farmed fish and escapes were not only about farmed fish escaping into the wild environment.

104. Professor Phil Thomas noted some concerns with the current drafting of this section of the Bill—

“[… there is a technical problem with the way in which the bill is written, as the text suggests that an escape at one farm could trigger sampling at every farm in Scotland. We think that that is unreasonable, although we have no difficulty with the notion that, if there is an escape in an area, farms in that location should be sampled.

The important issue is that wild fish, not farmed fish, should be monitored. If we are going to look for escapes, the wild fish population is the key.”

105. The Committee received evidence which suggested alternative methods for tracing the origins of escaped fish. In evidence to the Committee, Europharma stated that—

“[… contrary to the implications of [...] the Policy Memorandum [...] in Norway the genotyping methodology for traceability of farm escapes is not the only approach being taken and [we] recommend that Scotland also evaluate the alternative method being trialled there: physical tagging of fish.”

106. Ken Whelan was also in favour of physically tagging farmed fish, particularly in areas where there was known to be a problem with escapes.

107. The Minister told the Committee that it was not currently practically possible to tag all farmed fish, given the numbers involved. However, he noted that this issue was being looked at globally and that technology was always advancing and may provide alternative options at some point in the future.

108. The escape of farmed fish into the wider environment is obviously undesirable for both the aquaculture and the wild fisheries sectors. It is therefore important these sectors work together to limit the number of escapes, and their effects.

109. The Committee supports the provisions in the Bill which would enable samples to be taken from any fish farm in an effort to determine where an escape had originated so appropriate steps could be taken to prevent further escapes and minimise any resulting impacts.

110. The Committee notes concerns raised by the Scottish Salmon Producers’ Organisation which suggest that an escape could trigger sampling at every farm in Scotland, however the Committee is confident this was not the policy intention of the Bill and that any sampling would be proportionate and based on the scientific need for data.
111. The Committee notes the suggestions put forward for alternative methods of tracing the origins of escaped fish. The Committee recommends the Scottish Government gives further consideration to these suggestions, in association with the aquaculture industry, and reports back to the Committee ahead of Stage 2.

Seals

112. In gathering evidence relating to escapes of fish at fish farms, the Committee received evidence about the threat posed by seals, which are known to predate on some farmed fish, and the methods currently used by the aquaculture industry to prevent these attacks.

113. Alex Kinninmonth, the Living Seas Policy Officer with the Scottish Wildlife Trust, told the Committee—

“30 per cent of escapes in 2011 were caused by predators. In the development of a technical standard, we need to prioritise gaps in knowledge about how predators attack the net so that we can find the most effective and benign way in which to deal with the problem. Last year, 242 seals were killed at fish farms in Scotland. That is no good for wildlife and, frankly, it does the industry no favours. The development of that standard really needs to be prioritised.”

114. The Committee heard in evidence that 20 per cent of fish farms possess anti-predator nets, but that only 13 per cent of farms are using them. Steve Bracken, from Marine Harvest, told the Committee—

“We used anti-predator nets back in the 1970s and 1980s. The nets hang just outside the main net that contains the fish. Their mesh tends to be between 4 inches and 6 inches. I have seen for myself that, when those nets are deployed, all sorts of wildlife gets trapped in them, and it is extremely unpleasant.

We, like many others in the industry, have gone down the route of tensioning nets. That is a function of the size of the pens that we are dealing with today. We have a bigger volume of net, with some of the bigger nets having the volume of five Olympic-size swimming pools. Those bigger nets have to be really well tensioned, which makes it hard for the seals to attack the pen.

In addition, we have put seal blinds into the base. Those are nets of finer mesh that make it hard for seals to come up from underneath and see fish. We also use acoustic deterrents, which are an important part of our equipment, although I am aware of the issues with cetaceans[49]. The design of the equipment is being considered so that it does not affect cetaceans, but there is a lot of work to be done on that.

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48 Animal Concern and the Save Our Seals Fund. Written submission, page 2.

49 The order Cetacea includes carnivorous marine mammals such as whales, dolphins, and porpoises.
We would much prefer to find ways of keeping seals away from our fish. At the beginning of next year, we will trial the use of a copper-based mesh in the base of one of our nets to see what happens. We are considering new materials and, in particular, sapphire netting, which is high-density polyethylene. Stainless steel can be run through that netting. All netting developments are being looked at seriously.\(^{50}\)

115. As well as netting deterrents, the Committee heard evidence that an audio deterrent, a seal-scarer, was being deployed by many fish farms in a bid to keep seals away from the farms.

116. The Committee asked Steve Bracken when a farm would decide to turn on an audio device. He replied—

“That is a good question. That depends on the farm manager and what he believes works best on his farm, based on his experience. Some farm managers will switch it on from the beginning, as they do not want seals coming near the farm at all; other farm managers will wait until there is a problem before putting on the device. Seals can get accustomed to the noise, so it is down to the farm manager to use his judgment on how best to deploy the device on his farm.”\(^{51}\)

117. And he went on to explain that—

“Anecdotally, farm managers will say that they have on occasion seen porpoises and dolphins in the loch when the seal scarer has not been on. When it is switched on, they stay around before moving out. That is not based on a scientific trial, so I cannot say whether it reflects the situation accurately.

New developments are coming along all the time. One new device that is on the horizon and that we are interested in does not emit a loud noise—seal scarers are about 180 or 190 decibels—but it sounds like fingers scratching a blackboard. The seal does not like the noise, and it reacts accordingly.”\(^{52}\)

118. Dr Armstrong told the Committee that the Scottish Government has recently funded the University of St Andrews to develop a new audio seal scarer that would keep the seals away without damaging the seal in any way or affecting cetaceans.

119. The Minister told the Committee that the University of St Andrews has secured an investor for advancing the commercialisation of the new audio device and signed a technology licence for it in December 2012. He added—

“A Scottish Government sponsored research project showed, through captive experiments, that seals can be deterred by many sounds but that this effect

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can gradually disappear over time. The new acoustic deterrent involves a ‘startle stimulus’ which appears to continue to work over time.”

120. Dr Bean, from SNH, was of the view that such devices should be regulated if there was concern that seal scarers could negatively impact on seal welfare.

121. The Minister told the Committee that seals should only be shot to protect fish farm stocks as a last resort, so non-lethal alternatives needed to be explored to allow seals to co-exist with the aquaculture industry. The Minister told the Committee about the Scottish Government’s work to develop non-lethal measures which do not cause harm to other species.

122. However, he confirmed to the Committee that the Scottish Government has no plans to regulate the use of seal scarers at the present time, but said that the intention was that on-going research into alternative audio devices would inform “the requirement of the seal licensing system on non-lethal alternatives, including best practice and minimum standards”.

123. The Committee acknowledges the threat seal attacks pose to both the commercial performance of fish farms, and to the wider marine environment in terms of the impact on the number of escapes. However, the Committee notes concerns raised about the number of seals which are being shot at fish farms as part of predator control.

124. The Committee welcomes the efforts being made in some parts of the aquaculture industry to pursue alternative measures, in terms of netting and other equipment, which would prevent seals being able to break through into farm cages.

125. The Committee acknowledges that audio seal scarers may be a cost effective option to keep seals away from fish farms. However, it believes it is essential that such devices are as humane as possible. The Committee therefore recommends the Scottish Government works with the aquaculture industry to ascertain how effective and widespread the use of such devices is, in order to establish clear guidelines on their use.

126. The Committee welcomes the work being done by the University of St Andrews to develop an audio device which is as humane as possible for seals and does not harm other species and is encouraged that the device has secured investment, and a technology licence, which may see it established in the market place as a viable solution for the aquaculture industry. The Committee recommends the Scottish Government continues to work with the University of St Andrews to encourage further investment in, and development of, the device.

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53 Minister for Environment and Climate Change. Written correspondence, 17 January 2013. Available at:
http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2013.01.17_-Letter_from_the_Minister_follow_up_evidence_from_16_Jan_meeting.pdf.

54 Minister for Environment and Climate Change. Written correspondence, 17 January 2013.
Chapter 2 – fish farming: equipment and wellboats

127. Part 1, Chapter 2 introduces provisions to allow Scottish Ministers to make subordinate legislation for technical requirements for equipment and wellboats. In terms of equipment, the Bill introduces provisions to make subordinate legislation to set technical requirements and put them on a statutory footing, following further work by the Scottish Technical Standard steering group. In terms of wellboats, the Bill allows for measures to be put in place to control and monitor wellboat operation to control the risks of the spread of parasites, pathogens or diseases.

Equipment

128. The CoGP includes recommendations on containment (in section 4.9 and Annex 14) which require equipment to be “fit for purpose”. The code states that these will be updated when the Containment Working Group reports. The 2007 Act allows inspections to ascertain the risk of escape and the measures in place for containment of fish and prevention of escapes. Inspections are based on the requirements in the CoGP but “fit for purpose” is not defined in the Act.

129. A technical standard for Scottish fish farm equipment is under development. This includes fresh water and marine sites and covers nets, pens and mooring systems. The Scottish Technical Standard steering group (part of the Containment Working Group) has been working on a draft. Section 3 would allow Scottish Ministers to regulate to make the standard statutory. The Bill specifies what could be covered by secondary legislation including the purposes of the technical standard and requirements that can be put in place in terms of the information fish farm operators must provide, powers for inspection and sanctions for non-compliance.

130. Willie Cowan explained the Scottish Government’s aims in this regard—

“One of the Government’s key aims, which is reflected in the bill, is to reduce any potential impact of aquaculture on wild fisheries. One of the main ways to do that is to keep the fish in the cage. That is one of the key issues behind the technical standard provisions in the bill. Indeed, it is one of the key issues for the aquaculture industry as a whole, because every fish that escapes is an economic loss to the industry.”


131. Submissions the Committee received suggested that a significant number of escapes occur as a result of human error rather than deficient equipment and that regulations should therefore provide for there to be proper training in the use of fish farm equipment.

132. On the issue of training, Steve Bracken told the Committee—

“[…] when sites are given good equipment, it is key that people are well trained in its use. Some companies in the salmon industry have developed in-house containment training schemes, and we want to spread that throughout the industry. We look at containment in the same way as we look
at sea lice: it is an industry issue, and if we have good ideas we want to be able to share them.\textsuperscript{56}

133. The Minister was of the view that training should be left as a matter for the industry to address, albeit that the current picture would vary across operators and that this may become a regulatory issue if it was clear that training was not being successfully addressed. The Minister suggested that the technical standard strand of the MGA should take this matter forward.

134. The Committee learned that the technical standard was currently being developed by the Containment Working Group, and that Steve Bracken, from Marine Harvest, was chairing the Group.

135. Steve Bracken outlined the general ethos that is being taken by the Group, compared to more complex systems which exist, in his view, elsewhere, such as in Norway. He told the Committee—

\begin{quote}
“We have gone for something that will be understandable by farm managers, their staff and managing directors. The document must be not quite unputdownable but readily accessible and understandable by most people who are involved in the industry.”\textsuperscript{57}
\end{quote}

136. The Committee supports the approach in the Bill allowing Scottish Ministers to set technical standards for equipment, and returns to this issue in terms of the delivery of the policy aim via secondary legislation later in this report.

137. The Committee awaits the outcome of the work currently being carried out by the Containment Working Group. The Committee is encouraged by the comments made by the Chair of the Group that the regulations will be “readily accessible and understandable” and will pay close attention to these regulations when they come before the Committee.

138. The Committee learned that fish farm escapes can be due to human error, as well as the equipment being used, and therefore agrees with witnesses who highlighted the importance of training of fish farm employees, and others who come into direct contact with farmed fish. The Committee commends the work carried out in this area by Marine Harvest and recommends the aquaculture industry rolls out good practice from those currently operating in-house training schemes.

139. The Committee does not think that such training should become a legal requirement unless a significant evidence-base emerges to suggest that there is a widespread industry failure to adequately manage and deliver such training. The Committee recommends the Ministerial Group on Aquaculture monitors and assesses the effectiveness of training within the


aquaculture industry with a view to intervening if it deems it necessary to do so.

**Wellboats**

140. A wellboat is defined in the Bill as "a vessel that contains a tank or well for holding water (including sea water) into which live farmed fish may be taken, and [...] kept" for the purpose of transportation storage, slaughter, treatment or any other purpose connected with fish farming. There is currently some guidance in the CoGP on the risks of wellboat operation but no statutory requirement to record movements. There are concerns that wellboats could spread parasites or disease and that a lack of monitoring would mean this might not be identified. Wellboats are shared between Norway and Scotland and there is also work underway in Norway to develop technical standards.

141. Section 5 would allow the control and monitoring of wellboat operation in order to control risks of the spread of parasites, pathogens or diseases. As well as monitoring movements, wellboat operators could be required to use or install particular types of equipment to control risks. Enforcement would come under the provisions in Part 7 of the Marine (Scotland) Act 2010 (Section 7) and enforcement notices could be served to require action where wellboat operators were not fulfilling requirements (Section 6).

142. The Scottish Environment Protection Agency (SEPA)’s submission suggests a way of simplifying the consenting regime for the use of wellboats, where it, and not Marine Scotland, would be responsible for consenting discharges from wellboats. This could, SEPA stated, be cheaper for fish farmers and less bureaucratic. The Minister told the Committee that he was in discussion with SEPA about this proposal and would write to the Committee in due course to provide an update on progress.

143. The modifications needed to wellboats were identified as some of the most significant costs in the Financial Memorandum. The Committee pursued with witnesses whether these costs were considered to be proportionate.

144. Willie Cowan told the Committee that the ball-park figure for retrofitting a wellboat with a filtering system may be approximately £500,000. The Committee also learned that a new wellboat costs between approximately £12 million and £15 million to build.

145. Professor Phil Thomas gave the SSPO view of the wellboat provisions in the Bill—

> “Everybody in the industry would be supportive of retrofitting wellboats, but the cost would be massive. That would need to be phased in because, in truth, it is much easier to put the right installation in when a new boat is being brought in, rather than to retrofit. There would be commercial cost considerations. As the bill is written, the definition of a wellboat would cover pretty well every boat that goes anywhere near a fish farm. That is obviously

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58 Aquaculture and Fisheries (Scotland) Bill, section 4(1).
not the intention, and nor is it practical. I hope that the definition of wellboats will be adjusted in the final version of the bill.”

146. Willie Cowan told the Committee that the Scottish Government was aware of the possible issue about the definition of what constituted a wellboat and that it would look further at the issue.

147. The Committee welcomes the principle of the provisions in the Bill and joins the aquaculture industry in welcoming newly built wellboats being equipped to the requirements outlined in the Bill. However, the Committee acknowledges there will be significant cost implications involved in bringing existing wellboats up to the required standard.

148. The Committee therefore recommends the Scottish Government ensures the definition of wellboats in the Bill is amended at future stages if necessary, to ensure the legislation applies only to those vessels intended. The Committee further recommends the Scottish Government works with the industry so the provisions in the Bill can be phased in and managed within an appropriate timescale to make sure they are commercially viable as well as environmentally desirable.

149. As part of its evidence gathering on this issue, the Committee learned that few, if any, wellboats were built in Scotland (they are mostly built in Norway) and that, therefore, the retrofitting of wellboats may also largely take place in Norway. The Committee encourages the Scottish Government to work towards securing further building and retrofitting of such vessels in Scotland, given the importance and growth of the aquaculture industry in this country.

150. The Committee also recommends the Scottish Government seeks to work with the Norwegian Government to develop a common standard for wellboats between the two countries.

151. The Committee notes the Scottish Environment Protection Agency’s suggested way of simplifying the consenting regime for the use of wellboats, where it, and not Marine Scotland, would be responsible for consenting discharges from wellboats. The Committee also notes the indication from the Minister that he was in discussion with the Scottish Environment Protection Agency about this proposal. The Committee, recognising the merits of the proposal, looks forward to receiving an update from the Minister on the current discussions between the Scottish Government and the Scottish Environment Protection Agency on this issue.

Chapter 3 – commercially damaging species

152. Chapter 3 deals with commercially damaging species, putting in place measures to allow the Scottish Government to make orders defining such species. There is currently no definition of what such species are and no measures in place

to control them (unless they are invasive and non-native). A draft code of practice has been developed by the Scottish Government’s Shellfish Forum and the Bill would give legislative backing to the measures in the draft code. The chapter also deals with control where a commercially damaging species is confirmed as being present – outlining control agreements, control schemes (where no agreement could be reached), and emergency action notices (in cases where urgent action is required).

153. The Bill defines commercially damaging species as a species of animal or plant which, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a fish or shellfish farm and one that of itself has little or no commercial value. In most cases, orders under Section 8 would apply to native species, as provisions to deal with non-native species are included in the Wildlife and Countryside Act 1981 (as amended). Ministers may make provisions on the movement of species, equipment or water which could contain damaging species and can take samples and carry out surveillance activities (Section 10).

154. Where the presence of a commercially damaging species is confirmed, Ministers may enter into “control agreements” with a fish farm operator (Section 13). This would involve agreeing the measures to be taken and the timeframe needed to deal with the damaging species. Where difficulties were encountered in coming to an agreement, “control schemes” could be put in place (Section 14). This could be carried out if necessary without the agreement or participation of the farmer. Where action is urgent, an “emergency action notice” could be served allowing action to tackle the commercially damaging species in a shorter timeframe (Section 15). Appeals could be lodged against such a notice (Section 16).

Orders relating to commercially damaging species and definition

155. The Committee heard evidence about the effects of one such species, the mussel, *Mytilus trossulus*, which has had a negative effect on mussel farms in Scotland. In that case, the Scottish Government was able to take action but this was only because all mussel farmers active in the loch affected agreed to it. This example was given as a reason why legislation in this area was required.

156. In approaching this issue, it was clear to the Committee that the fundamental basis for ensuring these measures could be effective lay in the definition of what a commercially damaging species would be in the context of the legislation, and pursued this point with witnesses. Alex Adrian, from the Crown Estate, told the Committee—

“Any definition has to be broad enough to catch such things when they arise, because no one can really pick them out. Such species are not invasive non-natives and are not necessarily damaging in their own right; the effects become clear only when the commercial context applies.”

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157. The Bill limits the Scottish Ministers to only being able to make orders specifying a commercially damaging species which, if not controlled, would be likely to have an adverse effect on the economic or commercial interests of a fish or shellfish farming business, and if the species itself is of little or no commercial value. Alex Kinninmonth told the Committee—

“I note that the bill defines a commercially damaging species as something that is without “commercial value”. The danger with that definition is that, although something might be without commercial value, that does not mean that it has no environmental or ecological value.

[…] it has been presented as something that is quite wide ranging, which is a bit dangerous. At the very least, Scottish Natural Heritage should be consulted before something is defined as a commercially damaging species. After all, there is the potential for something quite damaging to happen.”

158. Willie Cowan confirmed that any order defining a commercially damaging species would be consulted upon before being laid, and that agencies such as SNH would be asked for a view as part of that consultation process.

159. Professor Phil Thomas also had some concerns about the current drafting of the provision—

“[…] it has been cast in broad terms in relation to fish farms. However, fish farms are not the issue; instead, the issue is movement of the species and, within that, the movement of boats, particularly inshore boats […] Any attempt to do something about that should focus not on the fish farm but on how the species got there, which is almost universally down to boats. As a result, the provision is too limited and we would have preferred the Government to have included the opportunity to introduce secondary legislation to get a more comprehensive approach.”

160. The Committee also questioned the Minister on the potential negative impact of genetically modified (GM) salmon on wild salmon, given the USA’s provisional approval of GM salmon, and whether GM salmon could be defined as commercially damaging.

161. The Minister said that as it was illegal to hold or release GM animals without approval, which would include an assessment of potential detrimental effects, he could not envisage a situation where approved GM product would need to be subsequently defined as being commercially damaging.

162. The Committee is supportive of the principle of the Bill’s provisions on commercially damaging species, in order to be able to deal more effectively with incidents such as the appearance of the mussel, Mytilus trossulus, (a

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63 Minister for Environment and Climate Change. Written correspondence, 17 January 2013.
species which was not invasive non-native, but which could cause commercial damage) at Scottish mussel farms.

163. The Committee notes the concerns raised regarding the definition of a commercially damaging species in the Bill, and the call for Scottish Natural Heritage to be consulted before a species is designated as such, to ensure environmental and ecological considerations are also taken into account. The Committee was reassured by the Scottish Government’s intention to consult on orders before they are laid, and to ensure agencies such as Scottish Natural Heritage are asked for a view as part of that consultation process.

164. The Committee also notes the concerns that the provisions are too narrowly drafted and not comprehensive enough, in that they are limited to the presence of species on fish and shellfish farms, rather than casting the net wider to encompass where the species originated from and how it reached the farm. The Committee asks the Scottish Government to re-examine that issue ahead of Stage 2, should the Bill reach that Stage, to ascertain if any amendments are required to better achieve the purpose of the provisions.

165. The Committee notes the comments made by the Minister with regard to the potential impact of genetically modified salmon on wild salmon. However, the Committee remains of the view there could be circumstances (such as an escape of approved genetically modified salmon) in which genetically modified salmon could be commercially damaging to wild salmon. The Committee therefore asks the Ministerial group on Aquaculture to keep this matter under review.

Issues not taken forward in the Bill

166. As discussed earlier, several issues consulted upon were not included in the Bill. The Scottish Government produced a response to the consultation, which it updated on 26 November 2012 in writing to the Committee, explaining which issues contained in the consultation were not taken forward in the Bill, why, and how they would be progressed.

167. Many issues relating to aquaculture are not included in the Bill and the Scottish Government response gives limited information on how they will be taken forward. These issues included—

- revoking consents and dealing with unused consents;
- provision of data on sea-lice, fish mortality and movements, etc;
- powers to reduce biomass consents; and
- seaweed cultivation and discharges from processing plants.

168. Some of these issues provoked considerable comment during the Committee’s evidence taking and are therefore discussed in detail below.
Sea lice - general

169. The Committee heard a great deal about the extent of the effect of sea lice on both wild and farmed salmon. A controversial issue within this, and one which provoked firmly opposing views, was the availability of, and public access to, data on sea lice numbers on salmon stocks, in fish farms – an issue consulted on but not taken forward in the Bill.

170. The Committee heard evidence about the extent of the sea lice problem, how lice move from fish to fish, what effects lice have on the health of fish, what effects lice have on both the aquaculture and wild fisheries sectors; how fish are treated for lice, and what steps could be taken to tackle the problem more effectively for all concerned. Much of the discussion focussed on whether there should be a statutory requirement on the face of the Bill for individual fish farms to regularly publish data on sea lice numbers.

171. In terms of why the issue is not part of the Bill, in his letter to the Committee of 26 November 2012, the Minister updated the Scottish Government’s response to the consultation analysis, which outlined the Government’s summary and response to the issue of sea lice data collection and publication. The letter states—

“There was some support for combined government and aquaculture industry responsibility for data collection and publication. There was strong support for additional information to be provided, as proposed in the Consultation Document. However, there was also strong opposition to this proposal from the aquaculture sector. Scottish Government response: It is anticipated that this proposal will be progressed through non-legislative means, through improved voluntary reporting, in discussion with stakeholders. Alternatively, the Scottish Government has existing powers to progress the proposals through secondary legislation.

Additional information

Part 5, Section 38 of the Aquaculture and Fisheries (Scotland) Act 2007 details the powers available to the Scottish Ministers to make orders around information provision. For now, it remains our intention to progress data collection through voluntary means before the end of the year.”

172. Willie Cowan went into more detail about the route being taken by the Scottish Government with regard to sea lice data—

“[…] there are powers in the 2007 act for ministers to require the provision of environmental data, so new primary legislation is not required. After discussions with stakeholders, ministers have taken the view that there should be greater disaggregation of sea lice data. Last week, the Scottish Salmon Producers Organisation published an article on its website indicating that from 1 January 2013 the disaggregation of sea lice data would move to

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between 25 and 30 areas around Scotland as opposed to the current six. Ministers support that further disaggregation but recognise that in some instances there are commercial confidentiality reasons why it might not be beneficial to the industry given their responsibilities as public limited companies.\textsuperscript{65}

173. Willie Cowan went on to summarise the fundamental question that the Committee, and ultimately Parliament, should consider, if amendments come forward on this issue—

“\textquote{The issue for Government and for Parliament generally is whether the voluntary approach that is being advocated provides stakeholders as a whole with a solution that is acceptable or whether we need to come back and consider that through further regulation.}”\textsuperscript{66}

\textbf{Origins of sea lice}

174. The Committee considered the issue of sea lice from a number of angles. Firstly, it heard evidence on the origins of sea lice. It heard from Professor Phil Thomas that the assumption that sea lice always originate on fish farms was mistaken, and often lice were brought in on mature fish returning from sea which caused lice outbreaks on farms.

175. Dr Alan Wells acknowledged that there was a lack of clarity on this, telling the Committee—

“\textquote{Scientifically, we cannot say where an individual sea louse came from or whether it came from a farm or a wild fish. The chances are that it is a bit of both.}”\textsuperscript{67}

176. The Committee notes the evidence it heard on sea lice origins and believes that, whilst it is important, scientifically, to understand the behaviours, cycles and preponderance of lice, the issue sits beyond of what is required by way of regulation as part of this Bill.

\textbf{Biomass and revoking consents}

177. SEPA informed the Committee that, under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, Ministers currently have the powers to direct SEPA to reduce the biomass, i.e. the amount of fish, at a fish farm, under certain conditions. SEPA also told the Committee it has the power to revoke the relevant fish farm licences in certain circumstances.

178. However, the Committee heard from several witnesses that it was a matter for fish farms, ultimately, to ensure that the number of fish in their cages was appropriate to the amount that could be treated for lice. The Committee learned that the planning consent for the biomass of a site was managed separately from

the SEPA licencing of medicine for a site. Douglas Sinclair, an Aquaculture Specialist with SEPA, told the Committee—

“We would say that it is up to the fish farmer to ensure that he holds a level of stock on his farm that can be treated responsibly using the available medicines. In our view, it is a husbandry issue.”

179. Steve Bracken told the Committee that the aquaculture industry took the issue of consents very seriously, and that it was critical to them that consents were not reduced as that would result in fewer tonnages of fish being produced. He said that it was imperative that farms were managed in a way that matched the tonnages with the consents in a way that was environmentally sustainable.

180. The Minister told the Committee that the Scottish Government—

“[…] consider[s] it to be within the powers of Ministerial Direction to ask SEPA to [reduce biomass] for purposes other than environmental pollution – for example if persistent sea lice issue[s] were unable to be managed appropriately within the available medicine discharge limits.”

181. The Committee believes it is good practice for fish farms to have a level of stock that can be treated appropriately for lice and other diseases and notes the Scottish Government, and the Scottish Environment Protection Agency, have powers to intervene and limit the amount of stock at a farm in specific circumstances.

182. The Committee notes Scottish Ministers and the Scottish Environment Protection Agency have powers to reduce biomass at fish farms and also, in specific circumstances, to revoke consenting licences. The Committee believes these powers are appropriate should intervention be required.

183. However, the Committee is concerned about the separation that exists between the biomass permitted, and the biomass that could be treated with the quantity of medicine licensed to be used at a site, such that it would be possible to have more fish at a site than it were possible to treat, were that necessary. Whilst noting the comments made that it was for the industry to balance these two biomass levels, the Committee, in the absence of sufficient data, recommends the Ministerial Group on Aquaculture keeps this matter under close review.

_Treatment of farmed and wild fish_

184. Whilst accepting that the 2007 Act already contains the powers required to take action relating to lice outbreaks on fish farms, there was some disagreement amongst stakeholders about whether this extended to wild fish. Dr Alan Wells told the Committee—

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69 Minister for Environment and Climate Change. Written correspondence, 17 January 2013.
“[…] the provisions in the 2007 act are specifically about the health and welfare of the fish in the cages but we are equally concerned about the health and welfare of wild fish—the fish outside the cages.”

185. But Professor Phil Thomas was of a different view—

“The perception that the fish health inspectorate cannot take action in relation to wild fish is wrong. The code that the inspectorate uses to inspect has adopted the elements of the industry code that set treatment limits and give guidance on when treatment is given, for example, in the spring, autumn and so on. The fish health inspectorate can follow that code, as that is the code that it uses to inspect. Therefore, that perception is wrong.”

186. The Committee notes the comments made on this issue and would welcome clarification from the Government in advance of stage 2, should the Bill proceed, that the provisions in the 2007 act extend to enable action regarding lice outbreaks in wild fish.

Publication of sea lice data

187. The most controversial aspect of the sea lice issue, and the one which provoked the most debate, was on the issue of the availability of data on the number of sea lice on fish farms. The Scottish Government received a significant amount of feedback on this issue in its own consultation process and, as detailed above, decided to maintain the current voluntary approach to this matter. Professor Phil Thomas outlined what the SSPO has recently agreed to do in this regard—

“What we have agreed to do at this stage, taking further account of the wild fish considerations, is to move on from the area basis on which we have been publishing. Currently, we use six areas across Scotland, which we decided was the most appropriate approach after analysis from a sea lice epidemiology standpoint—albeit that it was done for our own interests. In the future, however, we will move to a situation in which we will have 26 to 28 areas, so there will be a much finer disaggregation.”

188. Ken Whelan helpfully provided some wider European context by outlining to the Committee the situation in Ireland—

“The situation in Ireland is that we have had public access to lice information for quite a number of years. In another life I was responsible for the monitoring in Ireland. My team used to monitor 14 times a year. The material was collected and analysed and within two weeks the farms were made

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aware of what the monitoring had shown. Within a month, the information was made available publicly. There are huge advantages in that system.”

189. Guy Linley Adams, an environmental solicitor at the Salmon and Trout Association, went on to clarify the current position with the 2007 Act with regard to record keeping and access to those records—

“[…] the 2007 act requires the industry and fish farms to keep records, which are available for inspection, but the records or copies of them are not held by the fish health inspectorate, so they are outside the scope of the Environmental Information (Scotland) Regulations 2004. The public does not have access to records unless the Scottish Government or its agencies hold them.”

190. It was clear that data on sea lice are currently collected and published. The debate focussed on whether these statistics go far enough, and whether there would be merit in placing the publication of data on a statutory footing in the Bill, and making it a requirement for every fish farm to publish individual sea lice data on a regular basis.

191. It was clear to the Committee there were two opposing views on this matter; on one hand, Professor Phil Thomas from the SSPO was of the opinion that publishing data on a farm-by-farm basis would not add to what it is currently, or shortly will be, provided, as the material issue is the number of lice in an area, rather than on specific farms. On the other hand, many witnesses felt the publication of farm-by-farm data would be more helpful and transparent and would assist all those interests affected by an outbreak by providing more specific local information.

192. Steve Bracken, from Marine Harvest, a significant owner and operator of fish farms in Scotland, told the Committee his company had published sea lice data online, and had done so since 2009. However, these are not on a farm-by-farm basis.

193. Alex Adrian, the Aquaculture Operations Manager at the Crown Estate, suggested that the primary driver behind the publication of data should be based on the affected interests—

“The argument about making data available is being made on the basis that there are adjacent interests that may be affected by lice on fish farms, but it is the context of just how those adjacent interests are affected and the significance of that effect that is material here. I would suggest that the publication of lice data is material to those whose interests are affected and the level at which the lice are being managed. For example, in an area management system, it is entirely acceptable that a particular farm’s lice

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counts would be made available to the interests that may be affected within the management area.”

194. Douglas Sinclair, from SEPA, gave the Committee some context on how information about sea lice compared to other areas in terms of data publication—

“It is one of the few areas in the Scottish environment in which someone can be doing something that can significantly impact on someone else’s interests and there is no public access to what is going on. We regulate various areas. For example, if someone lives downwind of smoking chimneys on a factory and they want to find out what is in the smoke, they can find out from us—from the published record. Fish farming in Scotland is the one omission. For all sorts of reasons, it ought to be sorted out and the information ought to be published.”

195. The Committee also received evidence from Guy Linley-Adams on how the provision of farm specific data could be best achieved in legislative terms—

“[…] that can easily be dealt with by amending the Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, which was drawn up under the 2007 act. Primary legislation is not needed.”

196. The Minister helpfully and clearly outlined the Scottish Government’s position on sea lice data. He confirmed that data is currently collected on a farm-by-farm basis, and that this information is made available to those with a local interest on a case-by-case basis, to ensure that those who require the information in order to respond had access to it. However, he also confirmed that the Scottish Government did not believe that farm-by-farm data should be published routinely, due to a combination of commercial sensitivities and the information already being available to those who require it. The Minister stressed that the Scottish Government is seeking to correctly judge the balance between such commercial sensitivities and environmental considerations. He told the Committee—

“On commercial sensitivities and the publication of data, the key point is to understand that, because of the nature of the retail market in the UK and elsewhere, there are huge sensitivities about sea lice. In the public discourse about the issue, there is often frenetic debate.

Every fish farm probably has some sea lice—I would be amazed if there was a farm that had none—just as sea lice infest wild salmon irrespective of whether the industry operates in the locality. We need to give operators the opportunity to flag up problems to the industry internally and to the officials who regulate the sector. They will have to publish data that perhaps will not give the degree of granularity that is being suggested but which will enable communication at the necessary level so that we can step in, determine

whether measures are being taken and, if they are not, take regulatory action.\textsuperscript{78}

197. The Minister acknowledged that the Scottish Government’s approach did leave a possible gap in that farm-by-farm sea lice data was not available to inform research, and in response to this he told the Committee—

“[…]. a strand of the ministerial group on aquaculture’s work will be about identifying gaps in the research and trying to increase collaboration between the academic community, the industry and people who are involved in commercial research. I hope and expect the MGA to work to ensure that gaps are filled, by prioritising research in areas in which we need information.”\textsuperscript{79}

198. The Committee acknowledges the issue of sea lice, predominantly at fish farms, is an emotive and controversial issue which has elicited a great deal of comment and conflicting views from stakeholders, both in responses to the Scottish Government’s consultation, and in the Committee’s own evidence taking.

199. It is clear to the Committee that outbreaks of sea lice are a significant issue for the aquaculture industry, and one which every fish farm operating in Scotland must take very seriously.

200. The Committee notes that data on sea lice is currently required to be collected on a farm-by-farm basis. The Committee also notes that this data can be examined, and copies of it taken, by the Fish Health Inspectorate (which is part of Marine Scotland and the Scottish Government). Fish farms can also share this data with other interested parties as part of Farm Management Agreements. However, there is currently no requirement for such data to be routinely placed in the public domain.

201. The Committee notes the call for such data to be published, to increase transparency within the aquaculture industry; improve the ability to respond to sea lice outbreaks; and inform scientific research. However, the Committee also notes the nervousness from within the industry that such publication could present commercial difficulties, both for specific farms, and in terms of reputational damage for companies, and also threaten the confidence of consumers, and therefore, potentially the overall marketability of the product.

202. The Committee notes the Scottish Government has not taken this issue forward in the Bill, and notes the Minister’s explanation of the reasons behind this. The Committee also notes the recent announcement by the SSPO to increase the number of areas from which data is collated from 6 to 30 and sees this as a step in the right direction. However, the Committee would like to see this taken a step further and for data to be collated for each


Farm Management Agreement, and each Farm Management Statement where an Agreement is not in place and recommends this is considered as a priority by the Ministerial Group on Aquaculture.

203. The Committee is still considering whether sea lice data should be published on a farm-by-farm basis, after taking evidence from the Minister, the aquaculture industry, the wild fisheries sector and other stakeholders. The Committee welcomes the Minister’s commitment to look at this issue as part of the work of the Ministerial Group on Aquaculture if not taken forward in the Bill, and recommends the Group prioritises improving the transparency of data and considers the merits of publishing data on a retrospective basis (such as with a time lag of one or two months).

204. The Committee is also concerned that the current lack of accessible farm-by-farm data leaves an important gap in that such data, though collected, cannot be used to inform scientific research. The Committee recommends the Ministerial Group on Aquaculture gives careful consideration to how farm-by-farm sea lice data can be made available to inform scientific research and reports back to the Committee before the conclusion of Stage 2.

PART TWO – SALMON FISHERIES, ETC.

205. Part 2 deals with salmon and freshwater fisheries and largely amends the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, particularly in relation to governance by and of District Salmon Fisheries Boards (DSFBs) and management of salmon fisheries. The Bill makes a number of changes to the powers and duties of DSFBs (including requiring publication of annual reports and financial accounts; the holding of an annual public meetings; and minutes of meetings to be published). The intention is to improve DSFB’s transparency and accountability.

206. Part 2 also includes provisions to allow the introduction of a carcass tagging scheme for all net-caught salmon to replace the current voluntary scheme, making it an offence to sell or possess salmon which is not tagged.

207. Part 2 also contains powers of entry for inspectors to take samples of fish, or to tag fish, to carry out analysis, tracking or monitoring etc, and gives the Government powers to conduct inquiries and investigations into salmon and freshwater fisheries. This also gives Ministers more powers in relation to conservation measures, rules on baits and lures, and annual close times.

208. Finally, Part 2 provides for monitoring and good practice regarding the introduction of fish or fish spawn into salmon fisheries and the possibility for Scottish Ministers to change the rules on consenting introductions under particular circumstances.

209. As mentioned elsewhere in this report, the Scottish Government informed the Committee that the provisions in this part of the Bill were to be seen as a “first step” in the Government’s planned widespread review of wild fisheries management in Scotland.
Consultation

210. Concerns were expressed by the ASFB that the details of this section of the Bill were not consulted upon.80

211. Responding to this point, Willie Cowan told the Committee—

“The consultation paper was not as detailed as the bill, but we struggle to identify where the requirements in the bill are any more onerous than the requirements on other public bodies or bodies that have been created by statute.”81

212. The Committee notes the point made by the Association of Salmon Fishery Boards that much of the detail of Part 2 of the Bill was not specifically consulted upon by the Scottish Government. Whilst acknowledging the Scottish Government’s response that the requirements in the Bill are proportionate and in line with those experienced by public bodies, or bodies created by statute, the Committee recommends the Scottish Government carefully considers the contents of future consultations to ensure all aspects likely to appear in legislation are consulted upon.

Background and context

213. In order to better understand the requirement for, and likely effectiveness of, the provisions in this part of the Bill, the Committee took evidence on a number of related background and contextual issues. Whilst not directly part of the legislation before the Committee, this evidence did provide very important underpinning information which enabled the Committee to better assess the legislation.

Wild salmon and sea trout – stock numbers

214. The tensions between the farmed and wild fishing sectors, which the Committee was frequently aware of during its evidence taking, often focussed on a perception that fish farming is having a negative effect on wild fisheries. The Committee explored this issue from many angles, one of which was to better understand the current health of wild salmon and sea trout stocks in and around Scotland.

215. The Atlantic Salmon is listed on Annex 2 of the EU Habitats Directive82 as a species for which Member States are required to designate Special Areas of Conservation (SACs). 11 rivers in Scotland have been designated as SACs where salmon are the main reason for the designation.83 SNH carries out monitoring of SACs which shows that in two of the rivers, salmon are in “favourable condition”, and in the other nine, are classified as “unfavourable recovering”.

80 Association of Salmon Fishery Boards. Written submission, paragraph 3.
83 These are the Tweed, Tay, Dee (Aberdeenshire), Spey, Berriedale and Langwell, Thurso, Naver, Little Gruinard, Grimersta (Langavat), Bladnoch, and South Esk.
216. This issue was explored with witnesses on 12 December 2012. Dr John Armstrong, from Marine Scotland, gave the Committee a broad picture of salmon and sea trout stocks—

“[…] in Scotland in 2011 the total number of sea trout caught and retained and also released was 23,324 and the total number of salmon was 87,915. For salmon, that is the sixth highest rod catch in our records. Superficially, that might give the impression of quite a rosy picture. Indeed, in terms of the overall fishery in Scotland that is a good situation. However, one reason for such good rod catches is the dramatic decline in coastal net catches over the past couple of decades. That decline is because mortality of fish at sea has progressively increased so fewer fish are now returning to Scottish waters. However, because fewer fish are being caught in the coastal nets, the number of fish that are coming into the rivers and being caught are being maintained or are increasing slightly.

The overall, broad conservation picture is quite healthy but there is not much scope for further reductions in net fisheries, for example, should there be further increases in mortality at sea. The good news is that in recent years, the number of fish returning to the coast has at least maintained at a steady level, if not increased slightly. That is the broad picture.”

217. Callum Sinclair, the Director of the Rivers and Fisheries Trusts of Scotland (RAFTS), endorsed this view but noted that within that general healthy picture, there are regional differences which should not be overlooked.

218. Dr Colin Bean, the Science and Policy Adviser at SNH, also highlighted the difference in the health of stocks at different parts of their life cycle—

“We have fish that come back as grilse—after one winter at sea—of course, and multi-sea winter fish that will come back at other times of the year. If we look at the longer-term trend of spring fish, for example, we will see a longer decline of the spring stock component. That seems to have stabilised recently, but it is still an issue of some concern in respect of the overall salmon components.”

219. On the issue of the concerns relating to the trends in spring fish (which is also discussed in the section on catch and release below) Willie Cowan told the Committee—

“The spring runs are certainly an issue, although they are more of an issue in some areas than in others. A key point that we do not understand is why some rivers do reasonably well in the spring while others, which may even be in relatively close geographical proximity to them, do not. The issue is hugely complex. However, the bill will provide ministers with an order making power to introduce regulations for a national interest, which would have the potential to override local fishery board interests. Powers within the bill would enable

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ministers, if it were thought necessary, to introduce national overriding
regulations that would apply to all fisheries."^{86}

220. The Committee also explored the state of sea trout stocks. The Committee
posed the question - can direct and conclusive links be made between, say, poor
sea trout stocks in the west of Scotland with the prevalence of fish farms in that
area, whilst stocks in the east, where there are no farms, are stronger?

221. The evidence given to the Committee was not conclusive, as it seemed that
whilst a general picture could be given of weaker stocks in the west and stronger
ones in the east, within that there were regional differences which perhaps
highlighted that there was more to explain stock levels than just the proximity of
fish farms. Dr Armstrong told the Committee—

"Many factors affect the survival of sea trout at sea, and trying to tease out
different factors simply from catch statistics will always be very difficult, given
the complexity of the situation."^{87}

222. And Dr Bean provided further enlightenment—

"[...] there are sea trout projects going on in other parts of the United
Kingdom—for example, the Celtic sea trout project and the Moray Firth sea
tout project. Those projects were set up because sea trout were in decline in
parts of the UK other than the north-west of Scotland. It is true that the
number of sea trout off the west of Scotland has declined, and people are
looking for a cause-and-effect relationship between aquaculture and that
decline. Aquaculture—through sea lice numbers—undoubtedly has an impact
on sea trout.

However, there are other factors that we must consider. Climate change is
one such factor. Changes in hydrological conditions could result in redd
washout—the washout of the egg nests of sea trout. In addition, there is a
lack of understanding of what makes a sea trout go to sea in the first
place."^{88}

223. The Committee was encouraged to learn that against a backdrop of
long term decline the number of salmon returning to Scottish rivers is
stabilising and in some places increasing slightly, which together with a
reduction in netting, has boosted rod and line catches to near record levels.
It is obvious that the factors which affect stocks can be complex in nature
and it clear there is no room for complacency on the issue.

224. Sea trout stocks seem to be at greater threat and the Committee was
interested to learn of the work on-going in Scotland, and elsewhere, to better
understand the reasons for this and the best ways to respond.

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9 January 2013, Col 1607.

^{87} Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*,
12 December 2012, Col 1484.

12 December 2012, Col 1484.
Wild salmon and sea trout – stock data

225. The Committee explored the issue of how robust current counting and stock data was – can it be relied upon as giving a truly accurate picture of the state of stocks? Dr Armstrong explained the current counting situation in Scotland—

“There are few well-validated counters in Scotland, particularly in strategic locations. There is a big opportunity for fisheries management to increase that network. Once we have counters with absolute data, we can start to calibrate some of our other data sources, such as catch data. There is big potential for increasing the numbers of counters to improve our understanding of fish stocks.”

226. The Committee explored whether a mandatory reporting of rod-and-line fishing effort for salmon and sea trout would improve the current collection of data. Dr Bean from SNH agreed that it would, and Callum Sinclair said—

“Yes, if someone could come up with an effective way of assessing rod catch effort. The Marine Scotland science statements that I have read seem to confirm that no satisfactory practical means has been devised to obtain meaningful information. If someone could come up with a way in which we could have meaningful and useful information, I would say yes.”

227. The Royal Society of Edinburgh’s evidence also states that there should be a legal requirement for rod and line fisheries to report fishing effort, i.e. the number of rod days fished. They explain that this information is provided in England and Wales, and that if it were provided in Scotland, it would allow more meaningful analysis of catch statistics, because changes in catches due to changes in effort could be accounted for. The Scottish Government’s Salmon Catch Statistics for 2011 (published April 2012) states that “we have no time series of fishing effort information associated with the rod and line fishery.”

228. The Minister told the Committee that the issue of data collection and use would form part of the Scottish Government’s review of wild fisheries management in Scotland. In particular, the review would examine what data is currently collected and available, with a view to identifying where the gaps are. In addition, the Minister subsequently drew the Committee’s attention to the Policy Memorandum, which outlines the Scottish Government’s intention to consider the need for a national data collection workstream to consider the most efficient collection and use of information and statistics on fish and fisheries.

229. The Committee is firmly of the view that the more robust the data, the better policy and legislation will be. The Committee recommends the Scottish Government takes note of the points made by Dr Armstrong of Marine Scotland - that an increase in the network of well-validated counters, in strategic locations, would lead to improved data and understanding of

fish stocks and updates the Committee on how this situation could be improved.

230. Witnesses supported mandatory reporting of rod-and-line catch of salmon and sea trout to help improve current data and statistics, provided that a robust means could be identified and agreed upon to obtain such information. The Committee therefore recommends the Scottish Government explores methods for recording rod-and-line salmon and sea trout effort data and reports back to the Committee before the completion of Stage 2.

231. The Committee also recommends the Scottish Government gives consideration to introducing a legal requirement to record the number of rod days fished, as is the case in England and Wales, and reports back to the Committee before the completion of Stage 2.

Wild salmon and sea trout – catch and release schemes

232. On its fact-finding visit to the River Dee, the Committee heard about the success of its catch and release scheme, which has made a very significant contribution to the healthy state of salmon stocks in the Dee. The success in the Dee has seen a cultural buy-in by those fishing which has resulted in no decline in the number of angling lets.

233. Callum Sinclair told the Committee about the wider success of catch and release schemes in Scottish salmon rivers—

“The voluntary take-up of catch and release over a generation in Scotland has been quite fantastic to watch. The total figure for catch in the round of all fish in Scotland is 73 per cent. The voluntary figure for catch and release of all spring fish, which people are particularly concerned about, is 91 per cent. In the SACs, a total of 6,116 spring fish were caught last year, of which 5,554 were returned and 562 were killed. That equates to less than 300 fish of the spring-run take-in for each SAC.”

234. The Committee speculated on how accurate data could be on stocks if fish were being caught on multiple occasions due to the success of catch and release schemes. How could those collecting the data be sure that a fish had not been caught, and counted, previously?

235. The Royal Society of Edinburgh's evidence states that—

“The annual salmon fishery statistics show that in 2011, 73% of the annual salmon rod catch was released. Given the widespread adoption of catch and release practices across District Salmon Fishery Boards, consideration should be given to the introduction of measures to record multiple catching of the same fish. Without this, the rigour of the catch statistics as a conservation tool is eroded.”

236. Dr Armstrong told the Committee—

“Typically, throughout the year perhaps 10 per cent of salmon coming into a river might be captured by rods. For spring fish, the proportion is a bit higher and might be up at 20 per cent. If a fish is captured and released, it still has a one in 10 chance of being captured again, so the level of inflation is actually rather low. We have made adjustments to our trend figures to account for that inflation, but they do not make a difference to the general trends that we report.”

237. Given the success of the Dee scheme, the Committee explored the option of making catch and release schemes mandatory under the Bill. Callum Sinclair’s view on this was—

“When evidence shows that the stock is under particular stress or is in decline, mandatory catch and release could be entirely justifiable. That would be eminently preferable to draconian closures of rivers or fisheries.”

238. The Committee was impressed with the success of the River Dee catch and release scheme, both environmentally and commercially. This is a good example of exactly the sort of measure that can be undertaken nation-wide as it appears to deliver multiple benefits with few negative consequences. The Committee therefore recommends District Salmon Fishery Boards consider the appropriateness of establishing such a scheme on rivers in their areas.

239. In terms of the issue of fish being caught multiple times affecting the catch data, the Committee is reassured by the comments made by Dr Armstrong from Marine Scotland that the impact of this is quite low and that figures are adjusted to take account of it to ensure it does not affect the recording of general trends.

Governance of District Salmon Fishery Boards

History of fisheries boards management

240. During its evidence taking, it became clear to the Committee that the debate over changes to the District Salmon Fishery Board system has a long history, and it is helpful to briefly set out that history to place the current proposals in context.

241. The report of the Salmon Strategy Task Force published in 1997, recommended the replacement of DSFBs with 20 Area Fishery Boards. These would principally be responsible for salmon and sea trout fisheries, although the report said that giving these bodies responsibility for other species should be considered. The Task Force report reviewed previous work on this area. Proposals to replace DSFBs with larger area committees responsible for all species of fish date back to the Hunter Committee of 1965.

242. A Green Paper, “Scotland’s Freshwater Fish and Fisheries: Securing their future” was published in 2001. It did not propose the wholesale replacement of

DSFBs but did propose the establishment of Area Fisheries Management Committees at catchment level who would produce Area Fishery Management Plans. Where there was agreement, DSFBs could combine and take on the role of these Committees.

243. Work on freshwater fisheries was taken forward by a Freshwater Fisheries Forum. Proposals for a Draft Aquaculture and Freshwater Fisheries Bill were put forward in 2005. The consultation document said the structure favoured by the forum was a “Unitary authority” model covering salmon, trout and coarse fish. However it went on to say that developing legislative proposals would take longer than the timescale available for the Bill. The Bill went on to be enacted as the Aquaculture and Fisheries (Scotland) Act 2007.

244. The present Bill makes a number of changes to the way DSFBs operate, but would not fundamentally alter the administration and management of salmon and freshwater fisheries. The Scottish Government’s Bill team said that the Government planned to scope out a review of the management structures for salmon and freshwater fisheries during the passage of the current Bill, with a view to introducing further legislation within the lifetime of the current Parliament.

245. The Committee asked the Minister why the Freshwater Fisheries Forum had not met since 2009, something some witnesses regretted in evidence to the Committee. The Minister said that the Forum had had a specific lifespan, between 2004 and 2009, during which it had been involved in a lot of useful work. He went on to add that he had an “open mind” about the role the Forum could play in the forthcoming review.

Proposals in the current Bill

246. Section 20 of the Bill introduces new requirements to the financial powers and duties afforded to DSFBs as set out in the 2003 Act. The Bill introduces a suite of good governance obligations requiring DSFBs to act in a way consistent with public bodies i.e. in an open, fair and transparent way.

247. There were varying views in evidence to the Committee on the new requirements. While DSFBs did not appear to firmly oppose the good governance requirements in general, some reservations were expressed about the details.

Holding meetings in public

248. With regard to establishing a principle of conducting meetings in public except when there is good reason to hold them in private, ASFB stated—

“[…] 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

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be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting."^98

249. Some DSFBs also expressed concerns about the costs of moving meetings to venues with sufficient capacity for members of the public to attend, and also of advertising meetings in local newspapers. There was a general point of view that came through the evidence-taking that the provisions in this part of the Bill could threaten the existence of smaller DSFBs. Further comment on these issues can be found in the section on the Financial Memorandum which accompanies the Bill, later in this report.

250. The Minister responded to this issue, telling the Committee—

“In my discussions with the managers of larger fishery boards, I have found that they recognise that situation and have sought to collaborate with smaller boards to provide them with a bit of expertise and support, where that is practical. Obviously, that cannot be done ad infinitum, because supporting the smaller boards has a financial implication for the larger ones, but a degree of collaboration is taking place between colleagues in the fisheries community to help smaller boards to adopt best practice and take things forward.”^99

251. Simon McKelvey, the Director of both the Cromarty Firth Fisheries Trust and the Cromarty Firth District Salmon Fisheries Board, welcomed the intention to conduct more DSFB business in public.

252. There was some concern that, given that DSFB members were currently volunteers, albeit that most were also proprietors, the Bill’s proposals may discourage people from continuing to volunteer.

253. In responding to this point, and whether boards would need to share resources, merge etc, the Minister again stated that the Scottish Government’s forthcoming review would address these issues—

“We need to understand what the financial and other implications of the proposals might be. That is why the review is important. We need to understand where we are and where we might go and to consult on the options before deciding what path to take with regard to the smaller boards in Dumfries and Galloway and the larger ones, such as the Dee and the Don boards. We will take on board the results of that consultation before we develop any firm proposals. I do not want to be prescriptive at this point.”^100

254. The Committee notes the evidence it received relating to meetings of District Salmon Fishery Boards and under which circumstances business could be considered privately. The Bill provides for an annual public meeting to be held by every District Salmon Fishery Board, and for other

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^98 Association of Salmon Fishery Boards. Written submission, paragraph 15.
meetings to be held as appropriate. In terms of meetings other than the annual public meeting, the Bill clearly states that District Salmon Fishery Boards may decide to consider particular items in private, if there are good reasons for doing so. The Bill also states that District Salmon Fishery Boards should state reasons for taking any items in private, and minute those reasons.

255. The Committee considers the provisions in the Bill to be an important and necessary step in improving the accountability and transparency of District Salmon Fishery Board activities.

256. However, the Committee has sympathy with the concerns of smaller Boards that they may be less able, in terms of resource, to cope with the implementation of the provisions in the Bill than larger Boards. The Committee therefore welcomes the Minister’s acknowledgement of this issue and his commitment to address the matter in the Scottish Government’s forthcoming review.

257. The Committee therefore recommends that the enactment of the relevant sections of the Bill dovetail appropriately with the outcomes and implementation of the Scottish Government’s review, to ensure there is no unmanageable adverse impact on smaller Boards in the short-term.

Involvement of other interests

258. In its response to the Scottish Government consultation, the Scottish Federation for Coarse Angling, stated—

“[…] in addition to being given a specific duty to act fairly and transparently; Boards should also be obliged, when developing and implementing management activities, to have regard to the effects on other freshwater species and to consult representatives of the anglers who pursue them.”

259. Ron Woods, from the Scottish Federation for Coarse Angling, went on to tell the Committee—

“Our concern might be addressed through future management structures, but it ought to be raised just now. The statutory remit of boards is to

“do such acts, execute such works and incur such expenses as may appear to them expedient”

with the aim of protecting and improving the migratory fisheries or increasing the salmon population. That is, doubtless, a sensible objective for a district salmon fishery board, but there is no counterbalance in the board’s role. Nothing obliges a board to have any regard to the impact of its activity on other species of fish or on other angling activities in the area. When introducing management measures of any kind, boards should have a

statutory obligation to consider and consult those who have an interest in the other species in the district.”

260. The Committee notes the points raised on this issue and can see the merit in District Salmon Fishery Boards consulting other fisheries interests as part of their management of salmon rivers. The Committee therefore recommends the Scottish Government considers these points within the scope of its forthcoming wider review.

Complaints procedure
261. The Bill includes provisions to ensure that DSFBs maintain, keep under review, and publish and record arrangements for dealing with complaints, particularly in relation to a specified list of potential complainants.

262. Concerns were expressed to the Committee by the ASFB regarding the proposal which states that DSFBs must keep records of how complaints were responded to and disposed of. The ASFB was of the view that this went beyond requirements placed on other public bodies and was overly prescriptive.

263. The Committee notes the comments made by the Association of Salmon Fishery Boards but after careful consideration is content the complaints procedure provisions in the Bill are proportionate and appropriate and will assist District Salmon Fishery Boards in improving overall transparency and accountability.

Members’ interests
264. The Bill includes provisions relating to Board members’ interests, including definition, registration and declaration of relevant financial interests, and preventing members from taking part in the board’s consideration of any business in which the member has a relevant financial interest.

265. The Committee heard evidence from George Pullar, the Vice Chairman of the SNFAS, which suggested that some DSFBs do not currently prevent Board members’ interests from unfairly and unduly influencing decision making. Mr Pullar told the Committee—

“In my experience, boards are run like cabals. A group on the board runs the show and other board members do not even know what is happening.”

266. Beauly DSFB believed that preventing members of a board with financial interests in a matter from participating in decisions was impractical because most Board members were proprietors who, by definition, could have a potential financial interest in Board decisions.

267. The Royal Society of Edinburgh however, supported this measure and believed it should go further—

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“[…] there would be substantial public and community benefit from annual publication of a list of salmon fisheries owners and occupiers in Scotland. This would increase transparency in the system. This is a topic which the Land Reform Review Group[^104] may seek to address.”[^105]

268. Simon McKelvey told the Committee that the ASFB current code of good governance already includes guidance on this issue which says that Board members with a relevant financial interest in a particular decision should declare it.

269. The Committee notes the differing views on the appropriateness of the provisions in the Bill relating to the declaration of Board members financial interests, and the exclusion of members taking part in business where there could be a potential conflict of interests.

270. The Committee believes it is important to not only establish the principle of improving accountability and transparency by declaring such interests, but also to place that principle on a statutory footing in the Bill. The Committee also supports the provision relating to excluding members from participating in business where there are identified conflicts of interest.

Management

Carcass tagging
271. Section 22 inserts a new Section into the 2003 Act providing an enabling power to allow Scottish Ministers to introduce a carcass tagging scheme. Regulations could be introduced requiring salmon legally caught and retained by any method or one particular method to be tagged. Once the regulations are in place, it will be an offence to sell or possess salmon which are not tagged.

272. Several witnesses supported the introduction of a tagging scheme, which would bring Scotland in line with England, Wales and Ireland, but believed the details of the scheme should have been included in the Bill rather than the Bill providing for the scheme to be introduced via secondary legislation.

273. However, the Royal Society of Edinburgh welcomed further consultation on the issue, stating—

“We welcome the fact that further consultation with stakeholders is being undertaken to ensure any scheme does not impose a disproportionate financial burden on small businesses.”[^106]

274. The ASFB told the Committee that it would like to see tagging requirements applied to rod caught fish which are not returned to the river. In addition it believed that once these provisions are in place, it should be made illegal to buy untagged rod caught fish as well as sell them—

“Purchase of rod caught fish: It is illegal to sell rod caught fish but it is not illegal to purchase rod caught fish. Once we have a statutory system of carcass tagging in place, we believe that it should be illegal to both sell and purchase an untagged fish.”

275. The Minister told the Committee that he did consider it necessary to create an offence for purchase of rod caught salmon given that once a carcass tagging scheme came into force, it would be illegal for a person to have an un-tagged salmon in their possession.

276. Some witnesses also wanted to see a scheme involving individually numbered and recorded tags. Simon McKelvey told the Committee—

“I fully support a carcass tagging scheme, which needs to be backed up by numbered and recorded tags. I agree that it should be for nets and for rods. To that end, within the Cromarty Firth region, we introduced a rod and line carcass tagging scheme last year. Initially, there was quite a bit of opposition from local angling clubs but, after one year of the trial, we have overall support from the angling clubs. One club has seen a doubling in the number of fish that are returned by the end of the season.”

277. George Pullar was in favour of a tagging scheme but not numbered tags—

“It is unnecessary and it would be more work for netsmen. We have limited time to do anything during the season—we are running about and we are very busy.”

278. Craig Campbell, the Chairman of the Migratory Fish Committee with Scottish Anglers National Association, disagreed—

“Tagging has been done, it works and none of us has found any great problem with it. As regards numbered tags, if we do not number the tags, how will we confirm the catch data? If we do not number the tags, how will we prevent illegal sales of English-caught fish through Scottish markets?”

279. The Minister said that numbering the tags for scanning purposes was possible and that he could not identify any technical reason why this could not be undertaken. In circumstances where scanning on boats was impractical, scanning could take place on the shore.

280. The Minister and the lead Scottish Government official, Willie Cowan, discussed the provision for rod caught fish to be tagged, and suggested that doing so may complicate one of the purposes of tagging, in that it will be illegal to sell a fish that is not tagged, and it is illegal to sell rod caught fish. Therefore a tagging

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107 Association of Salmon Fishery Boards. Written submission, paragraph 25.
scheme for rod caught fish would have to be a separate tagging scheme from the scheme proposed in the Bill.

281. In subsequent correspondence to the Committee, the Minister stated that the provisions in the Bill enable the creation of a tagging scheme which would be applicable to both rod caught and/or net caught salmon and that the Scottish Government has not yet made a decision about the type and coverage of the scheme that will be introduced. However, should a tagging scheme be introduced it would be an offence for a person to have in their possession any salmon not tagged and so the creation of a specific offence for the purchase of rod caught would not be necessary.

282. The Minister told the Committee that before any order is brought forward regarding carcass tagging, a full consultation will take place which will consider issues such as numbering and scanning.

283. The Committee notes the significant support for the introduction of a carcass tagging system, and welcomes the inclusion in the Bill of an enabling power to allow this to be brought forward, via secondary legislation, in due course.

284. The Committee notes the comments made on how such a scheme should be realised, including numbering tags, and notes that before any secondary legislation is brought forward on this, a full consultation will take place which will enable full consideration of the detail of such a scheme. However, the Committee supports the individual numbering of tags and believes it would be an essential part of making the tagging scheme effective.

285. The Committee can see the benefits in rod-caught fish being tagged, in terms of it leading to better data being collected to inform science. However it notes the Scottish Government is not yet decided on the issue and has reservations regarding the purpose and practicalities of such a scheme. The Committee encourages the Scottish Government to explore the practicalities of tagging rod-caught fish.

286. The Committee believes the provisions in the Bill in relation to tagging have the potential to close the current loophole which currently makes it illegal to sell, but not buy, a rod caught salmon.

Fish sampling and investigations
287. Section 23 introduces a new section to the 2003 Act to give Scottish Ministers powers to access fish farms for sampling and research purposes. Section 24 amends the 2003 Act giving Scottish Ministers’ powers to conduct inquiries and investigations into salmon and freshwater fisheries. The caveat that such investigations should never cause damage or interference to the rights of the owner or occupier of the fishery is removed. New requirements on information provision are introduced.
288. SNH supported these measures though called for clarification on whether hatcheries were included in the sampling provisions. Fisheries interests were, in general, not opposed to these provisions.

289. ASFB supported the sampling provisions in its written evidence but stated—

“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.”

290. The Committee supports the sampling and investigation provisions in the Bill but draws the attention of the Scottish Government to the comments made by the Association of Salmon Fishery Boards that local District Salmon Fishery Boards should be consulted if the sampling would involve killing fish.

Monitoring, evaluation and varying orders

291. Sections 25-26 make changes to the sections of the 2003 Act which relate to DSFBs’ abilities to apply to Scottish Ministers to prohibit the use of specific baits and lures; set annual close time; and make salmon conservation regulations. The changes would allow Scottish Ministers to ensure that where DSFBs have applied for regulations to be put in place, they can be required to monitor and evaluate their effects.

292. Reservations were expressed about monitoring requirements for close times and conservation measures and their potential financial implications for smaller boards. The River Tweed Commission stated—

“With respect to Section 25, whilst we generally support the provision to monitor orders we believe that this should only be for orders made on the initiative of the boards themselves; further we do not think it is proportionate to make non-compliance a criminal offence.”

293. The Committee did not receive a significant volume of evidence on these sections of the Bill. The Committee notes the comments made by The River Tweed Commission regarding Section 25 only applying to orders made on the initiative of District Salmon Fishery Boards, and expressing concern at the proportionality of making non-compliance an offence. The Committee draws these comments to the attention of the Scottish Government.

Close times

294. Section 26 of the Bill would give Scottish Ministers a new power that they do not have at present to change annual close times for salmon fishing. This follows the recommendations made by the Scottish Mixed Stock Salmon Fisheries Working Group which proposed that Government should ensure that it has all the powers to act at its own hand where there is no DSFB; the appropriate DSFBs have not proposed conservation measures; or there is a cross boundary...
dimension. This is viewed as particularly important for meeting EU obligations as Scottish Ministers do not currently have the necessary powers to ensure that obligations under the Habitats Directive are met and they could therefore be liable to infraction proceedings.

295. Craig Campbell highlighted a potential advantage of these provisions to the Committee, saying—

“One quirk in the administration of salmon and sea trout fisheries in Scotland is that we have some missing links, because we have rivers without district salmon fishery boards. It is essential that the powers exist so that, in loco parentis, the Government can act like a district salmon fishery board.”113

296. Callander McDowell and the Usan Salmon Fisheries Ltd were both concerned that DSFBs had shortened the length of the closed season for rod fisheries below the 168 days set out in the 2003 Act which Callander McDowell suggested demonstrated they were—

“[…] more concerned about providing sport for anglers and increasing the revenue for their members than for the protection of the wild salmon.”114

297. As to whether there was actually a current requirement for close times to be altered, Dr Bean told the Committee—

“I think that we have to look at close seasons because, for example, climate change may mean that fish are on spawning areas at later times of the year than they would have been previously. Some salmon seasons start very early in the year, in January, when fish are still in the redds[^115], so there may well be a case for amending the start and end of seasons. There is a good biological reason for doing that in some circumstances.”116

298. And Simon McKelvey added—

“[…] we do not support a general change in the close season across the board, but if evidence identifies that a change is required and justified, clearly we should always have that option available if we are serious about conservation and better management.”117

299. The Minister, and the lead Scottish Government official, Willie Cowan, both confirmed that the close time provision was intended to address potential conservation issues, such as the effects of climate change on salmon and sea trout, to ensure that close times reflect what is actually happening in rivers.

[^114]: Callander McDowell. Written submission, page 3.
[^115]: Redds are spawning nests made by salmon or trout.
300. The Committee notes comments made to it regarding the need for a power to change annual close times and supports the Bill's provision which would give Scottish Ministers such a power.

Introduction of fish for re-stocking

301. The Bill would make some changes to the controls on the release of salmon. At the moment DSFBs are responsible for authorising the release of salmon within their districts, and Scottish Ministers are responsible for areas where a DSFB does not exist. Section 28 of the Bill would change this and allow Scottish Ministers to make regulations which would make them responsible for authorising releases of salmon instead of DSFBs.

302. The Committee saw and heard first hand evidence regarding re-stocking of fish during its fact-finding visits to both the River Dee and to the Fort William area. It appeared to the Committee, and several witnesses confirmed this in evidence, that there were a number of reasons why re-stocking was a legitimate and necessary practice on salmon rivers in Scotland.

303. In oral evidence to the Committee Dr Bean, from SNH, was supportive of the provisions in the Bill. He told the Committee that it was, indeed, possible for a river to be restocked too much, and that he was concerned that some DSFBs were not complying with current legislation, such as the EU Habitats Directive, or current scientific best practice, in their approaches to restocking.

304. Dr Bean told the Committee—

“[…] we support stocking as a management tool, but district salmon fishery boards and others quite often look at stocking as the first tool in the box when they should really be trying to address the environmental issues that have led to the reduction in recruitment to stocks by, for example, removing a fish barrier or through some other habitat management prescription.”

305. The ASFB proposed that an independent panel of stakeholders should be set up to consider decisions related to releases of all fish species and advise the Scottish Government prior to the granting of consent.

306. Simon McKelvey told the Committee—

“I would like the decision-making process to be more transparent, particularly in cases in which district salmon fishery boards are self-regulating. First, there should be a requirement to seek advice. There should be a management objective for the activity that would stand up to some scrutiny. There should also be an associated monitoring assessment programme and an exit strategy because, as Colin Bean mentioned, stocking is sometimes legitimate for a period to help recovery after an accident or incident. However, that should not mean that it is a recurring intervention.

In the consultation response and in this meeting, we have stated that we would strongly favour some sort of public register of regulatory decisions on

stocking so that such decisions on fish movements made by the DSFBs or Marine Scotland are apparent to us all, so that we can see the justification for the action if it is approved and, I guess, so that we can challenge it if we wish.”

307. And went on to add—

“[…] the key issue is how we better inform stocking activity if it is to take place and how we better regulate its extent. There is certainly room for improvement in regulatory practice, in where and how advice is given to those who make regulatory decisions and in how visible those decisions are.”

308. The Minister, and Willie Cowan, both confirmed to the Committee that the intention of the Bill on this issue was to improve transparency and get a better picture of stocking practices across Scotland. The implication was that a public register, or additional management body, was not required, because the Bill would achieve the desired outcomes and Marine Scotland already fulfilled the necessary management functions. Lindsay Anderson, a solicitor with the Scottish Government, did confirm that the Bill would require amendment to make provision for such a register.

309. The Committee acknowledges the various legitimate reasons for releasing salmon into rivers for restocking purposes. However, the Committee notes the concerns raised by Scottish Natural Heritage regarding current examples of European Union law not being fully complied with by some District Salmon Fishery Boards when carrying out restocking.

310. The Committee therefore supports the provisions in the Bill on this issue which it agrees will help to establish a more robust picture, and better transparency, of current practices, to allow better management in the future.

311. However, the Committee notes the comments made by the Association of Salmon Fishery Boards and others regarding the input they should have in this process and the need for greater transparency. The Committee therefore recommends the Scottish Government consults fully ahead of introducing any orders relating to introductions of fish.

Issues not included in the Bill

Coarse fishing
312. The Bill does not include any provisions relating to coarse fishing. Ron Woods expressed disappointment about this in evidence to the Committee—

“I do not think that the bill does anything for coarse fishing or coarse fish. We raised a number of issues in our response to the consultation, none of which has been taken up in the bill, as yet. It is possible that they will be taken up in

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the next round of consideration of freshwater fishing management issues, although in our view there is actually a need for legislative change [...] the bill is something of a disappointment from our point of view.”

313. The Minister gave a commitment to update the Committee on the Scottish Government’s thoughts on this issue, and Willie Cowan stressed that the forthcoming review of wild fisheries was just that, i.e. would not just focus on salmon, but on all wild fisheries, which includes coarse species.

314. The Committee sympathises with the disappointment of the coarse fishing sector that comments it made to the Scottish Government’s consultation ahead of this Bill were not reflected anywhere in the Bill itself.

315. However, the Committee is reassured by the comments made by the Minister, and by the lead Scottish Government official, Willie Cowan, that the Scottish Government will reconsider the views of the coarse fishing sector, and include relevant issues in the Scottish Government’s forthcoming review.

*Salmon netting - background*

316. As part of its fact-finding visits to support its scrutiny of the Bill, the Committee visited the Usan Salmon Fisheries Ltd in Montrose, to meet representatives from both that fishery, and the representative umbrella organisation, SNFAS. The Committee also discussed issues relating to the interactions between netting and the operation of DSFBs with representatives from the ASFB and individual DSFBs.

317. It quickly became evident to the Committee that in the case of Usan Salmon Fisheries Ltd and the DSFB’s within which it operates, there were severe tensions between the DSFB and the fishery. The Committee undertook to develop a better understanding of what those particular tensions were, and also to see if those issues were replicated in other parts of the country, with an overall view to determining a recommended way forward on this issue.

318. To underpin this work, the Committee also gathered background information which showed that netting in Scotland had reduced significantly over time, and that currently there are few netsmen operating commercially in Scotland, with 80% of the netting catch in 2011 being taken from four river districts - the Tweed, South Esk, North Esk and Strathy.

319. The essential nub of the tensions lies, on one side, with netsmen feeling that they are being unfairly restricted and penalised in their commercial operations by unworkable regulations and DSFB decisions, and, on the other side, fishery boards being concerned at netting overfishing salmon from more than one river (mixed stock fisheries), leading to stocking and conservation issues in salmon rivers.

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320. In written evidence to the Committee, Usan Salmon Fisheries Ltd outlined the outcomes they were hoping the Bill, if amended, may be able to deliver for them—

- removal of netting from the management of DSFBs and placing them under the control of the Scottish Government’s Inshore Fisheries Team; and
- abolition of the weekly close time legislation and replacement with a minimum days at sea allowance.

Salmon netting - management

321. Usan Salmon Fisheries Ltd and the SNFAS told the Committee in written evidence—

“[…] we wish to see coastal netting removed from the management of local fishery boards all together. It is clearly recognised that we, and operations like ours, are an inshore fishery and the Esk board itself (our local management) has indicated it cannot manage us appropriately. We have sustained years of relentless persecution at the hands of the local fishery board, which is dominated by angling interests managing for abundance without the slightest regard for netting interests other than to see them put out of business. Therefore it is appropriate to consider transferring us to the management of Scottish Government Inshore Fisheries Team. This is effectively how other Scottish inshore fisheries are managed and there is therefore no sensible rationale for continuing to subject us to continued inept, haphazard and discriminatory management.”\(^ {122} \)

322. In oral evidence, George Pullar, of Usan Salmon Fisheries Ltd, elucidated on this issue, telling the Committee—

“[…] the people who are currently managing the asset are those who are trying to put us out of business. For example, we found out yesterday that we have been fortunate in being awarded protected geographical indication status for Scottish wild salmon, which is a great accreditation for the industry. However, the ASFB and fishery boards all objected to the move. They are supposed to be representing us, and we give them revenue every year for that representation. We in Montrose are paying £5,350 per annum to people who are lobbying to put us out of business.

If we were moved over to inshore fisheries the Government would, as ever, look at us impartially and not as a vested interest, and it could liaise with the fishery boards if it so chose.”\(^ {123} \)

323. Simon McKelvey responded to this point, stating that—

“[…] the nets are exploiting the same resource, so we need to find a way collectively to manage that resource. We would be concerned if different

\(^ {122} \) Usan Salmon Fisheries Ltd/Salmon Net Fishing Association Scotland. Written submission, paragraph 9.

exploiters of a resource were to be dealt with in different places. We understand, and I am sure that the committee will be familiar with, some of the tensions in the dynamic between netting and angling operations or their proprietors. That tension in itself is unfortunate. A solution to the tension must be found that does not split management of the resource. In essence, they are catching the same fish so it would be unfortunate if we had two separate cycles of consideration of how we manage the system. My preference would be to retain the management in the same place.”

324. The Minister told the Committee that the Scottish Government is well aware of the issue and that the upcoming wild fisheries review would consider it.

325. The Committee notes the call from Usan Salmon Fisheries Ltd for netting interests to be removed from DSFB management, and transferred to direct Scottish Government management. Whilst the Committee sympathises with some of the local circumstances behind this proposal, it was not convinced during its evidence-taking that this was a widespread issue across Scotland. The Committee is therefore not persuaded that the proposal is necessarily the most appropriate response in seeking to resolve the local tensions highlighted.

326. The Committee notes the Scottish Government’s commitment to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

Close times and days at sea
327. Another issue raised by Usan Salmon Fisheries Ltd was that of the current weekly close times (currently 6pm Friday until 6am Monday), and the suggestion that these be replaced by a designated days at sea allowance. Usan Salmon Fisheries Ltd argued that the current close times are too restrictive, setting fixed times for netting equipment, such as leaders (long curtain like nets which act as barriers to guide, or lead, the fish into the catching bags) to be brought in to shore which can be impractical.

328. On the issue of weekly close times, Usan Salmon Fisheries Ltd stated in its written evidence that replacing close times with a days at sea allocation would—

“[…] avoid the need for us to wrestle with the conflicts of current fisheries legislation (avoiding inadvertent breaches of the law, due to circumstances out-with our control) and health and safety considerations (which of course must remain paramount at all times).”

329. The Committee heard evidence that it could be dangerous for netsmen to go to sea and remove leaders to comply with close time legislation if weather conditions were very poor.

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125 Usan Salmon Fisheries Ltd/Salmon Net Fishing Association Scotland. Written submission, paragraph 13.
330. ASFB did not agree with this proposed change however, and told the Committee that in cases where weather or other unexpected circumstances prevented the removal of leaders to comply with close times, it would like to see leaders removed for a corresponding time period as soon as possible.

331. Simon McKelvey stressed to the Committee that it should be remembered that the current close times were set for a very good reason and were important in attempting to avoid unsustainable exploitation of mixed stocks. He suggested that a possible compromise to try and resolve the current limitations, and the issues of health and safety highlighted by George Pullar, would be to ensure that, in circumstances where leaders were not removed for a weekend, they could be subsequently closed (say on a Monday and Tuesday) for the same equivalent period, when it was safer for boats to go to sea.

332. The Minister acknowledged these issues and again confirmed to the Committee that this issue would be considered as part of the Scottish Government’s forthcoming review.

333. The Committee appreciates the difficulties netsmen can encounter in trying to adhere to weekly close times in challenging weather conditions.

334. In acknowledging the need for close times for conservation and stocking reasons, it is evident to the Committee that a degree of flexibility is required in the application of close times to take account of bad weather and any other unexpected circumstance.

335. However, the Committee is not persuaded that replacing the current close times with a days-at-sea allocation would provide an acceptable solution to this issue, in part because it would be very difficult to monitor.

336. The Committee welcomes the Scottish Government's intention to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

Sale of netting stations
337. ASFB believe that, when a netting station is put up for sale, or is to be leased to a third party, the relevant DSFB should—

“[…] in the interests of salmon conservation, have a statutory right of first refusal to purchase (or lease) that netting operation before any proposed sale (or lease) could proceed.”126

338. George Pullar was not supportive of this call, telling the Committee—

“[…] Giving people a pre-emptive right would take us back to the dark ages.”127

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126 Association of Salmon Fishery Boards. Written submission, paragraph 28.
339. But Simon Mckelvey did not agree—

“[…] in some circumstances such a right would be justified. We are aware of netting stations that are used only as a front to launder fish. In some areas of Scotland, netting stations where, to the best of everyone’s knowledge, there is no boat or anything else, are putting in returns.”

340. The Minister told the Committee he would give further consideration to this issue as part of the Scottish Government’s review, but did stress that he would not want a market for such sites to develop, and that he was keen for de-commissioned sites to remain de-commissioned.

341. The Committee notes the evidence it received on the merits of District Salmon Fishery Boards having a first right of refusal to purchase or lease a netting operation once it had been placed on the market. The Committee also notes a right of first refusal is different from a pre-emptive right to buy a netting station. The Committee remains of an open mind on this issue and notes the concern of the Minister to ensure de-commissioned sites remain de-commissioned.

342. The Committee notes the issue will form part of the Scottish Government’s upcoming review of wild fisheries management in Scotland and awaits developments with interest.

Salmon netting – conflict resolution

343. There was some concern expressed to the Committee that the many issues of conflict reported between netting and fishing interests in the Esk DSFB were not representative or indicative of a wider-scale problem in other areas where netting still takes place.

344. George Pullar told the Committee—

“There has to be somewhere for netsmen to go to complain. As far as I can see, fishery boards are answerable to no one apart from the proprietors who voted them in in the first place. Given that no one governs them at the moment, it is important that the bill contains something to ensure that they are answerable.”

345. Simon McKelvey told the Committee—

“An awful lot of these problems seem to relate directly to the problems that George Pullar faces in his own area, and I just do not think that the same is the case at a national level. I am not sure that we will get good legislation by
346. Dr Bean felt that the key aim in any conflict resolution was that it was informed, and driven, by the science and not by particular personalities.

347. The Minister agreed that some form of mediation to resolve this issue would be worth exploring and could be included in the Scottish Government’s forthcoming review.

348. The Committee was disappointed to hear of the breakdown in the relationship between some netsmen and board members in the Esk District Salmon Fishery Board (in Angus). Whilst receiving no evidence that this was an indication of a wider problem, the issue did demonstrate the need for independent mediation within District Salmon Fishery Boards to deal with such issues of conflict and competing interest. The Committee agrees with Dr Bean that any such conflict resolution should be informed by scientific advice regarding the health of salmon stocks, and other species, in any particular area.

349. The Committee recommends the Scottish Government includes in its response to this Report, details of how it intends to take this issue forward to ensure better, and more transparent, conflict resolution within District Salmon Fishery Boards.

Funding of DSFBs

350. Some responses also commented on the funding of DSFBs in relation to netting. The Rivers and Fisheries Trusts of Scotland said in its written evidence—

“There is currently an imbalance in the financial contributions made to conservation and management by the exploiters of the resource. In 2010, net fisheries accounted for over 45% of retained catch, but contributed 1.3% of the total funding raised by DSFBs for fishery management.”

351. Alternatively, netsmen believed that the contribution they are giving to DSFBs is not being used to promote or, indeed, protect or represent, their interests. Usan Salmon Fisheries Ltd stated—

“We have sustained years of relentless persecution at the hands of the local fishery board, which is dominated by angling interests managing for abundance without the slightest regard for netting interests other than to see them put out of business.”

352. The Committee offers no comment on the appropriateness of the financial contribution made by netting operations to District Salmon Fishery Boards, but would sympathise with any situation whereby a business was
making financial contributions to fund an umbrella management body which, it perceived, had an active agenda to curtail the operations of that business. The Committee recommends the Scottish Government ensures this issue is part of its forthcoming review of wild fisheries management in Scotland.

PART THREE – SEA FISHERIES

353. Part 3 deals with sea fisheries and brings Scotland into line with the rest of the UK in terms of marine enforcement powers. The Bill confers the powers afforded to marine enforcement officers in the Marine (Scotland) Act\textsuperscript{133} to British sea-fishery officers (BSFOs) in order to enforce sea fisheries legislation in the Scottish zone and in relation to Scottish fishing vessels anywhere in the world. The Part also makes it possible for BSFOs to detain foreign vessels in port in cases of alleged offences and allows enforcement officers to inspect and seize objects connected with commercial sea fisheries where an offence is suspected.

354. The Committee notes the lack of evidence on the majority of this part of the Bill and concludes stakeholders are therefore broadly content with the proposed provisions, albeit subject to the following comments.

Inspection and seizure of objects used in commercial sea fishing

355. Section 34 gives powers to enforcement officers to inspect objects connected with commercial sea fisheries and, where an offence is suspected, seize them. Rules are also set in place on reporting concerning seized objects and their retention and disposal.

356. In its written evidence to the Committee, Seafish stated that an amendment to the Bill should be considered to make it clear that conducting valid scientific research on a commercial fishing vessel, that is not a specific research vessel, would provide a valid defence of ‘grounds for release’ of objects seized under these powers.

357. Craig Burton, of Seafish, told the Committee—

“We conduct real-time research on commercial vessels using gear that may or may not be legal under current requirements. We raised the issue because we are keen for the matter to be clarified before the bill proceeds further, so that there is no ambiguity for enforcement officers.”\textsuperscript{134}

358. The Committee notes the concerns raised by Seafish with regard to the inspection and seizure powers and the use of scientific equipment on board commercial vessels and asks the Scottish Government to provide clarity on this issue, and to consider bringing forward an amendment at Stage 2, if necessary, should the Bill reach that Stage.

Enforcement of EU rules

359. Section 44 amends section 30(1) of the Fisheries Act 1981 which currently provides for enforcement of EU rules within the Scottish zone (200 nautical mile limit). This section extends these powers to all Scottish fishing vessels when they are outside the Scottish zone.

360. In a letter to the Committee dated 26 November 2012, the Minister wrote that the Scottish Government would put forward an amendment to the section on enforcement of EU rules—

“The Bill currently contains provisions to amend Section 30(1) of the Sea Fisheries Act 1981. This concerns the regulatory framework of the Common Fisheries Policy, which places obligations and restrictions on others and not just exclusively on the masters and owners of fishing vessels. Following further consideration, we have concluded that the amendment as drafted does not deliver our policy intention in that it does not explicitly apply to shore based trades, and therefore a further minor amendment is necessary.”

361. Following the evidence session with Scottish Government officials, Willie Cowan wrote to the Committee to clarify the Scottish Government’s understanding of stakeholders’ views on this section—

“I should have made it clear that while both the Fisherman’s Association Limited (FAL) and the Scottish Fishermen’s Federation (SFF) have expressed general satisfaction with the focus of the Bill, they have expressed a little concern with a potential practical issue arising from the proposed Scottish Government amendments to Section 30(1) of the Sea Fisheries Act 1981 to improve the enforceability of Community provisions under the Common Fisheries Policy (CFP) […]

The practical issue raised by FAL and SFF was around what they considered to be a lack or absence of any parliamentary scrutiny that may result from less transposition of EU Regulations into domestic law, and that fishermen may be less well served if they did not have statutory instruments to consult to find out what their obligations are. In response we noted that most EU measures are directly applicable with little discretion available to the Scottish Government in implementation, and that Scottish Ministers are bound by Section 57(2) of the Scotland Act to operate in a way which is compatible with EU Law. We also noted that the Scottish Government has historically provided sea fisheries operators with guidance on their regulatory obligations and that will not change going forward.”

362. The Committee notes the proposed amendment to the Bill at Stage 2, should the Bill proceed to that Stage, put forward by the Scottish Government. Given relevant stakeholders had no further comment on this
issue following sight of the proposed amendment, the Committee is content this issue will be satisfactorily resolved.

PART FOUR – SHELLFISH

363. Part 4 deals with shellfish and amends the 2003 Act to insert provisions relating to the protection of shellfish growing waters. These provisions are currently contained in the Shellfish Waters Directive, but this will be repealed by the Water Framework Directive next year, hence the need to transpose the Directive through the Bill. A new section is added in the Bill to enable Ministers to designate by order areas of coastal or transitional water as “shellfish water protected areas” within River Basin Management Plans. The part also makes minor amendment to shellfish related order making powers.

364. Willie Cowan told the Committee that the amendments would continue to ensure the existing provisions remain in place, and not bring in any new obligations.

Protection of shellfish waters

365. The Committee heard that good water quality is important for the production of high quality shellfish. Water bodies can be impacted by pollution from various sources such as run-off from agricultural land or discharges from sewage treatment works. Designated shellfish areas are currently protected by the EU Shellfish Waters Directive (SWD). The Directive prescribes the minimum quality criteria which must be met by shellfish waters, and guideline values which Member States must endeavour to observe.

366. SEPA has responsibility for implementing the SWD. For each of the 80 designated areas SEPA maintains a Pollution Reduction Plan which identifies point source discharges and potential risks of diffuse pollution and highlights required improvement actions. Pollution Reduction Plan’s often require action from Scottish Water and they have invested significant amounts of resources to meet standards. The investment programme is included in the Quality and Standards process run by Scottish Government, in collaboration with Scottish Water, SEPA, SNH, the Water Industry Commissioner and other stakeholders. Where agricultural or urban diffuse inputs are suspected of being the dominant sources of contamination, SEPA will look to devise and implement site-specific plans to ensure such inputs are minimised.

367. Compliance with the SWD in itself will not ensure the protection of public health. This is the objective of the Shellfish Hygiene Directive which is the responsibility of the Food Standards Agency (FSA). The FSA designates “harvesting areas” (normally smaller than shellfish areas), sets standards and reports the classification of harvesting areas (as A to C) according to the presence of faecal indicator organisms. The degree of shellfish contamination determines

the degree of depuration (purification) required before shellfish are commercially marketable.

368. The SWD will be repealed in 2013. The Scottish Government carried out a consultation exercise on integration of the SWD into water protection legislation from 4 October 2011 until 27 December 2011. This received 22 responses which were broadly supportive of the proposals. The Bill amends the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act) to insert provisions relating to the protection of shellfish growing waters. A new section is inserted into the WEWS Act to enable the Scottish Ministers to designate by order, areas of coastal or transitional water as “shellfish water protected areas” within River Basin Management Plans (RBMP).

369. In written evidence to the Committee, SEPA welcomed the provisions in this section. In particular, it welcomed the proposal in the Explanatory Memorandum 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.”137

370. Scottish Water outlined a number of areas which it thought were unclear in the Bill. It wanted to know how the framework of environmental objectives would be developed and how the designation and de-designation cycles would be aligned to the RBMP process. It welcomed the consideration of disproportionate cost on other bodies—

“Scottish Water has already invested substantial sums to enhance assets in the vicinity of shellfish waters and it is important to ensure investment is both proportionate and effective. In many cases Scottish Water may not be the primary cause of water quality problems and we welcome the commitment to address sources of diffuse pollution.”138

371. Seafish welcomed the provisions in the Bill but thought that not all of the specific protections under the SWD were included. In particular, it was concerned that—

“[…] the wording within section 47.4(b) (ii) might appear to offer SEPA the opportunity to decide that it may not be ‘necessary or desirable’ to implement protection measures in areas where it considers that the expense would not be commercially justified. Whilst not the intent of the Bill, this may prove to be prejudicial to some smaller shellfish cultivators located in some of the more remote and fragile rural areas.”139

372. The Committee pursued this particular issue at its roundtable session on 19 December 2012. Walter Speirs of the Association of Scottish Shellfish Growers told the Committee—

137 SEPA. Written submission, page 3.
138 Scottish Water. Written submission, page 1.
139 Sea Fish Industry Authority (Seafish). Written submission, page 1.
“We are not clear about who will make the judgment on the cost benefit analysis. In the extreme case, we would accept that to spend millions of pounds upgrading a sewage plant for a small output shellfish farm would not make sense. However, we are certainly not clear about how that judgment would be made and who we would work with or negotiate that through; how that will be managed is a little vague.”

373. He expressed his frustration about Scottish Water’s attitude to water pollution and its effect on shellfish growers—

“To be perfectly frank, I think that Scottish Water does not want to be as open as it could be, just in case someone comes after it for compensation, and we really have to move on from that position. I suppose that if Scottish Water were to alert a shellfish farmer that there had been a spill and if, as a result, the farm could not sell its produce, the door would be left open to the farmer making a claim against the loss of sales. If we can get that scenario out of the way and work together more productively, I think that Scottish Water can do a lot of positive things to help us to move forward jointly. It would be helpful to have a more open discussion without the fear of litigation.”

374. The Committee explored the issue of the different classes of water, and the effect of classification on the shellfish growing industry. Jennifer Howie, the Head of Shellfish Unit with the FSA, made the point to Committee that Class B waters, and shellfish grown in them, were perfectly fine. However, industry reps strongly believed that there was a “perception” with consumers, and therefore within the industry, that Class A is better.

375. The Committee invited Scottish Water to give evidence to it as part of its evidence taking, and it was unfortunate that it could not take up that invitation. Scottish Water did however, at the Committee’s request, provide a written response to the points raised in evidence.

376. Scottish Water stated—

“It is our view that through our investment we have largely removed the impact of Scottish Water discharges as a source of shellfish water downgrade. In terms of how me might address other sources, we believe there are lessons to be learned from SEPA’s priority catchment work and would agree that further investigation, licensing and promoting good practice for septic tanks would be appropriate.”

377. Willie Cowan told the Committee that Scottish Water was engaged with the Shellfish Forum, and went on to outline the development of a pollution notification system for shellfish growers—

“One of the practical things that we are trying to get is a real-time notification when there has been, for example, a sewage spillage as a result of a heavy storm. We are trying to set up some kind of red light or red flag system so

that Scottish shellfish growers can be notified very quickly when an incident has happened in an area so that they can manage their business around it.”

378. Scottish Water also commented on this issue in its correspondence to the Committee, noting that it has agreed with shellfish growers to alert them in the event of an Environmental Pollution Incident (a spill caused by a problem with a Scottish Water asset) that could lead to a spill into shellfish water. Scottish Water noted that no such incidents had occurred since the agreement had been put in place.

379. Scottish Water went on to note that with regard to an alert system to cover Combined Sewer Overflow (CSO) spills, there was further work required. It noted that CSOs in the vicinity of shellfish waters are designed to operate at a frequency that protects shellfish waters but that, in most cases, there will not be monitoring in place. Scottish Water added that it was currently exploring a monitoring strategy for such CSOs, and that this was a key step that must take place before progressing work on an alert system.

380. Scottish Water concluded—

“More importantly, we must recognise that (as noted by FSA Scotland in the transcript), shellfish waters may be significantly impacted by runoff during rainfall events. Alerting shellfish growers purely on the basis of a CSO discharge would not cover other sources of loading. As noted above, our bathing water studies have highlighted that in many cases Scottish Water assets are not the limiting factor to achieving compliance.

We suggest much work is required to better understand the relationship between the various sources of microbiological loading to shellfish waters and the impact of heavy rainfall. In particular, it would be useful to understand the extent to which risk to health is exacerbated by harvesting shellfish during extended periods of wet weather, which have been shown to be a key constraint on bathing water quality. Further study may inform the most appropriate response to be made. We are keen to continue to engage with shellfish growers and others to explore this further.”

381. The Committee notes the support from witnesses for the Scottish Government seeking to continue to protect shellfish growing waters and welcomes these provisions in the Bill.

382. It is clear to the Committee that good water quality is vital for the shellfish industry and there are commercial, as well as environmental, considerations in terms of faecal contamination of otherwise good quality waters. For progress to continue it is vital agencies such as the Scottish Environment Protection Agency and Scottish Water work closely and cooperatively with the shellfish growing and marketing industries.

383. The Committee notes the proposals outlined by the Scottish Government for developing an effective notification system to alert shellfish

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growers of significant pollution issues. However, the Committee also notes the comments made by Scottish Water with regard to alerts relating to Combined Sewer Overflow spills and the further work it believes is required before such a system could be established.

384. The Committee believes the development of such a system would be of great benefit to the shellfish growing industry and therefore recommends the Scottish Government works closely with Scottish Water and the shellfish industry to establish this and updates the Committee on progress towards establishing such a system.

Orders as to fisheries for shellfish

385. Sections 48-49 make changes to the Sea Fisheries (Shellfish) Act 1967 under which Scottish Ministers may make Several and Regulating orders to manage shellfish fisheries. Currently, powers are restricted to orders relating to certain types of shellfish listed in the Act. The Bill would allow such orders to be made for any kind of shellfish and removes the requirement for regulations to be made to add new species to this list any time an order was sought for a species not already listed. The Ministers’ powers to appoint an inspector to conduct an inquiry into applications for an order are also clarified.

386. Craig Burton, of Seafish, told the Committee—

“Anything that simplifies the process, speeds it up and reduces the cost to an applicant must be a positive measure. I understand the reluctance of the catching sector, which is inherently reluctant to consider such fishery orders, because they see them as landlordism of the sea.

Granting a right of several fishery or regulated fishery to take a named species in a named area could be regarded as a bit of landlordism. However, on a practical basis, someone who is looking to cultivate a species, use the natural environment and so on needs a level of protection, given what they are putting in.”

387. The Committee notes the evidence received on this issue which is supportive of these measures. The Committee is content with the provisions in the Bill which remove the requirement for regulations to be made every time the list of shellfish in the 1967 Act needs to be extended, and also to clarify the Ministerial powers to appoint an inspector to conduct an inquiry into applications for an order.

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143 The right of a Several fishery bestows ownership of the shellfish on the Grantee and is a property right that may be leased or transferred.
Cockle fishing

388. The Scottish Government wrote\(^{145}\) to the Committee with a proposed amendment it intended to bring forward to this section, should the Bill proceed to the next Stage—

“Amendment 1: Cockle fishing in the Solway Firth

Current offence provisions in relation to the Solway Firth prohibit "fishing for" cockles. So enforcement officers have to gather sufficient evidence in the act of fishing. It is problematic to do this for an act that is rarely if ever witnessed by the authorities. Health and Safety considerations mean that enforcement officers cannot easily venture out onto the sands where the illegal cockle fishing takes place (the "Morecambe Bay" issue). So the path to improving the odds for more effective enforcement lies, we believe, not in the creation of additional enforcement powers, but in framing the offence provisions in a way which is more closely aligned with the scenarios where suspected illegal cockling activity is often detected.

These scenarios include where suspected cockle gatherers are intercepted in laybys or car parks close to beaches either before or after they have been on the sands. Where such detections come immediately after the act of illegal fishing, the cockle gatherers may be found with cockles in their possession. However, illegally gathered cockles are often left in caches on the beach to be collected at a later time and the presence of cockles alone may not necessarily represent sufficient evidence of the act of fishing for them. It has not been uncommon for those who are intercepted on their way to the foreshore to make it clear to enforcement officers that they will simply curtail their activity that night, with the clear inference that they will return again on another night when their activities might go unobserved. So to date, enforcement efforts have primarily frustrated illegal cockling activity rather than resulted in prosecutions.

Vehicular access to the foreshore along the Solway Firth is limited. As a result cockle fishermen often have to travel several miles diagonally over the sands - usually on quad-bikes - to get to the cockles beds. In the past at least one local land owner was suspected of providing access from the public road network to the foreshore for cockle fishermen via a private road on his property. However the landowner would not permit vehicular access to Marine Scotland when officers wanted to take their vehicles down his private road to look for illegal cockle gathering on the adjacent foreshore. Officers were faced with the prospect of walking down the road but without a vehicle - not least for health and safety considerations - this is less than ideal and ultimately thwarted the officers' attempts to intercept anyone fishing illegally. When this issue was raised previously, advice seemed to be that this could perhaps be overcome by giving officers of Marine Scotland a general power or responsibility to patrol the foreshore.

We wish to amend both the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967 - the latter since historic and possible future controls on cockles have used regulating orders and a possible several order has been mooted - to introduce defined circumstances in which the courts may be entitled to infer that accused persons had fished for, or were about to fish for cockles (or other shellfish) in contravention of any principal order. The circumstances that the courts could take into account include:

- Persons are found in possession of the apparatus and paraphernalia associated with cockle fishing, which might include rakes, sacks, riddles, etc;
- Persons are found in possession of cockles.

389. In advance of this issue coming forward at Stage 2, should the Bill reach that Stage, the Committee took evidence on the proposed Scottish Government amendment from Dumfries and Galloway Police.

390. David McCallum, Chief Inspector with Dumfries and Galloway Constabulary, told the Committee that he was supportive of the Scottish Government’s proposed amendment but that he would take things on a stage further and make the provision in two parts; the first part to deal with a person found in circumstances in which it is reasonable to suspect they intended to commit the offence; and secondly for those found with tools and paraphernalia from which it is reasonable to conclude that they intended to commit the offence.

391. Lindsay Anderson, a solicitor with the Scottish Government, told the Committee that the Government was still considering the exact wording of the amendment(s) that would be brought forward at Stage 2, should the Bill reach that Stage, adding—

“[...] there are issues about evidence, burdens of proof and how attempts at illegal cockle fishing can be proven. Relevance is certainly the aspect of the offence that we would be considering. That comes down to how evidence is gathered and proven. Those are things that we are certainly aware of and they are being fed into the policy process.”

392. The Committee also discussed wider issues of illegal harvesting and selling of shellfish, and witnesses agreed that there were other issues that would require further thought in relation to this area. In particular, the issue of the traceability of cockles and other shellfish, and the robustness of the documentation currently required to sell product, both within the UK and abroad, was of concern, with witnesses giving anecdotal evidence to the Committee about large quantities of illegally caught cockles, and other shellfish, being sold overseas.

393. The Minister updated the Committee on this issue—

“I am pleased to report to the committee that we now have a much more joined-up approach to the enforcement of the law against illegal cockling and that most, if not all, of the relevant bodies have now put in place formal...”

memorandums of understanding and data-sharing agreements. I hope that this is an important step in understanding the scale of the problem, that it will inform future targeting of resources and effort on tackling it and that, when we have the detail of the amendments, they will inform the “how” in how we will go about this.”

394. The Committee supports the principle of the Scottish Government’s suggested amendment to the Bill (should the Bill reach Stage 2), in terms of strengthening the law regarding illegal cockle fishing. The Committee believes this is a significant problem, particularly in the Solway, but also in other parts of Scotland, and that the law as it currently stands does not give the police sufficient powers to deal effectively with the issue.

395. The Committee notes the suggestion put forward by the Chief Inspector of Dumfries and Galloway Constabulary that the suggested amendment would be further strengthened by it being split into two parts to deal with those with, and without, paraphernalia associated with illegal activity in their possession. The Committee recommends the Scottish Government considers this suggestion and speaks further to the police regarding this before bringing forward any amendment(s) at Stage 2.

396. The Committee also recognises that this amendment alone will not solve the issue of illegal shellfish harvesting in Scotland, and therefore recommends the Scottish Government continues to work closely with all relevant agencies and industry bodies to develop proposals for tackling issues such as the difficulty in tracing and tracking shellfish, and the documentation required to sell shellfish both in the UK and overseas.

PART FIVE – MISCELLANEOUS

397. Part 5 deals with charging and fixed penalty notices (FPNs). In terms of charging, the Bill introduces powers for Ministers to introduce charges for functions relating to aquaculture, freshwater fisheries and sea fisheries. Current services carried out by Marine Scotland for free will be reviewed and charges brought forward (for example functions carried out by the Fish Health Inspectorate to prevent the spread of diseases). Any introduced charge would have a test applied to it to ensure it was proportionate and targeted appropriately.

398. In terms of FPNs, the Bill amends the 2007 Act to widen the cases in which Marine Scotland can issue them. The cases in the 2007 Act only relate to sea fisheries, and the Bill extends this to all marine and sea fisheries offences which Marine Scotland has responsibility for. In this regard, this part of the Bill extends beyond the matters previously covered, i.e. beyond aquaculture, salmon and freshwater and sea fisheries. The Bill also proposes an increase of the maximum level of penalty from £2,500 to £10,000.

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Charging

399. The SSPO’s written submission expressed concern about the principle of the Scottish Government charging for its own core functions or for services which are already provided by industry preferred commercial suppliers. The SSPO view was that it was vital that any such charges brought forward by order be subject to the affirmative subordinate legislation procedure, to ensure greater parliamentary scrutiny. This point was also made by the SLC in its report to the Parliament on the delegated provisions within the Bill (see the section on delegated powers later in this report).

400. Walter Speirs expressed some unease on this issue, telling the Committee—

“Marine Scotland carries out certain duties in relation to EU legislation—things that are not of any benefit to us but which we have to do. I think that the Food Standards Agency is in a similar position. If those charges were passed back to industry, that could be disproportionate in terms of the profit margins of some small businesses. We have to be careful that we do not pass non-specific charges back to small businesses from large organisations, as that could cripple them.”

401. The Minister explained the rationale of the provisions to the Committee—

“The general principle is that Marine Scotland provides a number of services free of charge or, at best, at less than full cost; however, given the demands of the growing marine industry sector and the public finances themselves, such a principle is no longer sustainable. The primary purpose of charging is to promote the efficient use of resources. Indeed, there are compelling arguments for charging where public services are provided in competition with those in the private sector, where a direct economic benefit accrues to the user or, where practicable, to recover the costs of regulating commercial activities.”

402. The Minister added that details of the charges were not yet available and would be subject to full consultation before any orders were brought forward.

403. The Committee notes the comment in evidence on this issue and welcomes the Scottish Government’s intention to consult fully before any charging orders are brought forward.

404. The Committee joins the Subordinate Legislation Committee in asking the Scottish Government to consider the merits of making these orders subject to the affirmative subordinate legislation procedure.

405. The Scottish Anglers National Association (SANA) expressed concerns, in its written evidence, that Part 5 could create powers that would allow ministers to

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introduce rod licensing. This concern was not shared by Ron Wood, who stated that he did not share SANA’s point of view, explaining—

“That is not to say that we favour rod licensing, but we believe that more money needs to be invested in fisheries management for freshwater species. We believe that it is not unreasonable that some of that money should be raised from anglers, although—I would say this, of course—we believe that some more public money would be useful. We think that how that money is raised should be a completely open question and that rod licensing should not be removed from the options at the outset. It is not necessarily the case that we favour it or would wish it to happen, but we do not share the deep-rooted aversion that SANA expresses.”

406. However, the Scottish Government, in additional evidence to the Committee, clarified that there was no intention, or indeed ability, to introduce such a scheme—

“Section 50 will allow charges to be imposed in connection with the carrying out of specified statutory functions. At the present time there is no national system of rod licensing in Scotland and hence no relevant statutory functions. As a consequence the proposed charging power in section 50 cannot impose such a charge.”

407. The Minister subsequently wrote to relevant stakeholders to provide clarity, stating—

“The provision within the Aquaculture and Fisheries (Scotland) Bill will enable Scottish Ministers to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions (these are functions under legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing). However, we have not yet made any decisions about which functions might be subject to any future charging regime. This is a matter which will be fully consulted upon in due course and even then it will be for Parliament to make a decision on any charging proposals after consultation.

Some people have jumped to the incorrect conclusion that this means that the Scottish Government plans to introduce charges for rod licenses in Scotland.

As we have explained to the RACCE Committee of the Scottish Parliament, and the Cabinet Secretary has explained to the angling community via Twitter, there is no national rod licensing system in Scotland that a charge could be introduced for, so the proposed power in the Bill could not be used

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to introduce such a charge. Furthermore, the Scottish Government has no current plans to introduce a rod licensing scheme either.”

408. SANA subsequently confirmed that it was reassured by the Scottish Government’s clarification on this issue.

409. The Committee welcomes the Scottish Government’s clarification that it has no plans to introduce a rod-licensing scheme. However, the Committee asks the Scottish Government to consider the issues raised in evidence relating to investment in fisheries management and the part anglers could play in that.

Fixed penalty notices

410. A FPN is a fine which for some offences can be an alternative to seeking a criminal conviction in court. The provisions in the Bill would not prevent a case being taken to court if that was deemed appropriate by Marine Scotland or if the offender chose not to pay the fine in the set timeframe.

411. The Bill increases the maximum level of penalty, currently set at £2500, to £10,000. This will widen the scope of offences which can be dealt with using FPN as they are for now limited to minor offences by the maximum penalty level.

412. The Policy Memorandum states that the purpose of widening the FPN regime is so more cases can be dealt with outwith the criminal justice system. This reduces costs on both the state and operators and means cases are dealt with more quickly. It also means that operators can avoid a criminal conviction. This follows the general pattern of reform to the criminal justice system including several Scottish and UK wide reviews which have recommended extending the range of alternatives to prosecution and looking at a sliding scale of penalties for more minor offences in particular regarding business non-compliance with regulatory obligations.

413. In terms of why the Government felt this step was necessary, Jeff Gibbons, the Bill Team Leader with the Scottish Government, told the Committee—

“There are instances of non-compliance at one level or another. The move creates an additional disposal option for compliance officers and the extension will ensure a consistent approach. There is no suggestion that a raft of fixed-penalty notices will suddenly be issued; the move is simply a natural progression from an existing disposal option that our compliance officers have, under their current powers […] The key issue is that individual inspectors would not and could not hand out fixed-penalty notices on the spot. If an inspector uncovers an instance of non-compliance that they think warrants a report, they send a report to a central unit that considers reports from across Marine Scotland’s activities. That unit identifies whether there is

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sufficient evidence to enable a report to be made to the procurator fiscal. That is the first test. If there is sufficient evidence, the question is whether to submit a report to the procurator fiscal or to offer a fixed-penalty notice. It is only after a matter has passed the test of whether there is sufficient evidence to submit a report that we move the question how it should be dealt with.”  

414. The Scottish Government published a note on its website in October 2012 to: supplement the background provided in the Policy Memorandum on FPNs; outline how FPNs would relate to the existing provisions; set out the process undertaken before the FPN option would be pursued; and provide some examples of the types of offences where they might be applicable.

415. Douglas Sinclair, an aquaculture specialist with SEPA, told the Committee that the agency strongly supported the inclusion of these provisions in the Bill, because courts cases were inevitably expensive and bureaucratic for all concerned, adding—

“I am aware that, in many cases, people whom we regulate and who may have faced a case in court would have preferred to take a fixed-penalty notice as a lesser option for crimes of lesser seriousness because of the cheapness, the immediacy and the fact that they can get the offence out of the way.”

416. Steve Bracken indicated that the aquaculture industry now has a better understanding of the FPN proposals—

“When the idea of fixed-penalty notices appeared, there was definitely a knee-jerk reaction in the industry, because we did not see that coming and did not understand what it was about. There was a lot of disquiet on the farms—not just in Marine Harvest but in the industry overall.

Since then, the bill team has put out good information that further explains what fixed-penalty notices are about. The original thought was that they would be applied immediately on farms, but the process has now been explained, which has helped. I am not saying that the industry endorses fixed-penalty notices, but it understands them better.”

417. Professor Phil Thomas told the Committee that the SSPO has accepted that FPNs will be introduced but asked that the Scottish Government be required to publish statistics on their use.

418. Craig Burton told the Committee that the extension of the FPN scheme to all marine and freshwater fisheries-related offences which are the responsibility of

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Marine Scotland, brought a degree of concern within some parts of the industry because of the uncertainty of what this could lead to in practice.

419. The Committee notes the concerns raised about extending the offences covered by fixed penalty notices to all marine and freshwater fisheries related offences which are the responsibility of Marine Scotland because of the uncertainty about exactly what offences the fixed penalty notices would apply to.

420. However, the Committee is in favour of streamlining the legal processes involved in enforcing legislation, and supports the view expressed by the Scottish Environment Protection Agency that better use of fixed penalty notices should lead to improvements in cost effectiveness and a reduction in bureaucracy for both the regulators and the regulated.

421. The Committee is also reassured by comments made by Scottish Government officials who clarified how the fixed penalty notice system would be applied in this area. The Committee does see merit in the Scottish Government publishing statistics on the number of fixed penalty notices issued in this area in the initial years of the scheme, in order to better assess its effectiveness, and therefore recommends the Scottish Government give thought to how best to collect and publish this information.

FINANCIAL ISSUES

422. The Scottish Parliament’s Finance Committee issued a call for views on the Financial Memorandum of the Bill and received two responses\(^\text{157}\), one from the ASFB and one from FSA Scotland. The Committee subsequently forwarded those responses on to the RACCE Committee for consideration but made no further comment.

423. In its response to the Finance Committee, the ASFB stated that—

> “We believe that there are a number of unintended consequences arising from the approach adopted in Part 2 of the Aquaculture and Fisheries (Scotland) Bill, and indeed we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation.”\(^\text{158}\)

424. The response goes on to outline the potential additional expense for some DSFBs if the Bill’s provisions are enacted, such as—

- being required to conduct meetings in public unless there is good reason to hold certain discussions in private;


\(^{158}\) Association of Salmon Fishery Boards. Written submission to the Finance Committee.
• the requirement to maintain and keep under review the process for handling complaints;

• the requirement to publish details of certain consultations and reports in newspapers;

• a potential negative knock-on effect on DSFB donations to charitable Fisheries Trusts as a result of increase DSFB expenditure elsewhere.

425. The ASFB response makes the concluding point that—

“In the case of smaller DSFBs we believe that some of the costs relating to good governance may be disproportionate and indeed may threaten the existence of some of these organisations.”

426. The Scottish Government’s Bill team told the Committee on this issue—

“There is no intention to try to put the smaller boards out of business, but there is an intention to try to raise the bar, in that a lot of what is covered in the bill is carried out by the better boards. The bill is about raising the bar so that everybody adheres to minimum levels in relation to what they do, how they do it and transparency. Ministers do not want to impose a regulatory burden that would make it impossible for those guys to improve the fisheries, which is their statutory purpose.”

427. Further comment on this issue is made in the relevant section in the report above.

428. The FSA response indicated that the potential impact on the FSA as a result of the Bill’s provisions regarding shellfish waters, although not clearly set out, are accurate in terms of their presumptions.

429. The Committee notes the Finance Committee received two responses with regard to the Financial Memorandum on this Bill and presumes therefore there is not widespread concern amongst relevant industries and stakeholders about the Bill’s potential financial impact.

430. However, the Committee notes the concerns raised by the Association of Salmon Fishery Boards regarding the potential impact the provisions in Part 2 of the Bill, regarding the governance and management of District Salmon Fishery Boards, could have on smaller district boards.

431. The Committee refers readers to the relevant section elsewhere in this report which deals with the issue of District Salmon Fishery Boards’ governance and the potential impact on boards of different size and resource.

159 Association of Salmon Fishery Boards. Written submission to the Finance Committee.
432. The Delegated Powers Memorandum describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. The Bill introduces many delegated powers and this has been criticised by some stakeholders. SSPO state that Ministers are given significant enabling powers and ASFB has suggested that some provisions should be dealt with through primary rather than secondary legislation.

433. The Committee questioned Scottish Government officials on why there is such a reliance on secondary implementing legislation in the Bill. In response, the Committee was told by Willie Cowan—

“The primary reason why ministers seek the enabling powers is the technical nature of the provisions that will ultimately be implemented. Ministers are seeking enabling powers, on the back of which further consultation is under way even now with stakeholders on what their implementation will look like. It is not unusual for enabling powers to be used to implement something such as technical standards, which are by their nature technical and can move apace and require further amendment.

At this point, ministers think that the balance between primary legislation and enabling powers is right. The fallback is that the use of each enabling power would undergo a further round of detailed technical consultation with stakeholders before coming back to the Parliament for consideration.”

434. The Committee went into further detail with regard to the technical standards in Section 3, and how prescriptive the intention of the legislation was and if the drafting was suitably wide enough to allow Ministers to prescribe what needed to be prescribed. Alastair Mitchell, the Head of the Aquaculture Unit at the Scottish Government, responded—

“It is not the intention to micromanage the farming of the fish but, as with all the other elements of the incremental approach that we are taking, if a risk were identified, we would discuss that with the industry and would consider how we would deal with it.”


436. The SLC raised a number of issues in its report as follows—

- the first related to the status of the CoGP for aquaculture as proposed in the Bill and noted that the Scottish Government has indicated to the SLC that intends to bring forward an amendment at Stage 2, should the Bill pass to that Stage, to amend the reference to the CoGP in the inserted section 4A(5) of the 2007 Act;

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Section 3 of the Bill, regarding the power to prescribe technical requirements for equipment used in fish farming, required clarification by the Scottish Government in a number of areas;

regarding Section 20 of the Bill, containing a power enabling the Scottish Ministers to modify by order the good governance requirements placed on DSFBs and to impose additional requirements for specified purposes (section 46F(1)), the Scottish Government is considering an amendment to clarify that this only applies to amended section 46F(2) as is the policy intent;

regarding Section 22 on carcass tagging, the SLC was of the view that the affirmative subordinate legislation procedure would be more appropriate than the negative procedure. The SLC reported that the Scottish Government agreed with this point and intended to amend the Bill appropriately at Stage 2, should the Bill reach that Stage; and

with regard to Section 50, containing the power to charge in connection with fisheries functions, the SLC was of the view that these powers were, significant and should, again, be subject to the affirmative subordinate legislation procedure rather than the negative procedure. The SLC asked the Scottish Government to consider this issue ahead of Stage 2.

437. The Committee notes this Bill contains a large number of enabling powers which will possibly come forward at a later stage by way of secondary legislation. While this is not in itself unusual, the Committee is keen to ensure the delegated power provisions contained in the Bill are subject to the appropriate levels of parliamentary scrutiny when measures are brought forward in future.

438. The Committee thanks the Subordinate Legislation Committee for its very thorough report on the delegated power provisions in the Bill. The Committee supports the recommendations made by the Subordinate Legislation Committee and asks the Scottish Government to give full consideration to any outstanding issues ahead of Stage 2.
ANNEXE A: GLOSSARY

Glossary of acronyms used most frequently in the report

- ASFB – Association of Salmon Fishery Boards
- CoGP - Scottish Finfish Code of Good Practice
- DSFB – District Salmon Fishery Board
- FMA – Farm Management Area
- FMAg – Farm Management Agreement
- FMS – Farm Management Statement
- FPN - Fixed penalty notice
- FSA - Food Standards Agency
- MGA – Ministerial Group on Aquaculture
- SANA - Scottish Anglers National Association
- SEPA – Scottish Environment Protection Agency
- SLC – Subordinate Legislation Committee
- SNFAS - Salmon Net Fishing Association of Scotland
- SNH – Scottish Natural Heritage
- SSPO – Scottish Salmon Producers’ Organisation
- SWD - Shellfish Waters Directive.
ANNEXE B: EXTRACT FROM THE MINUTES OF THE RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

22nd Meeting, 2012 (Session 4)

Wednesday 24 October 2012

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

28th Meeting, 2012 (Session 4)

Wednesday 5 December 2012

Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence in round table format on the Bill at Stage 1 from—

Allan Wells, Policy and Planning Director, Association of Salmon Fishery Boards;
Ken Whelan, Research Director, Atlantic Salmon Trust;
Alex Kinninmonth, Living Seas Policy Officer, Scottish Wildlife Trust;
Alex Adrian, Aquaculture Operations Manager, Crown Estate;
Professor Randolph Richards, University of Stirling;
Professor Chris Todd, University of St Andrews;
Douglas Sinclair, Aquaculture Specialist, Scottish Environmental Protection Agency;
Steve Bracken, Business Support Manager, Marine Harvest;
Guy Linley-Adams, Environmental solicitor, Salmon and Trout Association;
Professor Phil Thomas, Chairman, Scottish Salmon Producers’ Organisation;
Councillor George Farlow, Vice Chair of the Planning, Environment and Development Committee, Highland Council.

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

29th Meeting, 2012 (Session 4)

Wednesday 12 December 2012
Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Dr Colin Bean, Science and Policy Adviser, Scottish Natural Heritage;
- Callum Sinclair, Director, Rivers and Fisheries Trusts of Scotland;
- Dr John Armstrong, Freshwater Fisheries Team and Programme Leader, Marine Scotland, Scottish Government;
- Simon McKelvey, Director, Cromarty Firth Fisheries Trust and Cromarty Firth District Salmon Fisheries Board;
- George Pullar, Vice Chairman, Salmon Net Fishing Association of Scotland;
- Ron Woods, Policy Officer, Scottish Federation for Coarse Angling;
- Craig Campbell, Chairman, Migratory Fish Committee, Scottish Anglers National Association.

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
MINUTES
30th Meeting, 2012 (Session 4)
Wednesday 19 December 2012

Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence in roundtable format on the Bill at Stage 1 from—

- Craig Burton, Inshore Manager, Seafish;
- Stephen Cameron, Managing Director, Scottish Shellfish Marketing Group;
- Jennifer Howie, Head of Shellfish Unit, Food Standards Association Scotland;
- Walter Speirs, Chairman, Association of Scottish Shellfish Growers;
- Peter Pollard, Principal Policy Officer (Water), Scottish Environmental Protection Agency;
- David McCallum, Chief Inspector, Dumfries and Galloway Constabulary.

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
MINUTES
1st Meeting, 2013 (Session 4)
Wednesday 9 January 2013

Aquaculture and Fisheries (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Paul Wheelhouse, Minister for Environment and Climate Change, Willie Cowan, Deputy Director of Performance, Aquaculture and Recreational Fisheries, and Lindsay Anderson, Solicitor, head of branch, Scottish Government.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

3rd Meeting, 2013 (Session 4)

Wednesday 23 January 2013

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee considered a draft Stage 1 report, and agreed to consider a revised draft at its next meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

4th Meeting, 2013 (Session 4)

Wednesday 30 January 2013

Aquaculture and Fisheries (Scotland) Bill (in private): The Committee agreed its draft Stage 1 report.
ANNEXE C: SUBORDINATE LEGISLATION COMMITTEE REPORT

62nd Report, 2012 (Session 4): Aquaculture and Fisheries (Scotland) Bill
ANNEXE D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

27th Meeting, 2012 (Session 4), Wednesday 28 November 2012

ORAL EVIDENCE

Willie Cowan, Deputy Director of Performance, Aquaculture and Recreational Fisheries, Alastair Mitchell, Head of Aquaculture Unit, and Jeff Gibbons, Aquaculture and Fisheries Bill Team Leader, Scottish Government.

SUPPLEMENTARY WRITTEN EVIDENCE

Marine Scotland

28th Meeting, 2012 (Session 4), Wednesday 5 December 2012

ORAL EVIDENCE

Allan Wells, Policy and Planning Director, Association of Salmon Fishery Boards;
Ken Whelan, Research Director, Atlantic Salmon Trust;
Alex Kinninmonth, Living Seas Policy Officer, Scottish Wildlife Trust;
Alex Adrian, Aquaculture Operations Manager, Crown Estate;
Professor Randolph Richards, University of Stirling;
Professor Chris Todd, University of St Andrews;
Douglas Sinclair, Aquaculture Specialist, Scottish Environmental Protection Agency;
Steve Bracken, Business Support Manager, Marine Harvest;
Guy Linley-Adams, Environmental solicitor, Salmon and Trout Association;
Professor Phil Thomas, Chairman, Scottish Salmon Producers’ Organisation;
Councillor George Farlow, Vice Chair of the Planning, Environment and Development Committee, Highland Council.

SUPPLEMENTARY WRITTEN EVIDENCE

Professor Chris Todd
Scottish Salmon Producers’ Organisation
Guy Linley-Adams, Solicitor, on behalf of the Salmon & Trout Association Scotland
Association of Salmon Fishery Boards

29th Meeting, 2012 (Session 4), Wednesday 12 December 2012

ORAL EVIDENCE

Dr Colin Bean, Science and Policy Adviser, Scottish Natural Heritage;
Callum Sinclair, Director, Rivers and Fisheries Trusts of Scotland;
Dr John Armstrong, Freshwater Fisheries Team and Programme Leader, Marine Scotland, Scottish Government;
Simon McKelvey, Director, Cromarty Firth Fisheries Trust and Cromarty Firth District Salmon Fisheries Board;
George Pullar, Vice Chairman, Salmon Net Fishing Association of
Scotland;
Ron Woods, Policy Officer, Scottish Federation for Coarse Angling;
Craig Campbell, Chairman, Migratory Fish Committee, Scottish Anglers National Association.

SUPPLEMENTARY WRITTEN EVIDENCE

Dr Colin Bean, SNH (first response)
Dr Colin Bean, SNH (second response)
Association of Salmon Fishery Boards

30th Meeting, 2012 (Session 4), Wednesday 19 December 2012

ORAL EVIDENCE

Craig Burton, Inshore Manager, Seafish;
Stephen Cameron, Managing Director, Scottish Shellfish Marketing Group;
Jennifer Howie, Head of Shellfish Unit, Food Standards Association Scotland;
Walter Speirs, Chairman, Association of Scottish Shellfish Growers;
Peter Pollard, Principal Policy Officer (Water), Scottish Environmental Protection Agency;
David McCallum, Chief Inspector, Dumfries and Galloway Constabulary.

1st Meeting, 2013 (Session 4), Wednesday 9 January 2013

ORAL EVIDENCE

Paul Wheelhouse, Minister for Environment and Climate Change, Willie Cowan, Deputy Director of Performance, Aquaculture and Recreational Fisheries, and Lindsay Anderson, Solicitor, head of branch, Scottish Government.

SUPPLEMENTARY WRITTEN EVIDENCE

Scottish Salmon Producers’ Organisation
Callander McDowell
Scottish Government

SUBMISSIONS RECEIVED IN RESPONSE TO CALL FOR VIEWS

- Animal Concern and the Save Our Seals Fund (134KB pdf)
- Atlantic Salmon Trust (309KB pdf)
- Professor Brian Austin, Director, Institute of Aquaculture, University of Stirling (67KB pdf)
- Beauly District Fishery Board (123KB pdf)
- British Trout Association (BTA) (262KB pdf)
- Callander McDowell (84KB pdf)
- The Crown Estate (77KB pdf)
- Dee District Salmon Fishery Board (Dee DSFB) (78KB pdf)
- Esk District Salmon Fishery Board (75KB pdf)
- Europharma Scotland Ltd. (81KB pdf)
The following submissions were endorsed by several organisations and individuals (listed)

- **Association of Salmon Fishery Boards (252KB pdf)**
  Endorsed by:
  - Kyle of Sutherland District Fisheries Board
  - Helmsdale District Salmon Fisheries Board
  - The Outer Hebrides Fisheries Trust
  - Western Isles District Salmon Fisheries Board
  - Urr District Salmon Fisheries Board
  - Netherdale Estate
  - Salmon & Trout Association
  - Kyle of Sutherland DSFB and the Kyle Fishery Trust
  - Nith District Salmon Fishery Board
  - The River Deveron District Salmon Fishery Board
  - Bell Ingram
  - Argyll District Salmon Fishery Board
  - The Wester Ross Area Salmon Fishery
  - The Tay District Salmon Fisheries Board
  - Beauly District Fishery Board (endorse paragraphs 12-23 only)
  - Andrew Graham-Stewart (with reference to the aquaculture sections of the Bill)
Rural Affairs, Climate Change and Environment Committee, 1st Report, 2013
(Session 4) — Annexe D

- Findhorn District Salmon Fishery Board

- Scottish Environment LINK (143KB pdf)
  Endorsed by:
  - Marine Conservation Society
  - National Trust for Scotland
  - RSPB Scotland
  - Scottish Ornithologists’ Club
  - Scottish Wildlife Trust
  - Whale and Dolphin Conservation
  - WWF Scotland

- Scottish Salmon Producers’ Organisation (133KB pdf)
  Endorsed by:
  - Marine Harvest

- Rivers and Fisheries Trusts of Scotland (RAFTS) (197KB pdf)
  Endorsed by:
  - The River Don Trust

- Salmon & Trout Association (99KB pdf)
  Endorsed by:
  - Andrew Graham-Stewart (with reference to the aquaculture sections of the Bill)

OTHER WRITTEN SUBMISSIONS RECEIVED

Rivers and Fisheries Trusts of Scotland (RAFTS)
Marine Scotland
Scottish Government
Scottish Water
Members who would like a printed copy of this Numbered Report to be forwarded to them should give notice at the Document Supply Centre.