Association of Salmon Fishery Boards

Comments on the Consultation on Proposals for an Integrated Framework of Environmental Regulation

August 2012

Introduction

The Association of Salmon Fishery Boards is the representative body for Scotland's 41 District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), which have a statutory responsibility to protect and improve salmon and sea trout fisheries. The Association and Boards work to create the environment in which sustainable fisheries for salmon and sea trout can be enjoyed. Conservation of fish stocks, and the habitats on which they depend, is essential and many DSFB's operate riparian habitat enhancement schemes and have voluntarily adopted 'catch and release' practices, which in some cases are made mandatory by the introduction of Salmon Conservation Regulations. ASFB creates policies that seek where possible to protect wider biodiversity and our environment as well as enhancing the economic benefits for our rural economy that result from angling. An analysis completed in 2004 demonstrated that freshwater angling in Scotland results in the Scottish economy producing over £100 million worth of annual output, which supports around 2,800 jobs and generates nearly £50million in wages and self-employment into Scottish households, most of which are in rural areas.

We welcome the opportunity to comment on the proposals for an integrated framework of environmental regulation. We are broadly supportive of proposals to integrate and streamline regulation, provided that such proposals do not compromise environmental protection. The core purpose of any new regulatory regime is the protection and improvement of Scotland's environment taking into account the requirements of species which rely on that environment.

Specific Comments

Q1. Do you foresee any difficulties in adopting the single permissioning framework set out above?

We are generally supportive of integrating the permissions of the 4 main regimes. However, the bottom line of any integration must be robust environmental protection. We are concerned that such protection is not included as one of the outcomes set out in section 3.2.7 of the consultation document.

We appreciate the thinking behind the Standard Conditions/Rules Approach but we are concerned that, in some cases, the potential lack of site-specific conditions might result in inadequate environmental protection. Despite the proposal that standard rules will be combined with site-specific conditions as necessary, we remain concerned that SEPA may not always have the resources to apply site-specific conditions to permits where necessary and might therefore use the standard rules by default. We seek further clarity as to what mechanisms will be put in place to ensure that site-specific permits are applied whenever necessary.

We would also seek further that the proposed approach would be capable of taking into account possible cumulative effects of a number of perceived low risk activities. ASFB are a member of the Diffuse Pollution Management Advisory Group and therefore are well placed to comment on the significant issue of agricultural diffuse pollution which arises from activities which, when viewed alone, would be deemed low risk. However, at a catchment scale, such activities have been demonstrated to have a significant cumulative impact on water quality. The example of agricultural diffuse pollution also highlights the potential difficulties in terms of raising awareness and ensuring that all operators are compliant with GBRs. Recent inspection work by SEPA has uncovered high rates of non-compliance with the diffuse pollution GBRs despite them being in existence for some years. Lessons must be learned from that to ensure that operators are fully aware of the regulations and to ensure that SEPA is equipped to detect and enforce cases of non-compliance. There are also significant concerns relating to the consistency in SEPA's approach to micro hydro developments in Scotland and the ability or otherwise of SEPA to ensure compliance with licence conditions.

Q2. Do you agree that SEPA should adopt this proportionate approach to determining where an activity sits in the new permissioning hierarchy?

We are supportive of the proposed approach, and we welcome the flexibility for SEPA to retain the ability to escalate or de-escalate risks as they can currently do in CAR. The criteria that will be followed in making any such decisions as to whether an activity warrants escalation or de-escalation should be transparent and we would emphasise again that environmental protection and improvement must be the primary considerations.

Q3. Are there any problems in the current procedures for the 4 Main Regimes which could be addressed in the new single regulatory procedure?

Please see our comments relating to diffuse pollution above. It is vital that the requirements on operators, particularly those arising from GBRs are effectively communicated. This will ensure that, where necessary, the use of the proposed common enforcement notice will be entirely justified.

We would also highlight the current procedure for the use of herbicides for eradicating invasive species in environmental projects across Scotland. We are aware of at least one situation where a Fishery Board/Trust has been required to apply for the appropriate permit on an annual basis, rather than the permit covering the 5-year duration of the project. We believe that it would be more efficient for both SEPA and the Board/Trust in question, to apply for such a permit once.

Q4. Are there any issues which you think SEPA should take into account when developing its approach to joined-up permits?

Whilst we agree that the proposed approach is sensible, it is important to consider that stakeholders who wish to comment on a specific aspect of a development, may only be interested in one aspect of that development. In the stated example of a distiller, DSFBs or fishery trusts would only have an interest in those aspects of the license relating to discharges, dams and abstractions at its distillery sites. If the purpose of the approach is to allow SEPA 'to tailor its approach to advertising and consulting to the activity being proposed and ensure greater effectiveness of public engagement', then the application forms and means of consulting must be tailored to allow stakeholders to clearly and simply identify the aspects of the permit which pertain to their interest/expertise. This may involve guidance/workshops in the first instance.

Q5. Do you agree that there is merit in introducing corporate or accredited permits for environmental activities? If not, why not?

We are concerned about the proposals to allow corporate permits as we do not see how site-specific issues could or would be taken into account. On that basis, and based on the information provided in the consultation document we do not support such an approach.

We also have concerns about accredited permits for operators who have robust environmental management systems. Whilst we welcome such accreditation, many potential environmental impacts, such as those arising from finfish aquaculture, are so site specific, that the local conditions and geography might be more important from an environmental perspective than company-wide environmental management systems. We believe that this proposal has the potential to increase the risk of such environmental activities, as it does not recognise that the responsibility for environmental risks often falls to individuals working on the ground and the decisions they make. We would support a trial of such an approach, but would wish to reserve final judgement until the results of such a trial are available.

Q6. Do you agree that SEPA should have the power to use fixed and discretionary direct financial penalties to address less significant offences? Do you think the amounts of £500 and £1,000 for fixed penalties and the cap of £40,000 for a discretionary penalty are set at the right level?

We agree that SEPA should have the power to use fixed and discretionary direct financial penalties but we do not believe that these penalties are set at the right level. We believe that fixed penalties should be set at up to £5000. With regard to discretionary penalties, there must be scope to apply a fine that would both act as a deterrent and adequately penalise those who have caused significant environmental harm. In some cases, this may include extremely large multi-national companies, and we would question whether a £40,000 fine would be an adequate deterrent in such cases. Ultimately we believe that fines should be commensurate with environmental impacts.

The consultation document indicates that the penalties would go to Scottish Government or to a publically administered environmental restoration fund. We would strongly support the latter option.

Q7. *Do you agree that SEPA should be given the power to accept enforcement undertakings in a greater range of circumstances? Do you agree that they should be limited to ensuring environmental restoration?*

It is proposed that SEPA would use such undertakings "*to enable legitimate operators to make amends where an offence has not led to significant environmental harm and has involved little or no blameworthy contact*". We would support such enforcement undertakings only if they were applied on that basis. However, we would be very concerned is this approach become seen as a default option as an alternative to SEPA pursuing enforcement through the courts. In many instances, we believe that this is the only appropriate response.

Q8. Do you agree that SEPA should be able to require non-compliant operators to publicise the damage they have caused the action they are taking to put things right? Should this power also be available to the courts?

We support this proposal on the basis that such publicity can often prove a greater deterrent than a financial penalty due to fears over reputational risk.

Q9. Do you think that the direct measures set out above should be applied to the 4 Main Regimes and to the other regimes set out in paragraph 3.5.21? Would it be useful for the direct measures to be available to SEPA in relation to other regulatory regimes for which it has responsibility?

Yes.

Q10. Is there a need for any additional safeguards?

We do not believe that there is a need for any additional safeguards above and beyond those set out in the consultation document.

Q11. Do you agree that the existing powers relating to remediation and compensation orders should be extended as set out above? Do you think that we should require the courts to have regard to financial benefit when setting fines?

We agree that powers relating to remediation and compensation orders should be extended. We also think that the courts should have regard to any financial benefits that have accrued as a result of the offence when setting fines. However, we believe that the proposed cap on £50,000 is set at too low a level, for the reasons set out in our response to Q6 above.

Q12. Do you agree that SEPA should be able to recover the costs which it incurs in investigating and enforcing environmental legislation, up to the point at which it imposes a direct measure or refers a case to the Procurator Fiscal for prosecution?

We have no difficulty with this proposal.

Q13. Do you agree that the new integrated permissioning framework, supported by a more strategic, flexible enforcement toolkit and a targeted approach to regulation, will provide more effective protection of the environment and human health?

We would hope that the new framework would result in more effective environmental protection. However, this will only be the case if rigorous environmental protection, rather than cost savings or growth of business is the ultimate driver. The final determination of the effectiveness of the regime will require the regime to be monitored against environmental outcomes.

For further information please contact:
Alan Wells | Policy & Planning Director
Tel: 0131 272 2797 | Email: alan@asfb.org.uk

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Association of Salmon Fishery Boards

Title **Mr** ☐ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☒ ***Please tick as appropriate***

Surname

Wells

Forename

Alan

2. Postal Address

Capital Business Centre		
24 Canning Street		
Edinburgh		
Postcode EH3 8EG	**Phone** 0131 272 2797	**Email** alan@asfb.org.uk

3. Permissions - I am responding as…

Individual ☐ / **Group/Organisation** ☒

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ **Yes** ☐ **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

Please tick as appropriate ☒ **Yes** ☐ **No**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate ☒ **Yes** ☐ **No**