



# Association of Salmon Fishery Boards

## Evidence presented to the Rural Affairs, Climate Change and Environment Committee Aquaculture and Fisheries (Scotland) Bill – Stage 1 November 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.

We welcome the opportunity to comment on the general principles of the Aquaculture and Fisheries (Scotland) Bill.

### Overarching Comments

1. There appears to be a basic disconnect between the provisions in Part 1 (Aquaculture) and Part 2 (Salmon Fisheries etc.) of the Bill. There is a perception that the underlying principles of fairness and transparency do not apply equally to both sectors. We also believe that there are a number of unintended consequences arising from the somewhat more prescriptive approach adopted towards DSFBs.
2. The Marine Scotland Response to the consultation did not adequately explain why some of the proposals that were consulted on, particularly those relating to aquaculture, have not been taken forward in this Bill. Whilst we have now received further clarity on the other mechanisms by which these proposals might be taken forward we would seek further assurance that these proposals will be acted upon, and a clear timetable for doing so should be set out. In the absence of such assurance, we would seek to have a number of those proposals (which were all supported by a wide cross section of stakeholders) included within the Bill.
3. We do not believe that some aspects included in Part 2 of the Bill were specifically consulted on.

### Specific Comments

#### *Part 1: Aquaculture*

4. Section 1 sets out a requirement for any person who carries out the business of fish farming to be party to either a farm management agreement (where more than one operator is present in an area) or a farm management statement (where a single operator is present). We support this section, which was a clear recommendation of the Healthier Fish Working Group<sup>1</sup>, but believe that such agreements and statements should be published in a publically accessible manner. We are concerned that the Bill does not contain any requirement for farm management agreements or statements to address/minimise impacts on the receiving marine environment, including impacts on wild fish. We remain concerned that the existing farm management agreements are extremely variable in size. Whilst we recognise that information and understanding about connectivity between farms and farm management areas is incomplete, it would appear that in some instances, the current farm management area boundaries are not primarily based on reasons of good husbandry, biosecurity and control of sea lice, but rather on operational priorities. On that basis we supported the consultation proposal that Scottish Ministers should have powers to specify FMA boundaries. We understand that Scottish Ministers will be able to specify FMA boundaries where necessary through the provisions in the Bill and the 2007 Act, but confirmation that this is the case would be welcome.
5. We welcome the inclusion of section 2 which will allow the origin of escaped fish to be ascertained, should advancements in genetic, or other technology, allow. We would also note that there is a move in Norway to ensure that all farmed fish are marked with a uniquely numbered tag, with the purpose of identifying the source of escapes under strict liability.
6. We welcome the inclusion of a technical standard for equipment used in fish farming (Section 3). The work of the Improved Containment Working Group has also demonstrated that a significant proportion of escapes

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<sup>1</sup> Part of the Ministerial Group on Aquaculture: see: <http://www.scotland.gov.uk/Resource/Doc/1062/0114793.pdf>

are not due to equipment failure, but rather to human error (29.5% of all escapes in 2010). We therefore believe that Section 3 should be amended to ensure that any such standard includes provision for accredited training in the use of such equipment and a requirement to ensure that all personnel operating in Scotland demonstrate competence in the use of equipment.

7. We welcome the provisions relating to the control and operation of wellboats. However, it is not clear, if wellboats present significant issues relating to the prevention, reduction, removal or control of the risk of the spread of parasites, pathogens or diseases, why open water cages are not subject to similar controls.

**Other consultation proposals not being taken forward in the current Bill**

8. Powers to revoke consents: A power to revoke aquaculture consents is particularly important as our understanding of the interactions between the aquaculture industry and wild salmonids improves. Marine Scotland Science cannot accurately predict the effect of a particular site on wild fish. Given that most developments currently receive permanent planning consent, it is a real concern that such a power does not currently exist. Despite 71% of those substantive responses to the consultation being in favour of such a power, the Marine Scotland response was, *'we do not intend to progress these proposals at this time'*, with no further explanation.
9. Collection and publication of sea lice data (and information on fish mortality, movement, disease, treatment and production): The publication of sea lice data at an appropriate resolution is one of the key issues for wild fisheries organisations. We believe that the fundamental basis for any proposed solution must be an ability for wild fisheries managers to assess, at a local level, the success or otherwise of treatment strategies and to be provided with an assurance that, where those strategies have not been successful, management practices will be adapted to ensure that such issues do not reoccur during the next production cycle. Equally we believe that any proposed solution must also allow the aquaculture industry to demonstrate clearly that they are able to, and do, manage sea lice levels within acceptable tolerances without ambiguity or debate. The Marine Scotland response was *'it is anticipated that this proposal will be progressed through non-legislative means, through improved voluntary reporting. Alternatively the Scottish Government has existing powers to progress the proposals [which also include other information on fish mortality, movement, disease, treatment and production] through secondary legislation'*. Our clear preference is for these existing powers to be used to deliver this information. At the very least we would seek a clear assurance that the Scottish Government are willing to use these powers, should such voluntary agreements fail to deliver data at an appropriate resolution. The importance of transparency on sea lice data is highlighted by a recent paper which analysed the results of a number of previously published experiments involving the release of salmon smolts<sup>2</sup>, half of which were treated to protect them against sea lice infestation and the other half were untreated. In these studies, high marine mortality naturally affected both treated and untreated salmon groups. However, the analyses used allowed for the high natural mortality to be accounted for and isolated the estimated loss of salmon recruitment due to parasitism, revealing a large and significant effect of parasites. The authors noted that precisely because natural mortality rates are high, even a proportionally small additive mortality from parasites can amount to a large loss in adult salmon recruitment.
10. Powers to require SEPA to reduce biomass consents: SEPA's consideration of applications for biomass consents are limited to 'discharges' such as fish waste and sea lice treatments and such discharges **are not** interpreted by SEPA as including sea lice. Marine Scotland Science routinely state that *'the industry Code of Good Practice takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and posing a risk for wild fish particularly in the case of larger farms or management areas holding a large biomass of farmed fish.'* Since the potential increased release of sea lice is not taken into account in SEPA's decision-making process it is entirely correct that Scottish Ministers should have a power to reduce biomass consents where such action is appropriate for the health of **wild** fish. The Marine Scotland response was *'SEPA can already reduce biomass consent in certain circumstances. We will consider further non-legislative solutions and have begun discussion with SEPA about these matters'*. We are not clear whether SEPA could, or would, use these

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<sup>2</sup> Krkosek, M., Revie, C.W., Gargan, P.G., Skilbrei, O.T., Finstad, B. and Todd, C.D. (2012) Impact of parasites on salmon recruitment in the Northeast Atlantic Ocean. Proc R Soc B.

existing powers to reduce the biomass on site in order to protect wild fish and would seek clarity on this issue. We are also concerned that SEPA appear to have only used their existing powers to reduce biomass on a handful of occasions, despite 44% of monitoring surveys between 2009 and March 2012 being deemed by SEPA to be “unsatisfactory” (*beyond the assimilative capacity of the local environment*).

11. Powers to determine a lower threshold for sea lice levels above which remedial action needs to be taken: The absolute number of sea lice released from a farm is more important than the relative number of lice per fish (the basis of the Industry Code of Good Practice). We therefore believe that threshold lice levels should be changed to take into account farm biomass and the cumulative biomass in the local area in order to minimise risks to **wild** fish. We are aware that the industry already used a much lower treatment threshold than that set out in the CoGP in some areas. This is important, in order to protect wild fish, **not** for the health and welfare of the farmed fish. Marine Scotland believe that this can be delivered through existing powers but we would seek further clarity about how and when this will be taken forward.

#### **Other issues relating to part 1**

12. Enforcement notices under Section 6 of the Aquaculture and Fisheries (Scotland) Act 2007 allow Scottish Ministers to require the execution of such works, or the taking of other steps, with the purpose of the prevention, control or reduction of parasites. However, we have been informed by the Fish Health Inspectorate that any such notices are limited to observed problems with farmed fish and such notices cannot be utilised for the purpose of protecting wild fish. We do not believe that the 2007 Act specifically precludes such action, but if this is the case, we believe that the 2007 Act should be amended to allow such action to take place for the health and welfare of **wild** fish. We also believe that, related to point 8 above, the Fish Health Inspectorate should be given full access to the industry fish health management database operated by SSPO.

#### **Part 2: Salmon Fisheries etc.**

13. Section 20: Section 20 includes a number of amendments to the 2003 Act in relation to good governance. Whilst many of the provisions relating to governance look reasonable, we are concerned that opinions on many of the specific provisions in the Bill were not sought during the consultation. The consultation asked three questions in relation to these issues: *Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?; Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?; If yes, do you think such a Code of Good Practice should be statutory or non-statutory?*
14. We have no difficulty with the principle of publishing annual reports and audited accounts and indeed we encourage our members to do so via the DSFB’s Code of Good Practice. We would note that whilst we have no difficulty with providing copies of these documents to Scottish Ministers, this aspect was not consulted on.
15. Whilst we have no difficulty with the principle of open meetings, 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 be taken out of context, given undue weight, or misinterpreted as DSFB policy if aired in a public meeting. Without clear guidance about what it is acceptable to discuss in private (as permitted by section 20 – 46C(6)), this provision could have the result of inhibiting discussion within meetings. Ultimately, potential Board members in districts in which there are particularly contentious issues to be faced may even be put off from volunteering and giving up their time. We are aware that identifying potential volunteers is already an issue in some districts. The RACCE Committee will discuss its Stage 1 report in private but we are not aware that the Committee operates under a requirement to state their reasons for meeting in private as is set out in the Bill for DSFBs. We would again note that, although the consultation document stated that a Code of Good practice *could* include recommendations for Boards to hold meetings in public, there was no consultation on a legal requirement to do so. The cost of moving these meetings to a venue with sufficient capacity for members of the public, would involve a significant expense, which may prove disproportionate for many of the smaller DSFBs. In addition, some DSFBs operate over considerable geographical areas. For example, if the Argyll DSFB (total income through privately-funded levy system - £58,000) was required to advertise 4 meetings a year in all three local papers within that district, the annual cost of such advertisement would be £3,200. We would therefore seek clarity on exactly how

such meetings should be publicised. A partial solution would be that the annual meeting should be a public meeting, and that there should be an opportunity for the public to attend part of all other meetings and submit proposals to be considered. Finally, we understand that the reference to 'salmon anglers' in Section 20 - 46C(2)(c)(i) is a drafting error, and should read 'representatives of salmon anglers'.

16. If necessary ASFB will work with Marine Scotland to help DSFBs set up a formal complaints procedure, where such a procedure is not already in operation. However, it should be noted that the processing of such complaints will usually be undertaken by the clerk to the Board. In the case of smaller boards, many employ clerks who are paid at an hourly/daily rate. If processing complaints (which may be ill-founded or arise from single-issue 'campaigns') becomes arduous, this will result in resources being diverted from other areas of operation. It is worth noting however, that this provision was **not** consulted on, or even mentioned in the consultation document, and indeed, there is a fundamental question as to why such a statutory provision is necessary. Should such a procedure be deemed necessary, we are not aware of any public bodies operating under a requirement to publish the number of complaints and a statement of the nature of each complaint and how it was disposed of. This aspect of the proposal appears to be unnecessarily prescriptive.
17. Section 20 includes an open-ended power for Scottish Ministers to modify the good governance requirements by order. We do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny. If, for example, this power is used to prescribe DSFB functions in legislation, DSFB donations to Fishery Trusts (which totalled £610K in 2010) would have to be linked to specific services and therefore subject to VAT. This, coupled with the potential additional costs outlined above, could have a significant negative effect on the core funding of fishery trusts across Scotland.
18. The Aquaculture and Fisheries (Scotland) Act 2007 contains a provision that Scottish Ministers may by order approve any code of practice issued for the aquaculture industry. In our consultation response, we supported a similar approach being adopted towards the DSFB Code of Good Practice, and indeed this approach was specifically highlighted by Marine Scotland in the consultation. We would therefore suggest that this approach would be more proportionate and would allow us to deal with some of the possible consequences highlighted above. We would of course be very happy to work with Marine Scotland officials to ensure that the ASFB Code is consistent with the principles outlined in the Bill. We would be content for the Ministerial Power to dissolve the committee constituting a board to remain, in an amended form, to reflect the above approach.
19. Section 21 includes a duty to consult and report before making certain applications. We have no difficulty with this provision in principle, but we have some concerns about the requirement to publish details in a newspaper on three occasions during the process.
20. We welcome the inclusion of a power to introduce a carcass tagging system in Scotland but we believe that this provision should be delivered in primary legislation. Carcass tagging was a clear recommendation of the mixed stock fisheries working group and there was overwhelming support for this provision in the consultation. Whether delivered via primary or secondary legislation, we would seek a clear assurance that a statutory system, **using individually numbered, recorded tags**, will be in place in time for the 2014 salmon fishing season. Any system which does not use numbered tags would not allow verification of catch data, nor would it prevent illegal sales of fish from other parts of the United Kingdom (where tags are numbered) or of fish caught by rod and line (sales of which are banned by the 2003 Act). Equally, DSFBs are strongly in support of a national carcass tagging system for all rod caught fish not returned to the river. We believe that carcass tagging of rod caught fish would be a useful tool to aid DSFBs in ensuring compliance with their conservation policies.
21. We welcome the inclusion of a power to take fish or samples for analysis. Genetic analysis is a key tool in modern fisheries management and will enable rational management decisions to be made. 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.
22. Section 25 provides that Scottish Ministers can impose requirements on DSFBs and proprietors in relation to the monitoring of certain orders. We believe that monitoring of such orders is consistent with evidence-based management and on that basis we are supportive of this in principle. However, this section also makes

failure to monitor and evaluate the effects of an order a criminal offence, on which a DSFB may be convicted on the evidence of one witness. This appears to be totally disproportionate, and again, may result in potential Board members being put off from volunteering and giving up their time. Finally, we believe that there would need to be a degree of proportionality in placing monitoring requirements on a DSFB, due to the potential expense and/or expertise required to carry out such monitoring, particularly in the case of smaller Boards. We would be concerned if Scottish Ministers were to take out an order at their own initiative, and then impose a legally binding requirement to monitor such an order on that Board. We therefore believe that s25 should only apply where a DSFB or proprietors have applied to Scottish Ministers for such an order.

23. Section 26 includes an open-ended power for Scottish Ministers to vary the procedures for various orders. As we stated earlier, we do not support such potentially wide-ranging changes being delivered through secondary legislation and we believe that any future changes should be subject to proper parliamentary scrutiny.
24. Section 28 includes a power for Scottish Ministers to modify DSFBs functions with respect to consenting of introductions (stocking). Such regulations may specify circumstances or cases where the consenting function is to be exercised by Scottish Ministers or when applications for consent should be referred to them. We note that Scottish Ministers already have jurisdiction over fish introductions in those parts of Scotland which are not covered by DSFBs. In addition, Scottish Ministers have jurisdiction over introductions of other freshwater species throughout Scotland. However, we are not aware of any evidence to suggest that the use of such regulatory powers is significantly better in those areas of Scotland under the jurisdiction of Scottish Ministers. Indeed, we would argue that some of the most concerning examples of questionable practice occur in these areas. We therefore believe that, should this power be exercised, that all decisions on stocking (all species) should be considered by a panel of independent stakeholders, prior to the granting of consent.

#### **Other issues**

25. 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.
26. Consenting of activities: At present, the powers of DSFBs to consent certain fishery management related activities e.g. electro-fishing and collection of broodstock for hatchery operations, which would otherwise be illegal are only exercisable out with the annual close time. During the close time, DSFBs must apply to Scottish Ministers for authorisation for these activities. Annual close times were historically set and based on the commercial salmon fishing season with an extension beyond such close times for rod and line fishing and whilst this definition of the salmon season may have made sense historically, when salmon netting was the major part of the sector, this is no longer the case. As the vast majority of fishery districts have little or no netting activities it seems incongruous, and a waste of scarce resources, for DSFBs to apply to Scottish Ministers for exemptions from certain offences to undertake activities, which include essential fisheries management techniques such as electrofishing, during the annual close time, when they do not have to do so at any other time. This places an unnecessary burden on all parties and so we propose that the period over which DSFBs can consent such activities should be extended throughout the year.
27. An end to fishing during weekly close times: It is an offence to fish or take salmon during the weekly close-time for net fisheries (6pm Friday – 6am Monday). In the case of fixed engine salmon fisheries (bag or stake nets), this is achieved by removing the 'leader', a net positioned perpendicular to the shore which diverts fish into the salmon net. Removal of the leader prevents fish from entering the nets. It has become apparent that, in some parts of Scotland, the weekly close time is often not being observed if, for example, rough sea conditions make it too dangerous to remove the leader. This happened on a large number of occasions throughout Scotland in 2012, equating to a significant increased exploitation of fish. We are content that exceptions to the weekly close time should exist and indeed ASFB do not want to see anyone's life being put at risk. The weekly close times were put in place for sound conservation reasons and were designed to allow a proportion of the salmon run to have free passage into their natal rivers *throughout* the season. Therefore we believe that, where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity. Implicit in this, is a requirement for netsmen to report all such occurrences when leaders are not removed. We understand that SNFAS have suggested an alternative solution, whereby the weekly close time would be abolished and a

minimum number of days at sea would be introduced. We do not support this solution for a number of reasons. Such a solution would not allow free passage of fish to their natal rivers throughout the season, would permit additional exploitation on the fragile spring stock component (considered by Marine Scotland Science to include **all** fish entering the rivers before June) and would result in a considerable increase in exploitation from 128 days to 150 days. This would be absolutely contrary to internationally accepted best practice and agreements on mixed stock fisheries. It would also be unacceptable for such a solution to set a *minimum* rather than *maximum* a number of days at sea.

28. The North Atlantic Salmon Conversation Organisation<sup>3</sup> has successfully negotiated reductions in salmon fisheries in their marine feeding grounds in the North Atlantic. Recently, Mixed Stock Fisheries (MSFs - any fishery taking fish from 2 or more rivers of origin) have come under increased International scrutiny. NASCO's success in achieving tight restriction of traditional high seas MSFs near Greenland and the Faroes has led to increasing pressure on all parties to the Convention for the Conservation of Salmon in the North Atlantic Ocean to address MSFs in their home waters. As we expect Greenland and the Faroes to adhere to the current tight restrictions on their fisheries, we must keep our own house in order – it would be a disaster for Scottish salmon fisheries if these high sea fisheries were to resume. The operation of MSFs is contrary to internationally accepted best practise because they prevent management of the resource on an individual catchment basis. However, Scotland is in a unique position because **all** salmon fishing rights are private heritable rights. It is easy to portray the issues surrounding MSFs as simply an argument between rod fisheries and net fisheries (and this issue has been portrayed as the laird against the working man), but in reality this is simply an issue of sound management. Marine Scotland Science has stated that the decline in netting effort over the last 30 years has acted as a buffer for the rod fishery in the face of declining marine survival of fish. Rod fisheries have responded through increasing rates of catch and release (In 2011, the overall catch and release rate for salmon was 73%, rising to 91% for spring salmon). However, there is significant potential for netting effort to increase in future and indeed, the high price of wild salmon and sea trout has meant that a number of previously dormant or lightly fished stations have re-opened. Indeed our analysis of the district assessors' valuation roles shows that there are at least 129 dormant netting stations which have the potential to come back into operation. 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. Such a right would also not be prejudicial to the fishery owner who would still have to receive appropriate compensation for the value of the fishery, thus protecting the private heritable rights of the fishery owner. It would not prevent such fisheries continuing to operate, but would prevent a significant increase in commercial exploitation, which flies in the face of internationally accepted best practise.
29. The need for the equitable burden of conservation was recognised by the Mixed Stock Working Group. There is currently an imbalance in that burden between the exploiters of the resource. In 2010, net fisheries accounted for over 45% of the retained catch, but only contributed 1.3% of the total funding raised by DSFBs for fishery management. As a specific example, the RACCE committee has visited both the River Dee, and Usan Salmon Fisheries Ltd. The Dee DSFB operates a policy of 100% catch and release and puts significant investment (both private and public funding) into the health of the river, with significant wider environmental benefits. However, recent work by Marine Scotland Science on the South Esk Fisheries Management Demonstration Project has shown conclusively that a significant proportion of the commercial catch at Usan, originated from the River Dee. Despite this exploitation, the Dee DSFB receives no contribution for fishery management from Usan.

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<sup>3</sup> NASCO: Established under the Convention for the Conservation of Salmon in the North Atlantic Ocean in October 1983