

S&TA RESPONSE TO AQUACULTURE AND FISHERIES BILL
February 2006

PART I – AQUACULTURE

1. **Do you agree that FRS/SEERAD would make the most suitable Regulator?**

Yes. We believe that a Regulator would play an essential role, particularly with regard to the control of sea-lice as at present this is an area that has been extremely difficult to formally manage. **However, it is essential that adequate resources are made available** in both the areas of finance and personnel if the Regulator is to be effective.

2. **Should there be an enabling power to permit the option of charging in the future?**

Yes. This is accepted practice with other regulators. Charging companies that do not meet minimum standards would be an incentive to improve performance.

3. **Should the Bill make provision for parasites in general, or restrict itself only to sea lice?**

It is essential that provision must be made for parasites in general. Whilst sea-lice are a particularly serious problem at present they are not the only parasite. With the expansion of the aquaculture industry into other species other parasites may come to the fore.

4. **Should the Regulator have both advisory and enforcement functions?**

Yes, the Regulator should have both advisory and enforcement functions. It is only through this type of system that issues such as sea-lice and fallowing can be addressed rapidly and efficiently. At present, with regard to local Area Management Agreements etc, the process has often been extremely slow and sometimes eventually ineffectual.

5. **What powers should the Regulator have as regards the inspection of data and investigation of potential parasite problems on farms?**

It is essential that the Regulator has powers to demand information/records with regard to parasite monitoring and treatments due to the extreme importance of this area. If this information is not provided then it should be an offence.

6. **Should the Regulator have the power to direct treatment?**

Yes, this is essential. The lack of this ability would make no sense of an enforcement regime. It is assumed that this power would only be used where all other efforts at solving the problem have failed.

7. **Should the Regulator have the power to arrange treatment through a third party contractor where a direction to treat has not been complied with?**

Yes. This is the only way to ensure that effective treatment has been carried out.

8. **Should the Regulator have the powers to direct treatment for notifiable diseases?**

Yes. This power is absolutely essential

9. **Should escapes proposals apply to all farm types outlined above?**

Yes. Escapes in the freshwater environment can be equally serious as those at sea. This is particularly so with regard to rainbow trout farms and many problems from escapes have been identified throughout Scotland.

10. **Should shellfish farms and restocking hatcheries be exempted?**

Yes we believe that shellfish farms should be exempted, as escapees are not seen as an issue. **We also believe that restocking hatcheries for wild fish should also be exempted. However this should only cover wild fish hatcheries and not full scale restocking fish farms.** There are a significant number of rainbow trout restocking farms in Scotland where escapes could (and have) caused major environmental problems. There are also a number of fish farms in Scotland grow brown trout that are not necessarily from local stock and their escape into the river system could have serious effects on the indigenous population.

11. **Do you agree that the Regulator should have the powers to inspect and direct with respect to preventing escapes?**

Yes. This is an essential role of the Regulator. We strongly agree that prevention should be the watchword.

12. **Do you agree that the Regulator should have a role in improving containment to prevent fish escapes?**

Yes. This is an essential role of the Regulator.

13. **Should the Executive introduce a strict liability offence for escapes from fish farms?**

Yes. The creation of a strict liability offence is essential as the ultimate deterrent to bad or uncaring management practises.

14. **What elements should be addressed in containment plans?**

All plans must be based on realistic risk assessments, on a site by site basis.

15. **Do you have any views on the above proposals?**

We agree with the proposed notification procedures listed and believe they are essential.

16. **Do you agree that the Regulator should have powers to investigate escapes and suspected escapes from fish farms whatever the sources of information?**

Yes, this is essential. There have been numerous occasions throughout Scotland where fish farmers have denied knowledge or liability of an escape. This has even happened where the farmer was the only grower in the area/ loch and therefore the fish could not have come from any other source. The Regulator, therefore, needs the ability to fully investigate situations by whatever means necessary.

17. **What data, in addition to the production survey data, do you believe are appropriate to submit?**

We are unclear as to what is being asked in this question. Assuming that it relates to the production and economic performance of the industry then we believe there should be a general presumption in favour of supplying information that does not have genuine commercial sensitivity. This is seen as essential where there is a potential clash between commercial operations and environmental issues. It is our belief that there should always be a presumption in favour of the environment.

18. **Do you agree that financial assistance be given to fish farm operators to relocate where there is a clear environmental benefit in doing so?**

Yes. There could be situations where the relocation of a fish farm (both at sea and in freshwater) is necessary for environmental or wild fisheries reasons. Financial assistance would be particularly helpful to smaller firms, where there is often a lack of funding. **However, in all cases a properly assessed cost benefit analysis should first be carried out.**

19. **Do you agree that the Scottish Ministers should have the powers to close fish farms where there is a clear public interest to do so and where owners are not in a position to relocate?**

Yes, this is essential. However, these powers should only be used as a matter of last resort once all other options have been exhausted.

20. **Under what circumstances might it be useful for the Scottish Ministers to have discretionary powers to pay compensation to fish farm operators?**

Compensation should only be paid where the circumstances are out with the control of the relevant farmer. It should not be paid if the situation is the result of poor management practice etc.

21. **Do you agree with the need to regulate live fish movements out of, and between, marine fish farm management areas?**

Yes, this is essential to control the spread of diseases such as ISA etc.

22. **Do you agree there is no general need to restrict live fish movements between freshwater fish farms?**

Yes, but only if there are adequate controls and adequate monitoring with regard to disease and parasites.

23. **Is the proposed power to bring in a national standstill provision in the case of a novel disease appropriate?**

Yes.

24. **Should the Regulator be empowered to licence the transfer of fish by well boats in Scotland?**

Yes. Once again this would significantly help control the spread of disease or parasites especially given the involvement of well boats in the transfer of ISA during the last outbreak.

PART II – FRESHWATER

25. **Should the Bill include enabling powers to eradicate GS where the circumstances are appropriate?**

Yes. This power is essential and should be seen as a matter of primary priority. **The enabling power should not just cover GS and should be worded in such a way to as to cover all similarly dangerous diseases, parasites etc that may present themselves in the future.** We also very strongly believe that there should be a **ban on imports of all live fish species** from out with the UK as this is probably the main potential entry route for numerous diseases and parasites. Whilst it is our understanding that the transfer of smolts by wellboat from Norway to Scotland would not result in the introduction of GS (due to the fish being in salt water), there are a number of other carrier species (such as rainbow trout etc) that are transferred in fresh water. Similarly there are other diseases and parasites that could be introduced that may have a devastating effect on salmon and/or other species of fish. We reject the statement that little more can be done in the area of live fish imports and very strongly believe that further action must be taken so that this potential disastrous trade is not permitted. We believe that opportunities to do this must be presenting themselves with the development of the Fish Health Directive.

26. **Should the Scottish Ministers have the power to apply chemical treatments to watercourses for the purposes of eradicating GS?**

Yes but this should not be solely restricted to GS and should cover all similarly dangerous diseases, parasites etc that might present themselves in the future. However, we believe that consideration must also be given to the provision of compensation to commercial fisheries (particularly rainbow trout) where chemical treatment has to be carried out. This should only apply where the situation arises through no fault of the commercial fishery. The killing of all the stock in a commercial fishery could effectively bankrupt these businesses. This ties in with the views expressed with regard to Question 20 where consideration would be given to compensation for farmers affected by an outbreak of disease.

27. **Should the Scottish Ministers have the power to apply chemical treatments to freshwater farms for the purpose of eradicating GS?**

Yes but this should not be solely restricted to GS and should cover all similarly dangerous diseases, parasites etc that might present themselves in the future.

28. **Should the Scottish Ministers have the power to authorise the removal of dead and moribund fish from watercourses for the purpose of eradicating GS?**

Yes but this should not be solely restricted to GS and should cover all similarly dangerous diseases, parasites etc that might present themselves in the future.

29. **Should the Scottish Ministers have the power to remove dead and moribund fish from freshwater farms for the purpose of eradicating GS?**

Yes but this should not be solely restricted to GS and should cover all similarly dangerous diseases, parasites etc that might present themselves in the future.

30. **Do you agree with the proposal for the Scottish Ministers to impose standstill notices?**

Yes. However, once again, we believe that consideration must be given to the provision of compensation to commercial fisheries (particularly rainbow trout) if they are not directly responsible for the outbreak of GS. Or, more importantly, if a Standstill Notice was issued “... *where there was no evidence for the presence of the disease but where it was thought prudent to apply a precautionary approach...*” (Paragraph 65) Rainbow trout fisheries rely on a continual supply of stock fish throughout their season. This supply can range from daily to weekly. If this supply was stopped then the fisheries would have to cease trading, with possible resulting redundancies and bankruptcy. If, for example, a standstill notice was applied to the Forth catchment (even on the precautionary approach) this would result in the closure of most of the largest commercial fisheries in Scotland. If the standstill notice was for anything other than a very short time scale it is highly likely that a significant number of these fisheries would not be able to re open for trade. This would be due to the low profit margins within the industry and the fact that the customers would either stop fishing altogether or move their custom to other areas.

31. **Do you agree with the powers to erect barriers and close fish passes?**

Yes, this power is essential.

32. **Should the Scottish Ministers and their agents have powers of compulsory access?**

Yes.

33. **Do you agree with the power to require clearance of fish farms in these circumstances?**

Yes.

34. **Should the powers for mandatory disinfection of recreational gear be introduced?**

Yes. However we believe that whilst this would be workable with regard to areas such as the Western Isles we do not believe that it would be workable on a Scottish wide basis if the intention was to stop the introduction of GS, or similar disease/parasite from out with Scotland. A highly significant proportion (if not the majority) of anglers coming to Scotland from mainland Europe enter through England and therefore mandatory disinfection would need to be introduced on a UK wide basis if it were to stand a chance of being truly effective.

35. **Do you agree with the proposal to make Liaison Committees mandatory?**

Yes. However, we feel that it is essential that any mandatory Liaison Committee should adequately represent users, owners and fishery managers and that it is not seen/perceived to be controlled by any one group. If this committee is to be mandatory it has to be able to make balanced decisions based on all available evidence. An assumption appears to have been made in the consultation that POs have a management and conservation role. This is not actually the case. **We therefore believe that under any new proposal that there should be formal relationships with relevant Fishery Trusts and Fishery Boards.** Also there should be an indication of how those involved might receive relevant training or be shown to be qualified enough to fulfil their responsibilities.

All meetings, minutes, decisions etc of each Liaison committee should be made publicly available through publication on a centrally maintained web site.

36. **Do you agree with the proposal to remove the requirement to advertise in the Edinburgh Gazette?**

Yes.

37. **How else should protection orders be publicised, beyond the requirement set out in the 2003 Act that the applicant give notice in such other papers as the Scottish Ministers direct?**

On a formal basis any application should be published on the Scottish Executive web site and two national newspapers. More extensive use of the angling press, the Internet, angling/fishery organisations and tackle shops should also be used to informally publicise applications.

38. **Do you agree with the proposal that protection orders need not cover contiguous fisheries?**

Yes. However we do support the concept that in order to have a Protection Order that all parts of the system should necessarily be open for "access". There may be perfectly legitimate management/conservation reasons why certain parts of the fishery are not generally open to the public. For example within a river system there may be parts of the system where increased access would have a detrimental effect on spawning or nursery areas. We are therefore strongly of the view that "access" should in fact be "sustainable access". Each individual application requires to be considered on its merits and at all times the principle of sustainable fisheries management should be to the fore.

39. **Do you agree?**

Yes. However this follows on from Question 38 in that there may be circumstances where parts of a particular fishery have removed access for sound sustainable fisheries management reasons. It is therefore essential that any removal only happens after full consultation with all the relevant fisheries and angling organisations and that there has been due consideration of all the facts. We would strongly resist a provision that sought a blanket removal of fisheries based solely on the issue of access.

40. **How should buyers find out/be told that protection orders affect their property and be alerted to what their responsibilities are?**

We consider that the fact that a fishery is subject to a Protection Order could be notified to future owners by having the interest registered either in the Sasine Register or the Land Register for Scotland. We also suggest that discussions should be held with the RICS in Scotland to suggest that the failure to refer to the fact that subjects may be subject to a Protection Order may be considered as a property misdirection.

41. **Should the Bill make provision to regulate the movement of fish into inland waters?**

Yes, this is fundamentally important to stop the introduction of diseases, parasite or species/strains of fish that may effect the ecological balance of an area. **Provision of a licence must also be based on a presumption against the movement of any non-native species to any water where they are not already present.** If such an over all provision is made then adequate funding will need to be found to enforce it. We also welcome the Executive's commitment in paragraph 87 to making provision for blanket consents. However, we believe that some element of reasonable time limiting should be attached to any blanket consent

42. **Do you agree with the proposals to permit the use of rod rests?**

Yes.

43. **Are the limits on the number of rods correct?**

Yes, with regard to coarse fishing only. No, with regard to harling. It has been common practice on, for example, the Tay system for one angler to harl with three rods for many, many years. We do not believe it would be right to criminalise this activity. We therefore believe that the number should be set at three rods. However it may be advisable to have an upper limit of four rods if there are two or more anglers in any boat.

44. **Do you agree with the ban on live vertebrates as bait?**

Yes. We believe that this, taken together with the regulation of the movement of fish (Question 41), will significantly help control the spread of disease, parasite and alien introductions.

45. **Do you agree with the proposals to prohibit the use of tailers, gaffs, pike gags and landing nets with knotted nets?**

Yes. We also believe that there should be a ban (except under licence) on the use of monofilament gill nets. Whilst already illegal with regard to salmon, these nets are freely available to buy and are regularly used in poaching incidents.

46. **Do you agree that foul-hooking should be clearly prohibited in law?**

Yes. We also believe that it should be made an offence to retain any foul hooked fish. This will close a potential loophole where the defence might be that fish was not deliberately foul hooked.

47. **Do you agree with the proposals to make provision empowering the Scottish Ministers to make orders specifying annual or weekly close times for freshwater fish?**

Yes. However any resulting proposal must be subject to full and proper consultation.

48. **Do you agree with this approach?**

Yes, we agree with the regulation of this activity. However, we would not agree with its prohibition, as there could be situations where the removal of certain fish might be necessary. Any activity should come under a licensing scheme and any licence should only be granted subject to a sound ecological case being made. Provision would also need to be made so that a licence could be granted quickly if an environmental reason necessitates rapid action.

49. **Do you agree that the current law prohibiting the obstruction of salmon during their spawning runs should be extended as described?**

Yes, we would agree with this concept in principle. However we feel that there are a number of practical problems involved. We are not sure how it would be possible to economically build (or, in particular, adapt) fish passes etc that allow the free passage of **all** freshwater fish. Scotland has numerous fish passes that allow the free movement of salmonids but are unlikely to be suitable for minnows, stone loachs, lampreys etc. Would all these passes need adapting and where would the funding come from?

50. **Should the Executive widen the existing passage of salmon rules to cover all freshwater fish at all times of the year?**

Yes, we could agree with this concept in principle. However we feel that there are a number of practical problems involved, as with our response to Question 49. Clarification would be needed concerning existing structures with fish passes.

51. **Do you agree with the extension of the definition of fish?**

Yes.