

The Royal Society of Edinburgh

Aquaculture and Fisheries Bill

The Royal Society of Edinburgh (RSE) is pleased to respond to the Scottish Executive Environment and Rural Affairs Department (SEERAD) consultation on the Aquaculture and Fisheries Bill. These comments have been compiled with the assistance of a number of expert Fellows of the RSE, under the direction of the General Secretary, Professor Gavin McCrone.

In developing this Bill to progress through the 2006/2007 session of the Scottish Parliament, it should be recognised that it will be published in advance of the new EU Fish Health Directive, and therefore likely to require the Bill's later amendment. In addition, as the aquaculture industry's new self-imposed code of practice is currently being implemented, it would seem sensible to allow sufficient time to see how effective the new code is before implementing the proposals in the consultation paper. This Code of Good Practice, produced by input from industry, wild fish interests, government, academia and veterinary interests, was designed to evolve as knowledge developed and methodology improved, as opposed to a less responsive legislative instrument.

The specific areas of the draft Bill are now addressed below:

Part I – Aquaculture

Chapter 1 Regulator

Question 1: Do you agree that FRS/SEERAD would make the most suitable Regulator?

SEERAD's Fisheries Research Services (FRS) would be an effective enforcement body. However, as a regulator it would need further expertise in fish farm management processes and medicine applications, perhaps for example from the State Veterinary Service.

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

No. If the proposals are implemented, inspections by the Regulator should not be charged for. This would not apply elsewhere and would create a new and unwarranted financial burden on the industry, jeopardising the industry's profitability and competitiveness.

Chapter 2 Parasite Control

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

Any decision imposed by the regulator on a company that created disruption, fish losses or disease transmission would create financial liabilities for government and invalidate the insurance policies of companies. It is also questionable as to whether a Regulator would have the detailed site knowledge to override local management expertise, where decisions are based on everyday practical experience. Non treatment cannot necessarily be regarded as an offence, as there can be other options and insistence by the Regulator on further treatment/medicines might not be consistent with the discharge consent of the Scottish Environmental Protection Agency (SEPA).

One alternative would be to allow those who are independently certified to the Industry's Code of Good Practice to be exempted from such regulation, allowing the regulator to focus on those companies who are not certified to the code for whatever reasons. At present the control of parasites on fish farms is provided by experienced health care professionals with veterinary support, together with the legal requirement for local clinical control for many of the veterinary medicines used.

In terms of sea lice control, the current National Treatment Strategy takes account of the different epidemiology of the two sea lice species *Caligus elongatus* and *Lepeophtheirus salmonis*, which does not appear to be reflected in the paper, but which has proved to be an effective means of control, supported by the Government, the aquaculture industry and wild fish interests. Such control requires a close working relationship between the veterinary surgeon and the farm health team to avoid compromising fish welfare or imposing unnecessary or ineffective treatments that could lead to the development of resistance. There would be a danger that regulator decisions to take remedial action based on simple lice counts would not take the necessary account of the local situation and could compromise the ability of the vet to protect the welfare of the fish under their care.

Question 4: Should the Regulator have both advisory and enforcement functions?

While the regulator could offer advice, particularly in connection with parasite control mentioned above, it would be sensible to separate the two functions.

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

The Regulator should have the power to inspect sea lice monitoring and treatment records, which are currently available to statutory authorities under existing medicines and environmental regulations. Subsequent action would depend on the Regulator's findings but could include advice on treatment, although there would be difficulty in formally defining what a sea lice infestation problem was in law.

Question 6: Should the Regulator have the power to direct treatment?

The direction of treatment could create liability and insurance issues, and would need to be compliant with SEPA discharge consents. If a farmer objected to the directed treatment of the Regulator, which proved to be ineffective, or damaging to fish welfare, in a court of law the regulator would have to demonstrate that their competence and ability were superior to that of the existing farm health and veterinary personnel. Indeed the use of single treatments could lead to the development of resistance against the limited number of medicines available; and with *Caligus* infections, new infections can occur overnight, despite an effective treatment. Therefore, rather than protecting wild fish, such actions could create future problems of control.

Question 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?

As noted above, direction could create liability and insurance issues, and it would need to be ascertained whether sufficient appropriate contractors existed. Such contractors would also need to be insured against claims for loss of growth or loss of fish during treatment.

Question 8: Should the Regulator have the powers to direct treatment for notifiable diseases?

No. Treatment strategies for notifiable diseases should be handled through Governmental veterinary control, in a similar manner to that applied to future Foot and Mouth Disease outbreaks. The Regulator would be unlikely to have sufficient knowledge of local site conditions and local veterinary expertise.

Chapter 3 Containment

Question 9: Should escapes proposals apply to all the farm types outlined?

Yes, proposals should apply to all the farm types outlined.

Question 10: Should shellfish farms and restocking hatcheries be exempted?

While shellfish farms should be exempted, restocking hatcheries should not unless they contain only wild fish stock from the catchment in which the hatchery is situated, as they could represent a major risk of escape leading to disease or genetic impact (depending on stock origin).

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

The regulator could have powers to inspect and advise where a farm was not signed up to the Code of Good Practice, but not to direct. The latter would require qualified surveyors with appropriate experience, and open the regulator to potential liability resulting from any action.

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

The regulator should be able to advise on improvements in containment, but will not have detailed knowledge of local situations.

Question 13: Should the Executive introduce a strict liability offence for escapes from fish farms?

The introduction of such a liability could impact on the viability of the aquaculture industry in Scotland, in terms of extra insurance or in court costs in defending court actions, where there would be a presumption of guilt to start with.

Question 14: What elements should be addressed in containment plans?

The elements proposed in the consultation paper should be included.

Question 15: Do you have any views on the proposed notification procedures for fish escapes?

The draft proposals seem reasonable but it must be accepted that odd fish do escape during handling and to go through these reporting procedures each time one fish escapes does seem onerous and time-consuming.

In terms of proposal (36.3.8) to provide information on the drugs administered to the escaped fish, this issue is more connected with food safety and would be better covered by food safety legislation.

Question 16: Do you agree that the Regulator should have powers to investigate escapes and suspected escapes from fish farms whatever the source of the information?

There would be a risk that third party information could be unsubstantiated or triggered by those with an anti-Aquaculture agenda. If the regulator was duty bound to investigate all such claims, there could be significant cost implications and a negative result from such an investigation could be perceived as a lack of rigour of investigation and result in criticism in the media.

Chapter 4 Data Collection

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

The current data provision should be sufficient and there would be a danger of an overload of 'red tape'. There would also be concerns over confidentiality and the provision of commercially sensitive information.

Chapter 5 Fish Farm Relocation

Question 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?

There should be financial assistance, within clear criteria and financial limits.

Question 19: Do you agree that the Scottish Ministers should have 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?

In order to avoid the loss of investor confidence in the Scottish industry, such closure would need to be accompanied by financial compensation.

Chapter 6 Discretionary Power to Pay Compensation for Compulsory Fish Slaughter

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

Individual fish farmers should be compensated for the compulsory slaughter of stock, or for compulsory transfer or closure of farms stemming from the proposals, as long as they have signed up and complied with the Code of Good Practice. In this regard, such payments should be clear in advance, rather than discretionary, as notifiable diseases are controlled for the good of the country rather than the farm.

Chapter 7 Fish Movements – Fish Farms

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

Disease can be spread by live fish movements and the movement of clinically diseased fish is not possible under existing welfare legislation. Healthy fish, however, may need to be moved as part of management practices such as synchronous fallowing, and regulation of such movement would need to be practical to work, and perhaps focused on situations where the greatest risks applied. One option would be to allow movements from one area to another over an extended period. This would then avoid the need for a rapid response team for broodstock and processing movements, which would be subject to weather changes and other operational modifications.

The management areas also need to be sensible and clearly defined. Perhaps, in order to facilitate the implementation of the Code of Good Practice, it would be sensible to use the management areas identified by the code.

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

No. There should be standstill powers both for present and for incoming stocks from outwith Scotland and restrictions on movement of fish between fresh water farms and wild fish hatcheries or wild fish from different rivers. This is because such movements could potentially transfer notifiable diseases, parasites, as well as other organisms, such as crayfish and fish species other than those supposedly being transferred.

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

There have been a number of novel diseases in the past which have been controlled by risk control procedures, such as those outlined in the Infectious Salmon Anaemia (ISA) code of practice. Such novel conditions would best be controlled through Notifiable Disease Legislation.

Question 24: Should the Regulator be empowered to licence the transfer of fish by wellboats in Scotland?

Yes, and wellboats which move fish into the UK from a state with poorer disease status should be subject to compulsory disinfection and then a licence to operate.

Part II – Fresh Water Fisheries

Chapter 8 Gyrodactylus Salaris (GS)

Question 25: Should the Bill include enabling powers to eradicate GS where the circumstances are appropriate?

Yes, but only in very specific circumstances and after rapid, but full, discussion among stakeholders. *Gyrodactylus salaris* presents a serious risk to wild salmonids in the UK, but efforts to control the parasite in wild populations in other European countries has not been effective, despite the application of extreme measures.

Question 26: Should the Scottish Ministers have the power to apply chemical treatments to watercourses for the purpose of eradicating GS?

Yes, but only in very specific circumstances and again after rapid, but full, discussion among stakeholders. In many situations in Scotland (e.g. large lochs, extensive catchments, the largest rivers) treatment might well be futile, prohibitively expensive and extremely damaging to biodiversity. Such treatments have failed several times in Norway. Only in small, local and relatively contained situations should full chemical treatment be contemplated.

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

The treatment of freshwater farms would currently make any farmed fish present unsaleable, as only those substances permitted under European and UK legislation can be used in fish destined for human consumption, and there are no products currently licensed for use in food animals that could provide an effective treatment. Compensation, such as that outlined for compulsory slaughter in marine farms, above, would therefore need to be provided.

Question 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, Scottish Ministers should have such power.

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

Yes.

Question 30: Do you agree with the proposal for the Scottish Ministers to impose standstill notices?

Scottish Ministers should be able to impose standstill notices on a risk based approach, along with compensation. Movement could then be allowed following extensive testing and subsequent monitoring.

Question 31: Do you agree with the powers to erect barriers and close fish passes?

Yes, provided the construction of such barriers was paid for by the Scottish Executive.

Question 32: Should Scottish Ministers and their agents have powers of compulsory access?

As with the Animal Health and Welfare Bill, powers of access are needed, but only on the basis of taking responsible measures to control GS.

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

Yes, but only with the provision of compensation. Farmed fish in farms upstream of a barrier will, however, be no more of a threat than the wild fish upstream of the barrier, who may have also just passed upstream of the barrier (with GS) just before closure.

Question 34: Should powers for mandatory disinfection of recreational gear be introduced?

Yes. Angler's clothing and equipment are a likely source of infection if they have been abroad.

Chapter 9 Amendments to Rules on Access

Question 35: Do you agree with the proposal to make Liaison Committees mandatory?

Yes. There should be mandatory Liaison Committees with powers to co-ordinate activities within Protection Order areas. Scottish Ministers should also have the ability to vary the area within the Protection Order, to both allow for additions and deletions, especially if requested by the Liaison committee.

Question 36: Do you agree with the proposal to remove the requirement to advertise in the Edinburgh Gazette?

Yes.

Question 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 newspapers as the Scottish Ministers direct?

In addition to the requirement in 2003 Act, relevant stakeholders (such as those on the current consultation list) could be notified through an approved e-mailing system.

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

Yes, provided there continues to be liaison with such fisheries.

Question 39: Do you agree in removing fisheries from the prescribed area in a protection order for non-compliance?

Yes.

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

Protection orders would normally be a burden on the land if sold, and therefore should be included within the burdens' section of the Land Certificate.

Chapter 10 Fish Movements – Wild Fish

Question 41: Should the Bill make provision to regulate the movement of fish into inland waters?

Yes, with agreement of the owner, and also apply to freshwater fish farms.

Chapter 11 - Miscellaneous Amendments

Question 42: Do you agree with the proposals to permit the use of rod rests?

Yes.

Question 43: Are the limits on the number of rods correct?

Yes.

Question 44: Do you agree with the ban on live vertebrates as bait?

Yes.

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

Yes, apart from the prohibition of knotted landing nets.

Question 46: Do you agree that foul-hooking should be clearly prohibited in law?

Foul hooking frequently happens accidentally. Depending on the foul hooking and the length of time a fish is played, it may not then be sensible to release the fish. As this can not be controlled, it would not be sensible to seek to prohibit it in law.

Question 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.

Question 48: Prohibit the eradication of fish, or adversely affecting their environment.

Scottish Ministers should have the power to regulate the removal of fish from waters. However, there must be no blanket ban prohibiting the eradication of certain species. For example, it would be reasonable to attempt the complete eradication of an alien species where this was feasible and where the local biodiversity was threatened by such a species.

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

Yes.

Question 50: Should the Executive widen the existing passage of salmon rules to cover all freshwater fish and all times of year?

Yes, although salmon can surmount greater natural physical barriers than trout.

Question 51: Do you agree with the extension of the definition of fish?

Yes.

Additional Information

In responding to this consultation the Society would like to draw attention to the following Royal Society of Edinburgh responses which are of relevance to this subject: : *Conservation of Salmon and Sea Trout* (August 2000); *Protecting and Promoting Scotland's Freshwater Fish and Fisheries* (August 2000); *Scotland's freshwater fish and fisheries: Securing their future* (November 2001); *Strategy for Aquaculture* (April 2002); *Review of the Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters* (April 2002); *The Scientific Issues Surrounding The Control of Infectious Salmon Anaemia (ISA) in Scotland* (June 2002); *Strategic Framework for Aquaculture* (January 2003); *A Strategy for the Sustainable Development of European Aquaculture* (January 2003) and *Draft Animal Health and Welfare (Scotland) Bill* (July 2005).

Copies of this response and of the above publications are available from the Policy Officer, Dr Marc Rands (email: mrands@royalsoced.org.uk) and from the RSE web site (www.royalsoced.org.uk).

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