

Consultation on wild fisheries reform in Scotland



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

Spey Fishery Board and The Spey Foundation

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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

- (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

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

(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

Spey Fishery Board and Spey Foundation Response

The Spey Fishery Board (SFB) is writing on behalf of both the Board and its sister organisation, the Spey Foundation, in response to the Scottish Government's invitation to comment on its Consultation on Wild Fisheries Reform in Scotland. The SFB is one of 41 District Salmon Fishery Boards (DSFBs) around Scotland, having been founded in 1863. Indeed, of those, it is one of the "Big Four" DSFBs, alongside the Tweed Commission and the Tay and Dee District Salmon Fishery Boards. It employs nine full-time and one part-time members of staff to manage a significant river system, the salmon angling on which generates in excess of £15 million per annum for the local economy and employs over 360 full-time equivalent staff in hotels, restaurants, bed & breakfast houses and local shops. Working alongside the SFB, the Spey Foundation is a charitable company limited by guarantee, which conducts scientific research into all aquatic species within the Spey catchment and thereby provides advice to the SFB and others involved in the management of the river and its tributaries. We believe we are well-placed, therefore, to comment on the Scottish Government's proposals for the reform of wild fisheries management in Scotland and, henceforth, any comments by the SFB are made on behalf of both organisations. However, the views of the SFB or the Spey Foundation are not necessarily those of the owners of "private heritable salmon fishing interests" on the Spey and we should clarify that neither organisation represents the proprietors.

We should also explain from the outset that we are extremely disappointed that there is no mention within the Scottish Government response or consultation of mixed stock net fisheries, aquaculture or the coastal or marine environment. We cannot see how the management of fish destined for the sea can be adequately addressed without considering these issues as well.

CONSULTATION QUESTIONS – RESPONSE TEMPLATE

Q1. Do you agree with the balance of functions as set out in Table 1?

Yes

No

Don't know

1.1 We broadly agree with the balance of functions as set out in Table 1, subject to clarification that the Scottish Government's overall objective is the enhancement of wild fish populations, as well as support and protection for our famous and valuable wild salmon and freshwater fisheries. We also agree with the Scottish Government's proposal to create a small Central Unit to ensure that national leadership, strategic focus, co-ordination and regulation, may be combined with locally-driven delivery. However, we believe that from the tenor of the Government's response and the number of potential duties that are expected to be fulfilled by the Central Unit, it will need to be a substantial organisation if it is to ensure delivery of all of its responsibilities and we have concerns about that.

1.2 We believe that functions can only be determined once clear objectives have been decided. In this respect, we note that no details have been given as to what the national strategy, or indeed the national research and data strategy, will actually entail. It may be that the identification of Conservation Limits, or the conduct of Site Condition Monitoring for rivers designated as Special Areas of Conservation, could be national objectives with which the Government envisages local input and delivery. However, there is no detail or clarification of this.

1.3 We are particularly concerned by the proposal that the resourcing of local FMOs to deliver national management priorities is a feature of the national functions that would be fulfilled by the Central Unit. However, the issue of resourcing is covered later in the Consultation and we shall therefore defer our responses to these issues to questions 15 to 20.

Q2. Do you consider that any main functions are missing? If so, please state what these are. Do you think that any of these functions might be best fulfilled at a different level?

2.1 The Central Unit is likely to be a small executive and administrative body. We would like to see this overseen by a well-informed group of Stakeholders or Commissioners, with a Chairman who liaises directly with the Scottish Government. In a similar manner to the operation of the Board of Scottish Natural Heritage, this group would determine the objectives, strategies and policies of the Central Unit, in light of its statutory obligations and guidance from the Scottish Government, as well as providing direction to Central Unit staff for implementation.

2.2 Something missing from the table of functions is some methodology for disseminating best practice and feedback from and between the local delivery bodies. We therefore recommend that the Central Unit establishes a liaison organisation to assist it with communication and coordination with these local

bodies. This would also ensure consistency and assist with the successful delivery of national management priorities.

2.3 We note that the issue of enforcement is also missing from the list of functions that should be fulfilled locally. This issue is covered elsewhere within the Consultation, but the issue of enforcement is, we believe, sufficiently important that it should feature under local functions. We shall comment further on enforcement under questions 30 and 31.

2.4 We also note that facilitating participation in fishing and fisheries is listed under Local Functions. We believe that this should relate more to the promotion of angling generally and that this is primarily a national/central function, although this is addressed in more detail in our response to questions 34 and 35.

2.5 We have said in our introduction that there is no mention within the Scottish Government response or consultation of mixed stock net fisheries, aquaculture or the coastal or marine environment. We cannot see how the management of fish destined for the sea can be adequately addressed without considering these issues as well.

Q3. Do you agree that FMOs should be charitable bodies?

Yes

No

Don't know

3.1 The issue of charitable status for FMOs is complex, particularly so because the Government proposes to replace the roles currently fulfilled by two distinct types of organisation (District Salmon Fishery Boards and research Trusts/Foundations) with a single body that will fulfil both roles.

3.2 The Spey Foundation has successfully operated for a number of years as a Charitable Company Limited by Guarantee and whilst this charitable status has some attraction, it also brings with it considerable responsibility. Here on the Spey, the staff are employed by the Board, who then undertake work on behalf of the Foundation. The Board staff maintain meticulous records of time and mileage, the details of which all have to be collated and calculated so that the Board can be remunerated by the Foundation for the work that has been undertaken on its behalf. This results in considerable additional work and bureaucracy, which increases and becomes even more apparent when the financial records of both organisations are subsequently audited. However, advice received by another major salmon river is that if a potential charity is controlled by Government (central funding, delegated powers and Approved Body Status) it cannot be a charity. Indeed, the attainment and maintenance of "Approved Body" status ensures that the very existence of a FMO is subject to Government approval and, we believe, could thereby disqualify it from charitable status.

3.3 The Spey Fishery Board, meanwhile, has successfully fulfilled its role as a Statutory Body and we are concerned that the loss of statutory status could significantly neuter the effectiveness of future FMOs. In particular, we have found

that large commercial organisations take notice of views proffered by Statutory Bodies, particularly regarding planning applications, which they might otherwise ignore if tendered by a lesser body.

3.4 Independent Legal advice received by the Association of Salmon Fishery Boards (ASFB) and Rivers & Fishery Trusts of Scotland (RAFTS) has indicated that the control of exploitation could be a charitable purpose, insofar as such control is designed to conserve salmon and sea trout numbers at a sustainable level in a particular habitat. Managing relevant species and habitats should also be able to be categorised as the advancement of environmental protection or improvement and should therefore be capable of being carried out by a charity, as should research and monitoring. However, that independent legal advice also recommends that the development of individual fisheries which are privately owned cannot be a charitable activity as there is no public benefit and a group of salmon fishery proprietors are unlikely to constitute a sufficient section of the public to meet the public benefit test. In this respect, unless the fishery is owned by and available to the public at large (or, at least, a sufficient section of the public) the development of fisheries to enhance the likelihood of catching salmon and to enhance the commercial viability of the fishery will not be a charitable activity, as there would be no public benefit arising from such activity.

3.5 We note that the Government proposal is for FMOs to be constituted as Scottish Charitable Incorporated Organisations, rather than as fully constituted charitable companies. We are not convinced that this is appropriate, as explained in our answer to Question 4. However, we are convinced of the need to sustain the considerable voluntary contributions we currently receive. In some cases, this may be by way of voluntary financial donations; in others, it may be corporate funding from distilleries, wind farms or other organisations who want to fulfil a particular environmental objective; and in others, it is a significant amount of voluntary time and help that is provided by Ghillies, proprietors and local angling enthusiasts to the running and operations of the present organisations. We have already been told by those involved that there is a very real danger that these voluntary contributions will not be forthcoming if control of the organisations is centralised.

3.6 In light of the above, we recommend that consideration be given to enabling the FMOs to establish special relationships with local charities in order to harness and retain these considerable voluntary contributions to fishery management. This is something that could be considered within the context of the model constitution for a FMO currently being considered by the Government.

3.7 We note that the Scottish Government considers the Salmon Assessment, which is likely to be the mainstay of future resourcing for FMOs, to be a local tax rather than private money. If this is the case, we are not sure that charitable bodies may be the recipients of tax-payers money. There is no indication from this Consultation or response that advice has been sought from the Office of the Scottish Charity Regulator (OSCR) on this issue and we recommend that this issue be clarified with them.

3.8 We are not convinced that charitable bodies may employ enforcement officers, such as the Water Bailiffs who are currently employed by District Salmon

Fishery Boards. We recognise that Andrew Thin, during the conduct of his Wild Fisheries Review, drew parallels with the Scottish Society for the Protection of Cruelty to Animals, as a charitable organisation which also fulfilled an enforcement role. However, the enforcement powers awarded to Water Bailiffs are significantly greater than those afforded to SSPCA Enforcement Officers. This has been reinforced by the independent legal advice received by the ASFB and RAFTS. This has confirmed that whilst a charitable body could enforce the law in respect of wildlife and environment offences, private property rights and the enforcement of offences under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 could not be carried out by a charity, except insofar as such enforcement is consistent with furthering the charity's proper aims. We recommend that advice is also sought from OSCR on this equally important issue.

3.9 In conclusion, we believe that it is not appropriate for a Fishery Management Organisation to be a charity. However, we recognise that there is a place for a charitable body to exist alongside a Fishery Management Organisation and to assist with the work of that organisation. This is particularly necessary in order to sustain the considerable voluntary contributions that are currently received. It should not, however, govern the overall modus operandi of that organisation because it is not fit to do so, being wholly inconsistent with some of the roles and responsibilities that a FMO will be expected to fulfil.

Q4. Do you have any comments about the WFR's view that FMOs should be Scottish Charitable Incorporated Organisations rather than charitable companies?

4.1 We are not qualified to offer an opinion on whether FMOs should be Scottish Charitable Incorporated Organisations (SCIO) rather than charitable companies. However, independent legal advice received by the ASFB and RAFTS has indicated that a SCIO is not an appropriate body for FMOs. If the SCIO were to lose its approved body status, it would cease to be able to provide a public benefit and would be at risk of removal from the Charity Register. Furthermore, in those circumstances, its assets would revert to the Crown.

Q5. Do you agree that in order to ensure appropriate governance and fitness for purpose, FMOs should operate to a model constitution?

Yes No Don't know

5.1 We agree that, whilst the precise make-up of FMOs may vary across Scotland, a model constitution should be developed to ensure appropriate governance and fitness for purpose. In particular we believe that this will assist in delivering the fundamental principles identified by the Scottish Government, particularly with regard to alignment of responsibility and accountability for national and international obligations throughout the system. It will also ensure that an appropriate governance framework exists in order to address consistency and transparency of management, finance, reporting and accountability.

5.2. We would like to see this model constitution and hope that the Government will consult on it. We believe that we, and others involved in freshwater fisheries management, would be well-placed to offer assistance to the Government on this.

Q6. What do you consider is an appropriate balance of interests on the board and wider membership of FMOs?

6.1 We recognise the Government's desire to ensure a more inclusive management structure in the context of local FMOs, but we believe that the majority of that inclusive and representative structure already exists on the River Spey.

6.2 The current Spey Board consists of riparian proprietors, local angling associations, Government agencies (Scottish Environment Protection Agency and Scottish Natural Heritage) and a local authority. Its sister organisation, the Spey Foundation, operates a management committee, the membership of which includes some members of the Spey Board, employees who conduct the Board's and Foundation's business, external scientific advisors and a number of ghillies, many of whom deliver what Andrew Thin referred to as "citizen science". So we believe that the membership of these already goes a long way towards the inclusive and representative structure that is sought for wild fisheries and their management at a local level. We recognise, though, that we will need to broaden it to include representatives of all of the species of fishery management that will be facilitated in future.

6.3 We would also like to cross-refer here to our answer in paragraph 12.1, in which we agree with the Scottish Government that FMOs will need to be of sufficient size and capacity to deliver the functions expected of them. However, we believe that the level of staffing in each FMO should be driven by function, rather than form, because different areas of Scotland will require differing approaches to be adopted; some areas may need more protection and enforcement, while others may need more scientific research. This will also need to be reflected in the board and wider membership of the FMO.

6.4 We would like to emphasise the significant contribution made by fishery proprietors to local fishery management. The Government is already aware that proprietors currently provide the majority of income which finances the existing management structures and which is expected to provide the mainstay of the future fishery management regime. Proprietors also participate - and allow their staff time off work to engage - in the management of the river. It is vital that we maintain their support for and trust in the work that we undertake. If this is lost, there is a risk that it will significantly hinder the FMOs in the performance of their functions and the achievement of both local and national fishery management objectives. We therefore believe it is imperative that the involvement of proprietors in the management of the river continues and we strongly recommend that this is recognised in determining the participation in and membership of the future FMOs.

Q7. Do you agree that bodies wishing to become FMOs should do so through seeking approved body status from Scottish Ministers?

Yes

No

Don't know

7.1 We support the Scottish Government's desire to ensure the local delivery body's capacity, competence, accountability and transparency. However, we require more detail as to what "approved body status" means and what it is that FMOs will need to undertake in order to achieve it, before we are able to comment further.

7.2 If "approved body status" is the means by which the Scottish Government intends to exercise control over the priorities and expenditure of FMOs, the very nature of wild fisheries management will change irrevocably from one being driven locally, to one driven centrally by the priorities of the Scottish Government.

7.3 There is also little detail throughout the Government Response and Consultation with regard to a national strategy. It is therefore difficult to understand how the nominated local delivery body might work to deliver something that has not yet been clearly identified.

7.4 No reference has been made within the Government's response and consultation to the role of Marine Scotland or that of its sister organisation, Marine Scotland Science. We believe that any reform of wild fishery management would be significantly lacking without this and strongly encourage the Government to include it. We also believe that the Government's overarching strategy should be the enhancement of freshwater fisheries, rather than the currently stated aim of supporting and protecting them.

Q8. Do you agree that the cornerstone of the relationship between national and local management bodies should be the proposed plan-led approach? If not, why not?

Yes

No

Don't know

8.1 Fishery Management Plans have been in place for many years on the Spey and have successfully formed the basis on which the majority of our operations are undertaken. However, these Fishery Management Plans on the Spey have hitherto primarily focussed on salmon and more resources will be required for the successful adoption and implementation of an all species remit. The issue of resourcing, though, is addressed in our answers to questions 15 to 20.

8.2 One of the successes of the current system has been its focus on fishery management at catchment level rather than national level and in this respect we note that there is no detail as to what the national strategy might entail, or how that might be delivered at local level. Furthermore, we question what level of resources will be required for the delivery of a national strategy.

8.3 We note the Government's preference for fishery management plans to operate within a three-year framework. We recognise that this might be appropriate for other business planning and funding cycles, but we believe that a five-year framework might be more appropriate for fishery management planning purposes. This, in particular, relates to the fundamental principal for fishery management to be evidence-based and the practicalities of undertaking appropriate scientific research and monitoring to ensure that that evidence is robust. A five-year framework would also chime well with the life cycle of Atlantic salmon.

Q9. Do you agree that the proposed package of measures in terms of constitution, governance and a plan-based approach provides an appropriate framework for decentralised delivery of fishery management functions?

Yes No Don't know

9.1 We agree with the principals and ethos of the proposed package of measures, particularly relating to the constitution and governance of local management bodies, together with a plan-based approach. However, no details are provided as to what the Government's national priorities might be, or how these might be enmeshed with local body delivery. It is therefore difficult to offer substantive comment until further detail has been provided.

Q10. Do you agree that the FMO network should cover the whole of Scotland?

Yes No Don't know

10.1 We agree that the FMO network should cover the whole of Scotland. There are presently gaps in coverage and this risks the delivery of both local and national strategies and, thereby, the fulfilment of national and international objectives and responsibilities.

Q11. Do you agree that Scottish Ministers, following discussion with stakeholders, should set out the boundaries of FMO areas?

Yes No Don't know

11.1 We agree with the Government's proposal that FMO coverage should exist across the country and note the Government's intention to discuss this with stakeholders. We strongly recommend, however, that FMO boundaries should be developed at local level, rather than by national Government.

11.2 We are sure that the Scottish Government will also want to retain the flexibility to change FMO boundaries in future in order to meet changing circumstances. With this in mind, we believe that it would be a mistake to be too rigid in boundary determination from the outset. We would also recommend that the impending freshwater fishery Bill ensures that any subsequent changes to FMO boundaries in the future may be facilitated without the need for additional legislation.

Q12. What factors should be considered in determining the number and optimal coverage of FMOs?

12.1 We agree with the Scottish Government that FMOs will need to be of sufficient size and capacity to deliver the functions expected of them. In this respect, they will need a critical mass in terms of staffing to delivery fishery management plans and operate the organisations, particularly if a broader “all species” remit is to be fulfilled, rather than the current salmo-centric role currently undertaken. However, we believe that the level of staffing in each FMO should be driven by function, rather than form, because different areas of Scotland will require differing approaches to be adopted. Some areas may need more protection and enforcement, while others may need more scientific research.

12.2 We note the Government’s desire to ensure an appropriate balance of economies of scale and its suggestion that there is potential to integrate fishery management with wider catchment management frameworks, specifically in response to the EU Water Framework Directive. This might appear entirely logical in theory, but significant difficulties can arise when trying to apply this in practice. So whilst the geographical coverage of an FMO may look reasonable on a map, the ability of staff to travel around too large an area may significantly hinder the delivery of fishery management objectives in practice. Cultural affinities as well as geography are also important factors and these must also be considered in determining appropriate FMO boundaries.

12.3 A further issue for consideration in determining the number and optimal coverage of FMOs is that of resourcing. However, this is covered extensively in our answers to questions 15 to 20.

Q13. Do you agree that bodies designated as FMOs should be able to deliver analogous work on behalf of local or national interests?

Yes No Don't know

13.1 We agree with the Scottish Government’s recognition that the health of the fishery is linked to the wider management of the land within the catchment and that there may be opportunities to align delivery of related work where this is desirable. However, the practical ability to deliver this will be largely dependent upon resources.

13.2 The Spey Fishery Board and the Spey Foundation have been the driving forces behind the successful Spey Catchment Initiative. Indeed, the Spey Fishery Board employs and line manages the Project Officer involved in implementing this important initiative, which offers a partnership approach (involving SEPA, SNH, the Cairngorms National Park Authority, Forestry Commission Scotland, local authorities, the RSPB, Diageo and ourselves) in joint working to achieve shared objectives. This joint partnership approach has enabled the Board/Foundation to implement some of its habitat management projects whilst also achieving the

broader environmental and ecological goals of its partner organisations, including biodiversity and flood risk management. We sincerely hope that this will continue under any future fishery management regime.

13.3 We recognise that the Scottish Government’s focus here is on reforming the management of wild freshwater fisheries. We would point out, however, that the coastal and marine environment is also very important, particularly as so much current fishery management work is undertaken on salmon, which spend a significant proportion of their lives at sea. So we believe that coastal and marine issues will also be important areas in which FMOs should have the ability to be involved. For example, there are currently plans to develop significant offshore wind farms in the Moray Firth, the construction and operation of which could hinder the migration of salmon throughout the region. These could affect both juvenile fish (smolts) leaving their natal rivers, as well returning adults.

Q14. Are there any potential conflicts of interest in this approach?

14.1 We do not believe that there will be any conflicts of interest with this approach, particularly because FMOs will be fulfilling an all species remit, so long as the over-riding interest of the FMO is fishery management. Indeed, the Spey Foundation already has a remit to deal with all aquatic species – not just fish – ensuring that no such conflict of interest could arise. In this respect, the proposal for an all (fish) species remit could see the existing remit of the Spey Foundation be curtailed. We recommend, though, that this issue be highlighted and enshrined within the model constitution that the Scottish Government seeks to develop.

Q15. Do you agree that funding raised from proprietors should continue to provide the core strand of revenue for local fishery management?

Yes No Don't know

15.1 We accept that the current salmon assessment should remain the principal source of funding for fishery management bodies for which salmonids are the primary species from which economic activity is derived. However, the Scottish Government proposes that FMOs should adopt an all species remit and it is inappropriate to expect salmon fishery proprietors to fund the management of all other fisheries as well. Additional funding will therefore need to be secured if this is to be achieved.

15.2 We are also concerned by the assets currently held by District Salmon Fishery Boards (DSFBs) around Scotland. These have been collated over time and, in the cases of vehicles and equipment, provide essential tools for the conduct of fishery management. We are currently seeking legal advice as to what should or could happen to these assets in the event that the DSFB ceases to exist. It could lead to a significant shortfall if these assets are not passed on to any successor organisation. In which case, there would be a requirement to raise funding for the procurement of essential equipment to establish the FMOs, as well as to enable their daily functions and ongoing operating costs. This is something that will require careful consideration.

Q16. Do you agree that we should explore the potential for extending the responsibility for paying the levy to the owners of all fishing rights?

Yes

No

Don't know

16.1 We accept that owners of some fishing rights are able to derive an economic gain through the exploitation of a natural resource, and that the beneficiary of that resource should make a contribution towards its management. However, just because a right to fish exists does not automatically mean that a commercial gain is guaranteed and we would recommend that only those fresh water fisheries with the potential to generate economic gain should be considered for making contributions towards fishery management. We would therefore support the extension of the responsibility for paying the levy to owners of fishing rights on a case by case basis, rather than a blanket-type approach.

16.2 Furthermore, those areas which are not economically viable and will not therefore generate assessment revenue may still be in need of fishery management. These, too, may require additional funding if the management of those areas is to be successfully achieved.

Q17. Do you agree that responsibility for collecting and distributing resources from fisheries proprietors for the purpose of delivering the national strategy at a local level should rest with the national unit?

Yes

No

Don't know

17.1 We have significant concerns about the Scottish Government's proposal that the collection and distribution of the assessment from fisheries proprietors should be conducted by the Central Unit, rather than the local FMO. We recognise that the Government considers the assessment as a local tax, rather than private funding, and therefore has concerns about appropriate levels of democratic control and accountability. However, we firmly believe that the local fishery management bodies will be more effective at collecting the assessments and will be able to do so more economically.

17.2 By way of example, we levy an assessment in two phases: an interim assessment in February; and a final assessment in August of each year. Each of these takes approximately one day of an employee's time. A further day would realistically be taken up in chasing late payments. Crucially this is done effectively because we have a sound knowledge of our proprietorship and have developed good working relationships with all of them over many years. Indeed, the District Assessors approach us for details in changes of ownership, because they recognise that the District Salmon Fishery Boards will learn about these some considerable way ahead of official notification. If the assessment were to be collected centrally rather than locally, this local and effective relationship would be lost. Furthermore, and in turn, it would lead to the FMO developing a relationship with Central Government, rather than with significant local stakeholders. This is something that we are keen to avoid at all costs.

17.3 Part of the success of the current assessment system has been the collection of local “taxation” which has subsequently been spent locally. This in turn has generated significant voluntary contributions, both financially and in time/effort, for the delivery of fishery management objectives. Should the assessment be collected centrally rather than locally, we have grave concerns that these voluntary contributions will cease. Part of the reason for this is for the linked (but, we accept, separate) issue of redistribution, which is addressed below in question 18. Suggestions such as these have already been mooted to us by numerous stakeholders and cause us very real concern.

17.4 We recommend that in order to satisfy the Government’s concerns with regard to democratic control and accountability and to allay local concerns as well, that Government retain ultimate control for the collection of assessments, but delegates authority for their collection to the local FMO, so long as it adheres to the model constitution and has been awarded Approved Body Status.

Q18. Do you agree that we should explore the recommendation that redistribution of funds should form part of the new management system?

Yes No Don't know

18.1 We are particularly concerned by the recommendation that redistribution of funds should form part of a new fishery management system. One of the successes of the present system has been the fact that money raised locally is also spent locally for the management of a natural and national resource. It has also helped to secure voluntary donations for the betterment of the catchment. We believe that there is a significant risk that voluntary donations might cease if it is perceived that they would be topping-up funds that had been redistributed by the Government.

18.2 We understand and support the Government’s desire to ensure the consistent delivery of fisheries management across Scotland. This will require some areas of Scotland securing more funding than has currently been made available. However, there is a significant risk that those areas that have been better resourced and have received higher levels of fishery management work, see that level of work and management reduce if funds are diverted elsewhere. In this way, there is the significant risk that by raising the standards of fishery management in some areas of Scotland, the levels afforded to others are reduced in order to meet an average standard. If this were to happen on the River Spey, which is designated a Special Area of Conservation for Atlantic salmon and thereby afforded the highest level of environmental protection available under European legislation, there is a consequent risk of the health of the river suffering.

Q19. If not, what other means might be used for funding local fisheries management at appropriate levels across the country?

19.1 The Spey Board has already expressed support for the Government's proposal to explore the potential for extending the responsibility for paying the levy to the owners of all fishing rights where they have potential for commercial gain. Funding raised from these fisheries could subsequently be used for the management of the fisheries and fish species involved.

19.2 The principle resource required by fish is water and we believe that the Scottish Government should explore the taxation of other users of this valuable natural resource. Significant volumes of the upper River Spey are diverted by Rio Tinto Alcan and Scottish & Southern Energy for the generation of hydro-electricity; there are twenty-nine distilleries around the catchment which divert water for the production of whisky; and there are other water sports users such as the paddling fraternity. All of these offer the potential to make a contribution towards the management of the natural resource that they all utilise and we believe that this should be explored.

Q20. Do you agree that we should explore the recommendation for a two-tier levy system?

Yes No Don't know

20.1. We are not yet convinced that the imposition of a two tier levy system is either appropriate or cost effective. We suspect that the proposal for a standard rate set by Scottish Ministers may be for the conduct of fisheries management to achieve national and international obligations, although there is no detail yet to confirm this. A two-tier system will almost inevitably require more administration than is currently required to collect the salmon assessment, and would thereby be costlier to operate. However, with no detail yet provided with regard to the level of work that will be necessary for the achievement of the national strategy and no suggestion of what the standard rate might be in practice, it is difficult to offer objective analysis or comment.

Q21. Do you agree that Ministers should have powers to control harvesting of all fish species on the grounds of conservation and be able to do so in line with the precautionary principle?

Yes No Don't know

21.1 The Spey Fishery Board acknowledges that current legislation gives the Scottish Parliament the ability to regulate the killing of wild salmon. Under an all species remit, we agree that it is appropriate for powers to be available to Scottish Ministers to control exploitation of any of Scotland's wild fish species where this is done for conservation purposes. However, and also in line with the Scottish Government's fundamental principles for the management of wild fisheries, we believe that this must be evidence-based, local and supported by a regulatory and enforcement system which is robust, proportionate and consistent.

Q22. If not, what other mechanisms should exist in order to ensure a flexible regulatory system which can ensure delivery of legal obligations and policy priorities for management of species and is capable of responding to future changes?

22.1 We would like to reiterate our support for the highly successful policy of Catch & Release which we outlined in response to the previous consultation on proposals to licence the killing of wild salmon and introduce a carcass tagging scheme. In this response, we explained that since 2004 the SFB has recommended a voluntary policy of Catch & Release for salmon and sea trout fishing throughout the River Spey district. When it was introduced, it aimed to establish a release rate of 50% of the fish caught. The numbers released have grown steadily, year-on-year, and in 2014 achieved a release rate of 92% for all salmon caught. For a river system as large as the Spey, this is a highly creditable result. This meant that of the 4,563 salmon and grilse caught last year, only 364 were killed, the remainder being released back into the river to spawn. There is no reason to believe that such a release percentage will not be sustained in the future and the SFB commends this to the Scottish Government as an effective way of providing adequate conservation measures for salmon stocks.

22.2 In the previous consultation, the Spey Board also explained that it is not in favour of a licensing or carcass tagging system for rod & line fisheries. The Board did, however, recommend that the Scottish Government should give consideration to a system that is currently adopted by the Norwegian Government and which we believe that these might offer suggestions for alternative mechanisms for a flexible regulatory system. Some of these may be suitable for adoption by the Scottish Government. Further details of this can be found by referring to the Rapport for Vitenskapelig Raad for Lakseforvaltning No. 6 Status for Norske Laksebestander.

22.3 The SFB would point out that the ownership of fishing in Norway, both by net or by rod & line, is very similar to the Scottish System, in that each is a private, heritable right. Furthermore, the Norwegian system is centrally administered but locally delivered and in all cases separates the regulation of net fisheries from that of rod & line fisheries.

22.4 In Norwegian rivers where catch & release predominates and where fish stocks are healthy and above conservation limits, fishing is undertaken throughout the season. However, if a river demonstrates that its stock of fish is declining, to a point where its conservation limit may become exposed, or a disproportionate number of fish entering the river are being killed, then regulations may be imposed to restrict the season in which fishing may take place. In this way, the regulation is sufficiently flexible to be able to react to local and specific short-term circumstances.

22.5 The SFB is able to provide further details regarding the system adopted in Norway if this would be useful.

Q23. Do you agree that, in the context of the wider proposals in this paper, the creation of an offence of reckless or irresponsible exercise of fishing rights should not be pursued?

Yes No Don't know

Comments

Q24. Do you agree that data collection priorities and processes for fisheries management at a local and national level should be predicated on a consistent approach and that this should be via a national research and data strategy?

Yes No Don't know

24.1 We agree that there is a need for a national research and data strategy as part of the national wild fisheries strategy and agree that the Government should begin work to develop this. We also recognise that the Government has acknowledged that there is a clear role for local fishery management organisations to help deliver these. However, whilst we recognise the need for and importance of a national research and data strategy, we would caution the Government not to lose sight of the equal importance attached locally to local priorities. The Government is well aware that the current system of fishery management in Scotland enjoys a significant amount of voluntary contributions, both financial and in terms of time and effort provided. There is a significant danger that if the Government focusses too much on the national requirements, the local priorities may be perceived to be overlooked. The result of this could be that the voluntary contributions would either reduce, or dry-up altogether.

24.2. We agree that the existing standards developed by the Scottish Fisheries Coordination Centre and the Institute of Fisheries Management provide an excellent basis on which the Government should develop its work on this process.

Q25. Do you have any suggestions for additional means to ensure that evidence-based decision making is embedded within the fisheries management system?

25.1 We agree with the Scottish Government that evidence-based decision making is a fundamental principal of fisheries management if it is to be fit for purpose for the 21st Century. We recommend that this requirement should be included within the model constitution for the FMOs and indeed a requirement of Approved Body Status, so that scientific evidence – either in-house or via third parties/consultancies – is included in the decision-making process.

25.2 In supporting the principle above, we would also advise that fishery management is a mixture of sound science, politics and common sense. So it is not one-dimensional; evidence is vitally important, but there are other significant factors to consider as well.

Q26. Do you have any suggestions for additional skills areas which might usefully be covered in training and CPD programmes?

26.1 We support and agree with all of the suggestions so far provided for additional skills areas which might be covered in training and CPD programmes. We would add that communications and public speaking/presentations might also usefully be included.

26.2 One area that is noticeably lacking is that regarding enforcement issues and the provision of both training and CPD for Water Bailiffs. We would strongly recommend that this be included in order to cover such issues as e.g. evidence collation, conflict resolution and fisheries law.

Q27. Do you agree that annual and weekly close times should remain a key part of the management system for wild fisheries?

Yes No Don't know

Comments

Q28. Do you agree that the proposed local management organisations should have responsibility for considering such close times in line with the national strategy and the local fisheries management plan?

Yes No Don't know

Comments

Q29. Do you agree that the purpose behind Protection Orders can be achieved via the design of the new management system in line with the fundamental principles set out in chapter 2?

Yes No Don't know

29.1 We agree with the Government that fishing for both migratory and non-migratory fresh water species without legal right or written consent is complex and needs to be improved. For example, it is a criminal offence (without legal right or written consent) to fish for brown trout and other freshwater fish on waters specifically covered by a Protection Order, but a civil offence to fish for these species (again without legal right or written consent) in waters out-with a Protection Order area. Furthermore it is not an offence to fish for brown trout and other freshwater fish in waters which are tidal and navigable (these have a general public right of freshwater fishing).

29.2 We do not yet know whether the new structure for fisheries management in Scotland, with the adoption of an all species remit, will be sufficient in itself to secure responsible access to sustainable fishing for non-salmonid species. We are,

however, concerned to ensure that the public have access to trout fishing in the catchment without impinging on current proprietorial rights.

29.3 We believe that there is a strong case for the future system of all species fisheries management to be consistent and easily understandable. With this in mind, we support the Government in its work to develop a legislative framework which would provide equal protection for salmonid and non-salmonid fish species.

29.4 We are also concerned about the introduction of stocked brown trout in to areas that are accessible to salmon, particularly when those are within rivers designated as Special Areas of Conservation for salmon.

Q30. Do you agree that the principles of the existing bailiffing system should be retained, but with amendment to set compliance within an appropriate framework of accountability with warrants issued by the national unit?

Yes

No

Don't know

30.1 We agree that the existing bailiffing system for enforcement of wild fisheries legislation should be retained, but with warrants issued by the Central Unit, rather than the local Fishery Management Organisation (currently the District Salmon Fishery Board). Here on the Spey, the Board's Water Bailiffs are only warranted once they have passed the Institute of Fisheries Management exam in Fisheries Law and Bailiffing. They are also required to attend annual training/CPD in order to retain those warrant cards. Standards of bailiffing knowledge and training have improved considerably over the last ten years or so, but we agree that warranting should be undertaken nationally, particularly as Water Bailiffs have powers of arrest, search and seizure.

30.2 We recognise that Andrew Thin's Wild Fisheries Review recommended that FMOs should be charitable bodies. In this regard, we would like to cross-refer here to our answer in paragraph 3.7, in which we highlighted the independent legal advice received by the ASFB and RAFTS. This confirmed that whilst a charitable body could enforce the law in respect of wildlife and environment offences, private property rights and the enforcement of offences under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 could not be carried out by a charity, except insofar as such enforcement is consistent with furthering the charity's proper aims. We recommend that advice is also sought from OSCR on this equally important issue.

30.3 We acknowledge that the Government has recognised the potential, particularly in the context of proposals for licenced killing of salmon, for greater enforcement activity to ensure that the new regulatory framework is adhered to. This would increase even further if the new legislative framework provided equal protection for salmonid and non-salmonid fish species. These measures will put considerable and increased strain on already stretched resources and, if it is to be undertaken effectively, it is likely that the broader duties currently undertaken by water bailiffs, such as habit restoration, are likely to suffer. Here on the Spey, that

would have a significant impact on a river designated as a Special Area of Conservation and Site of Special Scientific Interest.

Q31. Are there other mechanisms for enforcing fisheries legislation that should be considered?

31.1 The Spey Fishery Board has enjoyed a close working relationship with Grampian Police and Northern Constabulary, and more recently, Police Scotland. In this respect, we have worked closely with Wildlife Crime Officers, in some cases undertaking joint operations and also benefitting from training courses that have been provided by serving Police Officers.

31.2 We have offered to provide the Police with training in the roles and duties of Water Bailiffs and encouraged the Police to include this within the basic training provided to its Officers. We recognise that Police resources are stretched, but strongly recommend that the Police incorporate some wildlife crime training into the basic training or CPD of its Officers. Raising awareness to a basic understanding of broad wildlife crime issues would be a significant benefit to future enforcement and help ensure that our system is fit for purpose for the 21st Century.

Q32. Do you consider that there are advantages in the bodies involved in recreational fishing being able to come together to speak through one lead body?

Yes No Don't know

32.1 The representative bodies involved in recreational fishing are currently an eclectic group covering a broad range of disciplines within the sport. They are also fraught with local and national politics and any attempt to create a single lead body is likely to involve significant challenges.

Q33. If so, do you have views on how this could be facilitated and in what timescale?

33.1 Not applicable.

Q34. Do you agree that promotion of opportunities and access should be a central theme for the strategy?

Yes No Don't know

34.1 We do not believe that access is an issue with regard to angling. Here on the River Spey, which is often misconceived as being an inaccessible river, there are nine angling associations in operation, with day or weekly tickets readily available at affordable prices. Furthermore, private beats advertise their fishing on numerous websites (including the Spey Fishery Board's own website), so we are not convinced that access should be regarded as an issue.

34.2 However, the promotion of angling generally is, we believe, an issue that could be better addressed.

Q35. We are interested to hear views on how increasing opportunities and access to fishing can be embedded within the fisheries management system.

35.1 We have already explained in our answer to question 34 that we do not believe that access is an issue with regard to angling. However, the promotion of angling generally is, we believe, as issue that could be better addressed and which should be embedded within the new fisheries management system.

35.2 We have commented in our answer to question 37 that, in preparation for our response to this consultation, the Spey Fishery Board and the Spey Foundation conducted three public meetings to raise awareness of the consultation and to encourage responses. One of the comments we received at these meetings and which we would like to pass on to the Scottish Government was the suggestion that there was a general inflationary pressure on the costs of angling. It was felt that this, in turn, could work against the aspirations to extend access to fishing.

Q36. Do you support the concept of the angling sector coming together to develop a programme for development of angling (Angling for All), including an emphasis on opportunities for young people and promoting social and economic benefits?

Yes No Don't know

36.1 In line with other sports that the Government supports, an Angling for All initiative could usefully be developed. We would therefore support the concept of the angling representative bodies, with assistance from the Scottish Government, coming together to develop a new programme designed to increase participation in angling from people of all ages, but with an emphasis on encouraging younger people to take up the sport. This has been tried on occasions in the past and is operated at a smaller scale by numerous angling associations. However, although these initiatives have honourable and laudable aims, their success is often hindered by lack of resource. The Government acknowledges the clear passion amongst anglers for their sport and their desire to ensure that it continues for generations to come. If this passion can be harnessed together with appropriate resourcing, an Angling for All initiative has a chance of success.

Q37. Should funding for Angling for All come from a rod licence? If not, where should resources be found to support the programme?

Yes No Don't know

37.1 The Spey Fishery Board, in preparation for responding to this Consultation, held three public meetings to raise awareness of the issues the Consultation

contained and to gather opinions for consideration in this response. The issue of rod licencing attracted a diverse range of responses: some anglers, particularly those visiting from England or from overseas and who were used to purchasing a rod licence, were ambivalent about the issue; some said that they would accept it if it was priced at £20 to £25 and, crucially, so long as the funding raised was seen to be used transparently for the proposed Angling for All initiative; and others were staunchly opposed to a rod licence, fearing that it would drive anglers away from the sport, particularly those who were only occasional fishers.

Q38. Do you agree that a rod licence should only be used to fund Angling for All, rather than also being used to support wider management activity?

Yes

No

Don't know

38.1 Looking at experiences elsewhere, the Environment Agency in England has used rod licence income to increase angling participation in three ways: raising awareness, through the production of guide books explaining where to fish; increasing opportunities, by funding numerous fishery development projects which, through matched funding from other donors elsewhere, has created new fisheries or improved existing ones; and Angler Taster Sessions, aimed at providing brief introductions to angling which are aimed at mass participation. So it would appear that in England there have been significant public benefits from extending the uses to which rod licence income might be put, rather than simply an Angling for All initiative.

38.2 Fisheries management in Scotland, albeit largely focussed on salmon and sea trout fishery management, raises in the region of £4.5 million per annum. If an all species remit is to be adopted, it has been estimated that an additional £2.5 million of additional revenue will be required if this objective is to be achieved effectively. If the Scottish Government does decide to adopt a rod licencing system, we would suggest that some of the income from this might also be used to address this shortfall.