

# **Draft provisions for a Wild Fisheries (Scotland) Bill/Draft Wild Fisheries Strategy: a consultation**

## **RESPONSE OF THE TAY DISTRICT SALMON FISHERIES BOARD**

### **1. Are you content with the structure and content of the draft national wild fisheries strategy?**

Overall no. We are concerned that the proposed draft will lead inexorably to the introduction of an end user's tax, or rod licence. Such a tax can only have a negative effect on the number of anglers, prospective anglers and tourists, affecting the local rural economy dependant on fishing (ghillies and guides, hospitality industry, shops...).

### **2 Which of the current areas within the draft strategy would you prioritise, and why?**

Given the "Vision for all", with which we broadly agree, as a general introductory point, we consider that the overarching aim of the strategy should be about "fisheries", i.e. it must be related to fishing and only the management of species that are actively fished for. While we agree that wild fisheries management should have regard to the conservation of all species of fish and wider biodiversity, we do not think a primary objective of wild fisheries management should be to take on any responsibility for the conservation of all species of fish in a broad sense. That is the responsibility of Scottish Natural Heritage and should continue to be.

In order for Scottish Ministers to more clearly support their Vision we consider that the ordering of the "overarching priorities" within the draft strategy should be changed as follows.

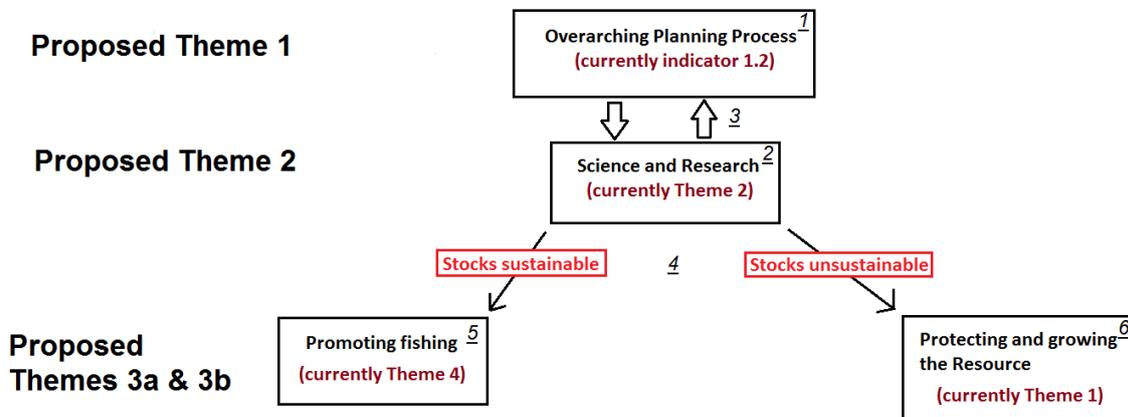
Of the three listed overarching priority areas, the first ought to be

"Identifying and maximising societal benefits from sustainable fisheries; and the promotion of angling as a recreational and tourism activity". A healthy, dynamic, responsible angling activity is the financial pillar of sustainable fisheries management.

Then the second ought to be "Promoting effective, evidence-based fishery management through integrated data gathering, research and dissemination" because this is a means towards achieving the main goal, but it is not an end in itself.

Lastly comes "Providing comprehensive protection and improvement of Scottish freshwater fish and the habitats they depend on". You only know what you need to protect or improve after you have conducted investigative work.

Regarding the four Theme boxes, we again suggest some changes in order and emphasis. A better structuring is proposed below.



Notes:

1. The first priority has to be to have a plan of what you can / need to do. This should be based on a prioritisation process regarding what has been shown to “work” and what hasn’t. In keeping with the Vision, prioritisation exercises must be based on fishing related metrics (e.g. number of extra fish caught, number of extra anglers who fish, increase in angling derived income etc) rather than on other biological criteria that may or may not be relevant to fishing. For example, it would not be enough to say with respect to a habitat improvement scheme that habitat has been improved over X km or X sq. metres. Because of the highly diffuse nature of juvenile salmon production even a seemingly large area measurement might still not amount to a very meaningful increase in the salmon catch. For example, improving say 5km of a degraded stream averaging 5m that caused its salmon smolt production to double, might not even produce an additional 10 rod caught salmon. It clearly important therefore to express all such improvements in terms of the ultimate product.

2. Within the Theme 2 described in the consultation, there is again a need for some reordering. For example, before the present Indicator 2.1 (coordination of science etc), it is necessary to define what you need to do in terms of science and monitoring. Memos of understanding etc come after you know what you want to do, not beforehand. Otherwise how do you know with whom memos are required?

3. The relationship between planning and science / research is a two way process. Planning obviously guides research but there is a feedback from research to planning depending on the results of research. Plans evolve continually therefore.

4. A main function of Theme 2 should be to determine whether fisheries are “sustainable” or not (the conservation limit river categorisation process is one example of this). That crucial step is not explicitly mentioned as an indicator in any of the themes within the consultation. While the consultation Indicator 2.2 considers data collection priorities and 2.3 covers data collection standards, a new indicator under this Theme before these two should explicitly refer to the design of monitoring schemes. All ecological monitoring exercises depend, not only on the quality of data collection in the field, but also on the overarching experimental design.

Having assessed stocks and determined which are capable of sustainable fishing and which are not, consideration should then be given to promoting fishing where stocks are sustainable (Theme 3a) and where stocks aren’t sustainable, doing something about it, if you can (Theme 3b).

5. Regarding Promotion etc (Theme 4 in the consultation but here 3a), it may be more appropriate to call it something like “Increasing Fishing” rather than Promotion, as promotion is too narrow an aspiration. Under this theme we would add, in the addition to the current Indicator 4.1, a second Indicator 4.2 (or whatever it becomes) called “creating more fishing opportunities” or such like. This would include identifying any new sustainable fishing opportunities (one example might be looking out for opportunities where sustainable fishing could be increased by removing or amending historic regulations like fishing seasons).

6. Regarding the consultation’s Theme 1 (Protecting and growing the resource), we would put this last.

Finally we would remove partnership etc as a Theme as this is really just a means to an end, not an end in itself.

### **3 Do you agree with the proposed high level duties on Scottish Ministers?**

Yes, we are content with these.

### **4 Do you agree that the criteria set out in paragraph 31 are the correct criteria for identifying the number of FMAs?**

Based on our interpretation of paragraph 31, then probably largely yes. However, we would also advise that value for money is included. Given there is a danger this system could seek to draw more money out of anglers and fisheries, we consider it essential that the requirement for such extra funding should not be a given. The requirement for any extra funding needs to be evaluated critically. We also note that the various criteria listed in para

31 are somewhat vague and no principles are described showing how these various, often competing, issues are considered against each other. We would like to see more information on how these balances are being struck. There must be a clear framework providing justification for the numbers that ultimately result.

**5 Do you agree that the legislation should not include a specific requirement to have an FMO in every part of Scotland?**

No. We consider it essential that there should be FMOs operating across the whole of Scotland. If this system is to be introduced it must be complete. However, as these should be self financing, unless Scottish Ministers provide some core funding, we accept that the level of "service" may have to vary. As a minimum, it is important that an adequate level of enforcement is always maintained even if some other functions are not.

**6 Do you agree with the proposed approach to designation of FMOs?**

No

We do not agree with the concept that any interested party should apply in the manner described.

In practice, what we perceive can only happen, is that existing DSFBs must morph into FMOs. Most of the proposed functions of FMOs are currently being conducted by DSFBs and indeed only being conducted by DSFBs. It will only be DSFBs that will disappear when the 2003 Act is repealed (Scottish Ministers cannot abolish fisheries trusts for example). DSFBs also have resources that the system should not lose, property, equipment etc.

It makes clear sense therefore that the process should start by evolving from the existing DSFBs. Start with what already exists. The boards should transfer themselves and then adapt and evolve from there.

As in some areas there will be requirement for DSFBs to amalgamate, it would obviously be helpful if Scottish Ministers could provide details on what the minimum requirements of FMOs in terms of staff, resources etc might be as the infrastructure is often there already.

**7 Do you agree with the proposed approach and timeline for approval of local fisheries management plans?**

No.

We consider the timeline is much too short. It is unrealistic for plans to be submitted within three months. For example, when Scottish Ministers commissioned trusts to produce

fisheries management plans nearly ten years ago, plans were produced over a two year period in two tranches of work. Even then, such plans did not really try to quantify the benefits claimed in them. Given the time that has passed since those plans were produced and the new issues that have to be considered as a result of a wide species remit and potential DSFB and trust amalgamations and all that entails, a much longer period than three months will be necessary. At least one year would be more realistic.

## **8 Do you agree with the proposed approach to good governance and investigation of FMOs?**

Yes, this approach is no different from those which DSFBs have to comply with currently.

## **9 We seek your views on the proposed approach to the wild fisheries levy.**

We agree that there may a continuation of a “salmon levy” along the lines of the present assessment system. However, the funds raised from this must be reserved for salmon work and that only in the local FMA. No funds should be transferred between FMAs. It will also be essential that value for money is maintained. The salmon levy must be affordable and not allowed to become excessive as job opportunities may suffer as well as maintenance and habitat improvements. We are concerned this could occur if salmon fishing interests cease to have significant representation on FMO boards.

Regarding the suggested levy on fisheries for other species of fish, we again have no problem with the principle, but in practice we question whether this will be worth the effort. For example, if such a system is to be based on valuations, as with salmon currently, then there will be significant issues. Most of these rights will be worth very little. Much will comprise small sections or on small waterbodies. It will prove very difficult and costly to value them all. For example, will every burn in Scotland have to be valued? On what basis will these low value fishing rights be valued? Indeed, given the level of coverage of the land register, in many cases how will the owners be identified at all? Therefore, we do not think for what it could raise, such a system is realistic. An alternative might be some form of standing charge but, how might that work, and how might it be equitable if not based on value?

We have also heard it suggested that a model used by the Tay Liaison Committee for raising funds within the Tay Protection Order area, which combines a number of these facets, might be worthy of consideration. In this case levies are charged (£1) on visitor permits and proprietors and angling clubs are invited to submit a donation or a proportion of permit income. However, we note that in practice, from this significant area of trout and

freshwater fishing close to central Scotland, the latest accounts from the TLC show that between 1 November 2013 and 31 October 2014 this raised in total only £6,798.91.

While the consultation does not ask for any specific opinions on “rod licences” we are aware that there may be some enthusiasm for this approach in some quarters. However, we caution that there are significant pitfalls with this too.

A rod licence will entail a significant cost of administration and if experience in England is anything to go by, there will be a significant cost in terms of enforcement too. As far as salmon angling is concerned, we question whether this will be worth the effort. For example, at the present time, salmon anglers do already pay towards management, indirectly through the existing levy system. If so, there is no logic to creating another less efficient method of taxing them with all the costs that entails. The salmon levy is also a more “progressive” form of taxation, those who catch most pay most, while a rod licence is essentially a “poll tax”. While undoubtedly many anglers will not grudge paying a rod licence, it will be a barrier for newcomers, occasional anglers and visiting tourists. It will just be one more thing that deters some anglers from fishing which at this time is not what FMOs and rural economies need.

The only justification for a rod licence in terms generating revenue is therefore to tax anglers fishing for species other than salmon or sea trout.

So what is the solution? First of all looking at opportunities for maximizing existing revenues from salmon fisheries in order to maximise the salmon levy. We also think that Scottish Ministers should look to put some public funding into this system if it is to work as they envisage. Particularly, in terms of the three overarching objects identified in the strategy document, we think that Scottish Ministers should fund monitoring and identifying the resource. Core funding should be provided for this.

**10 Should Scottish Ministers have the power to review the designation of FMO status?**

Yes

**11 If so, what would be the appropriate period for such a review?**

At least five years.

**12 Do you agree that FMOs should be statutory consultees for fish farming applications?**

Yes

**13 Should we consider whether FMOs should be statutory consultees for any other types of development?**

In principle, yes. However, we appreciate that such a requirement could involve an onerous level of work relative to the amount of resources likely to be available to FMOs, particularly if there was to be an expected level of response to all potentially relevant applications. We would require more guidance from Scottish Ministers as to what this might entail before we could provide a more definitive answer.

However, as a minimum, we do consider that there should be a statutory requirement for FMOs to be notified of relevant planning applications but with no statutory obligation to respond. If no core funding is to be provided to FMOs, then it might not be realistic to expect more.

One exception to this rule Scottish Ministers is where Scottish Ministers receive applications to consent activities under salmon and freshwater fisheries legislation from parties other than FMOs themselves (e.g. stocking fish, electrofishing etc). In this instance, FMOs should be consulted on all applications. It would be reasonable in this case that Scottish Ministers should be entitled to a response.

**14 Do you agree that local conservation measures, agreed by FMOs at a local level, could be made by the Scottish Ministers without being subject to Parliamentary scrutiny?**

If such measures are being applied for by FMOs then yes we do agree. However, in instances where Scottish Ministers promote measures then they always should be subject to Parliamentary scrutiny.

**15 Do you agree with the approach to conservation regulations?**

Yes, we have no issue with the broad principles of how conservation regulations are to be made and implemented.

**16 We would welcome any specific comments you have in relation to section 23 – 32 of the draft provisions.**

While we have no issue with the principles behind conservation regulations, there are some specific regulations proposed which require comment.

Section 26(b) gives Scottish Ministers power to compel FMOs to undertake activities by Order. We question why this power is necessary given that Scottish Ministers will be able to

direct FMOs through the fisheries management planning approval process? The FMP process will at least ensure that required activities are affordable.

We note that under Section 29 there is no specific requirement for Scottish Ministers to have to advertise applications to make regulations as is currently the case. We think the requirement to advertise should continue. However, the current requirement that “notice shall be given at least once in each of two successive weeks by advertising in a newspaper circulating in the district or districts affected by the proposals” is out of date. There should be a requirement that Scottish Ministers should also publish on their website.

Section 31 requires FMOs to monitor and evaluate local measures. However, there is no equivalent requirement for Scottish Ministers to do the same when they introduce measures. We suggest they should be required to do so too.

**17 Are there specific examples of issues with the offences in the 2003 Act that we should be aware of in developing the framework for an all species management system?**

The 2003 Act amended by the 2007 Act gives DSFB bailiffs powers to enforce legislation pertaining to the stocking of freshwater fish. We presume FMO bailiffs will be given similar powers. However, for FMOs to be able to perform this function there must be a requirement for Scottish Ministers to inform FMOs of the licences that have been issued. At the moment DSFBs are not consulted or even routinely informed who has been issued with licences. Indeed, it ought to be a requirement that Scottish Ministers should have to consult FMOs in the course of considering licence applications (see question 13).

We note that in Section 33 it is proposed to introduce a requirement for written permission for fishing for all species of fish. While from a salmon fisheries point of view we consider such a requirement to be an advantage, it will make relatively little difference in the Tay district because it is largely but not completely covered by four separate protection orders. While it is not of direct interest to us, we do note that there is some concern within the district from freshwater angling interests over the proposed replacement of POs with this arrangement. The PO system provides protection in return for a certain level of guaranteed access to relatively cheap fishing. We note that the lack of clarity in the proposals as to how or whether this quid pro quo might be maintained is causing some concern in those circles. We would therefore be interested to learn what Scottish Ministers propose.

Another particular issue in the Tay district concerns the proposed section 33(1)b, the exemption for a requirement for written permission in tidal waters. There has been a long standing issue in this district that in some years when low flow prevails in late summer and autumn large numbers of salmon can accumulate in an area just downstream of the high tide mark on the Tay. When this occurs it can attract “anglers” who claim to fish for trout or other species. We have in the past succeeded in bringing a successful prosecution against

one such angler but it is not always easy to obtain sufficient proof that such persons are deliberately fishing for salmon even though they are prepared to release them on the grounds “they were hooked by accident” if observed. We recommend that serious consideration be given to producing a solution to this issue, an issue we have raised previously in consultations. Either there should be a requirement for written permission to be required in all “inland waters” or, if that is considered too much of an ask (in the Tay district for example this would mean that in effect even “sea” anglers around the Dundee area fishing in almost full sea water would require a permit), we would welcome an indication from Scottish Ministers that they might be prepared to accept solutions based on *ad hoc* local regulations where problems exist, for example to prohibit some unconventional methods sometimes used under these circumstances to fish for “trout”. Alternatively might an order be used to determine a point in tidal waters decided by the FMO above which written permission would be necessary?

**18 Do you agree that the appointment of water bailiffs / wardens could be done for more than one FMO and potentially nationwide?**

Yes, we see significant advantage in bailiffs potentially being able to operate over a wide area. This would be a particular advantage where some bailiffs have a particular skill that is occasionally required but need not be replicated in every area. However, for this to operate, such bailiffs would have to be approved by all FMOs within which the bailiff might operate.

**19 Do you agree that the appointment of bailiffs and wardens should continue to take place at both a local or national level?**

If it turns out to be the case that the ultimate legislation allows areas of Scotland to exist without functioning FMOs, then under such circumstances, we agree that such appointments can take place at both levels. However, where FMOs exist we consider that bailiffs and wardens should only be appointed by the FMO.

**20 Do you agree that we should consider a new title for the role of water bailiff?**

We have no strong feelings on this issue.

**21 Do you agree that there are advantages in having a second tier of enforcement officer, primarily focussed on checking permits and providing information?**

Yes. Particularly if there is a requirement to enforce non salmon related offences and given that resources will be stretched, there is clearly a requirement for such a role. As there are several protection orders in existence in the Tay catchment with wardens already in place, this is a development we can easily relate to. However, we do believe that wardens should work closely with full bailiffs within an integrated system.

**22 What issues in relation to powers and enforcement do you consider are barriers to providing appropriate protection to our wild fisheries and fishing?**

While there has been a major advance in the training available for enforcement staff in recent years, we feel that more could be done in this regard. More consideration should be given to training bailiffs and wardens. As they will be enforcing a public statute we consider this is an area for which Scottish Ministers should provide core funding.

The process for reporting offences is another significant barrier that requires to be addressed. As far as we are aware, all DSFBs now rely on the Police to submit offence reports to the Procurator Fiscal (the Tweed Commission does not). While, many less well resourced DSFBs perhaps always relied on the Police, until some years ago we also reported directly to the PF when it was simply a case of submitting a paper report. However, we stopped when the reporting system requirements became too onerous compared to the volume of cases involved. We recommend that consideration be given to creating a central dedicated reporting function that all FMOs could use. We think a dedicated service of this type that would be expert in this field that FMOs could be rely on would be preferable to relying totally on the Police for help, which they are not always able to give. Given the current scale of illegal activity we think one such centre would probably be adequate for the whole country

Finally, we think it essential that the Crown Office continues to maintain dedicated wildlife Procurators Fiscal. In the past, a common complaint from DSFBs including ourselves was that perfectly competent cases got abandoned probably for no other reason than not being a priority in a busy prosecution system. When such cases are dropped it has both a demoralising effect on staff who may have put in considerable effort to get the case in the first place and only emboldens poachers. If cases are to be taken, then they must be followed through. If it helps to get this done, then we agree that for some categories of offences "Fiscal's fines" should be considered more or on the spot fixed penalty notices introduced.

**23 Are the terms used throughout the draft provisions clear and unambiguous?**

No, not entirely.

**24 What do you consider would be the key resource issues for an FMO under the proposed new regulatory structure?**

Compared to the present situation paid largely from the salmon assessment, the new regulatory structure will involve a significant amount of extra administration and reporting work plus potentially a lot of extra new work to perform an all species remit, both in management terms and enforcement. Should some form of rod licence ever be introduced that will add an even greater enforcement effort, particularly in a large district like the Tay which has many multi species angling waters in relatively close proximity to Scotland's major centres of population.

As the "salmon levy" is already used to the limit that is realistically available, then it is clear that funding these aspirations will be the major problem.

Also, for an FMO to function there will be a requirement for a significant amount of equipment, vehicles etc. It will be important therefore that there can be a transfer of such from DSFBs to FMOs and that these should not be lost.

**25 What other information do we need to consider in developing a BRIA for the Bill when it is laid before the Scottish Parliament?**

No answer