



Law Society
of Scotland

Consultation Response

SEPA Finfish Aquaculture Sector Plan

December 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law and Marine Law sub-committees welcome the opportunity to consider and respond to Scottish Environment Protection Agency's (SEPA) consultation on the Finfish Aquaculture Sector Plan.¹ We have the following comments to put forward for consideration.

General comments

We welcome SEPA's sectoral approach to regulation. However, the plan (as with the other sector plans consulted on earlier this year) indicates a desire to radically change the way in which SEPA regulates the finfish aquaculture sector – i.e. a move away from the 'traditional approach' to regulation. The sector plan lacks detail as to how it is intended that SEPA will fundamentally alter the regulation and policy which currently exist.

We consider that there are many examples of where the traditional, rule-based approach to environmental regulation is feasible. There is no explanation offered as to why this approach cannot be extended to cover the problem areas identified by SEPA within this sector. We note that existing enforcement powers do not appear to be utilised to their full extent in this sector. We suggest that robust use of existing powers to deal with non-compliance in the finfish aquaculture sector should be a first step in any new regulatory regime.

The traditional, rule-based approach is, in the main, both measurable and transparent which enables SEPA to be accountable to the Scottish public in its approach to regulation and enforcement. A new approach based on 'partnership working' with business to encourage improved environmental performance in this sector could result in less public engagement and visibility and therefore affect SEPA's role as a regulator. The public needs to be reassured that SEPA is no less likely to take enforcement action against those operating illegally in the sector.

¹ <https://consultation.sepa.org.uk/sector-plan/finfishaquaculture/>

It is important that there is clarity around the standard of “beyond compliance” – both what is meant by this and what is expected of businesses to meet this standard. Clarity is also required as to what will happen if businesses don’t go “beyond compliance”.

We note that there appears to be uncertainty around the respective roles of organisations including SEPA, SNH, local authorities, and Marine Scotland. It would be useful to clarify the roles and responsibilities of these organisations and how they can work together.

It is important that the Plan is not produced in a vacuum without reference to existing laws and regulatory processes. We also note that there is no mention in the Plan of planning permission, nor the National Marine Plan (2015) and the development of regional marine plans. Marine Scotland also produces sector plans including one for aquaculture and we consider it important that there is strong collaboration on relevant matters.

Response to consultation questions

Does the Finfish Aquaculture Sector Plan identify the right partners and influencers for SEPA to work with to achieve the vision?

It appears that the right partners and influencers have been identified. We consider that SEPA could benefit from working more directly with the sector. It should be noted that there are a number of NGOs beyond those connected with Scottish Environment LINK which have an interest in wild salmon conservation and aquaculture and there may be benefits in engaging widely with this sector.

Does the Finfish Aquaculture Sector Plan contain the right actions and priority actions to tackle non-compliance?

Please see our comments above. We suggest that there is robust use of existing powers to deal with non-compliance in the sector.

Does the Finfish Aquaculture Sector Plan contain the right actions and priority actions to help businesses go beyond compliance?

While the concept of an aquaculture business operating “beyond compliance” is clearly something to be applauded, the concept requires greater clarification for businesses and consumers. Although encouraging businesses to innovate is important, operators also require comfort in understanding what support they will receive from SEPA if they try but fail to move “beyond compliance”.

It is recommended that the emphasis in the Plan is on compliance across the sector, so that there is clarity on what is expected of operators, and so that consumers and stakeholders can be clear on the regulating standards.

What actions do you think are the most important to ensure protection of the environment, and why?

Although we do not seek to identify any particular priorities, we note the importance of strong regulation of benthic pollution so that marine habitats and the economies that benefit from them (for example shellfish, tourism) are protected; developing a clear scientific basis on the impacts of marine caged aquaculture on wild salmon and sea trout through sea lice concentrations and escapees; sea acidification and deoxygenation; and protection of the water environment in light of medical treatments (for example emamectin benzoate).

Do you agree with our proposals for a new, strengthened regulatory framework for marine cage fish farms (see annex to sector plan)?

A strengthened regulatory framework is to be welcomed, however it is essential that this is clear to ensure compliance. Although self-monitoring by operators is to take place and that this is to be audited by SEPA, the Plan would benefit from clarity on what aspects are being audited by SEPA and whether there needs to be liaison with Marine Scotland and/or other organisations. It is also recommended that operators are clear about what happens if they do not comply, and what might happen if a non-compliant operator applies to operate another site.

Does the appendix to the sector plan deliver an appropriately strengthened regulatory framework to protect the environment and contribute to the vision of the Finfish Aquaculture Sector Plan?

Please see our answer to the question above.

Do you agree with the timetables proposed for introducing the new regulatory framework to new and existing sites?

As the Scottish Government is proposing to increase farmed salmon production considerably by 2020, it is recommended that the new regulation dovetails with this proposed expansion timeline. This is particularly relevant for any new proposed sites, or sites that have been struggling with compliance to date. As referred

to above, it is particularly important that SEPA's work dovetails with planning permission arrangements and the planning system more widely, marine plans and other forms of regulation.

Do you have any other comments on the Plan?

The content of the Appendix is markedly different from the 'vision' set out at the beginning of the Plan, and it is recommended that this context is set out more clearly at the start of the document, so that the challenges and impacts can be explained to show the need for the proposed changes and need for innovation in the sector.

In addition, we note that the Plan states that some 47 marine caged fish farms failed in terms of compliance in 2017². It is recommended that this is set in context as to how many fish farms there are around Scotland. Similarly, the Plan shows 81% compliance³ - this would benefit from clarification as to how that figure is arrived at.

For further information, please contact:

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² At page 19.

³ At page 18.