

Consultation Response

Scottish Sea Fisheries National Discussion Paper

June 2019



Introduction

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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 Marine Law sub-committee welcomes the opportunity to consider and respond to Scottish Government's consultation on *Scottish Sea Fisheries National Discussion Paper*¹. We have the following comments to put forward for consideration.

We note that the development and further innovative use of technology may help to address some of the issues raised in the Consultation Paper and help to create products which could be exported.

Consultation questions

1. In Chapter 1 the Scottish Government identified a range of areas around achieving our vision for environmentally conscious and sustainable fishing. Therefore, in relation to these discussion points do you have any views or ideas in regarding the areas identified in Chapter 1?

In relation to environmentally conscious fishing, we would welcome consideration and review of existing transport links in supply chains. It is common for fish and fish products to be transported by road haulage and there may be environmental benefits of a greater use of alternative transportation methods.

2. Chapter 2 explores a range of discussion points around future governance, engagement and accountability. With regards the areas discussed what are your opinions of the discussion points raised and any related views on the themes identified in Chapter 2?

We note the intention to focus on local management. While this is laudable and will hopefully benefit local communities, we note that there is a possibility of conflict arising in circumstances where the local

¹ <https://www.gov.scot/publications/national-discussion-paper-future-fisheries-management-scotland/>

management of fishing activity is proposed to take place within the area of a statutory harbour authority which has general powers of direction. In this case, the harbour authority may have in place bye-laws and/or general directions or choose to issue special directions for the purpose of controlling the safety of navigation, for example to ensure safety, which may in some circumstances restrict or be contrary to what a local management group may seek.

We note that the consultation paper proposes in sections 2.1 and 2.2 to have “fewer representative bodies aligned with strong leadership” and recognises the need to “ensuring that there are opportunities for all voices – big or small – to be heard”. We consider that it may be difficult to reconcile these concepts with each other. In order to ensure that there is true representation of all relevant interests, we suggest that there is a review of the representative bodies with whom Marine Scotland engage.

In relation to accountability and compliance, we consider it appropriate that any measures are proportionate and cost effective and we welcome the commitment to review the costs associated with compliance as part of the development of a proposal for future compliance activities.

3. Chapter 3 explores areas for discussion around access to our waters and the role of Scotland in future fisheries negotiations as part of the UK. Do you have any views or ideas in relation to the discussion points raised in Chapter 3?

Fishing opportunities are a particularly important issue for Scotland: in 2017, landings by Scottish vessels accounted for 57% of the value and 64% of the tonnage of all landings by UK vessels². Strong collaboration between Defra and the devolved administrations is of considerable importance.

At the same time, we recognise the need for Scottish Government to balance interests of all stakeholders in directing trade policy.

4. Chapter 4 identifies the Scottish Government’s aim to establish fishing opportunities for long term future sustainability and accessibility. Accordingly, in relation to these discussion points do you have any views or ideas to the areas identified in Chapter 4?

With regards to the Fixed Quota Allocation (FQA) system, we welcome the continuation of this and presumably the continuation of the FQA Register, which ensures some transparency in relation to the allocation and holding of FQA units. Notwithstanding, we recognise that there is scope for improvements to be made.

We note the distinction which appears to be drawn between quota which currently exists and any additional quota which is received (section 4.4). If the additional quota is intended only for specific purposes, for example to support new entrants into fishing, then the rules governing it will require careful consideration – for example, who will be allowed to hold such additional quota; will it be transferable (and on the FQA

² Scottish Sea Fisheries Statistics 2017, paragraph 3.1.

Register or otherwise); if so, will there be restrictions on its transfer; does “additional quota” transform into “ordinary quota” after a certain period after a new entrant has “become established”; if not, what happens to it?

We note the proposals made in relation to an amended economic link condition (section 4.5). The proposed 55% figure for landings in Scottish ports is higher than the current 50% figure across the UK. Depending on (i) the UK Government’s review of economic link criteria and (ii) the outcome of EU exit negotiations (which may lead to a change to the requirements for the ownership of fishing vessels in the UK), there may require to be further consideration as to the economic link condition in Scotland.

In relation to a discard ban (section 4.6), in order to develop a management system that supports the ban and can work in practice, then the issue of “choke” species will have to be addressed. We are not clear as to what is meant by “ring-fencing” quota. If it means that the fish for which a fisherman has no quota is instead allocated against it, this will require careful consideration as this could move the problem somewhere else. We consider that this is an area in which greater use of technology and innovation may be used to assist in overcoming some of the challenges.

5. In Chapter 5 the Scottish Government discusses possible options for access to fishing in distant waters and new entrants. With regards the areas discussed what are your opinions of the discussion points raised and any related views on the themes identified in Chapter 5?

We note that there is a market in relation to licence capacity and if capacity is increased with specific purposes in mind, such as assisting new entrants into the sector, certain matters will need to be addressed (similar to those in respect of additional quota as referred to above) in relation to the rules governing the transfer, aggregation and disaggregation of capacity, in order to ensure that these purposes are achieved.

We note the desire to encourage new entrants to the sector. It is important that this is balanced with existing individuals and businesses operating in the sector, for example in terms of quotas and sustainability.

6. Chapter 6 identifies a broad range of themes and points around the future management of the inshore fishing industry. As a stakeholder what are your opinions of the discussion points raised and any related views on the themes identified in Chapter 6?

We have no substantive comment to make on the future management of inshore fishing but note that it will be important to consider how competing interests (for example between fishing and recreational/tourism use) will be managed in practice.

7. Possible options for the future funding of the fishing industry are identified in Chapter 7 for discussion. What are your views on the discussion points raised and do you have any other ideas with regards future funding options or opportunities going forward?

We have no substantive comment to make on this matter but note the funding which has been available to date for research support.

8. The Scottish Government understands that access to labour is a considerable concern for the industry. In Chapter 8 we identify a range of discussion points connected to access to labour and working in the fishing industry – what are your views on this area?

We note the concerns referred to in relation to access to labour.

It is crucial that consideration is given to the health and safety of workers in the fishing industry, particularly in light of the implementation of the Work in Fishing Convention, 2007 (known as ILO 188) in the UK in 2018. It may be that technology could assist in this regard.

9. To ensure long term sustainability of the fishing industry the Scottish Government believe it is right for the fishing industry to contribute to costs associated with science, research and development in the future. Chapter 9 consider options for this but what are your view and thoughts on the discussion points raised in this chapter?

We have no substantive comment to make on this matter but note the funding which has been available to date for science, research and development support.

10. Finally, thinking about ensuring the long term sustainability of the Scottish fishing industry for future generations do you have any other ideas or proposals that you would like to be considered that are not covered elsewhere in the discussion paper?

As part of the monitoring and evaluation process, it is crucial that key indicators to measure success are identified. We suggest that these should be 'SMART' targets which are both measurable and achievable.

For further information, please contact:

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