POLICY NOTE

THE FISH FARMING CODE OF PRACTICE (SCOTLAND) ORDER 2021

SSI 2021/340

Introduction

The above Order is to be made in exercise of the powers conferred on the Scottish Ministers by section 7(1) and (2) of the Aquaculture and Fisheries (Scotland) Act 2007 ("the 2007 Act") and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the Instrument

This Order approves the code of practice entitled "Aquaculture Code of Practice: Containment of and Prevention of Escape of Fish on Fish Farms in relation to Marine Mammal Interactions", which was issued by the Scottish Ministers on 21 September 2021 ("the Code").

The purpose of the Code is to address the impact of marine mammal interactions upon the containment of fish on fish farms and the prevention of escape of fish from fish farms. The practical measures identified within the Code are focussed upon addressing the risks concerning containment and escape of farmed fish arising from marine mammal interactions, particularly those involving seals.

The Code provides a combination of guidance on appropriate measures to ensure containment and prevent escape of farmed fish for Aquaculture Production Businesses ("APBs"), together with mandatory standards with which APBs must comply. The Code also introduces a system of monitoring and reporting in order to document the use of containment measures in a systematic way throughout Scotland's aquaculture industry and to log any killing or injury of marine mammals in the form of bycatch associated with fish farms.

Once approved by Order, the mandatory standards within the Code are subject to monitoring and enforcement processes as provided in the 2007 Act. Under section 8 of the 2007 Act, the Scottish Ministers may serve notice on a person who carries on a business of fish farming where it appears to them that that person is not complying with, or is likely to not comply with, the Code in a material regard. It is an offence for a person to contravene a notice issued under section 8 and any person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Policy Objectives

The effect of the Order is to approve the Code, which is designed to enable the aquaculture sector, as an essential component of the Scottish economy, to contribute to sustainable economic growth in rural and coastal communities in a manner that avoids harm to marine mammals.

Marine mammals in Scottish waters are provided with protection through measures specific to the species, site-based measures and wider seas measures under a series of regulatory and legislative provisions including the Conservation (Natural Habitats, &c.) Regulations 1994 and the Marine (Scotland) Act 2010. The Order approving the Code augments these existing

protections and is necessary to allow continued access to international markets through the provision of comparable standards of non-lethal measures for marine mammal protection and in relation to reporting. For example, adhering to the Code will help to ensure that Scottish standards are comparable with the United States Marine Mammal Protection Act (1972).

Consultation

In accordance with the requirement in section 7(4) of the 2007 Act, the Scottish Ministers have consulted such persons as they consider appropriate in relation to this Order and the Code., A six-week public consultation was held from 22 June 2021 to 3 August 2021. In total, 39 official consultation responses were received from individuals, APBs, environmental organisations and fisheries boards, amongst others. Views were invited on the draft Code, draft reporting forms, the draft Order and partial Business Regulatory Impact Assessment ("BRIA").

The majority of respondents supported the introduction of the Code, to be approved by this Order, and provided comments on how it could be developed. Key comments included concerns on enforceability, challenges to practical implementation, and requests for clarification to elements of the Code. As a result, the text of the Code and associated reporting forms were revised. Consultation responses also informed the final BRIA.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, it includes:

- Aquatic Animal Alliance
- Clyde Porpoise
- Law Society of Scotland
- Scottish Association for Marine Science ("SAMS")
- Scottish Environment LINK
- Scottish Salmon Producers' Organisation ("SSPO")
- The National Trust for Scotland
- Scottish Sea Farms

Impact Assessments

A Business and Regulatory Impact Assessment ("BRIA") has been carried out on the Code and the Order. Further detail on findings are detailed in Financial Effects section below.

A Equality Impact Assessment ("EQIA") was not deemed necessary. The Code will not deny access to services or functions; impact employment; alter budget or impact on other policies that affect people.

Island Communities Impact Assessment ("ICIA") screening identified no potential for significant differential impacts on island communities.

Under Strategic Environmental Assessment ("SEA") regulations, minor positive effects on marine mammal populations and farmed fish health are identified but these are not considered to have the potential to be significant.

Financial Effects

As per the BRIA, the overall impact to APBs associated with introduction of the Code and the approving Order is assessed to be negligible.

Five respondents to the public consultation (three APBs and two representative bodies) identified the potential for increased costs to fish farms through administration, staff training and compliance measures. Based on the qualitative information provided the impact is assessed to be minor. In response to detailed comments provided, particularly with respect to reporting, changes to the final reporting requirements will deliver efficiencies to APBs.

Continued access to the US market is worth over £100 million annually for the Scottish farmed salmon sector (source UK trade information – HMRC[1]). The impact of not introducing an enforceable code of practice is assessed to be very significant for APBs, resulting in the potential loss of a key market.

Marine Scotland

Scottish Government

23 September 2021

[1] UK trade information can be found here: Overseas trade data table - UK Trade Info (all salmon exports figures here refer to HS code 03021400 – Fresh/Chilled Atlantic salmon).