

SUBMISSION

To: Wild Fisheries Reform, Salmon and Recreational Fisheries Team, Marine Scotland

From: Scottish Anglers National Association (SANA)

CONSULTATION ON DRAFT PROVISIONS FOR A WILD FISHERIES (SCOTLAND) BILL/DRAFT WILD FISHERIES STRATEGY

Introduction

1. SANA is the recognised governing body for game angling in Scotland. This submission has been prepared by SANA's Migratory and Non Migratory Fish Committees.
2. The reform proposal is in line with previously expressed concerns from SANA about the need to conserve stocks of freshwater fish and to provide reasonable access for anglers to pursue their recreation. However, emerging details pose threats to the overall level of participation in angling.
3. Our views are set out below. While considerable progress has been made by the Scottish Government and its Stakeholder Reference Group (on which SANA serves), it should be noted that these views repeat some issues raised in our response to the August 2015 consultation on this subject.
4. Responses to the set questions are provided as an annex and are reproduced in the Respondent Information Form.

Summary

- **Function:** SANA applauds the central purposes of the reform, viz. improved freshwater fish stocks and fishing.
- **Funding:** SANA had agreed that an angler contribution to FMO budgets should be devised which entrusts the proceeds to allocation within fishery management and development budgets, with angler representatives having a say in how they are spent. However, concern remains about the details of any such scheme, which have yet to be devised. Any levy should not be set at a level which discourages participation and, if it appears to be a "rod licence" under another name, many anglers will oppose it. SANA is opposed to introduction of a rod licence.
- **Access to angling opportunities:** making angling without permission a criminal offence for all species in all places is a proposal which must be counterbalanced with readily available permits. An assessment of demand is likely to be required. SANA is concerned especially that young people who want to develop their angling skills should have cheap or free access where practicable.

Overview

5. The Scottish Government's response to the Wild Fisheries Review stated that "wild fisheries" refers to all salmon and freshwater fisheries (including stillwater fisheries) in addition to those for which there is a management need but no current fishery. We agree with the principle that all freshwater fish should be encompassed within the new system of management. The current consultation confirms that put-and-take fisheries, by which we mean fisheries which require stocking with trout already grown to a takeable size for angling in order to be sustainable, are to be treated as "wild". However, they will clearly not be subject to any kind of management support or supervision by Fishery Management Organisations (FMOs). They will, of course, remain subject to fish health and movement supervision. Therefore, we find no case for their being subject to any management levy. These fisheries are critical to supply of angling capacity, especially in more populated areas of Scotland. Their viability must be protected, lest the reforms result in fewer fishing opportunities.
6. Historically, SANA has been concerned that the impacts of aquaculture on wild fish populations were not being taken into account in Scottish Government policies. For instance, they were excluded from the terms of reference of the Wild Fisheries Review. We are pleased that the current requirement on District Salmon Fishery Boards to draw up conservation plans for migratory fish, includes assessment of aquaculture effects. Also, the reform process now recognises these issues. The national strategy makes reference to impacts on fish stocks that include aquaculture. Therefore, local management plans, where relevant, will include measures to mitigate the impacts of aquaculture on freshwater fish. This breakthrough is applauded.

Angling Access

7. At the time of the previous consultation, the objectives of the reform had a fundamental ingredient: the commitment to management for good stock levels and thriving fisheries. The principles also included a commitment to widening participation and promoting angling opportunities. These have been carried through in the statement of ambitions contained in the draft National Strategy. However, some SANA members have expressed concern that there are no specific indications in the consultation about how the supply of angling opportunities are to be "protected" or "advanced".
8. Hitherto, the focus for that worthy objective has been the system of Protection Orders (POs). Where these are perceived as successful, there is now anxiety that they will be discontinued because of previously agreed access being withdrawn by fishery owners. In practice, the system has had limited results in most areas and many anglers hoped for something better to arise from the reform process. There is no sign in the current consultation about how fishery owners may be persuaded to continue existing publicly available angling, let alone provide new opportunities.
9. The continuation of POs was questioned in the August 2015 consultation, because the new system could be tailored to provide both improved access to angling and equal

protection for all fish species. SANA agreed that, if new legislation were to incorporate the aims of POs and was robust enough to ensure they work in practice, better than currently, POs might be safely abandoned.

10. In the draft National Strategy, the ambition remains. (The ‘vision’ and the statement of ‘purpose’ both refer.) In the draft legislation, its implementation is invisible. The latter situation arises because the style of the draft Bill is permissive and implementation, on this and other subjects, would come from the Bill’s granting of authority for Ministers to act through secondary legislation. SANA applauds the drafting of a paper for the Stakeholder Reference Group which discussed options for ministerial action.

11. Our response to that paper is that:

- there should be a duty in the Bill, at national and local level, to ensure adequate provision of angling for locally relevant species by publicly available permits;
- assessing demand for publicly accessible fishing, or unrequited demand, is best carried out at as local a level as possible, i.e. by FMOs;
- FMOs should also be empowered to assist delivery of provision, funded explicitly at a national level to ensure no conflict of interest with other local objectives;
- local permits should be available at low or no charge to young people; (See further comments from paragraph 12 below.)
- “passport” schemes, whereby multiple angling venues are offered on a single ticket, would be an attractive example of how to promote an area’s angling potential;
- consideration should be given to using such permit systems to convey an entitlement to fish in certain places, associated with the proposed anglers’ levy. An obvious starting point for creating that catalogue of places would be publicly owned waters. Publicising availability would also be necessary.

Prosecution of Criminal Cases

12. Under the terms of the proposed Bill, anglers who are caught fishing without permission may be prosecuted as having committed a criminal offence. The extension of criminal law to all freshwater species in all places is a very substantial change from the more liberal approach which currently applies under civil law for non migratory species*. In effect, if not on purpose, there has been a liberty of access – enjoyed by generations of children who would leave if asked to do so. On the other hand, it has been enjoyed by those adults who have netted canals and rivers to sell their catch. Therefore, we must not pretend that fishing without permits has not been detrimental to fish stocks.

13. On balance, SANA has supported the protection of fish and fisheries by putting all species under the same system. However, there should be a way of affording “free” fishing opportunities where proprietors are already willing to allow children to develop their skills. Our suggestion is an extension of the “passport” system

identified in the context of more general access issues – that each FMO provide free-issue passports within their area for people in full time school education. Where such passports include club waters, participants should be subject to the same rules as other members and costs should be refunded.

Funding

14. SANA appreciates that the projected system of all-species management and protection must entail additional costs. However, we are not persuaded that the whole cost of the difference between projected FMO costs and existing DSFB and Fishery Trusts revenues should be wholly funded by anglers directly. Anglers for salmon and sea trout are already paying, through permit charges to proprietors, for much of the existing DSFB levies. Indeed, some of the new costs - for assessment of stocks where there are no fisheries - are clearly irrelevant to angling, at least in the short term.
15. The debate, about how new fisheries management will be funded, contrasts with the relative impacts of anglers, netmen and fish farmers on fish stocks. Anglers for salmon and sea trout already take the brunt of management costs, yet return most fish and cannot sell their catch (of salmon). Levying the netmen and fish farmers for every fish they sell, to help support wild stocks through better fishery management, would appear more equitable than the present system. Both of these parties impact on stocks of salmon and sea trout and non-migratory fish (through the interaction between stocks of trout, some of which go to sea).
16. Increased public expenditure is inherent to the proposed reforms of freshwater fisheries management. Given the belt-tightening outlook for UK, and Scottish, public spending, the most that may be expected from the proposed reforms is central government's financing of the national body. Excepting club and commercial put-and-take fisheries, there is unlikely to be much rental value to be assessed from new riparian fisheries which would become eligible subjects for national and local levies. (In any case, that levy would be likely to be passed on to anglers in higher rents.) Therefore attention has turned to possible angler contributions.
17. Because the central purpose of these reforms is increased fish stocks, SANA's response to the August 2015 consultation was that there could be support from anglers for a direct financial contribution to this effort. However, the details would have to be radically different from the rod licence model that is operated south of the border. There is general angler antipathy to the expression "rod licence" because it is seen as an excessive tax delivering poor value to anglers, as practiced in England.
18. We said further that there might be scope to get support for a direct angler contribution if the proceeds were ring-fenced to funding the FMOs' management plans and anglers had some supervision of that spending. These conditions were accepted in large part but we were asked to accede to a request from the Scottish Government that some part of the funds raised might be used for angling development purposes. We agreed to that, subject, of course, to further discussion of the details. The details have not yet been investigated and are to be subject to development in a technical working group of the Stakeholder Reference Group.

19. A further proviso to SANA's acceptance of the principle of any direct angler contribution was that it should not be called a "rod licence". However, whatever it is called, it could have a negative effect on participation. Therefore, it must be proposed at a modest level.
20. In angling clubs which provide public access to fishing, the sensitivity to the level of any angler levy is caused by a fear that anglers who do not exercise their membership rights very much may give up membership if faced by a significant extra charge. People who do not fish regularly can be critical to club finances. Without their membership fees, clubs may become unviable. Thereby, public access to fishing in an area could disappear along with some voluntary effort which FMOs would have to replace, at some cost.

Catch and Release of Rod-caught Fish

21. There are occasions where revival of rod-caught fish is impractical. Returning severely damaged fish to the water could present a vector for spreading fungal fish disease in the wider stock and, even if uncommon, may increase any public concerns about angling. We recommend that the FMOs should designate appropriate routes for the disposal of severely damaged, rod-caught fish, suspected likely to die soon after release.

Footnote to paragraph 12

In general, fishing for all species, other than salmon and sea trout, without legal right or written consent is a civil offence, except in: catchments covered by the Solway Act; waters classed as "proper lochs or stanks" under S11 of the 2003 Act; and those places where access to fish for trout, grayling and coarse fish is subject to Protection Orders (POs). Clause 33 of the draft Bill places all freshwater fishing in the same status under criminal law.

ANNEX – responses to the set questions of the consultation

Q1. Are you content with the structure and content of the draft National Wild Fisheries Strategy?

A: Yes

Q2. Which of the current areas within the draft Strategy would you prioritise, and why?

A: Because of the style of the draft Bill, it is not obvious how public access to freshwater fishing is to be retained and improved. Unless this is tackled soon, many anglers may oppose the criminalisation of fishing without a permit for all species. (Ref: Section 33 of the draft Bill.)

In summary, and consistent with the vision and purpose statements of the draft Strategy, action should be taken to demonstrate how FMOs may ensure supply of readily available permits, especially for young people who want to develop their angling skills. The subject is discussed further in SANA's submission to the consultation.

Q3. Do you agree with the proposed high level duties on Scottish Ministers?

A: Yes, but subject to inclusion of specific reference to assessing public access requirements and facilitating provision. This might be accommodated by adding to section 1(1).

Q4. Do you agree that the criteria set out in paragraph 31 are the correct criteria for identifying the number of FMOs?

A: Yes

Q5. Do you agree that the legislation should not include a specific requirement to have an FMO in every part of Scotland?

A: Yes, but the functions performed by FMOs should be undertaken in all parts of Scotland. This may be achieved by the National Unit undertaking the necessary tasks or by contracting them to third parties, some of which may be FMOs in adjacent areas.

Q6. Do you agree with the proposed approach to designation of FMOs?

A: Yes

Q7. Do you agree with the proposed approach and timeline for approval of local fisheries management plans?

A: Yes

Q8. Do you agree with the proposed approach to good governance and investigation of FMOs?

A: Yes, but the general duties of FMOs at section 9(1) and the content of local plans at section 10(2)(a) should be extended in line with the general duties of ministers [section 1(1)], viz. to ensure adequate public access provision.

Q9. We seek your views on the proposed approach to the wild fisheries levy.

A: The proposal at section 22(2)(b), to permit ministers to extend the tax base for funding fishery management may be something that could prove sustainable at some future time. Our opinion is that it is not a power that can be safely used in the foreseeable future. In SANAs submission we caution against using this power in stocked fisheries, lest they close and the public angling capacity is lost. For other freshwater fisheries, we doubt whether there is evidence of sufficient rental value to justify the expense of identifying and maintaining ownership data, making assessments (and dealing with appeals) and collecting such a levy.

As regards the question of a ‘management and development levy on anglers’ what matters is the detail. In SANAs submission, we urge a further search for other sources of funding, such as levies on netmen and fish farmers, so as to minimise any direct levy on anglers who already pay the bulk of funds raised by the DSFB levy. Any levy should not be set at a level which discourages participation.

Q10. *Should Scottish Ministers have the power to review the designation of FMO status?*

A: Yes

Q11. *If so, what would be an appropriate period for such a review?*

A: Don’t know.

Q12. *Do you agree that FMOs should be statutory consultees for fish farming applications?*

A: Yes

Q13. *Should we consider whether FMOs should be statutory consultees for any other types of development?*

A: Yes, viz. for any development which might impact on the subjects of the high level duties: fish and habitats conservation, fisheries management and provision of public angling access.

Q14. *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?*

A: Yes

Q15. *Do you agree with the approach to conservation regulations?*

A: Yes.

Q16. *We would welcome any specific comments you have in relation to section 23-31 of the draft provisions.*

A: Section 24 includes reference to regulatory powers to prohibit return of dead fish. There are occasions where revival of rod-caught fish is impractical. Returning severely damaged fish to the water could present a vector for spreading fungal fish disease in the wider stock and, even if uncommon, may increase any public concerns about angling. We recommend that the FMOs should be authorised to designate appropriate routes for the disposal of severely damaged, rod-caught fish, suspected likely to die soon after release.

We are pleased that section 29 obliges consultation before use of the proposed powers.

Q17. *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?*

A: Don’t know.

Q18. *Do you agree that the appointment of water bailiffs/wardens could be for more than one FMO and potentially nationwide?*

A: Yes

Q19. *Do you agree that the appointment of bailiffs and wardens should continue to take place at both a local or national level?*

A: Yes

Q20. *Do you agree that we should consider a new title for the role of water bailiff?*

A: Yes. Such consideration should seek words which convey a positive message about the roles being undertaken.

Q21. *Do you agree that there are advantages in having a second tier of enforcement officer, primarily focussed on checking permits and providing information?*

A: Yes

Q22. *What issues in relation to powers and enforcement do you consider are barriers to providing appropriate protection to our wild fisheries and fishing?*

A: Don't know.

Q23. *Are the terms used throughout the draft provisions clear and unambiguous?*

A: Yes

Q24. *What do you consider would be the key resource issues for an FMO under the proposed new regulatory structure?*

A: No comment. SANA has no locus on this subject.

Q25. *What other information do we need to consider in developing a BRIA for the Bill when it is laid before the Scottish Parliament?*

A: Impact of financing proposals on (a) angling participation and (b) provision of fishing capacity.

25th April 2016

Scottish Anglers National Association Ltd
National Game Angling Centre
The Pier, Loch Leven
Kinross KY13 8UF

Tel: 01577 861116

www.sana.org.uk