

SUBMISSION

To: Wild Fisheries Reform, Salmon and Recreational Fisheries Team, Marine Scotland
From: Scottish Anglers National Association (SANA)

CONSULTATION ON WILD FISHERIES REFORM

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.
3. Our views are set out below. Responses to the set questions are provided as an annex and are reproduced in the Respondent Information Form.

Summary

- **Function:** SANA applauds the central purpose of the reform, viz. improved freshwater fish stocks.
- **Structure:** the two tier management system is accepted as proposed, with the proviso that there should be a safeguard for approval of aspects of Fishery Management Organisation (FMO) plans which are outwith national priorities.
- **Funding:** SANA proposes that an angler contribution to FMO budgets should be devised which entrusts the proceeds to allocation within FMO budgets by angler representatives.

Overview

4. The Scottish Government's response to the Wild Fisheries Review states 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. However, we are concerned that the viability of stillwater fisheries be protected, lest the reforms result in fewer fishing opportunities.
5. Although impacts of aquaculture on wild fish were excluded from the terms of reference of the Wild Fisheries Review, the reform process should recognise the issues. For inland sites, the concern is primarily fish escapes and their impact on

wild fish populations. For sea farms, the primary issue is the impact of sea lice on wild fish, but fish escapes are also a problem. We expect the forthcoming national strategy to fully recognise the sector's failings and, where relevant, local management plans should include measures to mitigate the impacts of aquaculture on freshwater fish.

Function

6. The objectives of the reform are well expressed in the statement of fundamental principles (paragraph 24 of the Scottish Government's response to the Wild Fisheries Review). The fundamental ingredient is the commitment to management for good stock levels and thriving fisheries. That has given SANA pause for thought on the subject of how anglers should interact with the new structure.
7. The principles include a commitment to widening participation and promoting angling opportunities. Hitherto, the focus for that worthy objective has been the system of Protection Orders (POs). The continuation of POs is questioned in the consultation, because the new system could be tailored to provide both improved access to angling and equal protection for all fish species. We agree that, if new legislation incorporates the aims of POs and is robust enough to ensure they work in practice, better than currently, POs might be safely abandoned.

Structure

8. A two tier all-species management system is supported, viz. (i) a National Unit to advise Ministers and to support and engage with, (ii) "locally driven" Fishery Management Organisations (FMOs). We accept this and agree that the upper tier should be located within Marine Scotland. The local FMOs' tier, working on a catchment or other sensibly sized district basis, should be evolved from the existing District Salmon Fishery Boards and Fishery Trusts – and there must be input from local anglers.
9. Within the two tier structure, the autonomy of FMOs should be safeguarded by providing an appeal mechanism against any decision by the national unit to disallow any local initiative proposed for inclusion in management plans.

Funding

10. It would be folly to throw out the existing system of levy collection which is related to rental value of fishings – because it is the financing cornerstone. However, a straight adoption of the same system for non-migratory fishings could be inequitable and potentially damaging to recreational capacity. Clubs and commercial facilities offering put-and-take trout fishing are likely to have the highest rental values in the non-migratory sector. Those values are underpinned by substantial expenditure on stocking and facilities. The imposition of levy at the same rate as for migratory fisheries could make them unviable. This should be a subject of close attention in the Business and Regulatory Impact Assessment.

11. 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 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 wild migratory and non-migratory fish.
12. 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. Therefore attention must turn to possible angler contributions.
13. Because the central purpose of these reforms is increased fish stocks, we believe 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. Despite general angler antipathy to the expression "rod licence", anglers are not unsympathetic to the reform.

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. The title for any such scheme should not be "rod licence". For example, "conservation levy" would be better. However, whatever it is called, it could have a negative effect on participation, i.e. it must be proposed at a modest level.

Footnotes:

The first sentence of paragraph 18 of the Scottish Government's response to the Wild Fisheries Review, an assertion that fish are a public resource until they are caught, is not correct in all situations. Where fish are stocked to a stank, (i.e. an enclosed water without inlet or outlet to allow access or egress for fish and owned by one person - see 2003 S&FF Consolidation Act Section 11) they are private property and their removal without permission is theft.

Paragraph 75 of the Scottish Government's response to the Wild Fisheries Review says that: "The purpose of Protection Orders (POs) is to secure responsible access to sustainable fishing for non-salmonid species". POs apply to fishing for all non-migratory species and their purpose is to give applicants protection of the criminal law from poaching, in return for providing a significant increase in the availability of fishing for non-migratory species. Section 48 of the 2003 Act says it is to create "a significant increase in the availability of fishing for freshwater fish in inland waters to which the proposals relate" (S48[1]), "on such terms and conditions as they [i.e. Scottish Ministers] consider reasonable" (S48[3][c]), and after "they [i.e. Scottish Ministers] have taken into consideration the need for conservation of any species of fish" (S48[3][d]).

ANNEX – responses to the set questions of the consultation

Chapter 3

Q1. Do you agree with the balance of functions as set out in Table 1?

A:

Yes.

Q2. Do you consider that any main functions are missing? If so, please state what these are. Do you think that any of these functions might be best fulfilled at a different level?

A:

No.

Chapter 4

Q3. Do you agree that FMOs should be charitable bodies?

A:

There are other not-for-profit corporate formats, e.g. company limited by guarantee or a mutual company owned by members, which could deliver the required functions. The case for charitable status appears to rest on the argument that there are potential sources of funding for FMO activities which are only available to charitable bodies. That may be correct, but it has not been demonstrated, nor did the Wild Fisheries Review report indicate that other formats had been examined. (Page 18 of the Review report refers.)

Q4. Do you have any comments about the WFR's view that FMOs should be Scottish Charitable Incorporated Organisations rather than charitable companies?

A:

No.

Q5. Do you agree that in order to ensure appropriate governance and fitness for purpose, FMOs should operate to a model constitution?

A:

Yes. See response to question 15 below.

Q6. What do you consider is an appropriate balance of interests on the board and wider membership of FMOs?

A:

If it is agreed that FMOs should be charitable organisations, it would be impractical, and possibly illegal, for their trustees to proscribe any class of membership. Therefore, the constitutions of such bodies cannot foresee what persons (or corporate bodies) may be in membership. Thereby, FMOs cannot “balance interests”. A pragmatic solution would be to define the functions of FMOs in permissive terms and detail eligible classes of board membership at the outset. It is imperative that anglers, as such, are included as trustees. Representation should include anglers from all species interests. Other trustees may, of course, be anglers but be appointed in other capacities.

Q7. Do you agree that bodies wishing to become FMOs should do so through seeking approved body status from Scottish Ministers?

A:

Yes.

Q8. Do you agree that the cornerstone of the relationship between national and local management bodies should be the proposed plan-led approach? If not, why not?

A:

Yes.

Q9. Do you agree that the proposed package of measures in terms of constitution, governance and a plan-based approach provides an appropriate framework for decentralised delivery of fishery management functions?

A:

Subject to clarification that the national body should receive proposals from FMOs sympathetically and that there should be an appeals procedure in the event of disagreement, yes. Our concern is that FMOs should be able to innovate, as well as to deliver management that is consistent with national objectives.

Q10. Do you agree that the FMO network should cover the whole of Scotland?

A:

We agree that the functional objectives should apply throughout Scotland. However, we doubt the practicality of delivering these in all places, initially at least. As we said at the time of the review, it may be necessary that the national body have peripatetic staff to deliver FMO functions in places where there are no FMOs. An alternative approach to the “gap” problem, would be for the national body to agree contracts with FMOs to supply services in gap areas. However, this is inadvisable in the early years of the new system when FMOs will be hard pressed to fulfil the all-species stock assessment and other duties.

Q11. Do you agree that Scottish Ministers, following discussion with stakeholders, should set out the boundaries of FMO areas?

A:

Clearly FMOs should be authorised by Ministers to operate in a specific area. However, if central government/ the national body set out to map FMO areas without consulting the people likely to be active in establishing FMOs, there is a danger that the process could generate further “gaps”. As a starting position, we assume that existing DSFB/Fishery Trust areas, or combinations of these, will be used. For the places that have no Boards or Trusts at the moment, it is not obvious that there are existing institutions that might start the process. This may take some time.

Q12. What factors should be considered in determining the number and optimal coverage of FMOs?

A:

Don't know. That will surely depend on the funding package and the degree of technical support from the national body. It is widely perceived that existing DSFB areas are often too small to generate adequate levy funding for existing duties, never mind the extended remit of the new bodies.

Q13. Do you agree that bodies designated as FMOs should be able to deliver analogous work on behalf of local or national interests?

A:

Yes.

Q14. Are there any potential conflicts of interest in this approach?

A:

No, provided that the relationship is strictly contractual. Professional staff should perform duties according to the requirements of FMO or other body. Trustees should not be involved in the content of third party contracts. However, they should have a duty to ensure that the diversion of staff resources to third party contracts does not leave the FMO understaffed.

Chapter 5

Q15. Do you agree that funding raised from proprietors should continue to provide the core strand of revenue for local fishery management?

A:

Yes. However, we note that in practice that the cost of the levy is passed on to anglers in permit charges.

There is a danger that the continuing assessment for levy on migratory fisheries will cause salmon interests to dominate in a new all-species system of management. Therefore, the aforementioned model constitution must address this threat.

The debate about how new fisheries management will be funded contrasts with the relative impacts of the competing human predators for migratory fish. Anglers already take the brunt of management costs, yet return most fish and cannot sell their catch (of salmon). Levying the salmon farmers and netsmen 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 wild migratory fish. There are also adverse impacts on non-migratory fish from fish farming in inland waters.

Q16. Do you agree that we should explore the potential for extending the responsibility for paying the levy to the owners of all fishing rights?

A:

Yes.

Many owners provide fishing rights to angling clubs at peppercorn rents. There is a danger that a levy will prompt them to pass on the cost to clubs and/or other lessees, who may not be in a position to afford substantial extra costs. Therefore, the rental evidence must be taken into account in assessing the levy payable.

Also, the infrastructure costs can be high in club situations where more substantial rents are paid. There, the same considerations apply as have been raised in the context of stillwater fisheries. The principles of the reform include provision of more, not fewer, angling opportunities. See comments at paragraph 10 of our submission.

Q17. Do you agree that responsibility for collecting and distributing resources from fisheries proprietors for the purpose of delivering the national strategy at a local level should rest with the national unit?

A:

Yes.

Q18. Do you agree that we should explore the recommendation that redistribution of funds should form part of the new management system?

A:

Yes.

Q19. If not, what other means might be used for funding local fisheries management at appropriate levels across the country?

A:

The subject of an angler contribution to FMO funds is discussed below.

Q20. Do you agree that we should explore the recommendation for a two-tier levy system?

A:

Yes.

Chapter 6

Q21. Do you agree that Ministers should have powers to control harvesting of all fish species on the grounds of conservation and be able to do so in line with the precautionary principle?

A:

Yes, except where the fishery is a stank (see footnote above, re. the 2003 S&FF Consolidation Act, Section 11)

Q22. If not, what other mechanisms should exist in order to ensure a flexible regulatory system which can ensure delivery of legal obligations and policy priorities for management of species and is capable of responding to future changes?

A:

Not applicable

Q23. Do you agree that, in the context of the wider proposals in this paper, the creation of an offence of reckless or irresponsible exercise of fishing rights should not be pursued?

A:

Yes.

Chapter 7

Q24. Do you agree that data collection priorities and processes for fisheries management at a local and national level should be predicated on a consistent approach and that this should be via a national research and data strategy?

A:

Yes.

Q25. Do you have any suggestions for additional means to ensure that evidence based decision making is embedded within the fisheries management system?

A:

No.

Q26. Do you have any suggestions for additional skills areas which might usefully be covered in training and CPD programmes?

A:

No.

Chapter 8

Q27. Do you agree that annual and weekly close times should remain a key part of the management system for wild fisheries?

A:

Yes.

This question should be about all wild fisheries, not just salmon. It is unacceptable for weekly or annual close times for salmon to be applied to other species. For example, when salmon beats are closed in winter, it should not prohibit grayling fishing at that time.

Q28. Do you agree that the proposed local management organisations should have responsibility for considering such close times in line with the national strategy and the local fisheries management plan?

A:

Yes.

Q29. Do you agree that the purpose behind Protection Orders can be achieved via the design of the new management system in line with the fundamental principles set out in chapter 2?

A:

Yes. See paragraph 7 above and the answer to question 35 below.

Chapter 9

Q30. Do you agree that the principles of the existing bailiffing system should be retained, but with amendment to set compliance within an appropriate framework of accountability with warrants issued by the national unit?

A:

Yes.

In the proposed new system a much expanded bailiff force is likely to be required. Not least, extra bailiffs will be required to make up the shortfall if and when the current PO system is replaced and the current warden system disappears.

Q31. Are there other mechanisms for enforcing fisheries legislation that should be considered?

A:

The role of the police is relevant, especially wildlife crime officers, and not only for the obvious reasons. Persons who commit offences under fisheries legislation have been known to be involved in other kinds of crime. For example, drugs have been seized in conjunction with action on poaching. Close liaison with police is essential in all places, especially where bailiffs are able to identify persons who are known to be dangerous. Paragraph 78 of the Scottish Government's response to the Wild Fisheries Review should read: "all bailiffs should be working closely with Police Scotland".

Chapter 10

Q32. Do you consider that there are advantages in the bodies involved in recreational fishing being able to come together to speak through one lead body?

A:

No. The angling governing bodies (N.B. including sea angling) already co-operate on matters of mutual interest under the title of the Angling Development Board for Scotland (ADBOS). A single representative organisation would be obliged to report the separate views of its constituents where they are different. Therefore, the result would not be different from the status quo.

This matter would be difficult to resolve if it is decided to pursue it. It should not obscure the need to press ahead with management reform, that being a different subject.

Q33. If so, do you have views on how this could be facilitated and in what timescale?

A:

Not applicable.

Q34. Do you agree that promotion of opportunities and access should be a central theme for the national strategy?

A:

Yes.

Q35. We are interested to hear views on how increasing opportunities and access to fishing can be embedded within the fisheries management system.

A:

The imperative on increasing opportunities is expansion of the youth development work carried out under the ADBOS banner and explained in SANA's submission to the consultation, "Giving children and young people a sporting chance: A draft sporting strategy for Scotland".

The core issues on access are (i) to not discourage recreational angling by excessive levies on anglers and (ii) to retrieve the ambitions for access that were sought through the Protection Order system. However, access improvement is an academic exercise without good fish stocks. That must be acted on before increasing exploitation.

Q36. Do you support the concept of the angling sector coming together to develop a programme for development of angling (Angling for All), including an emphasis on opportunities for young people and promoting social and economic benefits?

A:

Yes.

Q37. Should funding for Angling for All come from a rod licence? If not, where should resources be found to support the programme?

A:

Not necessarily. While SANA has been opposed in principle to a rod licence, the model system being that employed by the Environment Agency in England and Wales, the concept of an anglers' contribution to FMO costs has not been discounted. This difficult subject is discussed in the main body of our submission. At this stage, it is suggested that an angler contribution to FMO costs may be acceptable, subject to the angler representatives on FMOs having control over what part(s) of the budgets are supported. Therefore, the relative place of Angling for All projects within FMO plans should not be gainsaid at this stage.

Q38. Do you agree that a rod licence should only be used to fund Angling for All, rather than also being used to support wider management activity?

A:

No.

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