

Partial Business and Regulatory Impact Assessment

Title of Proposal

The Fish Farming Businesses (Code of Practice) (Scotland) 2021

Purpose and intended effect

The Code of Practice is developed for Aquaculture Production Businesses (APB's) with respect to containment of fish on fish farms and the prevention of escape of fish on fish farms in relation to Marine Mammal Interactions.

This Code provides a combination of guidance on appropriate measures to ensure containment and prevent escape of farmed fish (referred to as non-lethal measures) for 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.

The intended effect of the Code of Practice is to enable the aquaculture sector as an essential component of the Scottish economy to contribute to sustainable economic growth in rural and coastal communities.

Background

Marine mammals in particular grey seals and harbour seals are commonly found in Scottish waters and may be attracted to fish farms, especially in circumstances where they learn to associate the farmed fish as a potential source of food. Seals are opportunistic hunters and will exploit weaknesses in containment. This can result in damage to nets and other aquaculture equipment which can in turn jeopardise the containment of farmed fish and risk their escape and may also cause stress and welfare issues in farmed fish. Therefore, successful containment at fish farms is essential for minimising the risk of escape of farmed fish.

In the past a combination of lethal and non-lethal management and mitigation measures have been used by APB's to reduce the risks concerning containment and escape of farmed fish arising from marine mammal interactions, particularly those involving seals.

The Code therefore contains measures which seek to reflect existing good practice in the aquaculture industry ensuring the effectiveness of non-lethal alternative methods of preventing seal damage to the fish farm and enabling the continuation of trade and access to international markets

Objective

The practical measures identified within this Code are focussed upon addressing the risks concerning containment and escape of farmed fish arising from marine mammal interactions, particularly those involving seals. The potential impact of marine mammals upon fish farms should be mitigated through the adoption of appropriate containment measures, while ensuring that these measures are not harmful to marine mammals (i.e., appropriate non-lethal measures).

The Code's system of monitoring and reporting will enable the documentation of the use of these containment measures in a systematic way throughout Scotland's aquaculture industry, and will log any killing or injury of marine mammals in the form of bycatch associated with fish farms.

Rationale for Government intervention

The aquaculture sector is an essential component of the Scottish economy, contributing to sustainable economic growth in rural and coastal communities. In 2018, Scottish aquaculture and its wider supply chain contributed £880 million GVA to the Scottish economy and supported over 11,700 jobs. The Code of Practice is needed in order to ensure the aquaculture sector's growth continues to be sustainable, and 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 following the Code will help ensure Scotland's standards are comparable with the United States Marine Mammal Protection Act (1972).

Consultation

The policy to introduce a statutory Code of Practice was developed through Marine Scotland's collaborative approach with various Scottish Government departments, trade associations, particularly the Scottish Salmon Producers Organisation (SSPO) and the British Trout Association whose membership was representative of the industry, as well as regulatory and advisory bodies.

Public Consultation

There is a legislative requirement under the Aquaculture and Fisheries (Scotland) Act 2007 that Scottish Ministers must consult such persons as they consider appropriate. A six week targeted consultation on the draft Order will be undertaken, from 14 June 2021. Business and relevant stakeholders will be also consulted on the partial BRIA as part of the consultation. Comments received during that process will inform the Final BRIA.

Within Government

Various Scottish Government departments were consulted on the draft Order including Scottish Government's Animal Welfare team, Marine Scotland Conservation, Marine Scotland Licensing and Operations Team, MS Science including the Fish Health Inspectorate, the Salmon and Recreational Fisheries Policy team, and Marine Scotland – Compliance.

Business

Views will be sought on the likelihood of business and regulatory impacts, from all affected by the Order including: fish farming businesses, fish farm equipment manufacturers such as ADD manufacturers and or suppliers, the Scottish Salmon Producers Organisation and the British Trout Association.

Options

Option 1 – Introduce a statutory Code of Practice – Preferred Option

The statutory Code of Practice, which provides a combination of guidance, together with and mandatory standards for with which APBs in Scotland must comply in order to provide for the containment of fish on fish farms and to prevent their escape. This Code is also introducing a statutory requirement on APB's through reporting the use of ADDs at finfish farms and monitoring and recording of interactions with marine mammals that help meet international standards and enable continuous trade and access to international markets.

Option 2 – Do Nothing

The alternative to introducing a statutory Code of practice for the purpose of giving practical guidelines as well as reporting and monitoring would be to rely upon existing regulatory provisions. This does not meet the policy needs and Scottish Businesses wouldn't be able to continue existing trade with international markets.

Scottish Firms Impact Test

We aim to understand the impact from the implementation of the Order on specific industries, firm types and businesses of different sizes through the following questions.

With respect to the Code for the containment and prevention of escape of fish on fish farms in relation to marine mammal interaction:

1. What Sector your Business represent?
2. Do you anticipate that the implementation of the Code of Practice will have a negative impact for your business and why?
3. Are there any benefits to your company from introducing the code?

4. If you are a fish farm equipment manufacturer or supplier - Do you anticipate that the implementation of the Code of Practice will limit the ability of manufacturer suppliers to compete?
5. Do you consider that implementation will increase or reduce the costs of operations, for your company and why?
6. Do you consider that compliance with the Order is difficult?
7. Do you consider that the reporting of incidental bycatch at Finfish Farms form is clear, simple and easy to complete? (only to be completed by APB's)
8. Do you consider that implementation of the Code will require increased resourcing?
9. Do you consider that implementation of the Code will require additional staff training?
10. Do you have any comments on the content of the Code including the enforceable measures?
11. Do you have any further comments on the potential socio-economic and environmental impacts that may be incurred from implementing the Code?

Competition Assessment

It is anticipated that the most significant impact will occur the marine finfish farming businesses and ADD manufacturers and fish farm equipment suppliers. The scale of the impact is unknown at this stage.,

Consumer Assessment

The Scottish Government do not anticipate any impact from the implementation of this Order on consumers. However, any consumer risks identified through the consultation process, will be reflected in the final BRIA.

Test Run of Business Forms

All affected fish farming businesses are asked through the partial BRIA questionnaire to "test run" the Reporting of incidental bycatch at Finfish Farms form and legislative requirements at the consultation stage. Responses that identify issues through the test run will inform the final BRIA assessment.

Legal Aid Impact Test

The offence in the Order falls under the offences set out in the Aquaculture and Fisheries (Scotland) Act 2007 and is not a new offence. It is unlikely to give rise to an increase in the use of legal processes as industry is supportive of the continuity of trade and a high level of compliance is expected.

Enforcement, sanctions and monitoring

Monitoring will be carried out by Scottish Ministers to ensure that valid returns are received from APBs for all sites that the Order relates to.

Based upon discussions and consultation with the Scottish aquaculture industry compliance levels are expected to be very high.

Sanctions for any non-compliance, following successful prosecution or the issuing of a fixed penalty notice, constitute an offence under section 2 of the Aquaculture and Fisheries (Scotland) Act 2007 which is punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

Implementation and delivery plan

To ensure that the Code is in place, the coming into force date has been set for 01 November 2021. In advance of that date and as part of the development of the electronic reporting mechanism, APBs will have the opportunity to submit data in advance of the Order coming into force and will have been issued with guidance with regards to the procedure for submitting the required data.

Post-implementation review

Post implementation review of the Order will be completed at a later date and will be reflected in the final BRIA.

Summary and recommendation

It is recommended that Option 1, to implement The Fish Farming Businesses (Code of Practice) (Scotland) Order 2021, is adopted.

Declaration and publication

Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name: Mairi Gougeon