

## Final Business and Regulatory Impact Assessment

### **Title of Proposal**

The Fish Farming Businesses (Reporting) (Scotland) Order 2020 (“the Order”)

### **Purpose and intended effect**

#### **Background**

The Scottish Government published Scotland’s 10 year Farmed Fish Health Strategic Framework in May 2018.

Within the framework a key activity in relation to sea lice was to review Scotland's voluntary farmed fish sea lice compliance policy, including reporting requirements and intervention thresholds, and make recommendations to ensure that it remains fit for purpose.

The sea lice species *Lepeophtheirus salmonis* pose one of the most important health issues for the Scottish salmon aquaculture industry and is the basis on which the current enforcement policy is implemented. The Scottish Government committed through its Programme for Government to introducing mandatory reporting requirements with regards to this species of sea lice to continue improving the control of sea lice on Scottish fish farms.

#### **Objective**

The purpose of the Order is to require all aquaculture production businesses that farm fish in the marine environment to report an average weekly female adult sea lice number, one week in arrears, to Scottish Government. The species which requires to be reported on is *Lepeophtheirus salmonis*.

Reporting of numbers should be done in writing. The intention is for an electronic reporting system to be used. Data will be made publicly available, ultimately on *Scotland’s Aquaculture* website.

#### **Rationale for Government intervention**

The provisions within the Order introduce a step change in reporting. Currently reporting is only required when a specified reporting level is reached or exceeded. The Order will require the weekly average number of adult female (gravid and non-gravid) *Lepeophtheirus salmonis* per fish per site to be reported a week in arrears irrespective of whether intervention levels are reached. This additional information will help the Fish Health Inspectorate (FHI) monitor and enforce Scottish Government policy on sea lice management. A commitment was also made to publish the data in the interests of transparency.

Aquaculture is a key contributor to Scotland’s rural economy and a significant provider of highly skilled jobs, particularly in some of our most remote coastal communities. As such, it

contributes to the National Performance Framework Outcomes of Economy, Environment, Fair work and Business.

### **Consultation**

The policy to introduce statutory sea lice reporting was developed through the Farmed Fish Health Framework, whose membership was representative of the industry, including finfish farming businesses and trade associations, the Scottish Aquaculture Innovation Centre (SAIC), veterinary professionals as well as regulatory and advisory bodies.

### **Public Consultation**

There is no legislative requirement to consult but, in accordance with good practice, a six week targeted consultation on the draft Order was undertaken, from 4 August to 14 September 2020.

Business and relevant parties were consulted through the six week targeted consultation, including the Scottish salmon and trout industry, wild salmon interests, regulators and statutory advisors, environmental interests, SAIC, and the Fish Vet Society.

Views were sought on the draft Order and also in relation to the likelihood of business and regulatory impacts. Consultees were asked whether the reporting requirements in the Order are likely to increase or reduce the costs and place burden on any sector on the basis that aquaculture businesses will be required to provide data for each site directly to Marine Scotland electronically. Consultees were advised that submission of data is likely to be requested via population of a formatted spread sheet provided to businesses, or by export of files (in a format still to be agreed but likely to be CSV or XML) directly from software currently used by businesses. Comments on administrative costs associated with this, if any, were encouraged.

### **Within Government**

Various Scottish Government departments were also consulted on the draft Order including Water Environment Policy, Marine Scotland Science including the FHI, the Salmon and Recreational Fisheries Policy Team, and the Chief Veterinary Officer.

### **Business**

All sectors responded and nine responses were received. Of those who responded, the introduction of reporting legislation was widely supported. The Scottish Salmon Producers Organisation was consulted and responded on behalf of its members. Scottish Sea Farms also responded as an individual salmon farming company. The British Trout Association was consulted and Dawnfresh responded as an individual trout farming company. SEPA and NatureScot (formerly SNH) were consulted as regulators and statutory advisors; Fisheries Management Scotland, Atlantic Salmon Trust and Scottish Anglers National Association were consulted as wild salmon interests; Scottish Environment Link were consulted as environmental interests; SAIC was consulted as research and innovation interests and the Fish Vets Society were also consulted.

The Scottish salmon industry was the only sector to comment on the question relating to business and regulatory impacts. Comments received stated that the reporting requirements in the Order are expected to require additional human resource associated with an increase in administration relating to the compilation and verification of data to be reported. An electronic reporting system is being developed to facilitate the provision of data required by the Order. As a result of discussion with the industry, the approach being developed is the simplest, least burdensome and therefore the option preferred by the industry.

Nine fish farming businesses were also contacted individually by telephone to discuss IT system requirements after the consultation closed. No major issues were identified with reporting in relation to the format for submission of data being proposed.

### **Options**

#### **Option 1** – Introduce a statutory reporting requirement

The policy to introduce statutory reporting of average sea lice numbers per site on a weekly basis was developed through the Farmed Fish Health Working Group, whose membership included finfish farming businesses, industry representative bodies associations, the Scottish Aquaculture Innovation Centre and veterinary professionals, as well as regulatory and advisory bodies. The Scottish Government committed through its Programme for Government to introduce statutory reporting requirements to continue to improve the control of sea lice on Scottish fish farms.

#### **Option 2** – Do Nothing

The alternative to introducing statutory reporting would be to rely upon voluntary reporting. This was not a preferred option as it did not meet the policy needs.

### **Sectors and groups affected**

The only sector to be impacted is the marine finfish farming industry in terms of administrative costs associated with the weekly reporting of average sea lice numbers to the Scottish Government. Under The Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, fish farms are already required to record weekly average sea lice numbers; the provisions of the Order require data on sea lice numbers which are already collected to be reported. The impact on aquaculture production businesses is therefore limited to the additional administrative costs associated with reporting recorded data.

### **Benefits**

The provisions within the Order introduce a step change in reporting. Currently reporting is only required when the reporting level is reached or exceeded; the Order will require the weekly average number of adult female (gravid and non-gravid) *Lepeophtheirus salmonis* per fish per site to be reported a week in arrears irrespective of whether intervention or enforcement levels are reached. This additional information will help FHI monitor and enforce the policy on intervention and enforcement.

## **Costs**

No definitive costs were provided by the fish farming businesses. It was stated that the reporting requirements in the Order are expected to require additional human resource associated with an increase in administration relating to the compilation and verification of data to be reported. This is not expected to have a material impact on the viability of these businesses.

## **Scottish Firms Impact Test**

In direct discussion with the nine aquaculture production businesses in Scotland on the reporting requirements we sought their views on the electronic reporting system being developed. The existing systems that they use can accommodate the reporting mechanism we are proposing and we will continue to engage with them as the system develops.

## **Competition Assessment**

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## **Consumer Assessment**

The only sector to be impacted is the marine finfish farming industry in terms of administrative costs associated with the weekly reporting of average sea lice numbers to the Scottish Government. Under The Fish Farming Businesses (Record Keeping) (Scotland) Order 2008, fish farms are already required to record weekly average sea lice numbers; the provisions of the Order require data on sea lice numbers which is already collected to be reported. The impact on aquaculture production businesses is therefore limited to the additional administrative costs associated with reporting recorded data.

## **Test run of business forms**

The Order requires that average sea lice numbers are submitted in writing. Aquaculture production businesses have been informed this will be required electronically and a system for reporting is being developed to support the businesses to do so. A preformatted spread sheet will be completed by aquaculture production businesses for electronic submission. This option has been developed following discussion with the industry and reflects their preferences. The system for electronic submission will continue to be developed in close contact with aquaculture production businesses and tested ahead of its use in a live environment.

### **Digital Impact Test**

A scoping report was undertaken to identify viable options for a digital approach to the collection and integration of sea lice data into the existing internal data base of the Scottish Government's Fish Health Inspectorate.

A range of options were considered, ranging from a fully digital reporting portal for aquaculture production businesses to use to submit data, to the development of a preformatted spreadsheet for electronic submission. Feedback from the industry was clear in that the latter option was their preferred. Most aquaculture production companies record sea lice data using farm management software specific to the finfish industry. The businesses expressed a preference for a reporting mechanism which they could populate using data generated by their existing systems; they did not wish to use a reporting mechanism which required them to re-enter data and thereby increase administrative burden.

Although not fully digital, this option is considered the most pragmatic and proportionate solution to the needs of the industry.

### **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 complements an existing offence. It is also unlikely to give rise to an increase in the use of legal processes as industry is supportive of the reporting and we expect a high level of compliance.

### **Enforcement, sanctions and monitoring**

Monitoring will be carried out by the Fish Health Inspectorate (FHI) to ensure that valid returns are received from aquaculture production businesses for all sites that the Order relates to. Reported data will be monitored on a weekly basis to ensure that data is received for relevant sites.

Any files for prosecution will be prepared for submission by FHI, but will be submitted by MS Compliance colleagues through the electronic COPFS portal, as previously agreed for other FHI case files. It is not envisaged that there will be a high non-compliance rate, based upon discussions and consultation with the Scottish aquaculture industry.

Sanctions for 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.

Costs to industry will vary, with smaller producers having less data to report than larger producers. The ability to export data from existing systems and using a preformatted spreadsheet should help reduce any increased costs. The requirement for the collection of the data has been a longstanding requirement, it is only the weekly submission from all producers which is a new requirement.

### **Implementation and delivery plan**

To ensure that a reporting mechanism is in place, the coming into force date has been set for 29 March 2021. In advance of that date and as part of the development of the electronic reporting system, aquaculture production businesses 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**

Average sea lice data received will be monitored weekly by the Fish Health Inspectorate and used directly in the implementation of the Scottish Government's sea lice management policies. This provides for continual assessment of the industry's compliance with the Order and provides for the opportunity to discuss any difficulty in meeting reporting obligations through the recommended electronic reporting system.

During the development of the reporting system, close contact will be held with aquaculture production businesses. Following the Order coming into force discussion will be held with the Scottish Salmon Producers Organisation and the British Trout Association on a regular basis to seek feedback on the administrative impact of compliance with the Order on the businesses.

### **Summary and recommendation**

It is recommended that Option 1, to implement The Fish Farming Businesses (Reporting) (Scotland) Order 2020, 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: Fergus Ewing**

**Date: 17th December 2020**

**Minister's name: Fergus Ewing**

**Minister's title: Cabinet Secretary for Rural Economy and Tourism**

**Scottish Government Contact point: Tasha Geddie**