

## **Response to the Draft Scottish Seal Management Code of Practice and Guidance Notes for Applications for a Licence to Shoot Seals to Prevent Serious Damage to Fisheries of Fish Farms in Scotland**

### **Overarching Comments**

Scottish Environment LINKs Marine Task Force (LINK MTF) welcomes the opportunity to provide these comments.

We welcome the new seal management regime as contained in Part 6 of the Marine (Scotland) Act 2010 (herein referred to as 'the Act'), and support the Scottish Government's stated policy that non-lethal measures should be used wherever possible, with seals only being shot as a measure of last resort<sup>1</sup>.

Both species of seal are listed in Annex II of the EU Habitats Directive, therefore to be compliant with the Directive, we believe that the conditions attached to licences issued for the taking or killing of seals must be strict, and all seals taken or killed must be accurately reported to the Scottish Government.

Further, given the declining harbour seal (*Phoca vitulina*) population on the Outer Hebrides, we believe that no licenses for the killing or taking of this species of seal should be granted in this area.

We are pleased Marine Scotland will produce an annual report on the new licensing regime. Transparent reporting and effective monitoring will be essential to its success and these aspects must be properly resourced. We would also like to receive a copy of the SARF report and the SMRU report on Potential Biological Removal once these are completed. Further, we are pleased to hear Marine Scotland will be holding workshops around Scotland to inform fishermen of the legislative changes.

However, we are concerned that the Guidance Notes, and Code of Practice only apply to applications under section 110(1)(g) of the Act. Guidance and a Code of Practice should be developed for all shooting of seals. Of particular concern are applications under s110(1)(f) 'to protect the health and welfare of farmed fish'. Either this Guidance and Code of Practice should be amended to apply to applications under section 110(1)(f), or very similar, separate guidance should be developed for these applications.

We are also concerned to hear that the intention of some groups is to apply for the maximum number of licences available. We believe that this approach is not only against the spirit of the new licensing regime, but it is contrary to stated Government policy, which makes clear that shooting should only be used as a measure of last resort. It would also seem inconsistent with the argument that interactions are mainly with 'rogue' seals. All licences should be issued on an individual basis, where a

---

<sup>1</sup> <http://www.scottish.parliament.uk/s3/committees/rae/or-09/ru09-3002.htm#Col2219>

problem has been identified, and where non-lethal methods have been thoroughly tried and have been demonstrated to have failed.

We are extremely concerned that new fisheries and fish farms will be able to apply for licences based on information from similar or nearby sites. New fisheries or fish farms should be sensitively sited in order to reduce interactions with seals, and they should be designed with suitable non-lethal methods of deterrence. Therefore there should be no initial requirement for a seal licence. This was acknowledged by the Cabinet Secretary during Stage three of the Bill's passage through Parliament, where he committed to producing guidance on the identification of haul-out sites for this purpose<sup>2</sup>.

A definition of 'fishery' is important and should be provided.

### **Draft Guidance Notes: Application for a Licence to Shoot Seals to Prevent Serious Damage to Fisheries or Fish Farms in Scotland.**

LINK MTF welcomes the commitment to seek advice on each application from the Sea Mammal Research Unit, Marine Scotland Science and Scottish Natural Heritage. We recognise that SMRU is a NERC Collaborative Centre but seek confirmation that this advice will meet the requirements of s116(1).

#### **Section 2 – Name of District Salmon Fishery Board/Fishery/Fish Farm(s) Covered**

It would be helpful if the guidance could expand on how 'local seal management groups' will be expected to demonstrate their ability to supervise and monitor seal management across their group in an 'effective fashion', and what conditions might be attached to a seal licence issued to a group of people in order to ensure seal management is monitored and carried out effectively.

#### **Section 5 – Specific Locations in Protected Areas**

Case law makes clear that the issuing of a seal license in an SAC should be considered a 'plan' or 'project' under the Habitats Directive. Therefore, under Article 6 of the Directive, licences for the taking or killing of seals granted under s110(1) in SACs, where these licences are not directly related to the management of the site, must be subject to an appropriate assessment. Whilst acknowledging the provisions of paragraph 4 - Article 6, the licence must only be granted if it can be shown it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public. This should be made clear in the Guidance Note.

LINK MTF further believes that there should be the strongest presumption against granting licences in any nationally important areas for seals (e.g. SSSIs, Nature Conservation MPAs where seals are designated/listed features, and haul out sites as designated under s117 of the Act). We believe that there is a strong case that such sites and the surrounding waters in their immediate vicinity should be designated as seal conservation areas.

<sup>2</sup> <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/sor0204-02.htm#Col23593>

## Section 7 – Evidence of Serious Damage

We are concerned that newly established fish farms will be able to use data from other sites in order to apply for seal licences. There was extensive discussion during stages 2 and 3 of the Act about the sensitive siting of all new fish farms, in order to minimise seal interactions. The Cabinet Secretary committed to issuing guidance for identifying seal haul-out sites in order to inform sensible planning<sup>3</sup>. We believe that new fisheries or fish farms appropriately sited, and designed with suitable non-lethal deterrence methods, should not require seal licences in the first instance. Further, licences should not be granted to new fisheries or fish farms established beside identified seal haul-out sites based on information provided by an equivalent facility in the same vicinity or of a similar type.

We welcome the requirement to provide evidence including regular seal count information, evidence of declining fish stocks and evidence of damaged fish stocks, but we would also like to see a requirement to produce evidence of a causal link between seal presence and damaged or declining fish stocks. This information should be factual and not solely circumstantial. We also believe there is merit in developing a standard procedure for gathering this evidence to ensure licensing decisions have a more sound scientific basis.

We are not convinced that the guidance should ask for an economic assessment of damage caused or likely to be caused, especially as a percentage of profits – unless the proposed methods for calculation can be improved significantly. The calculation as presented in the 'damage to fishery' section of the example, involves far too much speculation to be used as a factor in determining whether or not a licence should be granted.

The observations recorded in the example show that over the year, a seal was seen with a sea trout or salmon 10 times. Yet the economic assessment 'assumes each seal consumes one sea trout per day' and highlights the month of July where seal sightings reached their peak at an average of 2 seals present for the 8 times observations were undertaken. The guidance itself states that it is too simplistic to multiply 60 by £970 to estimate economic loss, yet it does not provide guidance on a better calculation. The example should be of a successful application and show best practice. To that end, it should not use such assumptions, but should show the correct way of presenting the information.

## Sections 8, 9, 10 and 11 – Non-lethal Measures

This section should make clear at the start that Scottish Government policy is for non-lethal measures to be used wherever possible, and that seals should only be shot as a last resort. Ideally, Marine Scotland would visit all sites to verify information on alleged damage, and to ensure all non-lethal methods have been thoroughly tried and have been demonstrated to have failed.

It would also be helpful if the guidance could expand on how applicants will be expected to demonstrate that non-lethal methods of control have been 'unsuccessful or impractical'.

---

<sup>3</sup> <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/sor0204-02.htm#Col23593>

## **Section 12 – Licence Application Number**

The ability for newly established fisheries or fish farms to rely on data from equivalent facilities to assess the numbers of seals that the applicant considers they may need to shoot, raises the same concerns as stated in relation to section 7.

It may be worth reiterating in this section that Scottish Ministers have a duty to consult before granting a licence to kill or take seals as per s116 of the Act, and as stated in the introduction, they will consult SNH, SMRU and Marine Scotland Science.

## **Annex A**

Scottish Environment LINK welcomes the requirement for all nominated marksmen to complete a seal management training course, this is in line with Scottish Ministers duties under s111(2) of the Act.

## **General Issues**

The guidance should make reference to the offence of harassment at haul-out sites contained in s117 of the Act.

It should also make clear that under s114 of the Act a seal licence may be revoked or varied at any time.

## **Scottish Seal Management Code of Practice**

We are pleased to hear that the Code of Practice will be a condition of the licence and therefore enforceable under law.

### **1. Overview**

LINK MTF welcomes the clear statement that the general principle of the new licensing system is that seals should only be shot as a last resort.

### **2. Who can shoot seals?**

LINK MTF believes it is appropriate that the personal details of marksmen are exempt from disclosure under Freedom of Information Legislation. However, it is important to ensure that this exemption does not extend to details of seals taken or killed in accordance with a licence or whilst attempting to be in accordance with a licence, including numbers shot, locality, numbers injured and species.

### **3. When can seals be shot?**

In the boxed section, paragraph 3 on licence conditions should come before paragraph 2 for emphasis.

Licences granted under section 110(1)(g) are only granted to prevent serious damage to fisheries or fish farms. It is therefore not clear why the Code of Practice states that 'in general a seal should only be shot when...it represents a threat to fisheries or fish farms'. We would encourage the removal of the phrase 'in general', 'should' replaced with 'must', and reference to 'serious damage' must be included to ensure consistency with s110(1)(g). What represents a 'threat' should be clarified, and 'serious damage' should be defined. Again the Code should make clear that all non-lethal methods of deterrence should be tried first.

We suggest rewording this sentence to read:

*'A seal must only be shot when, in the opinion of a nominated marksman or licence holder, it represents a threat of serious damage to fisheries or fish farms, and where all reasonable non-lethal methods of prevention have been tried and have been demonstrated to have failed.'*

Section 112(2)(b) of the Act states that a seal licence **must** impose conditions specifying the weather conditions in which a person may attempt to shoot a seal. All shooting of seals **must** be carried out in accordance with the licence conditions. The Code of Practice should make this clear.

Section 112(4)(d) of the Act also provides for seal licences to set conditions relating to periods during which seals may not be taken or killed, for example during breeding seasons. It would be appropriate to make this clear in this section.

'If possible' should also be removed from beginning of the last paragraph to stress the importance of carcass recovery and public safety. 'Ideally' is enough of a caveat.

#### **4. Where can seals be shot?**

If the seal licence specifies an area in which seals may be killed or taken under section 112(4)(a), it would be an offence under section 112(5) to shoot out with that area. Therefore, the code of practice should state that 'Shooting **must** be carried out within any areas specified in the licence'.

Identification of seal species prior to shooting will be made easier by the requirement that shots must be taken from a stable platform. All seal licences which authorise the killing of seals by shooting will prohibit a person from attempting to shoot a seal from an unstable platform as per s112(2)(d) of the Act. Therefore, the Code of Practice should make clear that **it is an offence** to fire from anything which might, in the opinion of the nominated marksman or licensee be considered an unstable platform.

Further, this section should make reference to s117 and the offence of Harassment at Haul-Out Sites.

#### **5. Firearms**

Bullet point five should also be altered to make clear that shooting **must** only be undertaken in the period between one hour before sunrise, and until one hour after sunset in order to comply with Regulation 41 of the Conservation (Natural Habitats) Regulations 1994.

It may be worth reiterating that the Scottish Ministers have a legal duty under section 111(2) to satisfy themselves that a person authorised to kill seals by shooting has adequate skills and experience in using firearms.

#### **6. How to Shoot Seals**

LINK MTF welcomes the requirement contained in the licence application form and guidance note, to specify which species of seal the licence is for, and fully supports all licences being species-specific. Where the licence contains conditions on the species of seal which may be killed or taken under section 112(4)(b) of the Act, the Code of Practice should make clear that nominated marksmen **must** identify the species of seal before firing, and that non-identification could constitute an offence. Photographic evidence should be taken to confirm the species.

Identification of seal species prior to shooting will be made easier by the requirement that shots must be taken from a stable platform. It should therefore be reiterated in this section, that it is an offence to shoot seals from an unstable platform.

Identification will also be helped if a seal is shot at closer range. All seal licences **must** impose conditions specifying how close a person must be to a seal before attempting to shoot it. If it is to be a condition of all licences that they must be shot within a range of no more than 50 metres, the Code of Practice should state that 'seals **must** be shot from a range of no more than 50 metres'.

### 7. Carcass Recovery

The retrieval of shot seals is important for gathering data relating to health and diet studies and should be considered a priority. This should be emphasised in the Code, which should state that 'you **must** take all reasonable steps to recover the carcasses of shot seals.'

### 9. Reporting

Section 113(2) of the Act requires seals licence reports to contain information relating to how many seals have been killed and taken in accordance with a seal licence, and how many have been killed and injured when **attempting** to take or kill in accordance with a licence (s113(2)(a)(iii) and (iv)).

The Code of Practice should make this clear. There also appears to be a need to alter the Seal Licence Return Form to accommodate this requirement.

**Scottish Environment LINK is the umbrella body for Scotland's voluntary environmental organisations, representing around 500,000 members.** Scottish Environment LINK's Marine Task Force is supported by:

Whale and Dolphin Conservation Society  
WWF Scotland  
Scottish Wildlife Trust

Marine Conservation Society  
RSPB Scotland

### For further information contact:

**Alan Wells, LINK Marine Policy and Advocacy Officer**

**Tel: 01350 728200**

**email: [alan@scotlink.org](mailto:alan@scotlink.org)**

**Lindsay Roberts, LINK Marine Policy and Advocacy Officer**

**Tel: 0131 311 6544**

**Email: [Lindsay@scotlink.org](mailto:Lindsay@scotlink.org)**

Scottish Environment LINK is a Scottish Company limited by guarantee without a share capital under Company No. SC250899 and a Scottish Charity No. SC000296. You can find out more about LINK on our website [www.scotlink.org](http://www.scotlink.org)