

**MARINE (SCOTLAND) BILL**  
**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE CALL FOR VIEWS: STAGE 1**

**SUBMISSION BY ADVOCATES FOR ANIMALS**

**11 JUNE 2009**

**Introduction**

1. Advocates for Animals welcomes the opportunity to submit comments to the Rural Affairs and Environment Committee on the Marine (Scotland) Bill.

2. Our submission focuses on Part 5 of the Bill, referring to conservation of seals. There are around 182,000 grey seals *Halichoerus grypus* in the UK, representing approximately 36 per cent of the world's population: around 89% of these breed in Scottish waters. Around 35,000-41,000 common or harbour seals *Phoca vitulina* also live in the waters around Scotland, equating to around 85% of the UK population: this in turn amounts to over a third of the European sub-species<sup>1</sup>. The presence of these internationally-significant populations places a special duty on Scotland to protect and conserve them. In recent years, however, the common seal population has been in severe decline in Scotland - by up to 50 per cent in some areas since 2000.

3. Public opinion supports greater protection for seals. In 2008, a national opinion survey found that 75% of people in Scotland believed that the Scottish Government should ban all killing of seals<sup>2</sup>. Out of the 4,177 Marine Bill consultation responses that commented on the need for a review of the Conservation of Seals Act 1970, a total of 4,147 (99.3%) called for improved measures to protect seals. Of these, 4,131 (98.9%) wanted the reformed law to start from the basis that seals should enjoy full legal protection.

4. Advocates for Animals believes that there should be an outright ban on killing seals. The Marine Bill does not provide this, but it could and should do more to protect Scotland's seals from harassment, suffering and killing. To achieve this, Part 5 must be significantly strengthened. In particular, it must contain greater detail about the proposed seal licences, so that stakeholders can be confident that the Bill offers genuine progress towards ending the suffering caused to seals under the current permissive system.

**SS.95- 97**

5. We welcome the general prohibition at s.95 on taking or killing seals and agree that it should be subject to exemptions for activities intended to alleviate suffering (s.96). We note however that the wide range of licensed exemptions at s.97 ensures that the Bill creates a reformed "management" regime, rather than a full ban on killing. Neither the Bill, nor its accompanying material, gives detail of the management proposals or any associated animal welfare measures, and there is no scientific or conservation argument provided for the need to manage populations.

**S.98**

6. S. 98 gives Scottish Ministers powers to grant seal licences for reasons including "to prevent serious damage to fisheries or fish farms" (s.98(f)). We do not think that licences should be granted on a precautionary basis. A licence should not be issued unless the individual seal has been independently proven to have caused serious damage to fisheries, fishing gear or fish farm cages. It is important to define the term "serious damage" in a way that encompasses substantial harm to the operation, bearing in mind that this is the first time that fish farms have been included in a seal licensing regime (fish farms were not eligible for close season licences under s.10 of the 1970 Act).

---

<sup>1</sup> Special Committee on Seals (SCOS) Scientific Advice on Matters Related to the Management of Seal Populations 2008 (SCOS Report 2008)

<sup>2</sup> TNS System Three survey February 2008

7. Fish farms are not the same as fisheries: they do not depend on the presence of wild populations of fish, but rather they choose sites, install cages and import stock for intensive rearing on site, and many fish farms regularly shoot seals. Earlier this year the Scottish Salmon Producers' Organisation (SSPO) stated that 489 seals had been shot in 2008<sup>3</sup>, and of course it is likely that not all killings were reported to the industry body.

8. Modern alternatives to seal killing include the use of anti-predator nets so that seals are unable to gain access to the food source artificially created in their environment, and deterrents such as acoustic deterrent devices. These also help fish farms to fulfil their duty to protect fish from pain and distress, but they are not universally used. Development of more sophisticated deterrents and more robust exclusion techniques continues, with the support of the Scottish Government and the industry, and the SSPO has reported that, out of over 20,000 incidents involving seals at salmon farms in 2008, "deterrent devices managed to scare off seals in the vast majority of cases"<sup>4</sup>. Some commercial farms in Scotland, such as Soil Association accredited farms, have a policy of not shooting seals.

9. Another obvious measure to eliminate conflicts with seals would be not to site a fish farm close to a known seal colony or haul-out site.

10. S.98(i) also permits a seal licence to be issued for "other imperative reasons of overriding public interest including those of a social or economic nature [...]". This statement raises concern about potential loopholes and again, definition is essential.

#### **S.99**

11. S.99 states that a seal licence must specify the method which the licensee must use to kill or take seals. We understand that Marine Scotland has been advised by the Sea Mammal Research Unit that shooting using a suitable calibre of rifle is the "most humane option available at present". However it would be a mistake to conflate "most humane" with "absolutely humane" and - as discussed below - if any seal is to be killed, the welfare conditions must amount to much more than merely specifying the weapon to be used.

#### **S.100**

12. We agree with the requirement at s.100(1) for a seal licence to specify the maximum number of seals to be killed or taken. It would be better however to provide that a licence should only be issued for one specific seal at a time, and only when that seal has been independently proven to have caused serious damage to fisheries, fishing gear or fish farm cages.

13. Much has been said by the fishing, angling and fish farm industries to the effect that shooting is required in the case of so-called "rogue" seals that form a habit of preying on stock in a particular place. The Policy Memorandum for the Bill states that it "seeks to provide additional protection for seals whilst permitting well-monitored local management of *individual seals* on an equal basis for all the relevant industry sectors" (our italics)<sup>5</sup>. Paradoxically, the Memorandum goes on to say that the preferred model for seal licensing is the Moray Firth Seal Management Plan, under which licences are administered on a group basis. Marine Scotland has also informed the Finance Committee that "[...] we expect to operate the system through groups of fish farmers or netsmen, as we have done in the Moray Firth, which will enable administration costs to be kept low."<sup>6</sup>

14. Although the Policy Memorandum states: "The Bill provides a statutory framework for introducing similar arrangements throughout Scotland"<sup>7</sup>, the Bill actually makes no reference to group licences. Currently, individual licences under s.10 of the Conservation of Seals Act

---

<sup>3</sup> SSPO media statement, 5 April 2009

<sup>4</sup> SSPO media statement, 5 April 2009

<sup>5</sup> Policy Memorandum, para 62

<sup>6</sup> Finance Committee, Official Report 2 June 2009

<sup>7</sup> Policy Memorandum, para 64

1970 for shooting seals during close seasons are issued to around ten DSFBs per year, as well as the Moray Firth management group.

15. Because shooting at any time of year will now require a licence, and fish farms will become eligible for licences, the licensing regime will extend to significantly greater numbers than before. We are concerned that this, coupled with the processing of licences in batches, might reduce the level of scrutiny that is given to applications.

16. We suggest therefore that licences should be subject to two tiers of assessment. The application should be considered and the permitted maximum number of seals agreed, but the licences should only be activated on an individual basis when the necessity to kill a particular seal has been demonstrated and independently verified. This would allow the more time-consuming assessments to be carried out ahead of any particular incident where it might be held that there was a degree of urgency to shoot a seal. The actual circumstances and the need for shooting could be verified relatively quickly at the time of the specific request. Operators in an area that had reached its limit should not, however, be allowed to shoot any further seals. While we would much rather see a genuine ban on seal-shooting in Scotland, this two-tier test would at least offer a more robust regime than is currently proposed.

17. We agree with the provision for reporting as soon as reasonably practical when a seal has been killed or taken in accordance with the licence (s.100(1)(b)(i)). We recommend that the licence should require the report to be made within thirty days of the killing.

18. We are extremely concerned to see the Bill referring to the injuring of seals (s.100(1)(b)(ii) and (iii)). Wounding of seals is a recognised problem, the consequence of which can be a slow and painful death for the animal. In 2007, in a Scientific Opinion focussing on commercial seal hunts, the European Food Safety Authority (EFSA) stated <sup>8</sup>: “[t]he main disadvantage with firearms is the risk of the targeted animal being hit with insufficient force and /or accuracy to cause instantaneous death or unconsciousness, and possibly escaping wounded. This may be caused by one or more of the following: poor marksmanship, excessive distance (e.g. shots fired over ranges >50m), unstable platforms (e.g. a boat or ice floe in rough weather conditions) unanticipated movement by the animal (e.g. a sudden movement of the head just before the hit) or inadequate firearms/ammunition. In any seal hunt, it is likely that a certain proportion of the animals will be only wounded, regardless of the power of the ammunition. Wounded seals may escape before they are re-shot, as there is no guarantee that the rifleman will be able to inflict a successful repeat shot immediately. This is especially true for animals which are shot while in water [...]”

19. It is essential that all attempts are made to end the wounding and injuring of seals in Scotland. We strongly recommend that licences require marksmanship and competency to be demonstrated by applicants; prohibit shooting in water or from unstable platforms; and require applicants to ensure that if a seal is shot, it is actually killed outright. These issues have already been addressed by legislation in a number of other countries<sup>9</sup>.

20. S.100 should also provide that a licence will not be issued where there is any alternative to killing. At s.105 of the Bill, it states that before granting a licence to kill or take seals in a seal conservation area, ministers must be satisfied that there is no satisfactory alternative way of achieving the purpose for which the licence is required. We assume from this that applicants would have to demonstrate that they had tried all non-lethal deterrents, including anti-predator nets and acoustic deterrent devices, and these had been ineffective. In view of the serious animal welfare concerns surrounding seal shooting, it would be desirable to

---

<sup>8</sup> Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on the Animal Welfare aspects of the killing and skinning of seals. *The EFSA Journal* (2007) 610, 1-122.

<sup>9</sup> See European Commission Directorate-General Environment: *Assessment of the potential impact of a ban of products derived from seal species COWI consultancy, Denmark, April 2008*

extend this condition to all areas, not just conservation areas. If the condition can be complied with in seal conservation areas, it can presumably be complied with elsewhere.

21. It should state on the face of the Bill that no licence will be issued for shooting a seal during the breeding season for its species. A prohibition on killing during close (breeding) seasons is a fundamental animal welfare measure, observed for most terrestrial mammals. As far as seals are concerned, the current situation means that pregnant seals are being found shot with half-aborted fetuses, and dependent pups are starving slowly to death, sometimes over a period of weeks, after their mothers have been killed. People in Scotland have been appalled to learn of this suffering and we ask the Committee to support amendments that would help to bring it to an end.

22. Finally, a seal licence should stipulate compulsory welfare conditions, breach of which will be a breach of the licence, and not simply refer to a voluntary Code of Practice.

### **SS 104 -105**

23. We strongly support the creation of seal conservation areas and we recommend that these should be zones where seals are neither killed nor harassed.

### **S.114**

24. We welcome the provision at s.114 for increased penalties for offences against seals in line with those set out in other wildlife legislation, as this gives a clear indication that offences against seals are viewed as serious wildlife offences.

25. As an addition to Part 5, we would like to see measures providing seals with protection from harassment, analogous to the protection provided for dolphins and other cetaceans which, like seals, are fish-eaters. Elsewhere in the Bill, on marine conservation orders, s.75 provides that an order may prohibit “the killing, taking, destruction, *molestation or disturbance* of animals or plants of any description in the protected area” (our italics), and we would ask that consideration be given to giving similar protection to seals.

26. Marine Scotland has stated: “We also want non-lethal measures and options to be covered. If such measures and options become more effective and practical, we want to shift over to using them.” We hope that the Committee will take this opportunity to seek assurances from the Government that non-lethal measures will always be given priority and licences only issued in exceptional cases of indubitable necessity, once all non-lethal methods have been tried and shown to have failed, and never during the times when animals are likely to be pregnant or have dependent young to feed.

### **Conclusion**

27. Advocates for Animals believes that the Marine (Scotland) Bill should ban the shooting of all seals in Scotland. If the shooting of seals is not to be banned, we seek provisions within the Bill to ensure that progress is made towards the use of non-lethal predator deterrence techniques as the norm within the fishing and fish farming industries. The issue of any licence to kill seals should therefore be absolutely exceptional.

28. Given the progress that is being made towards developing alternative methods, we recommend that the operation of seal licences should be reviewed every two years, starting two years after implementation, so that the need for permitting any seal killing, as well as emerging scientific knowledge of seal biology, welfare and behaviour, can be re-assessed. The ultimate aim must be to bring an end to the killing of seals in Scottish waters.