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Dear Mr Gilmour

Thank you for your reply to our email of 23rd June 2018, requesting a wild salmonid information workshop, and for your letter of 15<sup>th</sup> June about planning permission and the precautionary principle.

**RECC inquiry**

The RECC Committee's inquiry has concluded its hearings. We wrote to the RECC to express our views before it closed its call for written evidence on 27<sup>th</sup> April. We now await its report with interest. The inquiry may well result in changes to how aquaculture is managed and it is a shame that you did not feel obliged to hear its conclusions before giving planning consent for the largest fin fish farm in Scotland, at BDNC Loch Shuna. Under the circumstances, couldn't this precedent-setting decision have been postponed?

**Advice from Marine Scotland on wild fish impacts**

We appreciate your good intentions in trying to save us from fruitlessly corresponding with the Council's planning department and councillors, when they are obliged to make decisions based on the advice received from the statutory consultees.

We are already in the process of organising a meeting with Marine Scotland to discuss the advice they give you and we are also in touch with the Argyll DSFB. We note that the Board routinely replies to your consultations with significant objections regarding wild fish impacts, which always seem to be out-weighed by other considerations when they come before the Planning Committee.

SNH tell us that they are only allowed to advise you on wild salmonid interactions when they occur in freshwater, in SACs for wild salmon and where pearl mussels would be affected.

It is clear from your submissions to the parliamentary inquiry that the council lacks the necessary expertise to judge the impacts of aquaculture on wild salmonids for itself. The Marine Policy Officer admits that she does not know much about this and nor was the Local Biodiversity officer up to date on the impacts, when a member of our group asked her about them last year.

There can surely be no harm in the planning department and the councillors of the Planning Committee learning more about the important topic of wild fish interactions, particularly as planning officers annually consult fish farming companies during the Aquaculture Liaison Group meetings, which include discussions of these interactions, purely from the perspective of the industry. This is hardly a balanced approach, in terms of giving equal weight to material considerations, one of which is the impacts of aquaculture on local communities.

At present most councillors on the Planning Committee seem unwilling to give any credence to the informed opinions of 'lay people', preferring to place their trust in 'highly paid experts' instead, even though, as you know, Mr Kerr has told several Aquaculture Liaison meetings that he is frustrated by Marine Scotland's response to planning consultations, because it is not sufficiently precise to allow him to give the Planning Committee clear advice on the risk to wild fish. He has described MS as sitting on the fence.

Please tell us how many times the Council has turned down fish farm developments because of concerns about wild salmonid interactions. It cannot be many because, of 34 planning applications for aquaculture considered between 2003-2013, A&BC turned down only 2.

After our meeting with Marine Scotland, and in the light of what they tell us about the severity of impact on wild salmonids on the west coast, we will contact you again to see whether you will reconsider hosting the workshop we have proposed.

#### **Effectiveness of mitigation**

In your letter you say that: *'The Council will consider the extent to which credible mitigation is available **to reduce or eliminate** any identified potential threat to marine species and habitats, and will weigh this in the balance when determining the planning application.'*

The SPP is firmer than that, saying:

*'If there is a likelihood that significant irreversible damage could occur, modifications to the proposal **to eliminate the risk** of such damage should be considered.'*

In other words mitigation is supposed to eliminate the risk, not just reduce it.

Are you not obliged to consider how to eliminate the risk to wild salmonids, rather than just to reduce it?

You have stated clearly that the mitigation measures open to you are ineffective, for instance in written evidence to the ECCLRC and RECC inquiry, stating that EMPs are a just a 'sticking plaster' and that the responsibility for assessing, monitoring and enforcing protection of wild salmonids from sea lice has been misallocated to the council.

#### **Scottish Government's prohibition against development on east and north coasts**

We appreciate that the Scottish Government prohibits aquaculture developments on the east and north coasts, but do not agree with your conclusion that this means

there is no similar risk to wild salmonids on the west coast. This is not stated explicitly in the Government's statements on the subject. Have they stated this to you explicitly?

Presumably you have asked Marine Scotland to state categorically that fish farming poses no significant risk to wild salmonids living on the west coast?

Please tell us what they said.

We will ask Marine Scotland about this also.

It seems to us from the Scottish Government's statements that the presumption against further marine finfish farm developments on the north and east coasts 'to safeguard migratory fish species' is not based on a different assessment of the biological risk, but rather on the economic argument that angling for wild salmon in east coast rivers is worth more than it is in the west.

#### **Expansion of existing farms - EIA screening**

*The Notes on PLANNING CIRCULAR 1 2017. THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 says that, 'changes or extensions to Schedule 1 or Schedule 2 developments; developments which may have significant effects on the environment also fall within the Regulations'.*

Please can you explain why expansions to existing farms are not usually subject to EIAs, even when the expansion is a 40% increase in biomass, as at BDNC Loch Shuna, making this the largest fish farm in Scotland, especially as it is likely to have a significant impact on the environment by virtue of its size and location, being sited in coastal waters used by salmon and sea trout and close to a salmon breeding river notified to you by the Argyll DSFB?

Mr A'Hearn has stated specifically that SEPA's intention in considering allowing such large farms under DZR is that they will be sited offshore, where sea lice will not be such a problem, which surely shows the risk of harm from doing otherwise.

Please can you explain your reasoning, when this proposed expansion, and others like it, were screened by the Council and determined not to require EIAs?

Do these coastal waters near wild salmonid breeding rivers not count as sensitive areas, in the sense used in the Scottish EIA Regulations and EU Directive?

Marine Harvest's self-monitoring report for BDNC Loch Shuna, surveyed in December 2017 when the site contained 64% of its 2500 tonne maximum capacity, gave a borderline cage edge benthic quality result. Your advice to the planning committee showed that the site is only consented for 2100 tonnes but that it held 2949 tonnes in October 2017. In addition, the terms of an EMP imposed by you when it was permitted to expand to 2100t have never been met.

Despite this clear evidence that the site cannot take more fish without further harming the seabed, and the applicant's inability or unwillingness to adhere to the

previous EMP, the advice given in your name to the Planning Committee was to grant a 40% expansion and add a 2<sup>nd</sup> EMP.

This advice was partly given on the assurance of Marine Harvest, in a letter to Richard Kerr, that Ardmaddy South was operationally viable and would be surrendered, so the total biomass of farmed fish in the waterbody would stay the same. Ardmaddy South has not been in production since January 2016 and is not operationally viable. Save Seil Sound have followed that site closely and point out that after the granting of the application on 2 November 2012 the site was unstocked until May 2015, when the data shows biomass of 881 tonnes, then there was a production cycle peaking at 1732 tonnes in September after which the site was culled in January 2016, with a final tally of 896 tonnes. Reported mortalities totalled about 360 tonnes, which is far above the already unacceptable industry average of 25%. It seems that some stocks were removed from Ardmaddy to other sites around 24 November 2015, following reports of pancreatic disease, sea lice and physical damage due to the unexpectedly strong tidal conditions. Average Scottish cycles are currently 16.5 months, so culling after only eight months suggests a serious problem.

What checks were made to test the developer's assurance that this site was still viable? By accepting this without reservations you have permitted the farmed fish biomass in the waterbody to be increased by 2100 tonnes, at BDNC Loch Shuna and Pol na Gille, with direct consequences for the area's wild salmonids, and without requiring an EIA.

### **The cumulative impacts of aquaculture across Argyll and Bute**

You suggest that we are wasting our efforts by contesting planning permission applications for fish farms on a case by case basis, but fin fish farms do not only affect their local environment. They have wide scale cumulative impacts as well.

We note that the screening and scoping question you put to statutory consultees only ask about harm resulting from that one development. By contrast, in your letter to us of 5th May, you said: *'The Council's view is that wild fish issues would be best addressed on a water body wide basis, having regard to cumulative effects of the fish farm development.'*

The council's written submission to RECC also states, correctly, that: *'Sea lice are an environmental wide issue presenting cumulative impact considerations, therefore their consequences are not best addressed by individual planning applications, which present themselves on an ad hoc basis.'*

Adding that EMPs, the main form of mitigation available to you, do not work because: *'The issue of sea lice requires an area wide water body response which cannot be delivered by EMPs associated with individual applications. Whilst new or expanded sites may become subject to EMPs, other long-standing sites, potentially with more biomass or a history of elevated lice levels, may not present a similar opportunity to deploy EMPs, simply because they are not subject to alterations requiring further planning permission.'*

The most recent research shows that these cumulative impacts can be felt at far larger scales than individual waterbodies. (*Temporal variability in sea lice population connectivity and implications for regional management protocols*. T.P. Adams, D. Aleynik, K.D. Black. SAMS. in AQUACULTURE ENVIRONMENT INT Vol. 8: 585–596, 2016) Modeling current flows on the west coast of Scotland showed that viable sea lice larvae can be carried from their source on the mainland coast, to infest fish farms as far away as the Outer Hebrides, and from sources there back to the mainland. Only by synchronously managing areas at the scale of at least 100km could this impact be mitigated, according to the study.

The National Marine Plan states that: '*Development and use of the marine environment must not result in significant impact on the national status of Priority Marine Features*'. Wild salmonids are PMFs.

Furthermore the Marine (Scotland) Act 2010 requires that '*decision makers should act in the way best calculated to further the achievement of sustainable development and use, including the protection and, where appropriate, enhancement of the health of the Scottish marine area*', ie at scales much larger than the Council considers for individual fish farm planning applications.

As you know, larger farms present a higher risk of harm being caused by sea lice, disease and escapes, but there are very few ways for the biomass of fish held in a farm to be limited: MS/FHI are only allowed to cap fish biomass to benefit the farmed fish, and SEPA maintains that it can only limit biomass to reduce pollution. This leaves Argyll and Bute and the Highland Councils as the main arbiters of how many fish are farmed on the mainland's west coast, and with responsibility for the cumulative impact on wild salmonids, of the sea lice and disease agents produced by every farm that has already been consented, as well as a large part of the industry's proposed doubling of capacity.

The EIA Directive requires environmental assessments to include all the impacts in an area - an essential type of scrutiny that is never exercised by, or provided as guidance to the planning committee, when it assesses individual fish farm planning applications.

To routinely set the advantages of each such development above the cumulative harm being done by all the farms consented by the Council in its area of responsibility, without undertaking a Strategic Environmental Assessment, as required under the Environmental Assessment (Scotland) Act 2005, is a dereliction of your biodiversity duty.

To achieve such an SEA, you would need to have asked your statutory consultees to state categorically that, after all available mitigation, aquaculture poses no cumulative risk of significant harm to wild salmonids on the west coast.

If Marine Scotland has not confirmed that the risk is insignificant then there must be a chance that it is, in which case, as you have stated clearly (below), the precautionary principle applies.

The 2005 Act defines the process required to deliver such a Strategic Environmental Assessment. In accordance with this protocol, please provide details of the screening process you have undertaken to assess whether a SEA is required for the cumulative impact on the environment of all the fish farms in the Council's area of responsibility, and of the scoping stage you have undertaken to determine the scope of what should be considered in this SEA. This SEA should of course include the impact of industry's plans to double its capacity by 2030.

Please also provide details of the consultations with public bodies that you are obliged to have undertaken, to determine this cumulative impact across the whole area.

As a result of these consultation responses you should have produced an Environmental Report on this impact. Please provide this too.

#### **Marine Scotland's locational policies**

The SPP says that Marine Scotland are obliged to explain their, *'locational policies when identifying areas potentially suitable for new development, and sensitive areas which are unlikely to be appropriate for such development'*

Have MS supplied you with these policies?

Please provide us with details of the areas in Argyll and Bute that MS have told you are suitable for new developments, and the sensitive areas they have told you are unlikely to be appropriate for such developments.

As you have pointed out, gathering this information from other agencies is part of the Local Authority's biodiversity duty.

#### **Applying the precautionary principle**

In your letter you said: *'Where it is identified through consultation that the proposed development may impact on nationally or internationally significant natural heritage resources, and that impact is uncertain but there is sound evidence indicating that irreversible damage could occur, the Council will then apply the precautionary principle in accordance with the provisions of Para 204 of SPP'*.

The SPP also states that:

*'Planning authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there is sound evidence indicating that significant irreversible damage could occur.'*

The SAMS report for the parliamentary inquiry contains sound evidence that cumulative harm is being done by salmon farming to wild salmonids, a nationally significant natural heritage resource, across the west coast of Scotland. When such evidence exists but you are uncertain of the impacts, the SPP makes it clear that it is

not possible to avoid applying the precautionary principle. This risk cannot be assessed by only considering the impact of small clusters of adjacent farms, as happened at BDNC Loch Shuna.

We draw your attention again to the 2017 judgment by the Court of Appeal in Northern Ireland (NICA 41, para 35), to which you did not refer in your reply, regarding the precautionary principle and planning permission:

*'It operates on the basis that there should be no planning permission until it is established that there is no unacceptable impact on the environment.' ... 'The proper approach is to proceed on the basis that there is an absence of evidence that the operations are having an unacceptable impact on the environment.'*

And at paragraph 37:

*'What has been disregarded in the letter of decision, where it deals with the Stop Notice, is that these operations are considered likely to have significant impact, that the nature and extent of that impact has not been established, that prior to the grant of permission is the requirement to establish that there will be no significant impact and that it is imperative that the precautionary principle be applied.'*

*'What must be put in the balance is the absence of evidence that there will be no harm. To approach the matter with a requirement for evidence of harm is the negation of the precautionary principle.'*

In addition the SPP (para 251) requires you to adhere to your local development plan that sets out, *'the issues that will be considered when assessing specific proposals, which could include:*

*Impacts on, and benefits for, local communities*

*Economic benefits of the sustainable development of the aquaculture industry;*

*Landscape, seascape and visual impact;*

*Biological carrying capacity;*

*Effects on coastal and marine species (including wild salmonids) and habitats;*

*Impacts on the historic environmental and the sea or loch bed;*

*Interaction with other users of the marine environment (including commercial fisheries, Ministry of Defence, navigational routes, ports and harbours, anchorages, tourism, recreation and leisure activities);*

*Cumulative effects on all of the above factors.'*

Please direct us to the section of the Local Development Plan that describes in detail your assessment of the whole area's biological carrying capacity for marine fish farms, the cumulative impact of all the fish farms in Argyll, currently existing and under the proposed doubling of capacity, on coastal and marine species and habitats, including wild salmonids, and on local communities and other users of the marine environment, through their effects on existing sustainable jobs including those in tourism and in creel fishing, where fish farm pesticides can kill commercially valuable crustaceans.

The SARF098C 'PAMP2 Refreshment Study: *'The association between emamectin benzoate use and crustacean assemblages around Scottish fish farms'* (2017) shows

that emamectin benzoate use correlates with the reduction by a half, on average, of crustacean abundance at considerable distances from salmon farms in Shetland.

You say that the council is following its Local Development Plan, which was formulated in accordance with the Local Biodiversity Action Plan. We have read the updated LBAP (2010-2015). Wild salmon and sea trout are hardly mentioned in the ongoing projects, and then only in freshwater. It does not mention aquaculture's effect on them at all. The only two work programmes relevant to marine impacts on wild salmon and sea trout are MC 17: 'Firth of Clyde sea trout project' and MC18: 'Salmon and sea trout smolt migration', both of which are described as Potential Projects 'to take forward as and when resources become available'.

Given the evidence of the impact of aquaculture on these species in the sea, the LBAP and therefore the LDP are badly out of date.

The SAMS report for the parliamentary inquiry into the environmental impact of salmon farming shows that the evidence base has changed drastically in the last few years, both on the impact of sea lice and on genetic introgression, while on disease transference from farmed to wild fish (the main contributor to the very high average mortality figures in fish farms) the SAMS report is clear that there is a great knowledge gap.

Meanwhile new research, too recent to be included in the SAMS report is even clearer:

A new study on Skye (March 2018) shows that sea lice numbers are higher on wild sea trout living closer to fish farms than on those further from them, and concludes: *'our data add to the empirical evidence that L. salmonis from farms can cause fatal infestations of wild S. trutta and highlight the importance of limiting L. salmonis abundance on farms to improve wild salmonid survival.'*

*(The influence of aquaculture unit proximity on the pattern of Lepeophtheirus salmonis infection of anadromous Salmo trutta populations on the isle of Skye, Scotland. I. Moore, J. A. Dodd, M. Newton, C. W. Bean, I. Lindsay , P. Jarosz and C. E. Adams Journal of Fish Biology (2018))*

([https://www.researchgate.net/publication/324126170\\_The\\_influence\\_of\\_aquaculture\\_unit\\_proximity\\_on\\_the\\_pattern\\_of\\_Lepeophtheirus\\_salmonis\\_infection\\_of\\_anadromous\\_Salmo\\_trutta\\_populations\\_on\\_the\\_isle\\_of\\_Skye\\_Scotland\\_L\\_SALMONIS\\_INFECTON\\_RATES\\_ON\\_S\\_TRUT](https://www.researchgate.net/publication/324126170_The_influence_of_aquaculture_unit_proximity_on_the_pattern_of_Lepeophtheirus_salmonis_infection_of_anadromous_Salmo_trutta_populations_on_the_isle_of_Skye_Scotland_L_SALMONIS_INFECTON_RATES_ON_S_TRUT))

This study was peer reviewed and non-partisan, being part-funded by Grieg Seafood Ltd, while Marine Harvest Scotland and The Scottish Salmon Company assisted with field work, sample collection and site access permission - they could hardly claim not to know its conclusions.

Meanwhile, SARF (Scottish Aquaculture Research Forum) has just published (June 2018) the results of a three-year study, comparing tagged wild salmon smolts returning to the River Lochy (west coast) to the Conon (east coast). Only 2 of the 3229 smolts tagged in the Lochy were detected again as adults, while 52 of the 4012 smolts tagged in the Conon were detected: 21 times more, in proportion to the numbers tagged in each river.

(<http://www.sarf.org.uk/Project%20Final%20Reports/SARFSP010.pdf>)

Have the Marine Policy and LBAP Officers drawn your attention to these studies, or to the sea lice modelling study above? Or to this independent study, also published this year, by the Norwegian Institute for Nature Research? *Impacts of salmon lice emanating from salmon farms on wild Atlantic salmon and sea trout*. Thorstad, E.B. & Finstad, B. 2018. NINA Report 1449: 1-22

It concludes: *'In sum, the combined knowledge from scientific studies provides evidence of a general and pervasive negative effect of salmon lice on salmonid populations in intensively farmed areas of Ireland, Norway and Scotland. Premature migratory return, increased marine mortality and reduced growth of survivors that are induced by elevated salmon lice levels inevitably imply a reduction in numbers and body size of fish returning to freshwater for spawning, and hence in number of fish available to fisheries. Levels of additional mortality by salmon lice as indicated in several scientific studies may result in salmon stocks not achieving river specific conservation limits and, if sustained over time, could result in significant cumulative reductions in adult salmon recruitment.'*

The catastrophic decline in wild salmonids has multiple causes and there are a few rivers where returning fish numbers have been less affected, usually west-facing rivers further from fish farms, where salmon smolts have a more direct run to the open sea, but many west coast rivers, including the Awe, have been reporting all-time low returns of wild salmonids. Sea trout have the worst of it because they spend their lives in coastal waters.

There is a significant problem here and fish farms are contributing to it. Climate change is affecting Scotland's salmon and sea trout on all coasts, but no single agency can turn that around quickly, if at all. Against this background of decline there is an urgent need to reduce the impact of salmon farming on the west coast. Argyll and Bute Council are in a unique position to do something about it, by requiring the industry to prove that it can control sea lice and disease in existing farms to levels that have no effect on wild fish, before allowing further expansion.

We are engaging with Marine Scotland and the DSFB, as you have suggested.

In the meantime, will you not acknowledge the overwhelming evidence showing that it's time to take a precautionary stance, at least until the industry has shown that its cleaner fish and physical treatments are 100% effective at eliminating this risk?

Yours sincerely,

Friends of the Sound of Jura

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