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**Ask For:** Angus Gilmour

**Our Ref:** AJG/AA

**Date:** 31<sup>st</sup> July 2018

Dear Friends of the Sound of Jura

### **MARINE FISH FARMS AND THE PLANNING PROCESS**

I refer to your letter of the 16<sup>th</sup> July 2018 regarding the above matter. Whilst I am extending you the courtesy of a response, I should make it clear at the outset that the resources of the Council's Planning Service are finite and as such I must advise that I do not have the resources at my disposal to enter into protracted correspondence on the merits of fish farming outwith the context of an undetermined application. You will appreciate that in correspondence I have to prioritise resources to cases awaiting determination, given the responsibility I have to applicants, Members and third parties to ensure that applications are dealt with expeditiously having regard to all material considerations.

I have no doubt that we are both equally frequented with the vagaries of the regulatory process for fish farming as it currently stands. I, like you, look forward to the point at which this will be refined to allocate responsibilities more appropriately between the various regulatory bodies, but for the time being the Council must operate within the strictures of the current regime. I am aware that you would wish the Council to adopt a more sceptical stance towards the industry's efforts to address its impacts upon wild fish, but in determining applications there must be sound and clear cut reasons to underpin any refusal of planning permission, and these must be capable of being tested on appeal. In the absence of reliable science, or site specific advice from consultees with expertise in this area, apprehended trends, emergent research and assertions as to impacts upon wild fish, are unlikely to be sufficient to be able to demonstrate that individual proposals necessarily pose significant effects as to warrant refusal of permission.

In the interests of brevity I am focusing my response on the various questions you have posed, and I have taken the liberty of paraphrasing them as follows:

**Are there grounds for postponing decision-making?** – Applicants have a legitimate expectation that their applications will be determined as soon as practicable and have a right of appeal against non-determination in the event that they are aggrieved by failure to reach a decision timeously. The government holds speed in decision-making as an important indicator of the effectiveness of the planning system, and is able to impose penalties on authorities who perform poorly in that regard. The government is clear that it is necessary for decision-making to take place in the context of available information and policy, and that impediments should not be placed in the way of developments on the grounds of anticipated changes in circumstances which do not pertain at the point of

decision-making. It is a moot point as to whether a decision in the BDNC case ought to have been postponed, as that decision has been made and is a matter of record.

**Are councillors sufficiently acquainted with wild fish issues?** – Councillors with planning decision-making responsibilities are trained in various facets of the planning process and on a range of issues, including aquaculture. Aquaculture training has focused on material considerations relevant to marine fin fish farming, including escapes, sea lice and other aspects relevant to wild fish interests. Members have visited operational fin fish farms and have received explanations from operators as to the steps they take to assure containment and the management of lice burdens. Further training in this regard for those Members having joined the committee latterly is programmed. In addition, the Argyll District Salmon Fishery Board has supplied me with briefing information on wild fish issues, which I in turn circulated to relevant Members. From feedback from those Members I am aware that this was well received. I am in no doubt that councillors are properly acquainted with this issue, the steps the industry are taking to address it, the concerns of wild fish interests, and the difficulties of balancing considerations in the absence of definitive site specific advice from consultees and the lack of reliable science. That is not to say that they are best placed to adjudicate the matter, but that stems more from the shortcomings of the established regulatory regime and the division of responsibilities between the regulators, than it does from lack of adequate understanding of the issue on the part of councillors.

**How many fish farm applications have been refused on the grounds of unacceptable wild fish interactions?** To date no application have been refused on this basis, primarily because the concerns raised have been circumstantial rather than demonstrable, and there has been insufficient evidence to present a defensible case in the event of a refusal being contested on appeal, where that evidence would require to be tested. To prompt a refusal on these grounds it would be necessary to have access to reliable science sufficient to demonstrate that the development proposed would give rise to a reasonably predictable effect upon a wild fish population, preferably with support to that effect from consultees with expertise in that issue. The difficulty of demonstrating causation stemming from a particular development proposal is one of the reasons why the Council maintains that this issue is not one which should be considered on in response to individual planning applications arising on an *ad hoc* basis, but that it should be routinely addressed by means of a risk based water body approach, having regard to cumulative issues presented by the presence of multiple farms. I am anxious to see the current consenting review lead to an adjustment of responsibilities to enable a more considered and comprehensive response, presenting the opportunity to identify those areas with further capacity for fish farming and those where wild fish concerns would constrain that capacity.

**Is the Council not obliged to eliminate risk to wild salmonids?** You suggest that Scottish Planning Policy requires planning authorities to eliminate risk, rather than to seek to reduce or eliminate it. I would suggest that your reading of policy is a misinterpretation of the position. SPP requires that in the event of apprehended significant environmental damage, consideration should be given to elimination of that risk. That is clearly the preferential course of action and should be explored in the first instance. However, it does not go on to say that in cases where risk cannot be eradicated that permission should be withheld. It is therefore legitimate in those circumstances to consider whether measures to reduce risk can render acceptable an otherwise unacceptable proposal. In my view, it is fanciful to suggest that the Council could possibly be in a position to eliminate risk to wild salmonids, other than by refusing every application for a marine farm.

**What is the Council's understanding of the prohibition of fish farming on the north and east coasts relative to risk to wild salmonids on the west coast?** The farming of



salmon in net pens in the sea will always pose some risk to wild fish, either by virtue of the possibility of loss of containment, or as a result of the presence of lice, which even when controlled to industry standards will nonetheless still be present in large numbers. The Scottish Government has adopted a strategic response to risk by establishing a presumption against fish farming on the north and east coasts, ostensibly in response to the need to protect the country's most important salmon fisheries. The corollary of that is there must have been some expectation at that time that the concentration of salmon farming on the west coast would, to some degree, be prejudicial to wild fish interests in this area; given that however well managed escapes and lice are, they will never be an entirely avoidable facet of farming fish in net pens and there will always be an element of residual risk. I have not concluded, as you have suggested, that the absence of any presumption against farms on the west coast suggests that there will not be a similar risk presented to wild fish in this area. What the policy does suggest is that the government regards wild fish populations on the west coast to be of less value than those elsewhere, where a precautionary stance has been established at national level to avoid the prospect of any interaction between farmed fish and nationally important fisheries.

**What criteria are applied in the screening of marine fish farms for EIA purposes?** In determining whether an EIA is required to support a marine fish farm application, the Council undergoes a screening exercise as prescribed by the regulations. In so doing, Argyll and Bute Council goes beyond what is required by the legislation for EIA screening requests, by consulting the same consultation bodies we would be obliged to contact by regulation in the event of an EIA scoping request. That provides us with assurance that in the event of a planning application, consultees are not disadvantaged due to a prior decision which would otherwise have been taken unilaterally by the Council as planning authority. There is no particular biomass trigger level prompting the need for EIA, either as a result of the effect of legislation or Council policy. We would in practice consider any percentage increase in terms of the sensitivity of the receiving environment, the cumulative effect posed by multiple farms, and the availability of mitigation, along with views expressed by consultees. Generally EIA's are required for proposals to establish new farms, but also for some modifications of existing farms. Substantial biomass increases at existing farms being re-equipped may well prompt EIA - as is the case for example with the proposed re-equipment of East Tarbet Bay, Gigha where biomass is proposed to increase from 600 to 2,500 tonnes.

**When is it legitimate to consider de-equipped sites for cumulative purposes?** You question the legitimacy of the prospect of the relinquishment of the Ardmaddy South site being accepted as mitigation for increases in biomass elsewhere, given that in your view, that site has proven operationally unviable. That is not the position. Whilst the operators accept that this energetic location has not proven suitable for stocking for a full production cycle due to their experience with small fish, the site is still considered operationally viable due to its ability to be used for the on-growing of larger fish produced elsewhere. It is of course the second year of production where larger fish pose the more significant risk of sea lice presence. Accordingly, the prospect of the relinquishment of this site was legitimately factored in to the consideration of the merits of the biomass increases proposed at PNG and BDNC. For that reason, regard was had to the cumulative impact of the developments upon wild fish interests across the water body, and it was legitimate to take the relinquishment of the Ardmaddy South site into account as a material consideration, despite the farm not being equipped for use for the time being.

**Is sufficient regard paid to cumulative impact in the assessment of individual proposals?** Cumulative impacts will always be a material consideration in assessing all the planning aspects of a fish farm development proposal, including wild fish impacts. The fact that mitigation afforded by the relinquishment of Ardmaddy South was taken into



account in the assessment of the BDNC and PNG applications demonstrates that consideration was not restricted to the circumstances of those sites in isolation. Whilst individual planning applications, with or without EIA, would prompt consideration of cumulative issues, they would not prompt an SEA of the impact of salmon farming on wild salmonids, as you have suggested. Indeed if SEA was required, I would suggest that this should have been carried out prior to the government establishing its locational policy on fish farms, or prior to it lending support for the industry's ambition to double capacity by 2030. I do not think this is a fertile area for you to pursue on the basis of the Council's responsibilities in terms of planning application processing, and that you would be better to direct this to Scottish Government, who through Scottish Planning Policy and the National Marine Plan are better placed to address issues of a strategic policy nature.

**Has Marine Scotland supplied the council with locational policies?** National policy stems from the Scottish Government via Scottish Planning Policy and the National Marine Plan. Marine Scotland additionally produces Locational Guidelines, of lesser weight than policy, which indicate on a water body basis those locations with better or lesser prospects for additional fish farm development, having regard to carrying capacity and development which has already taken place. Additionally, it is open to Marine Scotland to provide whatever response it sees fit in the light of consultations prompted by planning submissions, including advice as to whether a water body has capacity in their view to absorb additional development or not. It has not felt able thus far to distinguish in spatial terms between more or less sensitive areas in terms of wild salmonids, although I understand that research is being undertaken on that front. You would need to pursue with them why they have not felt able to do so thus far.

**Is development policy out of date given changes in the evidence base about impacts of fish farming on wild fish?** The development plan remains the primary consideration in planning decision-making, although the extent to which it has become outdated can alter the weight which is given to it as part of that process, and its influence can be outweighed by the weight given by decision-makers to other material planning considerations. The manner in which fish farm proposals will be assessed is set out in Supplementary Guidance, which avoids a spatial mapping approach, given the difficulty of reliably defining some of the relevant constraints, including wild fish sensitivity. The policy pursues a criteria based approach having regard to the full range of considerations relevant to marine aquaculture, and this provides some flexibility and opportunity to adapt to changing circumstances and scientific advances. I do not consider that the development plan poses any impediment to the proper assessment of fish farm applications and the range of considerations which present themselves in each case.

**To what extent is the Council aware of emergent research?** The Council is aware of some of the research to which you have referred and will have regard to relevant matters cited by the industry, consultees and third parties in determining applications. It cannot, however, be expected to acquaint itself with all research, as that is for others, primarily Marine Scotland, with particular expertise in the area concerned, to formulate its advice in a manner which has regard to the best available science.

**Is the Council in a unique position to stem the adverse effects of fish farming on wild salmonids?** I do not consider that the Council is in a unique position, as the issues apply equally to all locations where fish farming is being carried out in waters frequented by wild salmonids and affects more than one local authority area. The uniqueness of the position is rather that planning authorities are the sole body responsible for wild fish, given that other regulators confine their remits to particular interests which exclude wild fish, and therefore the responsibility rests in default to the planning system. In my view, the response to this issue should be a national one driven by available science and promoted

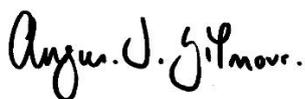


by Marine Scotland, who currently adhere to what is, in my view, an inappropriate differentiation between their responsibilities for fish health on the farm, to the exclusion of the interests of the health of wild fish in the surrounding environment.

**Is it not time to invoke the precautionary principle?** I consider that this matter has been addressed in previous correspondence with you. There is no question that the farming of fish in net pens poses risk to wild fish, and that some element of risk is inherent to the best practice operation of a farm and cannot be eradicated. What is less clear is to what extent receiving environments should be regarded as being more or less sensitive to the presence of farmed fish, and the extent to which harm to populations may be legitimately attributed to farming as opposed to, or in combination with, other environmental factors. In particular, given the nature of the marine environment, it is difficult to associate effects with individual developments. The nature of the planning process is such that permission should only be refused where there are reasonable grounds for withholding permission for a particular development based upon anticipated effects associated with that development. It is not sufficient to claim that a development would make an inappropriate contribution to risk overall, whilst the current level of risk and the additional risk proposed were not in some way quantifiable.

For the time being fish farming in the marine environment remains a legitimate activity actively promoted by the government. The outcome of the RECC inquiry might influence that position going forward, and if it does, that will no doubt influence planning policy and in turn, the extent to which the precautionary principle might be invoked on the advice of consultees, and with the backing of policy. Until that point, despite the emergence of research and in the face of declining fish stocks (for whatever reason) I do not believe that the Council will be in a position to achieve what you are looking for, which is in effect opposition to all proposals to expand this sector in the face of unquantified impacts upon a mobile species vulnerable to a range of environmental effects. Were the Council to unilaterally adopt a precautionary response by routinely refusing fish farms on the grounds of inappropriate impacts on wild fish I have no doubt that the industry would contest such decisions, which would prove difficult to defend in the absence of evidence or support from relevant consultees. For that reason, I remain of the view that this issue can only be progressed at strategic level on a national basis, and that seeking to motivate change by frustrating individual planning applications does not present an effective means of moving this issue forward.

Yours faithfully



Angus Gilmour  
Head of Planning, Housing and Regulatory Services