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Dear Mr Gilmour,

Thank you for your email of 2<sup>nd</sup> May.

We are aware that, in common with all Scottish public bodies, Argyll and Bute Council has a biodiversity duty under the Nature Conservation (Scotland) Act 2004. The recent ECCLRC report on the environmental effect of salmon farming confirmed that: *'Scotland's public bodies have a duty to protect biodiversity and this must be to the fore when considering the expansion of the sector.'*

Additionally, when the UK signed up to the UN Rio Convention in 1992, it agreed to apply the precautionary principle, as follows: *'Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'*

This principle is incorporated in the OSPAR convention, to which the UK is also a signatory. The convention relates specifically to the sea, saying that, *'preventive measures are to be taken when there are reasonable grounds for concern that human activities may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship.'*

*A lack of full scientific evidence must not postpone action to protect the marine environment. The principle anticipates that delaying action would in the longer term prove more costly to society and nature and would compromise the needs of future generations.'*

(<https://www.ospar.org/about/principles/precautionary-principle>)

These agreements impose clear legal obligations on the council.

The SAMS report for the current parliamentary inquiry and the independent NINA report submitted to the ECCLRC, both show beyond reasonable doubt that sea lice from farmed salmon are harming wild salmon and sea trout, in particular when the smolts of both species leave their natal rivers and spend time in coastal waters.

Marine Scotland Science confirmed this harm, in their June 2014 response to a planning application for a salmon farm in Loch Slapin:

*'Scientific evidence from Norway and Ireland indicates a detrimental effect of sea lice on sea trout and salmon populations. There is increasing scientific evidence that this is also the case for sea trout in Scotland. Salmon aquaculture results in elevated numbers of sea lice in open water and hence is likely to have an adverse effect on populations of wild salmonids in some circumstances ... Information from the west coast of Scotland suggests lice from fish farming can cause a risk to local salmon and sea trout.'*

(14\_01467\_FUL-RESPONSE\_-\_MARINE\_SCOTLAND\_SCIENCE-679145 Slapin 2014)

The A&BC's written response to the RECC explains that the planning system is unable to guarantee that such harm will not occur, because:

*'Planning applications can only consider the various means by which operators intend to mitigate the effects of their developments on wild fish interests. They cannot guarantee those measures will necessarily be effective, particularly given that there are off-site environmental factors which contribute to the incidence of sea lice, so levels may become elevated despite an operator's best endeavours.'*

Even if sea lice numbers are held below the industry's Code of Good Conduct levels, Marine Scotland Science advised the H&I local authority in its Loch Slapin letter, that: *'It should be noted that adherence to the suggested criteria for treatment of sea lice on individual farm sites stipulated in the industry Code of Good Practice may not necessarily prevent release of substantial numbers of lice from aquaculture installations.'*

MSS's Loch Slapin response also said: *'The greater the number of lice on the farm the greater the risk to wild salmon and sea trout.'*

The National Trust for Scotland pointed this out during its RECC session: To assess the risk to wild salmonids, the number of lice per farmed fish has to be multiplied by the number of fish in the cage. Larger farms produce more sea lice.

In your email to us you confirm that you understand this hazard: *'It is generally accepted that lice produced on farms pose a threat to the health of wild fish and that this threat will increase with numbers of fish being farmed.'*

As you are aware SEPA is in the process of changing its licensing system for salmon farms, removing its 2500t per farm biomass cap, to encourage a move towards larger farms. Under this new DZR regulatory system there will be no fixed upper limit to the size of farms.

The *VALUE OF AQUACULTURE TO SCOTLAND* report (HIE, June 2017), says that the number of fish per farm would be *'possibly up to 4,000-6,000 tonnes per site'*.

In April, Mr A'Hearn wrote to Mr Dey of the ECCLRC, to explain that SEPA wants these new, larger farms to be located, *'in exposed, dispersive*

*environments...'; because the strong tides in such exposed locations mean that, '... the risks of disease and, hence, medicine usage, are also likely to be lower.' '...in practice, large farms would be limited to more exposed locations where the risk of infection with sea lice and other diseases can be less'.*

This latter statement takes no account of the most recent research, modeling current flows on the west coast of Scotland, which shows that sea lice larvae can be carried large distances from their source, between the mainland coast and the Outer Hebrides for instance. (*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)

Nor does SEPA acknowledge that exposed sites with high tidal flow are not necessarily far offshore. Many are close to mainland and island shores, such as the Sound of Jura. These areas are important to wild salmonids. Contrary to Mr A'Hearn's statement, there would be no reduction in the risk of infection with sea lice or disease in these locations.

Incidentally many peoples' livelihoods in these coastal areas also depend on the sea not being polluted by fish farm chemicals - creel fishermen for example.

Such near-shore sites are easier to service with smaller vessels from existing shore bases, so they suit fish farming companies better than offshore sites. The *VALUE OF AQUACULTURE TO SCOTLAND* report confirms that: *'From our consultations, producers' focus pre-2025 is on near-shore, more exposed sites...'*

Wild salmon use these coastal areas on migration to and away from their rivers, and sea trout are there year-round. Despite the increased risk to these Priority Marine Feature species, planning applications have already been submitted for farms of 3500 tonnes biomass, close to the shore and to salmonid breeding rivers, at Loch Shuna for instance. Escapes of farmed fish in these areas also threaten wild salmonids, as made clear by the SAMS report.

The Council's submission to the RECC (section 5.3.3 on fish health and environmental challenges) agrees that there is a problem with sea lice interactions with wild fish and that the means available to farmers at present are unable to mitigate this risk:

*'The most significant issue facing planning decision-makers in the case of salmon farms is the acceptability of developments in the light of anticipated interactions with the wild salmonid environment. Methods relied on in the past by fish farm operators for the treatment of sea lice by chemical means (bath treatments and in-feed treatments) are proving to be less effective as resistance increases, and operators are having to resort to innovative methods (cleaner fish, temperature and fresh water treatments, and mechanical means) to provide a more effective suite of controls.'*

These innovative controls are not yet working. For instance, Marine Harvest's 1<sup>st</sup> quarter 2018 financial report says: *'Sea lice levels at the end of the quarter were higher than at the end of the comparable quarter of 2017.'* (<http://hugin.info/209/R/2191367/848340.pdf>)

A&B council's submission to the RECC acknowledges that this failure introduces uncertainty to its planning decisions:

*'Despite these efforts, the incidence of sea lice introduces an element of uncertainty for regulators in the adjudication of proposals to extend or increase the number of farms in those areas experiencing persistently elevated lice levels.'*

And it also acknowledges that wild salmonids are in trouble: *'The increase in farmed fish production has coincided with collapsing wild fish numbers on the west coast, and despite the absence of reliable science to demonstrate any causal link between these trends, river interests, salmon fishery boards and other environmental groups routinely point to the presence of farmed fish as being a significant factor in the collapse of wild fish stocks ... consideration should be given to the adequacy of containment (prevention of escapes) and to transmission of disease and parasites between farmed and wild fish.'*

The same submission shows that the planning officers and councilors do not have adequate information to consider the environmental impact of planning applications because: *'...sea lice data in respect of individual farms from operators...is only available to planning authorities (and the public) in the form of aggregated data on an area basis. Planning authorities do not receive operational data from fish farm companies and do not have any role in monitoring production activities on site.'*

The council's written submission to RECC also confirmed 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. The issue of sea lice requires an area wide water body response which cannot be delivered by EMP's associated with individual applications. Whilst new or expanded sites may become subject to EMP's, other long-standing sites, potentially with more biomass or a history of elevated lice levels, may not present a similar opportunity to deploy EMP's, simply because they are not subject to alterations requiring further planning permission.'*

The A&B Council's written submission to ECCLRC also shows that local authorities are largely unable to limit the impact of multiple farms on wild salmonids because EMPs, *'... cannot influence the management of other sites in the same farm management area...'*

New, large farm applications usually require Environmental Impact Assessment, but EIAs often do not apply to expanding biomass at existing farms. The written submission to ECCLRC adds that the planning system often cannot address the cumulative effect of multiple farms in these & some other cases, because,

*'... there is no express requirement for the applicant to provide cumulative information... It is clearly appropriate to ask an operator of a suite of farms to address their response to a condition in the light of those farms which they operate which could reasonably be expected to present cumulative issues, but it is less practical to ask them to address issues arising from farms in the control of others, where their access to information will not be the same.'*

*...adding that EMPs, '...are not an appropriate means to provide an area wide response to the overall impact of sea lice', and that, 'many pre-existing sites (are) operating without EMP's, and without any prospect of such unless an application should be made to alter a farm in the future'. 'EMP's are resorted to by Planning Authorities given the lack of an overall area based approach to wild fish interests founded around cumulative impacts' '...providing a somewhat random and ad hoc response to an issue which is ongoing...' 'They are in effect a sticking plaster, not a systematic means of assuring well-being in the wider environment.'*

This is a damning admission of the failure of the planning system, which has been operating like this for many years.

In addition, the local authority has no remit to inspect farms for fish biomass, sea lice numbers or chemical and waste impacts on the environment and has no effective mechanism to vary biomass once permanent planning permission is granted.

The submission to the RECC also makes it clear that the council is not properly equipped to make these decisions: *'In terms of technical knowledge and scientific expertise neither officers, nor councillors are best placed to address wild fish issues.'*

Aside from the planning process being the only part of the consenting process for salmon farms that is democratically accessible to the public, we agree with your email that, *'the responsibility for wild fish interactions arising from marine fish farms is ... not best placed with planning authorities given that consideration is only prompted at the time of planning applications being submitted, and in response to the details of the application at hand, without any opportunity to address issues associated with other operational sites in the same water body.'*

And: *'...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 EIA Directive also supports this view, requiring environmental assessments to include all the sources of pollution in an area - an essential type of scrutiny that is never exercised by the planning committee when assessing fish farm applications.

Yet, despite the council's inability to assess the cumulative impacts of sea lice, disease and escapes on wild salmonids, or to do anything about them via its ad hoc approach, the planning committee has continued to issue planning

permission for farm expansion and for new farms in places where many other farms already discharge their waste, and to release sea lice larvae into the same water bodies; around Shuna for instance and in Loch Fyne.

The precautionary principle is about decision-making in the face of uncertainty about the environmental impacts of development.

The council's written submission to RECC shows that there are many uncertainties facing the planning committee when making its decisions about aquaculture developments:

*'With conflicting advice from consultees, unreliable science, haphazard coverage by EMP's and significant public concern about the consequences of fin fish farming on the declining numbers of wild fish, planning authorities are required to arrive at decisions that involve weighing up the balance of wild salmonids interests as material planning considerations.'*

Your email to us also mentions significant uncertainties:

*'There can be no certainty as to the extent of likely effects of fish farming on wild fish, and the attribution of cause and effects is particularly challenging in an environment populated by multiple farms (not always in the control of the applicant) and with salmonids subject to a range of environmental factors, including river conditions and other influences in the marine environment, and not just those arising from escapes and lice at fish farms.'*

It is hard to imagine a clearer statement of the need to apply the precautionary principle.

You justify not doing so by saying that:

*'The precautionary principle is invoked sparingly in planning, as in many cases decisions have to be founded upon anticipated rather than definitive outcomes. It would be exercised in cases where the receiving environment is particularly sensitive, such as within European Natura nature conservation designations where significant adverse impacts are anticipated, or in cases of 'reasonable scientific doubt'. In other cases it is incumbent upon planning authorities to arrive at decisions having had regard to the full range of information available. **It would not be appropriate to routinely refuse applications on a precautionary basis simply because definitive information was not available.**'*

But that is exactly when the precautionary principle is supposed to be applied.

Extraordinarily you further justify not doing so by saying that this, *'... would impose an unjustifiable moratorium upon the fish farming industry...'*

The failure to apply the precautionary principle has not yet been tested by judicial review under Scottish law, but it has in Northern Ireland, in 2017 (NICA 41, para 35), when the Court of Appeal provided this useful guidance to the interpretation of this principle, regarding the issuing of planning permission:

*'It is acknowledged by the Department that these operations are likely to have a significant effect on the environment. It is not known what the effect will be. The precautionary principle applies. 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 Minister's decision proceeds on the basis that there is an abundance of evidence of an 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.'*

These rules apply whether or not the area is a Natura site or an MPA. All that matters is a likelihood of significant impact to the environment.

The SAMS report for the current parliamentary inquiry acknowledges that the impact of sea lice, disease and escaped farmed fish are having a significant impact on wild salmonids.

Granting planning permission for larger farms in the inshore areas used by wild salmonids will directly increase the threat of significant harm.

To do so is not consistent with the council's biodiversity duties, nor with the precautionary principle, yet planning decisions are still being made by the planning committee in breach of these legal obligations.

On the same basis, all such decisions made in the past must also be unsafe.

It seems clear that the council would have great difficulty in justifying these decisions at a judicial review, and also that it has an acknowledged bias in favour of expanding salmon farming, despite being aware that it has inadequate information on the uncertain but significant environmental impacts of such developments, and that for many years it has been, and still is, inadequately equipped to judge, monitor or enforce the mitigation of these impacts.

Under these circumstances please could you further clarify why you feel it is not necessary to apply the precautionary principle to all applications for new fish farms, or to the expansion to existing farms, with particular focus on farms above 2500 tonnes in areas used by wild salmonids.

Yours Sincerely,

The Friends of the Sound of Jura