During the discussion at Stage 2 of the Aquaculture and Fisheries (Scotland) Bill, I promised to come back on a number of points raised during debate. I hope the following is helpful.

Fish Farm Management

Tavish Scott expressed concern that the Scottish Government would be involved in the day-to-day operations of fish farms. I have reiterated on a number of occasions that this is not our intention and nor is it the effect of the provisions detailed in the Bill.

By way of example, you will recall the amendments at Stage 2, where we decoupled compliance from the industry Code of Good Practice. This was in response to and as a result of our continued stakeholder engagement. We now have new statutory obligations requiring the preparation and maintenance of FMAg/FMS and the Bill sets out a range of issues which must be covered in section 4A (4). Compliance activity will be determined on the basis of these provisions.

Genetically Modified Organisms (GMO)

You will recall the evidence and debate at Stage 1 and your own amendment relating to genetically modified organisms (to prohibit the introduction of GMO in terms of aquaculture. My officials have already advised you of the research report by Dr. Herve Migaud, from the University of Stirling, entitled 'Triploid salmon: Current knowledge, new concepts and further developments'. I hope that was helpful.
Technical requirements for equipment used in fish farming

I promised to come back at Stage 3 with further thoughts on the Stage 2 amendment from Jim Hume MSP, to require fish farm operators and their staff to be appropriately trained. In the interim Mr Hume has already lodged two amendments relating to this point and we are currently considering these, and the basis for the original amendments, with our Stakeholders and with the Chair of the Technical Standards Working Group of the MGSA.

Wellboats

During Stage 2 Tavish Scott said that he would like to see what consultation has taken place with the industry around the wellboat provisions to ensure that we were able to target the vessels undertaking the identified activities outlined in the Bill.

Again, the Committee will wish to note that considerable consultation has taken place with all those with an interest in this part of the Bill. The definition detailed in the Bill is the product of discussion with the wellboat operators and industry, especially in the absence of an existing and credible definition elsewhere. At the inaugural meeting of the Wellboat Working Group, whose membership includes the SSPO and wellboat operators, the definition was discussed. There were further email exchanges with members of the group – including the wellboat operators – exploring unsuccessfully the possibility of using registration or insurance documentation as a source of definition. I am aware that some of the wellboat operators in Shetland were planning to meet with Mr Scott last week to discuss his concerns.

Having taken account of this substantial engagement, I remain convinced that the Bill as drafted delivers the policy intention.

Planning

Alex Fergusson commented during Stage 2 that his understanding was that the Audit and Review process would not be subject to any level of public scrutiny, unlike the case for a normal planning application. As a consequence he asked me if I considered that was something that might be addressed in the name of openness and transparency.

The Committee may be aware that the Audit and Review process is a time limited process, run by the Scottish Government, to determine planning permission for marine fish farms that were in existence before responsibility for marine aquaculture developments was transferred to Local Authorities in 2007. Public consultation is not a requirement under the Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007 which deals with the Audit and Review process.

I think it is important to remember here that we are not dealing with new developments; they have been in the water for many years and are not therefore considered in the same way as a new planning application would be. However, thorough consideration of sites does take place as part of Audit and Review and should it be determined, following consultation with Statutory Consultees to the process, that a site requires an environmental statement, the opportunity for public consultation would present at this time.
Enforcement Notices

We had some discussion around the basis for determining 7 days as the appropriate time period that a master, owner or operator of a wellboat would have to appeal against an enforcement notice. During the discussion, Tavish Scott suggested that this was inconsistent with other areas in the Bill.

It might be helpful to clarify that the 7 day period is consistent with and follows the 2007 Act provisions for enforcement notices, whereas the 14 period detailed in section 16 (2) of the Bill is for a different set of circumstances (I would argue not comparable with Section 6), that is to say for emergency action notices issued by the Scottish Ministers.

Marine Enforcement officers functions

As promised, I have looked again at Amendment 58 lodged by Tavish Scott which looked to make it a requirement on the face of the Bill that should Scottish Ministers seek to recover any expenses reasonably incurred under Section 7(6), such charges or expenses should be detailed in a notice served on the person from whom they sought to recover expenses. While I recognise the importance of making it very clear how any such costs have been determined, that is something which would be included as a matter of course in any billing arrangements. Indeed, the absence of such detail would likely lead to lengthy delays in resolving prompt payment. As such, I do not think such an obligation needs to be specified in the Bill.

Fixed Penalty Notices

You will recall Tavish Scott kindly agreed to withdraw amendment 64 regarding the publication of statistics on the use of fixed penalty notices. While he was aware of our commitment to publish relevant statistical data he asked that by the time we got to stage 3 the issue be discussed with those affected and the basis for publication broadly agreed. I am happy to report that my officials have now held such discussions with stakeholders and there is indeed broad agreement on how statistical data on the use of fixed penalty notices will be published.

Marine Scotland will publish anonymous statistics on their website by industry sector e.g. sea fisheries, aquaculture, marine planning and so on. The data will be regularly updated so that the website reflects the latest statistics.

Carcass Tagging

Alex Fergusson elected to withdraw amendment 89 which sought to include the requirement for tags to be individually numbered on the face of the Bill but he indicated that he would like to come back to the matter at Stage 3.

I hope I made my position clear at Committee. Had that amendment been successful it would have restricted our ability to progress regulations which adequately reflect the differing views from our stakeholders, both in terms of application and potential impact on business. We are aware of existing practice in other parts of the UK, and we are certainly not ruling out statutory provision for numbered tags, however we are not yet ready to make a determination as to the shape of the scheme and have committed publicly to consulting stakeholders on this issue.
Monitoring and evaluating the effects of orders

I promised to come back to the Committee to provide clarity around my comments relating to Alex Fergusson’s amendments 7 and 9 which were designed to modify the level of fine liable on summary conviction for the offences of failing to comply with monitoring and evaluation requirements on regulations/orders made under sections 33 and 37 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Mr Fergusson sought a view on who would be subject to prosecution and liable to any fine on conviction. This is quite a technical area so I hope the following explanation will clarify the purpose and use of section 33 and section 37 measures, and also of section 38 which is the legislative vehicle through which Ministers make measures at their own initiative.

Applications for Baits and Lures Regulations under section 33 can only be made by District Salmon Fishery Boards. Applications for Annual Close Time Orders under section 37 can be made by District Salmon Fishery Boards or, where no Board exists, by 2 or more proprietors of salmon fisheries. Measures made on the initiative of Scottish Ministers are made under section 38 of the 2003 Act and must be for conservation reasons; the Bill seeks to add Annual Close Time Orders to the range of measures which can be promoted by Ministers.

This Bill creates two new offences of failing to comply with any monitoring and evaluation requirements imposed as part of a Baits and Lures Regulation (section 33) or Annual Close Time Order (section 37). These offences are distinct from the broader, existing offences of failing to comply with the terms of the Regulations or Orders – for example fishing with prohibited baits or outwith the close time. An existing offence in section 38 means that a specific new offence of failing to comply with monitoring and evaluation requirements is not necessary.

The offence of failing to comply with monitoring or evaluation requirements will be capable of being committed by the body on whom the requirements are imposed: it is appropriate that Ministers can impose monitoring requirements on the management body which has submitted the application for measures. In the case of section 33 only a DSFB can apply for Baits and Lures Regulations so it would be the Board who would be subject to any monitoring requirements. It is not the case that volunteers acting in support of a DSFB, or individual Board members of a DSFB themselves, would be liable for the fine where a Board was convicted of the new offences. The Board itself would be liable.

In the case of Annual Close Time Orders under section 37 the relevant applicant is the DSFB or – where no DSFB exists – 2 or more salmon fishery proprietors; the requirement to monitor would therefore be placed on the Board or, where the application comes from proprietors, the applicant proprietors. In the latter circumstance, individual proprietors would be capable of committing the new section 37 offence of failing to comply with monitoring requirements imposed upon them.

Powers of entry

The issue of powers of entry to Crown land was raised during stage 2, specifically in relation to the exemption of Her Majesty’s private estate from the enforcement functions and access rights for the new cockles provisions. Claudia Beamish sought further information on the reason for this exemption.
The applicability of legislation to Her Majesty's private estate is considered on a case by case basis in the context of policy needs and in correspondence with Her Majesty's Solicitors. As noted at stage 2, the private estate will be exempt from powers of entry in relation to cockles. However, there are cases where, for the purposes of national consistency and in reflection of the nature of the holdings, it is appropriate for the legislation to apply. For example, Her Majesty is the proprietor of salmon fisheries as part of her private estate and it is therefore appropriate for legislation governing salmon and freshwater fisheries to be applicable. I am bringing forward an amendment at stage 3 to clarify this issue.

I hope the Committee finds these comments helpful. I am also copying this letter to Tavish Scott MSP.

Kind regards

[Signature]

PAUL WHEELHOUSE