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Dear Rob

**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
RESPONSE FROM THE SCOTTISH GOVERNMENT TO THE STAGE 1 REPORT OF THE
AQUACULTURE AND FISHERIES (SCOTLAND) BILL**

I am writing in response to the Rural Affairs, Climate Change and Environment Committee's Stage 1 Report on the Aquaculture and Fisheries (Scotland) Bill.

I would like to take this opportunity to thank the Committee for its careful consideration of the Bill, and to all those who contributed to that consideration by providing evidence. I am pleased that the Committee supports the general principles of the Bill.

A number of important issues have been raised during Stage 1 proceedings and a detailed response is attached in the Annex to this letter. The text in bold relate to extracts lifted from the Committee's Report.

I hope the Committee finds this information helpful in its further consideration of the Bill.

Kind regards

PAUL WHEELHOUSE

Aquaculture and Fisheries (Scotland) Bill

Response to the Rural Affairs, Climate Change and Environment Committee's Stage 1 Report

Summary

I welcome warmly the Committee's endorsement of the general principles of the Bill.

I note the Committee's comments on the need to improve the relationship between the wild fisheries and farmed fishing sectors. Indeed the Committee will remember that when providing evidence I made a similar reference in my opening remarks. I agree that it is crucial that relations continue to improve and are maintained between fish farming and wild fisheries interests. I don't believe anyone would disagree with that view. Indeed in some areas there are excellent examples of joint working at a local level.

The key challenge will be to progress jointly towards tangible, positive action amongst these sectors which share interests in the same environment. That common denominator must be the springboard for improved communication, mutual respect and trust. Moreover good neighbours talk, listen and engage.

The Committee is familiar with the refresh of the Ministerial Group on Aquaculture (MGA). This Group will drive forward the principles of sustainable growth, good governance and science. The specific details of the refresh are still being worked out but I anticipate that the main business will be progressed by a number of working groups reporting to a core Group. These Groups will cover such issues as capacity, technical, science and operational, and interactions. I believe these forums will encourage improved engagement and joint working; and that will be evidenced by the progress we will look to make over the coming years. This will also help to promote an increase in positive local engagement between the respective interests around Scotland.

The Committee will wish to note that the next meeting of the MGA is not scheduled to take place until Tuesday 26 March. The MGA will therefore not be in a position to come back on the points identified at paragraph 204 of its Report in the timescale identified. However it will be an issue that I will invite the MGA to consider as a priority.

I particularly welcome the Committee's interest and comments in relation to the forthcoming review of the management of salmon and freshwater fisheries in Scotland. The stage 1 report rightly acknowledges that there are many issues still to be addressed in this area and notes the Government's two stage approach to delivery of a key manifesto commitment to modernise management structures. The Committee's report helpfully points towards areas which should be considered as part of the review and I give my assurance that these will be taken into account in the scoping process. I share the Committee's ambitions for the process and outcomes of the review – this is a key area where all interested parties must work together in a spirit of co-operation to deliver a salmon and freshwater fisheries management system which is robust, coherent and fit for purpose in the 21st century.

As the Committee notes, I have already intimated my intention to lay amendments at Stage 2. I will continue to consider the evidence and any suggested amendments of key stakeholders, and will take note and reflect on any points which may be raised in the Stage 1 debate.

Background

- *SG Consultation*

I accept that some of our stakeholders consider that the consultation process was not as clear as it might have been. That was evidenced both by the number of responses we received and more specifically by many of the comments, some of which appear to have been based on the assumption that all of the proposals would be taken forward and would require primary legislation.

I will certainly reflect on the process and we will learn from the experience.

- *Legislative Background*

I share the Committee's observation that action to modernise the management structures of salmon and freshwater fisheries has historically not progressed as quickly as it might over a number of decades and further work is required. The Committee has recognised the legislative and historical complexities of this area and these will take some time to explore and unpack. I view the Bill as the first step in delivering the Government's commitment to modernisation and will take forward the issues identified by the Committee's report in the context of the forthcoming review of the management of salmon and freshwater fisheries in Scotland. I share the Committee's support for the creation of a governance system which is robust, sustainable and fit for purpose and believe it is imperative that all those with an interest use this opportunity to get it right.

This Bill is not about introducing new powers in isolation – it is about enhancing the existing regulatory framework for aquaculture to ensure it is appropriate, proportionate and compatible with the aspirations for sustainable economic growth towards 2020 and beyond

Policy Memorandum and sustainable development

I note the Committee's views of the adequacy of our assessment of sustainable development in the Policy Memorandum. That is extremely pertinent given the primary aims of the Bill, and as confirmed where I provided evidence that we have considered this from an environmental, social and economic perspective.

I will certainly take on board the Committee's observations about the preparation of sustainable development sections in future policy memoranda.

Climate Change

I welcome the Committee's acknowledgement of the Bill's potential to help the aquaculture and wild fisheries sectors to mitigate and adapt to current and future climate change challenges. I will endeavour to consider progress in this area on a regular basis, making best use of all scientific and analytical advice, and where relevant drawing on the expertise available within the MGA.

Part One – Aquaculture

- *Fish farm Management*

I believe I can offer the clarity the Committee seeks on whether farms in an area where a Farm Management Agreement (FMA) could not be agreed would have an individual Farm Management Statement (FMS). The Bill provisions currently provide that a person who is not party to a FMA must instead prepare and maintain a FMS. This caters for a position where farms within a farm management area are unable to reach consensus on a FMA. This will ensure all fish farms are obliged to have either an FMA or FMS in place. FMSs are also provided to deal with scenarios where there is a single farm in farm management areas.

In both scenarios, the evidence indicates that such instances do not occur on a regular basis.

I welcome the Committee's endorsement of proposals to place FMAs/FMSs on a statutory footing, and agree there should be no issues with the transition from voluntary to statutory arrangements. We continue to work with the SSPO to ensure the new regulatory system is implemented and managed to best effect, in particular that the mediation service provided by the SSPO is fully accessible and fit for purpose.

In addition, the Scottish Government will also address the concerns of the Subordinate Legislation Committee and other stakeholders by bringing forward a further amendment to Section 4A to provide that there is no direct link between a FMA or FMS and the Code of Good Practice.

- *Escapes and obtaining samples from fish farms*

I welcome the Committee's support of the Bill provisions to manage fish escapes in future through the introduction of statutory technical standards for fish farm equipment. My officials and I will continue to develop regulations in this area through the discussions of the MGA commissioned Containment Working Group.

I also welcome the Committee's endorsement of proposed powers to improve further the containment of fish. I agree with the Committee's view that sampling must be proportionate and reasonable. We are already actively considering the comments made by a number of stakeholders regarding these provisions. As we indicated when providing evidence, technology moves on and there will continue to be developments in this area both in the context of sampling/genetic testing and alternative methods, which we may need to take account of.

- *Seals*

I can confirm that work continues with the fish farming and wild fisheries interests to consider further options for seal management. The Committee will wish to be aware that the Scottish Aquaculture Research Forum (SARF) have recently called for proposals on a further piece of work to supplement the technical standards to include predator control aspects such as net protection measures regarding predation, net tensioning to reduce escapes by predation and the use of predator nets into the specification.

- *Fish Farming: equipment and wellboats*

I agree with the Committee's conclusion that training is best handled by the fish farming industry and will look at how best to consider progress in the delivery of good practice in that regard via the MGA and the advice of the Containment Working Group. We understand that a training module may well feature within the modern apprenticeships currently being trialled by the industry.

I also welcome the Committee's recommendations and conclusions on wellboats. Discussions have already taken place on the definition of wellboats provided in the Bill to ensure it captures only the intended vessels and I intend to bring forward at Stage 2 an amendment to clarify this. My officials will also work with wellboat interests and the Norwegian Government to ensure regulations to manage the sector meet the need and are proportionate, reasonable and where possible, transferable. Officials have already established a Wellboat Technical Standards Working Group which will have its inaugural meeting in March. That process will enable officials to discuss the potential for wellboat manufacture and maintenance in Scotland with the sector, whilst mindful that this is primarily a business decision for industry to make.

I will update the Committee on consideration of changes to the licensing regime for wellboat discharges when these are complete. These considerations will take account of future arrangements for wellboats and the overall regulation of these vessels.

- *Commercially damaging species*

The Committee notes the concerns that the provisions are too narrowly drafted and not comprehensive enough, in that they are limited to the presence of species on fish and shellfish farms, rather than casting the net wider to encompass where the species originated from and how it reached the farm. The Committee asks the Scottish Government to re-examine that issue ahead of Stage 2, should the Bill reach that Stage, to ascertain if any amendments are required to better achieve the purpose of the provisions.

The Committee notes the comments made by the Minister with regard to the potential impact of genetically modified salmon on wild salmon. However, the Committee remains of the view there could be circumstances (such as an escape of approved genetically modified salmon) in which genetically modified salmon could be commercially damaging to wild salmon. The Committee therefore asks the Ministerial group on Aquaculture to keep this matter under review.

I welcome the Committee's general support of the provisions for the control of commercially damaging species, and believe the current proposals are proportionate to the need. I will reflect on the provisions as drafted in light of the Committee's request. However, these provisions are specifically to enable the industry as a whole to deal with species that have negative commercial impacts on a particular site, not to control the species in the natural environment. There are powers under other legislation to deal with invasive non-native species.

I note the Committee's views on genetically modified salmon and will encourage the MGA to keep issues relating to GM under review.

Aquaculture issues not taken forward in the Bill

- *Biomass and revoking consents*

I note the Committee's concern about the separation that exists between the biomass permitted, and the biomass that could be treated with the quantity of medicine licensed to be used at a site. I will look to the MGA to keep the issue under review mindful that SEPA have a major role in biomass controls.

- *Treatment of farmed and wild fish*

The provisions in the 2007 Act only relate to parasites (*caligus elongates* and *lepeophtheirus salmonis*) in fish farms and shellfish farms.

- *Publication of sea lice data*

The Committee notes the Scottish Government has not taken this issue forward in the Bill, and notes the Minister's explanation of the reasons behind this. The Committee also notes the recent announcement by the SSPO to increase the number of areas from which data is collated from 6 to 30 and sees this as a step in the right direction. However, the Committee would like to see this taken a step further and for data to be collated for each Farm Management Agreement, and each Farm Management Statement where an Agreement is not in place and recommends this is considered as a priority by the Ministerial Group on Aquaculture.

The Committee is still considering whether sea lice data should be published on a farm-by-farm basis, after taking evidence from the Minister, the aquaculture industry, the wild fisheries sector and other stakeholders. The Committee welcomes the Minister's commitment to look at this issue as part of the work of the Ministerial Group on Aquaculture if not taken forward in the Bill, and recommends the Group prioritises improving the transparency of data and considers the merits of publishing data on a retrospective basis (such as with a time lag of one or two months).

The Committee recommends the Ministerial Group on Aquaculture gives careful consideration to how farm-by-farm sea lice data can be made available to inform scientific research and reports back to the Committee before the conclusion of Stage 2.

I note the Committee's comments on the provision of sea lice data. The Committee will be aware that we already have access to the information on sea lice levels that we need to meet our current regulatory requirements, as well as access to industry data to undertake and inform our scientific work as required.

I am encouraged by the SSPO's voluntary proposal to enhance its public reporting from 6 to 30 areas. I consider this to be a significant development and an appropriate balance between public reassurance and commercial interests at this time.

This public data release will, as intimated, be supplemented for scientific and compliance purposes on a bilateral basis.

Overall, I am persuaded that the package of data moves us forward in a balanced and proportionate way, but I will keep the matter under close review.

Part two– Salmon Fisheries

- *Background and context*

The Committee rightly identifies the need for robust data to inform management decisions and policy on wild fisheries. This is a key and ongoing area of work for the Scottish Government and stakeholders. The Bill provisions on sampling and information will help develop the evidence base further and facilitate management actions at local and national level. Work is also planned on how the evidence base can be improved and how data can best be used and shared, and it is in this context that we will consider the issue of counters and other information sources.

I note the Committee's views on collection of effort data. Scottish Ministers already have powers within the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to require the collection of effort data for rod fisheries: section 64 of that Act provides scope. Effort for rods has not been collected to date for the reasons discussed during the Committee's evidence sessions. Discussions on this point will continue as part of the work outlined above but I think it important that resources are directed into collection of data and information which has the greatest potential to inform decision-making.

Given the continued reservations around the usefulness of effort data and the problems associated with agreeing a suitable collection method, I believe investment in alternative data collection methods, for example investigating the potential use of more counters, are of greater priority. I will be happy to update the Committee on our work to improve data collection and sharing in due course.

- *Wild salmon and sea trout – catch and release schemes*

I note the Committee's recommendation that District Salmon Fishery Boards consider the appropriateness of establishing catch and release schemes on rivers in their areas, and will draw it to their attention.

Governance of District Salmon Fishery Boards

- *Holding meetings in public*

The Committee has sympathy with the concerns of smaller Boards that they may be less able, in terms of resource, to cope with the implementation of the provisions in the Bill than larger Boards. The Committee therefore welcomes the Minister's acknowledgement of this issue and his commitment to address the matter in the Scottish Government's forthcoming review.

The Committee therefore recommends that the enactment of the relevant sections of the Bill dovetail appropriately with the outcomes and implementation of the Scottish Government's review, to ensure there is no unmanageable adverse impact on smaller Boards in the short-term.

I welcome the Committee's observation that the good governance provisions in the Bill are an important and necessary step in improving transparency and accountability. My officials

will work with the sector to develop guidance for Boards on implementation of the good governance obligations, mindful of the varying landscape in terms of resource and the context of the forthcoming review of the management of salmon and freshwater fisheries in Scotland.

- *Involvement of other interests*

I agree with the Committee's observation on the importance of consultation with wider interests and consider the requirement in the Bill for Boards to consult before submitting applications for statutory measures as a helpful first step forward. I will reflect further on the Committee's views in the context of scoping the review.

- *Members' interests*

I welcome the Committee's position that it is important not only to establish the principle of improving accountability and transparency by declaring such interests, but also to place that principle on a statutory footing in the Bill. My officials will work with ASFB to develop guidance on implementation of the good governance obligations, including dealing with conflicts of interest.

Management

- *Carcass tagging*

I note the Committee's interest and views on carcass tagging and confirmation that that a scheme be introduced via an enabling power. Options for schemes covering rod caught and net caught fish will be consulted on fully prior to use of the power and we will reflect on, and discuss with stakeholders, the issue of individually numbered tags. It is recognised that our stakeholders have a divergence of views as to how this is best progressed. I agree that the provisions have the potential to close a legal loophole on the purchase of rod caught salmon.

- *Fish sampling and investigations*

The Committee supports the sampling and investigation provisions in the Bill but draws the attention of the Scottish Government to the comments made by the Association of Salmon Fishery Boards that local District Salmon Fishery Boards should be consulted if the sampling would involve killing fish.

I note the point and my officials will discuss with the Association of Salmon Fishery Boards (ASFB) as part of Bill implementation.

- *Monitoring, evaluation and varying orders*

The Committee did not receive a significant volume of evidence on these sections of the Bill. The Committee notes the comments made by The River Tweed Commission regarding Section 25 only applying to orders made on the initiative of District Salmon Fishery Boards, and expressing concern at the proportionality of making non-compliance an offence. The Committee draws these comments to the attention of the Scottish Government.

I note these comments and consider a criminal sanction suitable for non-compliance with monitoring. There is existing precedent in the 2003 Act for Boards to be criminally liable for offences and a need for a sanction to ensure that monitoring requirements are met.

In response to monitoring requirements only being applicable for measures made on the initiative of DSFBs, it must be noted that Boards are the statutory managers of salmon fisheries and ruling out the option that they be required to monitor measures would be short-sighted and potentially a disincentive for effective local management.

- *Close times*

I welcome Committee's support for the provision to give Scottish Ministers the power to change annual close times.

- *Introduction of fish for re-stocking*

I welcome the Committee's observations, in particular the need to consider whether introductions legislation is framed in a way which ensures compliance with EU obligations. My officials and I will review introductions policy in association with relevant stakeholders and consult fully before bringing forward proposed legislative changes to the Parliament.

Salmon Fisheries Issues not included in the Bill

- *Coarse Fishing*

The Committee is reassured by the comments made by the Minister, and by the lead Scottish Government official, Willie Cowan, that the Scottish Government will reconsider the views of the coarse fishing sector, and include relevant issues in the Scottish Government's forthcoming review.

The forthcoming review of the management of salmon and freshwater fisheries in Scotland will consider management of both salmon and freshwater fisheries.

- *Salmon netting – management*

The Committee notes the call from Usan Salmon Fisheries Ltd for netting interests to be removed from DSFB management, and transferred to direct Scottish Government management.

The Committee notes the Scottish Government's commitment to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

I note that this is a key issue for the forthcoming review.

- *Salmon netting - close times and days at sea*

The Committee welcomes the Scottish Government's intention to include this issue in its forthcoming review of wild fisheries management in Scotland and looks forward to scrutinising this issue further when the outcomes of that review are published.

I note that this is a key issue for the forthcoming review, the desired outcome of which is a management and operational regime which is fit for purpose in the 21st century.

- *Sale of netting stations*

The Committee notes the issue will form part of the Scottish Government's upcoming review of wild fisheries management in Scotland and awaits developments with interest.

I note the Committee's recommendation in the context of scoping the review. As I mentioned in evidence there are considerable complexities to this proposal which need to be examined, not least the potential disruption to the operation of the free market and the rights of property owners to dispose of assets.

Salmon netting – conflict resolution

My officials will discuss with ASFB actions which might be taken in the short term to aid conflict resolution within Boards, looking at examples of best practice where possible. In the longer term the issue will be considered in the context of the review.

- *Funding of DSFBs*

I note the Committee's recommendation that this issue be considered as part of the forthcoming review.

Part three- Sea Fisheries

Inspection and seizure of objects used in commercial sea fishing

The Committee notes the concerns raised by Seafish with regard to the inspection and seizure powers and the use of scientific equipment on board commercial vessels and asks the Scottish Government to provide clarity on this issue, and to consider bringing forward an amendment at Stage 2, if necessary, should the Bill reach that Stage.

I don't see this as a problem in practice. I understand that this point relates to vessels that are chartered to undertake scientific voyages using equipment/gear that under normal circumstances would be illegal under the rules in force. I do not believe a formal derogation, or defence, within the Bill is necessary. Research activity is clearly signalled to enforcement officers and easily distinguishable from fishermen trying to circumvent the rules. There have been no problems reported in the past where an enforcement officer has attempted to take enforcement action on what has been bona fide scientific research.

I will be writing to the Elaine Hayes, Chair of Seafish to give her some reassurance on this point. I will ensure that is copied to the Committee.

Enforcement of EU rules

I am grateful for the supportive comments on the proposed Government led Stage 2 amendments on the enforcement of EU rules.

Part four – Shellfish

Protection of Shellfish Waters

The Committee notes the proposals outlined by the Scottish Government for developing an effective notification system to alert shellfish growers of significant pollution issues. However, the Committee also notes the comments made by Scottish Water with regard to alerts relating to Combined Sewer Overflow spills and the further work it believes is required before such a system could be established.

The Committee believes the development of such a system would be of great benefit to the shellfish growing industry and therefore recommends the Scottish Government works closely with Scottish Water and the shellfish industry to establish this and updates the Committee on progress towards establishing such a system.

I recognise that it is important for the Scottish Environment Protection Agency, Scottish Water and other stakeholders to work closely and cooperatively with the shellfish growing and marketing industries to implement the provisions set out in the Bill and address any underlying issues, and my officials have already set up a working group to take these matters forward. Emerging research illustrates that the pollution distribution in shellfish waters is not uniform and not necessarily attributable to sewage from the public network, so the group will work collaboratively to identify sources of pollution and develop proportionate responses to addressing this issue

Orders as to Fisheries for Shellfish

I welcome the support of the Committee in terms of our proposal to strengthen the law regards cockle fishing.

It has been suggested that the amendment be split into two parts to deal with those that are in possession of paraphernalia used to catch cockles and those that are not. The ability to pursue persons suspected of being involved in illegal fishing for cockles will depend, of course, on the availability of evidence that proves the commission of that offence. The intention is that it will seek to alter existing offence provisions in a way that will better allow the courts to infer that an accused was a person concerned in the illegal fishing for cockles from circumstantial evidence. Each individual case will, of course, need to be considered on its merits and it will be a matter for the courts to determine whether the accused should be convicted on the available evidence. The proposals are currently being discussed and developed with Crown Office.

Like the Committee, I recognise the need to work closely with all relevant agencies and industry bodies to develop proposals for tackling issues such as the difficulty in tracing and tracking shellfish, and the documentation required to sell shellfish both in the UK and overseas.

Part Five – Miscellaneous

The recent response to the Subordinate Legislation Committee confirmed my intention to bring forward an amendment at Stage 2 to ensure any orders relating to the charging provision are subject to the affirmative procedure.

I also note the Committee's recommendation that we look at the issues raised in evidence relating to investment in fisheries management and the part anglers could play in that. Marine Scotland will publish statistics on the use of Fixed Penalty Notices. I will also give consideration as to how best to publish statistics relating to other instances of non-compliance.

Finance Issues

I welcome the comments of the Committee in relation to the Financial Memorandum although I should report that some of our stakeholders have expressed their concern that they were not presented with an opportunity to engage with the process. I recognise that is a matter for the Finance Committee but I think it appropriate that I acknowledge their concerns.

I also acknowledge the comments made by the ASFB. As with other provisions, my officials will consider the potential impact on all stakeholders to ensure that it is proportionate and reasonable.

I welcome the comments of the Subordinate Legislation Committee. I have recently written to the Convener of that Committee to confirm that we are giving serious consideration to all of the points they have raised.