Dear Sir/Madam,

The Scottish fish farming industry had made representations during consultation on the matters covered in the proposed Planning Bill and are disappointed that our attempts to promote and highlight our difficulty with the implementation of terrestrial planning policy in the marine environment have not been taken up, with the consequence that our pleas for changes to the Definition of Development for Aquaculture have gone unheeded.

In late 2016 the Scottish Government responded positively to the recommendation of the Independent Review of Scottish Aquaculture Consenting (IRSAC) and agreed there was need to explore the best route and time for changes to the Definition of Development in S26(6) of the Town and Country Planning (Scotland) Act 1997. Although the Capacity Working Group (CWG) recommended, and the Scottish Government agreed, that there was a problem with the definition, and that a change would be considered, this has not been included in the current Planning Bill, the obvious vehicle to make such a change.

The nature of the problem is summarised in the attached note, which is the SSPO submission to the Independent Panel Review of the Scottish Planning System.

We would draw your Committee’s attention to the fact that, although aquaculture is the only marine based activity currently regulated within the planning system, there doesn’t appear to be anything in the proposed Planning Bill that directly relates to, or addresses issues around how that regulation works. This seems a missed opportunity in the process of presenting a Bill that will hopefully greatly improve the planning environment for Scotland. What is being sought in terms of a change to the planning status of fish farms is a relatively minor consideration in the wider planning context, however it would have significant benefits to the planning status of farming operations throughout the west coast and Highlands & Islands of Scotland.

We would therefore seek your Committee’s recognition of the issue and support for potentially amending the Planning (Scotland) Bill to incorporate the change requested,

Yours sincerely

David Sandison
Company Secretary

Enc SSPO Position on the Definition of Development for Fish Farming
Scottish Salmon Producers’ Organisation

Places, People & Planning

A Consultation on the Future of the Scottish Planning System

The Scottish Salmon Producers’ Organisation (SSPO), representing the only sector of activity that is currently required to apply for planning consent in the marine environment under the current land based planning system, is keen to seek an opportunity for changes to be made to the Definition of Development for fish farming activities. We see the forthcoming Planning Bill and its passage as an avenue for such change. However, at this time it would not appear that specific issues concerning Marine Planning are covered by the current consultation.

The specific issues we wish to draw attention to can be summarised by reference to the submission we gave to the Independent Review of Aquaculture Consenting (IRSAC) in 2016:

“The current definition of development (Section 26(6) of the Town and Country Planning (Scotland) Act 1997 (as amended)) has been interpreted as meaning that the removal of equipment from the sea extinguishes any planning permission for fish farming at that site. (See judicial review case 'FRIENDS OF LOCH ETIVE v ARGYLL AND BUTE COUNCIL AND DAWNFRSH FARMING LTD (CSOH 61 2015'). However, the removal, and replacement in the water of equipment, for its repair or cleaning, constitutes a normal operation of a fish farmer in carrying out the proper husbandry of the farm stock. On land, the removal, for repair or cleaning, of equipment from a site which has an established use for a particular activity does not constitute development and it does not extinguish the permitted use of that site. In this respect fish farm operators are at a significant disadvantage compared to other types of business activity under the planning system.

KEY ISSUE 3 - THE CURRENT DEFINITION OF DEVELOPMENT, AS REGARDS FISH FARMING, MEANS FISH FARM OPERATORS CANNOT CARRY OUT THE FULL RANGE OF NORMAL FARMING OPERATIONS WITHOUT THREAT OF LOSING THE PERMISSION TO FARM AT A SITE.

SOLUTION - THE DEFINITION OF DEVELOPMENT SHOULD BE AMENDED TO ENSURE THAT THE REMOVAL OF EQUIPMENT DOES NOT EXTINGUISH THE PLANNING PERMISSION."

The Scottish Government response to the IRSAC recommendations accepted that the issue needs to be addressed, as follows:

"Consideration of definition of development:

3.8 Other options to achieve similar outcomes have been considered by the Capacity Working Group (CWG). The Group concur with the ICR recommendation that the 1997 Act should be amended to clarify that removal and replacement of equipment as part of normal fish farming operations should not be considered development.
3.9 We agree with the principle of clarifying those operations, which should not be considered development and propose it is discussed in more detail prior to undertaking any formal public consultation.

3.10 We consider that changes to Scottish Government guidance could improve matters in the short term. We therefore propose to take forward work early in 2017 to amend two documents that have been identified as a priority:

- The Working Arrangements document (which sets out the respective roles and responsibilities of each of the statutory consultees in relation to fish farm planning applications), and
- Planning Circular 1 2007: Planning Controls for Marine Fish Farming.

So, as well as confirming that short term measures could be explored, the Scottish Government agree that the need for an amendment to the 1997 Act was desirable.

It is contended that, in the context of strengthening the deliverability of development goals and opportunities within Development Plans, that this amendment would bring a higher degree of certainty to marine fish farming planning consent and should be pursued through the forthcoming Planning Bill.

3 April 2017