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**Enclosure 1.0 – Email sent to Scottish Government.**

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)].co.uk>

**Sent:** Wednesday, August 15, 2018 3:29 PM

**To:** Marine Scotland Mailbox <Marine\_Scotland\_Mailbox@gov.scot>; Director of Marine Scotland Mailbox <Directormarinescotland@gov.scot>; enquiries@nature.scot; ceo@nature.scot

**Subject:** Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Email 1 of 2

Email 1 of 2.

Please see attached letter and attachments.

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Legal services for the environment, conservation, fisheries and freedom of information.

[Redacted - Regulation 11(2)] is authorised and regulated by the Solicitors' Regulation Authority (524741) and the Law Society of Scotland (30663)

VAT Registration No. 117 8721 06

## **Enclosure 1.1 – Email attachment (PDF).**

15th August 2018

Graham Black  
Director  
Marine Scotland  
1B South  
Victoria Quay  
Edinburgh EH6 6QQ  
marinescotland@gov.scot; DirectorMarineScotland@gov.scot

Francesca Osowska  
Chief Executive Officer  
Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
Inverness IV3 8NW  
enquiries@nature.scot; ceo@nature.scot

Dear Sirs

### **Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis**

This request is made pursuant to Regulation 14 of the Environmental Liability (Scotland) Regulations 2009 by Salmon and Trout Conservation Scotland and the Garynahine Estate. S&TCS is a non-governmental organisation promoting environmental protection.

The Garynahine Estate owns the fishings on the River Blackwater and is therefore affected or is likely to be affected by the damage and clearly has sufficient interest.

Damage is occurring to the River Blackwater population of a protected species, Atlantic salmon and there is an imminent threat of further damage. The Blackwater flows into Loch Roag on the Isle of Lewis. The damage is considered potentially to have significant adverse effects on the conservation status of Atlantic salmon, including upon its natural range and areas it covers within that range and its long-term maintenance.

It is considered that the sea lice loading seen on the salmon in the accompanying information is highly likely to be have been caused, in full or in part, by the release of juvenile sea lice from one or all of the salmon farms operated by The Scottish Salmon Company in Loch Roag, in a manner that fails to protect wild salmonids from damage and is contrary to the North Atlantic Salmon Conservation Organisation (NASCO) 'Guidance on Best Management Practices to Address Impacts of Sea Lice and Escaped Farmed Salmon on Wild Salmon Stocks' goal that “*100% of farms to have effective sea lice management such that there is no increase in sea lice loads or lice-induced mortality of wild salmonids attributable to the farms*”

S&TCS and the Garrynahine Estate jointly make this request for action and review to Scottish Ministers, who are the competent authority, as the damage is occurring to protected species in coastal waters, per Regulation 7(1)(a).

Due to the migratory nature of the species concerned, where damage is also occurring to the population of a protected species in freshwater, the request for action and review is also made to Scottish Natural Heritage, per Regulation 7(1)(b). SNH should note that the Grimersta river, part of the Langavat SAC, specifically designated for the protection of Atlantic salmon, also flows into Loch Roag.

This request is accompanied by relevant information and supporting observations made in relation to the environmental damage or imminent threat of such damage being referred to you as the competent authority. The accompanying information demonstrates in a plausible manner that the environmental damage or an imminent threat of such damage exists.

### **The damage**

Please see Annex A - Observations on the Movements and Condition of Migratory Fish, River Blackwater and Estuary, June to August 2018.

Sea lice counts (all stages) undertaken on five sampled wild fish taken by the Outer Hebrides Fisheries Trust were 686, 663, 760, 297 and 434.

Video footage and photographs are also attached.

### **Mechanism of damage**

Sea lice larvae produced in huge numbers by fish farms are known and well understood to have the potential to damage wild salmonids. This is a position accepted by Marine Scotland Science.

*“Salmon aquaculture can result in elevated numbers of sea lice in open water and hence is likely to increase the infestation potential on wild salmonids. This in turn could have an adverse effect on populations of wild salmonids in some circumstances. The magnitude of any such impact in relation to overall mortality levels is not known for Scotland. However, concerns that there may be a significant impact of aquaculture have been raised due to declines in catches of both salmon and sea trout on the Scottish west coast”<sup>1</sup>.*

A 2018 review, commissioned by S&TCS from the Norwegian Institute for Nature Research (NINA)<sup>2</sup>, examined all available research on the impact of sea lice, and concluded that “the combined knowledge from scientific studies provides evidence of a general and pervasive negative effect of salmon lice on salmonid populations in

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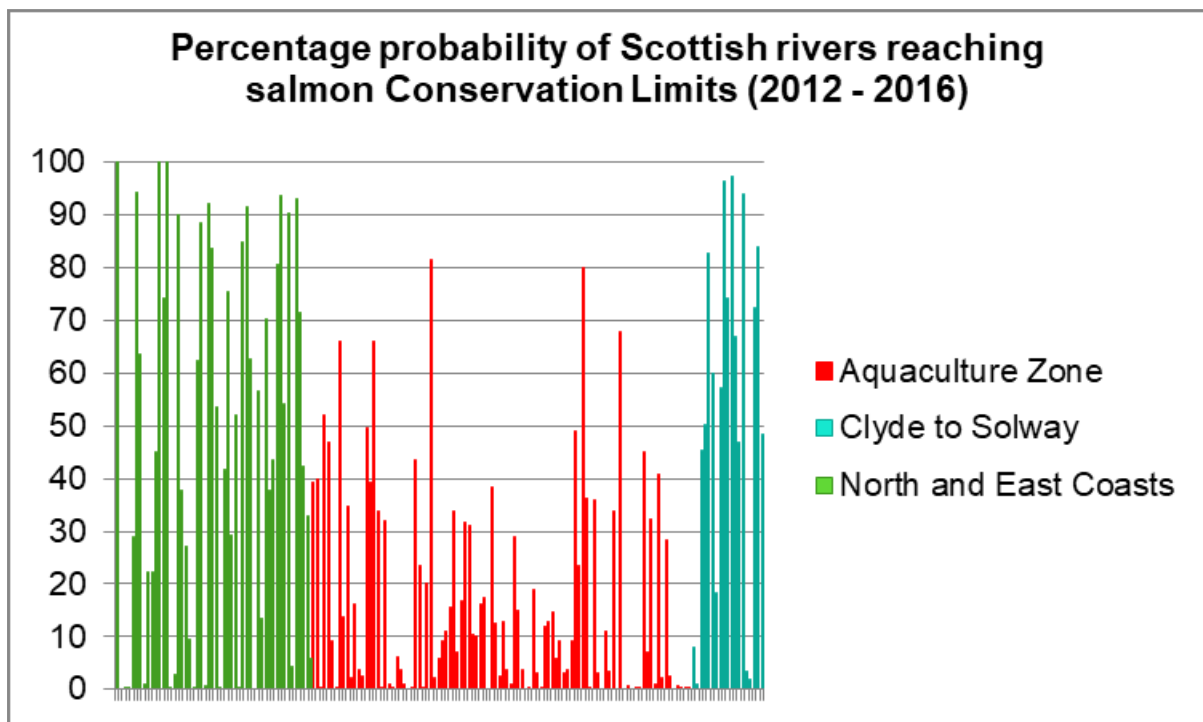
<sup>1</sup> MSS (2016) Summary of information relating to impacts of salmon lice from fish farms on wild Scottish sea trout and salmon. June 2016

<sup>2</sup> Thorstad, E.B. & Finstad, B. 2018. Impacts of salmon lice emanating from salmon farms on wild Atlantic salmon and sea trout. NINA Report 1449: 1-22. Trondheim, Norway, January 2018 at <https://brage.bibsys.no/xmlui/handle/11250/2475746>

*intensively farmed areas of Ireland, Norway and Scotland. ... Levels of additional mortality by salmon lice as indicated in several scientific studies may result in salmon stocks not achieving river specific conservation limits and, if sustained over time, could result in significant cumulative reductions in adult salmon recruitment.”*

The SAMS Report for the ECCLR Committee, also published this year, has concluded that *“the main treatment methods used in Scotland are experiencing reduced efficacy in dealing with sea lice on farms. New techniques are being applied, although the long-term success of these is uncertain. The legislative and voluntary frameworks that underpin the management of lice levels on farms are not transparent. They appear neither to be succeeding in controlling sea lice, nor capable of addressing the environmental effects of the lice.”*<sup>3</sup>

Data shows that, for wild salmon in the ‘aquaculture zone’ of the Scottish west coast, the percentage probability of Scottish rivers reaching salmon Conservation Limits (five-year average 2012-2016), shown using Marine Scotland Science data from the conservation assessments for 2018 by river and assessment group<sup>4</sup>, indicates a clear impact on the conservation of wild Atlantic salmon, with Atlantic salmon populations in rivers in the aquaculture zone far less likely to be reaching Conservation Limits.



### Location specific information – TSSC fish farms on Loch Roag

It is entirely plausible, indeed highly likely, that the level of sea lice infestation seen in Blackwater salmon has been caused by the release of the number of sea lice larvae from TSSC sites on Loch Roag, leading those salmon entering Loch Roag, and

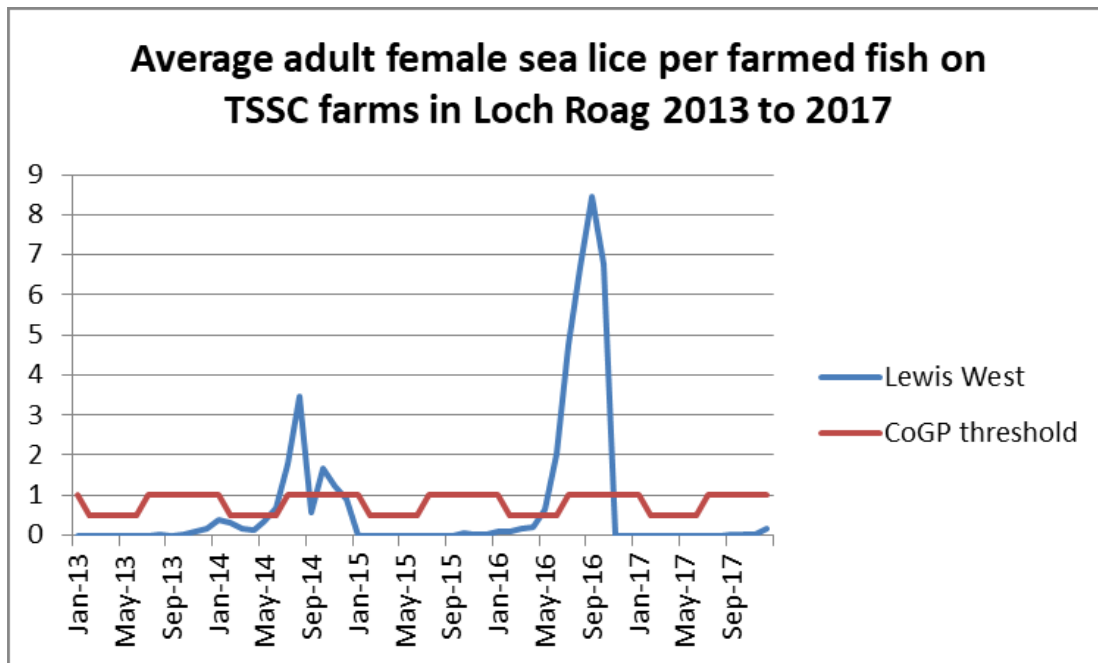
<sup>3</sup> Para 2.1.4 at page 15

<sup>4</sup> An explanation of Conservation Limits, and the probability of rivers meeting them, is available here: <http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence/status>

being held in sea water due to low river flows, to experience extreme infestations with sea lice, which would not, without the presence of the fish farms, have occurred.

TSSC farms on Loch Roag operate in, and are the only fish farms in the Lewis West region, for which aggregated sea lice data was reported by the SSPO in three-monthly Fish Health Management Reports over the period of 2013 - 2017.

The data on aggregated sea lice number of fish farms shows that there has been a failure to control adult female sea lice numbers on the farms in this region, in the last year of each of the last two production cycles.



This failure to control adult female sea lice on fish farms leads to the production of vast numbers of sea lice larvae and their release into the wider sea loch, at levels way above any natural or background level.

Note also that Marine Scotland Science has repeatedly stated “*that adherence to the suggested criteria for treatment of sea lice stipulated in the industry CoGP may not necessarily prevent release of substantial numbers of lice from aquaculture installations*”.

More recent publicly available data from SEPA, the FHI and the SSPO, which covers the period to the end of March 2018 only – no more recent data has yet been published – suggests that four of the TSSC farms on Loch Roag hold farmed fish at the end of the second year of production about now, which is generally accepted as the period within which adult female sea lice numbers on fish-farms hit their peak.



West Roag:

Gousam – long term fallow

Kyles of Vuia – stocked Jan 17, so in second year, peak biomass so far was in March 2018 at 1329 tonnes, treated with deltamethrin in February 2018

Vuia Mor - stocked Jan 17, so in second year, peak biomass so far was in March 2018 at 1370 tonnes, no treatments in Jan to March 2018

Vuia Beag - stocked Feb 17, so in second year, peak biomass so far was in March 2018 at 1253 tonnes, treated with azamethiphos in March 2018

East Roag:

Eughlam – long term fallow to March 2018, when re-stocked

Taranaish - stocked March 17, so in second year, peak biomass so far was in March 2018 at 1568 tonnes, no treatments in Jan to March 2018

Vacasay - stocked November 17, peak biomass so far was in March 2018, already at 1094 tonnes, so perhaps not stocked with smolts in November 2017, treated with deltamethrin in February 2018

Published on-farm sea lice figures show an upward trend at all stocked Loch Roag sites from January to March 2018. The only slight dip is at Kyles Vuia between February and March, where TSSC treated for sea lice with deltamethrin in February.

	Jan	Feb	Mar
Eughlam	F	F	F
Gousam	F	F	F
Taranaish	0.03	0.12	0.11
Vacasay	0.19	0.29	0.35
Vuia (Kyles)	0.05	0.68	0.47
Vuia Beag	0.19	0.25	0.63
Vuia Mor	0.34	0.29	0.48

It is not known what sea lice levels have been on TSSC farms from April to July 2018 as the industry has not yet fulfilled its commitment made to the ECCLR Committee this year to publish, by the end of April 2018, as close to real-time sea lice data as possible.

Amoebic Gill Disease (AGD) and complex gill issues at two TSSC sites on Loch Roag were reported to FHI in late 2017. It is understood that the presence of gill diseases can make treating for sea lice infestation in farmed fish difficult to achieve without significant mortalities, leaving untreated farmed fish that would otherwise be treated for lice. Total on-farm mortalities across Loch Roag have been rising towards March 2018, suggesting that disease issues may be occurring on some of the TSSC farms. It is not known what mortalities have occurred since March 2018.

Mortalities (tonnes):

	Jan	Feb	Mar
Eughlam	F	F	F
Gousam	F	F	F
Taranaish	23.6	32.2	53.7
Vacasay	3.7	3.7	5.6
Vuia (Kyles)	27.1	10.4	13.9
Vuia Beag	18.3	17.3	14.7
Vuia Mor	7.5	20.6	17.2
Total	80.2	84.2	105.1

## **Request for action and review**

Pursuant to Regulation 14(4), you are requested to determine whether or not you are satisfied that there is an imminent threat of damage or of actual damage in this case and, if so satisfied, you are requested to advise TSSC of the same and seek representations from TSSC.

Given that the threat of damage remains, you are asked to give this matter your urgent attention.

I look forward to hearing from you as soon as possible.

Yours sincerely

[Redacted - Regulation 11(2)]

## **Annex A**

### **Observations on the Movements and Condition of Migratory Fish, River Blackwater and Estuary, June to August 2018.**

*The Blackwater river is situated in East Loch Roag on the west coast of Lewis. The Scottish Salmon Company operates several fish farming sites in east and west Loch Roag, the closest of these being approximately 4 km from the estuary of the Blackwater river. (biomass etc to be added)*

*11 June*

*Sea trout and finnock were seen going in and out of sea pool with the tides that week. Underwater footage shows dorsal fins eaten away by sea lice. (video evidence).*

*15 June*

*First salmon and grilse arrived in sea pool. Heavy sea lice burdens but no counts done and not sufficient numbers of lice to cause concern. Low water at this time and fish stayed in the pool.*

*From 15 June through to 19 July*

*Numbers of fish in the sea pool increased but there was no freshwater to allow fish to run upriver. Approx half of the tides during this period would enter the sea pool and the water was saline the entire time.*

*By 18-19 July*

*The fish were showing signs of stress – constantly flashing on their sides underwater, cruising very slowly and remaining static near the surface with tails and fins showing, generally very lethargic. Fishing was suspended on 19 July and a few dead fish were found on the banks having beached themselves.*

*Week commencing 23 July*

*A number of fish were seen to have damage on the head, the gill covers and the dorsal fins. Each day I walked the banks of the sea pool and attempted to return to the water fish which were trying to beach themselves on the sloping banks of the*

*pool. During this week I picked up the following numbers of dead salmon/grilse from the banks of the pool. In addition to what I physically collected, there were numerous other carcasses visible on the bottom of the pool and very probably others on the bottom in deeper water which I was unable to see.*

*Mon 23 – 3*

*Tues 24 – 6*

*Wed 25 – 8*

*Thurs 26 – 12*

*Fri 27 – 16*

*Sat 28 – 21*

*Sun 29 – 8*

*On Friday 27 July, I witnessed several fish leaving the sea pool and going back to the estuary. Over the following 4 days carcasses were seen on the shoreline of the estuary. (witnessed by OHFT and photographic evidence) Numbers are difficult to give accurately as some carcasses were taken away by the tides and many more were taken by scavengers. (Black backed gulls, ravens and crows mainly). I would estimate the total number of dead fish at 150-200.*

*On Sunday 29 July, [Redacted - Regulation 11(2)] ([Redacted - Regulation 11(2)] with the [Redacted - Regulation 11(2)]) visited the sea pool and we took a dead fish from the pool for [Redacted - Regulation 11(2)] to obtain samples. An inspection at the time showed nothing obvious wrong with the internal organs of the fish but [Redacted - Regulation 11(2)] did comment on the high burden of sea lice and the dermal abrasions on the fish. Water temperatures were taken in both the sea pool and freshwater above the pool and readings gave no cause for concern. A salinity reading showed the sea pool to be too saline to kill the sea lice. [Redacted - Regulation 11(2)] suggested that we try sweep netting the pool with a view to transporting fish to a deep freshwater pool up the river.*

*On Monday 30 July, [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)] and [Redacted - Regulation 11(2)] got the relevant permissions to net the pool and, with help from a team of volunteers, we moved 61 fish from the sea pool to the long pool. Six dead fish were removed from the sea pool at this time and several more were seen in deeper water. A dead fish was chosen at random for a lice count and the number of lice was 686.*

*On Tuesday 31 July we netted the pool again and transported a further 19 salmon to the long pool. Sea lice counts were done on 3 live fish – a small coloured fish had 296 lice and two fresh grilse had 653 and 757 lice attached. [Redacted - Regulation 11(2)] had notified Marine Scotland Fish Health Inspectorate of the “fish kill” and their Emergency On-Call officer attended on Thursday 2 August. River levels had risen (starting on the evening of Tuesday 31 July) and almost all the fish had either died, gone upstream or gone back to sea. We netted one badly damaged fish from the pool and FHI took samples and inspected the fish. Lice numbers were low but by then the water was almost entirely fresh. An inspection of 2 carcasses (recovered from the sea pool on Saturday 28 July) from the freezer at Garynahine lodge was also carried out and the FHI inspector commented on a much higher number of lice.*

*There is plenty photographic evidence of the damaged and dead fish, and the unusually high sea lice burdens can be clearly seen.*

*The Scottish Salmon Company (SSC) are harvesting fish and there appears to be significant numbers of dead fish being landed at Breasclete pier. I saw 5 x 1 ton tubs full of dead fish on 2 August and also saw a fish farm boat unloading a further 4 x1 ton tubs of dead fish on 5*

*August. Three “special project” skips have been situated at the fish farm base at Breasclete for the last week but the extent of the contents is unknown to me.*

*The fish for harvesting are adults, typically 3 -4kg in weight, and will carry many more lice than the smaller fish from the year before. Sea lice counts should have been done on the penned fish but information on numbers is notoriously difficult to obtain – at best 3 to 4 months after the counts take place. It is unknown if/when any sea lice treatments took place in Loch Roag.*

*Thus far nobody has been able to offer any explanation for the high numbers of sea lice on the Garynahine fish other than the release of lice from the SSC farms in Loch Roag.*

*FHI has provided results from the first part of their testing of the dead fish which was sampled and the histology was negative. We are still waiting for virology results. It is extremely likely that the fish deaths at Garynahine were caused by excessive numbers of sea lice and this is supported by the dermal abrasions on the fish carcasses.*

Enclosure 1.2 – Email attachment (jpg).



Enclosure 1.3 – Email attachment (jpg).



Enclosure 1.4 – Email attachment (jpg).



## Enclosure 2.0 – Email sent from NatureScot.

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>

**Sent:** Monday, September 24, 2018 9:54 AM

**To:** [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@gov.scot; Mitchell A (Alastair) Alastair.Mitchell@gov.scot; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@gov.scot; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@gov.scot; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@gov.scot

**Subject:** FW: Re: Request for action and review in relation to damage to Atlantic salmon, Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

Dear All

For completeness – the letter addresses the two separate pieces of correspondence from [Redacted - Regulation 11(2)] addressed to Graham and Francesca (as agreed with Cathy).

Regards

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Marine Scotland](#)

Scottish Government | Area 1-B North | Victoria Quay | EH6 6QQ

T: [Redacted - Regulation 11(2)]

F: [Redacted - Regulation 11(2)]

**From:** Cathy Tilbrook [<mailto:Cathy.Tilbrook@nature.scot>]

**Sent:** 20 September 2018 13:56

**To:** [Redacted - Regulation 11(2)]

**Subject:** FW: Re: Request for action and review in relation to damage to Atlantic salmon, Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

Hi [Redacted - Regulation 11(2)]

Please see attached our response to [Redacted - Regulation 11(2)], issued today.

Thanks, Cathy

**Cathy Tilbrook | Sustainable Coasts & Seas Activity Manager**

Scottish Natural Heritage | Battleby | Redgorton | Perth | PH1 3EW | t: [Redacted - Regulation 11(2)]

| m: [Redacted - Regulation 11(2)]

Dualchas Nàdair na h-Alba | Battleby | Ràth a Ghoirtein | Peairt | PH1 3EW

[nature.scot](#) – Connecting People and Nature in Scotland – [@nature\\_scot](#)

Please note my email address is now: [Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)



**From:** [Redacted - Regulation 11(2)]

**Sent:** 20 September 2018 10:29

**To:** [Redacted - Regulation 11(2)]

**Cc:** Cathy Tilbrook; Francesca Osowska

**Subject:** Re: Request for action and review in relation to damage to Atlantic salmon, Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

Dear [Redacted - Regulation 11(2)]

Please see attached letter in response to your correspondence.

Kind regards,

[Redacted - Regulation 11(2)]

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[Redacted - Regulation 11(2)] | [Redacted - Regulation 11(2)]

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Scottish Natural Heritage | Battleby | Redgorton | Perthshire | PH1 3EW | t: [Redacted - Regulation 11(2)] | Cisco [Redacted - Regulation 11(2)]

Dualchas Nádair na h-Alba | Battleby | Ràth a' Ghoirtein | Peairt | PH1 3EW

[nature.scot](http://nature.scot) – Connecting People and Nature in Scotland - [@nature\\_scot](https://twitter.com/nature_scot)

## Enclosure 2.1 – Email attachment (PDF).



### Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland  
Nàdar air fad airson Alba air fad

[Redacted - Regulation 11(2)]  
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[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]

20 September 2018

Dear [Redacted - Regulation 11(2)]

#### **Request for action and review in relation to damage to Atlantic salmon, Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis**

Thank you for your letters dated 15 August and 7 September 2018 to Francesca Osowska and Graham Black, which set out your concerns in relation to the health of Atlantic salmon in the Blackwater and Grimersta Rivers and request a review under the Environmental Liability (Scotland) Regulations 2009 (ELR).

Francesca Osowska is currently on leave and I am responding on her behalf.

As you highlight in your letter, SNH is the competent authority under ELR in relation to terrestrial (including freshwater) protected species, whilst Scottish Ministers have this responsibility for protected species in the marine environment.

Under the Regulations, the competent authority must determine *whether the request and the accompanying observation demonstrate in a plausible manner that the environmental damage, or an imminent threat of such damage, exists*. In undertaking this review, we first have to test whether this case falls within the scope of the ELR.

ELR defines ‘damage to protected species’ as ‘significant adverse effects on reaching or maintaining the favourable conservation status (FCS) of the protected species’. In interpreting this, it should be noted that FCS is assessed at the scale of the natural range of a species, which for Atlantic salmon is widely distributed across the EU, although Scottish rivers are recognised to be a European stronghold for the species.

On that basis, the threshold for damage to Atlantic salmon under ELR is high and it is difficult to envisage a scenario where action by a specific operator or development would be likely to reach this level and cause significant adverse effects on reaching or maintaining FCS. For that reason, we have not progressed to assess these cases further under ELR.

Whilst we do not consider that these cases meet the ELR threshold, we do agree that your letter raises serious concerns about the health of Atlantic salmon in the area of Loch Roag and associated river systems. We are engaged in discussions with SEPA, who are investigating the background to this particular issue, and we are working alongside other key bodies, including Marine Scotland and local authorities, to ensure that wild salmonid interactions with aquaculture can be more effectively dealt with through the regulatory system.

I hope this response is helpful. Please contact Cathy Tilbrook  
Cathy.Tilbrook@nature.scot if you require any further information.

Yours sincerely

Nick Halfhide  
Director of Sustainable Growth

**Enclosure 3.0 – Email from Scottish Government.**

[Redacted – Out of scope]

**From:** [Redacted - Regulation 11(2)]

**Sent:** 27 November 2018 14:25

**To:** [Redacted - Regulation 11(2)] ([Redacted - Regulation 11(2)].co.uk) <[Redacted - Regulation 11(2)]>

**Cc:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>

**Subject:** Fol-18-03494 - Information relating to River Blackwater and TSSC on Loch Roag

Dear [Redacted - Regulation 11(2)]

In relation to your communication of 20 August 2018 (Fol-18-03494) please find the attached response.

Regards,

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB

Tel: [Redacted - Regulation 11(2)]

S/B: [Redacted - Regulation 11(2)]

Mob: [Redacted - Regulation 11(2)]

Fax: [Redacted - Regulation 11(2)]

e: [Redacted - Regulation 11(2)]@gov.scot

w: <http://www.scotland.gov.uk/marinescotland>

## Enclosure 3.1 – Email attachment (PDF).

marinescotland



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

T: +44 (0)131 244 2500 F: +44 (0)1224 295511  
marinescotland@gov.scot

[Redacted - Regulation 11(2)] by email

Our ref: Fol/18/03494

27 November 2018

Dear [Redacted - Regulation 11(2)]

I have now completed my review of our failure to respond to your request under the Environmental Information (Scotland) Regulations 2004 (EIRs) for all information held by Scottish Ministers (to include the Fish Health Inspectorate, Marine Scotland and Marine Scotland Science) concerning:

- the 2018 incident reported to Scottish Ministers concerning sea lice infestation of wild salmon at the River Blackwater on Lewis; and
- the salmon farms run by the Scottish Salmon Company on Loch Roag, to include all correspondence from any party concerning those farms, any inspections carried out by any person; and
- any other information held, covering the period 1st January 2018 to date (request submitted 20 August 2018).

In accordance with regulation 16(3)(b) of the EIRs, I have also reached a decision on your request.

I apologise for the delay in responding to this request and can confirm that our investigations have revealed that it was due to a procedural breakdown, which resulted in us overlooking both your initial request and your request for internal review. We have looked to address this by putting in place actions to ensure that this failing is not repeated. You may also find it helpful to note that we have a Central Enquiry Team who manage an email contact point for receiving FOI requests (ceu@gov.scot). In future you may wish to consider submitting (or copying) any requests via this dedicated contact point.

I can now provide our response to your original request. Relevant information to your request is available at the following Dropbox website address: **enclosures 3.3-3.7 provided via Shared Workspace.**

Further, some information that is relevant to your request has been published as responses to EIRs requests. You will find information on Vacasay salmon farm on Loch Roag in 2018 at the following link - <https://www.gov.scot/publications/foi-18-02916/>.

We have also published some information on a Fish Health Inspectorate (FHI) visit to investigate salmon deaths on the Blackwater River - <https://www.gov.scot/publications/foi-18-02917/>. While some of this information was published after the date of your original request, I hope that it is of interest to you.

You will note that some of the information released references scientific publications. These are not fully referenced in the emails released in response to your request, but the references are provided to you here as follows –

- White, H.C. (1940) “Sea lice” (*Lepeophtheirus*) and death of salmon. Journal of the Fisheries Research Board of Canada, 5(2): 172-175.
- Calderwood, W.L. (1905) “The white spot” affecting salmon in the Isle of Lewis. Twenty-fourth Annual Report of the Inspector of Salmon Fisheries for Scotland. Appendix V to the Twenty-fourth Annual Report of the Fishery Board for Scotland, pp78-79.

Under regulation 6(1)(b) of the EIRs, we do not have to give you information that is already publicly available and easily accessible to you in another form or format.

While our aim is to provide information wherever possible, in this instance we are unable to provide a small amount of the information you have requested because exceptions under regulations 10(4)(e) (internal communications) and 11(2) (personal information) of the EIRs apply to that information. The reasons why these exceptions apply are explained below.

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to a small amount of the information you have requested because it is internal communication about the 2018 incident reported to Scottish Ministers concerning sea lice infestation of wild salmon at the River Blackwater on Lewis. This information relates to the drafting of the final versions of a note that was put on the Marine Scotland section of the SG website, a Ministerial briefing and lines to take. This exception applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exception recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. You may find it helpful to note that the final versions of the note and Ministerial briefing have been released to you (with one redaction).

This exception is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. We recognise that there is some public interest in release as part of open, transparent and accountable government, and consider that this is met in part by the release of the final versions of these documents in

this case. We consider that there is a greater public interest in allowing a private space within which officials can discuss options and exchange views prior to provide free and frank advice to Ministers and/or making public statements. It is clearly in the public interest that Ministers can properly provide sound information to Parliament (to which they are accountable), and robustly defend the Government's policies and decisions. They need full and candid advice from officials to enable them to do so. Premature disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

An exception under Regulation 11(2) of the EIRs (personal information) applies to some of the information because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

You can also contact the Commissioner at:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely,

[Redacted - Regulation 11(2)]

**Enclosure 3.2 – FoI FoI/18/03494 request response attachment (PDF).**

**From:** [Redacted] (MARLAB)  
**Sent:** 31 July 2018 14:25  
**To:** [Redacted]<[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>  
**Subject:** FW: Garynahine, Blackwater River

Hi [Redacted]

Attached is a video of a moribund wild Atlantic salmon from the Blackwater river in the Western Isles. We will sample later this week, assuming that there are still moribund fish to sample, but I was wondering, could the damage be caused by sunburn? Would you be able to spot sunburn in a histological sample?

Thanks

[Redacted]

**From:** MS FishHealth  
**Sent:** 31 July 2018 14:07  
**To:** [Redacted] Email sent to FHI colleagues  
**Subject:** FW: Garynahine, Blackwater River

Hi all,

Please see a video from [Redacted] (Outer Hebrides Fisheries Trust) showing one of the moribund fish found after 70 fish were observed dead at the weekend. [Redacted] has agreed to go over to Lewis for a diagnostic investigation (the directions and map are for her).

Thanks,

[Redacted]

**From:** [Redacted]<[\[Redacted\]@ohft.org.uk](mailto:[Redacted]@ohft.org.uk)>  
**Sent:** 31 July 2018 13:37  
**To:** MS FishHealth <[MS.FishHealth@gov.scot](mailto:MS.FishHealth@gov.scot)>  
**Subject:** Garynahine, Blackwater River

Attached info regarding site visit for Garynahine, Isle of Lewis of visit. When travelling from Tarbet you will reach Leurbost and pass the doctors surgery on the left a short distance after there is a Tjunction signed for Uig with a brown tourist sign underneath take a left here and stay on this road until reaching Garynahine where there is another T-junction take this left and park at the area indicated on the map.

Regards [Redacted]

[Redacted]  
[Redacted]



Outer Hebrides Fisheries Trust  
The Sawmill, Marybank, Stornoway, Isle of Lewis  
HS2 0DD

Tel: [Redacted]  
Email:[Redacted][@ohft.org.uk](mailto:[Redacted]@ohft.org.uk)  
[www.ohft.org.uk](http://www.ohft.org.uk)

**From:** MS FishHealth  
**Sent:** 31 July 2018 11:14  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** FW: Wild Fish Mortality

Hi all,

Further to my email below, I can confirm that our on-call inspector ([Redacted]) will be with the Outer Hebrides Fisheries Trust in Lewis on Thursday for a diagnostic investigation on the fish from the River Blackwater.

Further information will be available following the visit.

Regards,

[Redacted]

**From:** [Redacted] (MARLAB)  
**Sent:** 30 July 2018 15:35  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** Wild Fish Mortality

Hi all,

This morning the DI received an enquiry from [Redacted], [Redacted] from the Outer Hebrides Fisheries Trust. He let us know that about 70 fish have been observed dead over the weekend in the River Blackwater, Garynahine Estate, Isle of Lewis. The fish have a high lice burden and physical damage. Moribund fish have also been observed.

We looked to send the on-call inspector asap but (due to the time of year and short notice) there is not enough space on ferries to get an inspector to and from Lewis.

We are currently investigating other options (i.e. [Redacted] taking the samples himself and sending them to us, if he has suitable training). We will keep you up to date with our progress,

Thanks,

[Redacted]

Senior Fish Health Inspector | Aquaculture & Fish Health  
Marine Scotland - Science

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Tel: +44 (0)131 244 [Redacted]

Fax: +44 (0)131 244 0944

S/B: +44 (0)131 244 2500

E-mail: [Redacted][@gov.scot](mailto:[Redacted]@gov.scot)

w: <http://www.gov.scot/Topics/marine>

[Redacted]

[Redacted]

Marine Scotland | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Tel: +44 (0)131 244 [Redacted]

Mobile: [Redacted]

[www.gov.scot/marinescotland](http://www.gov.scot/marinescotland)



**From:** [Redacted][@ohft.org.uk](mailto:[Redacted]@ohft.org.uk)

**Sent:** 16 August 2018 12:05

**To:** MS FishHealth <[MS.FishHealth@gov.scot](mailto:MS.FishHealth@gov.scot)>

**Subject:** Results for Garynahine

Dear FHI,

I'm writing with regard to the samples taken at Garynahine Estate, Isle of Lewis, you kindly informed me histology results came back negative but I was hoping you could also update OHFT as to the virology results?

Kind Regards, [Redacted]

[Redacted]

[Redacted]

Outer Hebrides Fisheries Trust

The Sawmill, Marybank, Stornoway, Isle of Lewis

HS2 0DD

Tel: [Redacted]

Email: [\[Redacted\]@ohft.org.uk](mailto:[Redacted]@ohft.org.uk)

[www.ohft.org.uk](http://www.ohft.org.uk)

**From:** [\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)

**Sent:** 17 August 2018 11:46  
**To:** [Redacted][@scottishsalmon.com](mailto:[Redacted]@scottishsalmon.com)>  
**Subject:** results from Vuia Mor

Hi [Redacted]

[Redacted] Just to pass on some results from Vuia Mor. I spoke with [Redacted] and passed them to him as well.

I sampled fish from cages 1, 6 (pool 1) and 9 (pool 2). The PCRs for ISA, VHS and IHN were negative, Pool 1 was positive for IPN and pool 2 was positive for SAV.

[Redacted], but [Redacted] is DI for the next two weeks [Redacted] and he'll keep you up to date with results.

[Redacted]

Cheers

[Redacted]  
Senior Fish Health Inspector  
Marine Scotland Science  
Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen AB11 9DB  
Tel: +44 (0)131 244 [Redacted]  
Mob[Redacted]  
Fax: +44 (0)131 244 0944 S/B: +44  
(0)131 244 2500  
e: [\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)  
w: <http://www.gov.scot/Topics/marine>

---

**From** [Redacted] (MARLAB)  
**Sent:** 01 August 2018 09:06  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** RE: Western Isles sea lice - comms plan

[Redacted]

Understand the pressures. Something along the lines of the fact that we are aware and are investigating? (It is an extremely unusual case – we have investigated many mortalities in wild fish populations over the course of the years, and this is the first that may be attributed to sea lice in near shore waters. Please bear in mind that we have yet to examine and get samples from these fish, but one line of investigation will be the cause of the damage.)

Happy to discuss.

Thanks

[Redacted]

---

**From:** [Redacted][@gov.scot](mailto:[Redacted]@gov.scot)

**Sent:** 01 August 2018 08:52  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** Western Isles sea lice - comms plan

Morning All

Just had a further discussion with [Redacted] who indicated that S&TC are alive to the current reports from the Western Isle, [Redacted].

Grateful for your thoughts, please.

Regards

[Redacted]

[Redacted]

Marine Scotland

Scottish Government | Area 1-B North | Victoria Quay | EH6 6QQ

T: +44 (0)131 244 [Redacted]

F: +44 (0)131 244 6512

---

**From:** [Redacted]@gov.scot

**Sent:** 01 August 2018 14:29

**To:** [Redacted] Email sent to SG colleagues

**Subject:** RE: sea lice - ministers

Dear All

I think the consensus we have reached is as follows:

- A short note on the FHI part our webpage with a factual account of the report and that we are investigating (drawing on the text in the minute to the Cab Sec) – [Redacted] are you able to progress ,please.
- A note to the Cab Sec outlining the details and that we have placed a short note as detailed above – [Redacted] –Slight rejigging of your note below.

Regards

[Redacted]

[Redacted]

Marine Scotland

Scottish Government | Area 1-B North | Victoria Quay | EH6 6QQ

T: +44 (0)131 244 [Redacted]

F: +44 (0)131 244 6512

---

**From:** [Redacted] (MARLAB)

**Sent:** 02 August 2018 13:09

**To:** [Redacted] MS FishHealth; [Redacted] Email sent to SG colleagues

**Subject:** RE: sea lice - ministers

[Redacted]

We would normally inform the river owner / provider of the fish of the results, rather than the DSFB. It would be for the river to keep the trust / board appraised. (similarly we would inform the fish farmer of results, rather than the SSPO. We would not discuss an individual farms results without the ok of the farm involved.)

I would suggest that we work to established routine, unless there is a significant reason not to.

[Redacted]

[Redacted]

Marine Scotland | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Tel: +44 (0)131 244 [Redacted]

Mobile: [Redacted]

[www.gov.scot/marinescotland](http://www.gov.scot/marinescotland)

---

**From:** [Redacted]

**Sent:** 02 August 2018 12:39

**To:** [Redacted] Email sent to SG colleagues

**Subject:** RE: sea lice - ministers

All

[Redacted]

Can we add that we will keep the local DSFB informed of our investigation/enquiries? Once on it would be politic to advise FMS.

Regards

[Redacted]

[Redacted] [Marine Scotland](http://www.marinescotland.gov.scot) Scottish Government | Area 1-B North | Victoria Quay | EH6 6QQ

T: +44 (0)131 244 [Redacted]

F: +44 (0)131 244 6512

---

**From:** [Redacted]

**Sent:** 02 August 2018 10:58

**To:** [Redacted] Email sent to SG colleagues

**Subject:** RE: sea lice - ministers

We 've never put information like this on our site before, however, I'm happy to start doing so if we think it's sensible.

Regards,

[Redacted]

---

**From:** [Redacted] (MARLAB)  
**Sent:** 02 August 2018 10:21  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** RE: sea lice - ministers  
**Importance:** High

Below is the text that I would intend to have posted on our web page.

Comment would be appreciated [Redacted]

Thanks

[Redacted]

[Redacted]

Marine Scotland | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Tel: +44 (0)131 244 [Redacted]

Mobile: [Redacted]

[www.gov.scot/marinescotland](http://www.gov.scot/marinescotland)

---

**From:** [Redacted]@gov.scot  
**Sent:** 02 August 2018 14:04  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** RE: sea lice - ministers

Hi [Redacted],

This looks good to me. Final text below. Thank you

-----  
-----  
The Fish Health Inspectorate (FHI) are aware of an incident in the Western Isles, when around 70 fish were removed dead over the weekend in a river flowing into Loch Roag.

A member of Scottish Government's FHI is in the Western Isles to examine fish from this incident.

The FHI has received images of a deceased wild salmon with high sea lice loads and of a live wild salmon with sea lice and physical damage.

The FHI receives a number of wild fish mortality reports throughout the year, which it investigates. Years where river levels are low generally see an increase in the number of wild salmonid mortality events reported.

Without full investigation the FHI cannot confirm the likely cause or contributing factors to the mortality.

---

**From:** [Redacted] **On Behalf Of** Cabinet Secretary for the Rural Economy

**Sent:** 07 August 2018 08:45

**To:** [Redacted]@gov.scot

**Cc:** Minister for Rural Affairs and the Natural Environment <MinisterRANE@gov.scot>; Black G (Graham) <Graham.Black@gov.scot>; Palmer MR (Mike) <Mike.Palmer@gov.scot>; [Redacted]; Communications Rural Economy & Environment

<CommunicationsRuralEconomy&Environment@gov.scot>; Cabinet Secretary for the Rural Economy <CabSecRE@gov.scot>; Cabinet Secretary for the Environment, Climate Change and Land Reform <CabSecECCLR@gov.scot>

**Subject:** RE: For Information - Notification of Wild Salmon Mortality Event - Western Isles

[Redacted],

Mr Ewing has noted.

Many thanks

[Redacted] | [Redacted] | 2N.08 | St Andrews House, Regent Road, Edinburgh EH1 3DG | T:0131 244 [Redacted] | Blackberry [Redacted]

***All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.***

***Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)***

---

**From:** [Redacted]@gov.scot

**Sent:** 01 August 2018 15:05

**To:** Cabinet Secretary for the Rural Economy; Cabinet Secretary for the Environment, Climate Change and Land Reform

**Cc:** Minister for Rural Affairs and the Natural Environment; Black G (Graham); Palmer MR (Mike); [Redacted]; Communications Rural Economy & Environment

**Subject:** For Information - Notification of Wild Salmon Mortality Event - Western Isles

**Importance:** High

***Please ignore my email of 14:39 and replace with the following version. This email is for information only and requires no action.***

PS Cabinet Secretary for the Rural Economy and Connectivity  
PS Cabinet Secretary for Environment, Climate Change and Land Reform  
CC. PS Minister for Rural Affairs and the Natural Environment

Ministers will wish to be aware of a mortality reported in wild salmon stocks by the Outer Hebrides Fisheries Trust. Around 70 fish were removed dead over the weekend in the River Blackwater, Garynahine Estate, adjacent to Loch Roag. A Scottish Government Fish Health Inspector will be in the Western Isles on Thursday to attempt to retrieve fish for further investigation.

Fisheries Management Scotland has provided images of a deceased wild salmon with high sea lice loads and still capture footage of a live wild salmon with sea lice and physical damage. We understand that Salmon and Trout Conservation Scotland (STCS), the group behind the petition which requests legal protection for wild salmonids for sea lice from fish farms and sparked the two recent aquaculture inquiries, is aware of the incident.

The FHI receives a number of wild fish mortality reports throughout the year, which it investigates. Years where river levels are low generally see an increase in the number of wild salmonid mortality events reported. Without inspection and sample analysis, it is not possible to definitively attribute the cause of the damage to these salmon.

### Communications

As Ministers are aware, the impact of sea lice of aquaculture origin on wild salmonids is a highly contentious topic. [Redacted] notwithstanding the uncertainties at this stage, and the possibility that the scarcity of water in the region is, at least, a contributory factor.

Officials will place a pro-active statement on the Fish Health Inspectorate's website and prepare media lines in anticipation of any media enquiries.

### **[Redacted]**

[Redacted]

Marine Scotland – Aquaculture, Crown Estate, Recreational Fisheries, EMFF and Europe

Tel: +44 (0)131 244 [Redacted]

E-mail: [Redacted]@gov.scot

Web: <http://www.scotland.gov.uk/marinescotland>

Mail: Scottish Government, 1B North, Victoria Quay, Edinburgh EH6 6QQ

<< OLE Object: Picture (Device Independent Bitmap) >>

-----Original Message-----

From: [Redacted] (MARLAB)

Sent: 17 August 2018 14:21

To: [Redacted] Email sent to SG colleagues



Subject: RE: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2

Unfortunately I cannot get on the internet for the moment, but the reference I was looking at was White 1940 "Sea lice and the death of salmon" in the Canadian Fisheries Board reports. This refers to an earlier report of similar mortality in the Western Isles that was reported by Calderwood 1905 in the Bulletin of the Fisheries Board of Scotland. I may be wrong on details of these publications, but not the dates or authors, because I have been frozen out for quite some time and so unable to check.

[Redacted]

-----Original Message----- From:

[Redacted]@gov.scot

Sent: 17 August 2018 14:09

To: [Redacted] Email sent to SG colleagues

Subject: RE: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2

Hi [Redacted]

That might be useful. Could you please provide some details [Redacted]?

I have been advised that a similar letter to this was received a couple of years ago so also chasing some thing at this end.

Cheers

[Redacted]

-----Original Message-----

From: [Redacted] (MARLAB)

Sent: 17 August 2018 14:04

To: [Redacted] Email sent to SG colleagues

Subject: FW: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2

Hi [Redacted]

I was discussing this with [Redacted] who recalls a historic early report of mortality in wild salmon associated with sea lice also in the western isles. [Redacted] will be able to provide details if required.

[Redacted]

-----Original Message-----

From: [Redacted]

Sent: 17 August 2018 10:56

To: [Redacted] Email sent to SG colleagues MS FishHealth  
<[MS.FishHealth@gov.scot](mailto:MS.FishHealth@gov.scot)>

Subject: FW: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2

Hi All

For awareness and in case any further correspondence is received.

Will be back in touch on this soon to discuss handling/ protocol.

Cheers

[Redacted] has sent you a link to "FW: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2" from Objective.

Open in Navigator

Double click on the attachment

Open in Your Browser

Latest: <https://erdm.scotland.gov.uk/id:A21889878/document/versions/latest>

Published: <https://erdm.scotland.gov.uk/id:A21889878/document/versions/published>

-----Original Message----- From:

[Redacted]@gov.scot

Sent: 17 August 2018 14:57

To: [Redacted] Email sent to SG colleagues

Subject: FW: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2

All

Thanks for replies on attached link so far which was sent for awareness in case of additional communications. There has been a previous case on this which [Redacted] was involved in responding to and [Redacted] is looking through the previous information.

Comments so far are noted. [Redacted] has offered to send around a summary and we can then agree handling moving forward. We will need to ensure a consistent approach so will await the summary before taking forward next week.

Cheers

[Redacted] has sent you a link to "FW: [Redacted - Regulation 11(2)] Request for action and review in relation to damage to Atlantic salmon, Blackwater River, Loch Roag, Isle of Lewis Emails 1 and 2" from Objective.

Open in Navigator  
Double click on the attachment

Open in Your Browser

Latest: <https://erdm.scotland.gov.uk/id:A21889878/document/versions/latest>

Published:

<https://erdm.scotland.gov.uk/id:A21889878/document/versions/published>

**From:** [Redacted]@gov.scot  
**Sent:** 01 August 2018 14:17  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** RE: sea lice - ministers

[Redacted] – in the latest circumstances, as the event appears to have essentially concluded [Redacted] suggest we limit the recommendation to a factual MS statement now with reactive media lines as an alternative.

[Redacted]

---

**From:** [Redacted]@gov.scot  
**Sent:** 01 August 2018 14:06  
**To:** [Redacted] Email sent to SG colleagues  
**Subject:** RE: sea lice - ministers

All

I've spoken with SEPA – this is not an area with significant water scarcity and it is unlikely to be the primary cause of the mortality – but potentially a contributory factor by holding the fish in that place for longer. I have suggested a couple of tweaks on that basis.

[Redacted]

---

**From:** [Redacted] (MARLAB)  
**Sent:** 01 August 2018 13:54  
**To:** [Redacted] Email sent to SG colleagues

**Subject:** RE: sea lice - ministers

[Redacted]

I've suggested some alternative words.

We have reports from the Western Isles that there has been heavy rain overnight and the moribund fish that have been observed for the last couple of days are no longer present. An assumption is that they have run the river, or dispersed on the tide. We will still be able to examine, collect limited samples and take photos of frozen mortalities.

In over twenty years I have not seen a similar case of wild salmon exhibiting physical damage such as this.

Happy to discuss

[Redacted]

[Redacted]

Marine Scotland | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Tel: +44 (0)131 244 [Redacted]

Mobile: [Redacted]

[www.gov.scot/marinescotland](http://www.gov.scot/marinescotland)

---

**From:** [Redacted]@gov.scot

**Sent:** 01 August 2018 13:24

**To:** [Redacted] Email sent to SG colleagues

**Subject:** RE: sea lice - ministers

[Redacted]

Some suggestions around approach below.

Regards

[Redacted]

[Redacted]

**Marine Scotland**

Scottish Government | Area 1-B North | Victoria Quay | EH6 6QQ

T: +44 (0)131 244 [Redacted]

F: +44 (0)131 244 6512

**Enclosure 3.3 – Fol request Fol/18/03494 response attachment (PDF) provided via Shared Workspace.**

**Enclosure 3.4 – Fol request Fol/18/03494 response attachment (PDF) provided via Shared Workspace.**

**Enclosure 3.5 – Fol request Fol/18/03494 response attachment (PDF) provided via Shared Workspace.**

**Enclosure 3.6 – Fol request Fol/18/03494 response attachment (PDF) provided via Shared Workspace.**

**Enclosure 3.7 – Fol request Fol/18/03494 response attachment (m2ts) provided via Shared Workspace.**

## Enclosure 4.0 – Email from NatureScot.

[Redacted – Out of scope]

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>  
**Sent:** 11 December 2018 09:56  
**To:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>  
**Cc:** Nick Halfhide <[Nick.Halfhide@nature.scot](mailto:Nick.Halfhide@nature.scot)>  
**Subject:** For information: SNH final response on Atlantic salmon , Isle of Lewis

Dear [Redacted - Regulation 11(2)],  
Cc Nick

Please see the attached final response from Nick Halfhide addressed to [Redacted - Regulation 11(2)], regarding the Langavat SAC population of Atlantic salmon on the Isle of Lewis, for your information.

Nick advises that there is the potential for this to attract Ministerial interest.

Kind regards  
[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)] | [Redacted - Regulation 11(2)]  
Scottish Natural Heritage | Silvan House | 231 Corstorphine Road | Edinburgh | EH12 7AT | t:  
[Redacted - Regulation 11(2)] m: [Redacted - Regulation 11(2)]  
Dualchas Nàdair na h-Alba | Taigh Silvan | 231 Rathad Chros Thoirphin| Dùn Èideann| EH12 7AT  
[nature.scot](http://nature.scot) – *Connecting People and Nature in Scotland* – [@nature\\_scot](https://twitter.com/nature_scot)  
All our emails have recently changed. My email is now [Redacted - Regulation 11(2)]@nature.scot

## Enclosure 4.1 – Email attachment (docx).

[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]

Dear [Redacted - Regulation 11(2)]

### **Request for action and review in relation to damage to Atlantic salmon, Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis**

Thank you for your further letter dated 27 September 2018 concerning your request for us to take action under the Environmental Liability (Scotland) Regulations 2009 (ELR), and please accept our apologies for the delay in responding to you.

#### Background

Your letter raised concerns about the way in which we had dealt with your original request, specifically in relation to the assessment of the contribution that the Langavat SAC population of Atlantic salmon makes to Favourable Conservation Status (FCS) over its EU range. You asked us to reconsider the decision not to examine the issue further under the ELR.

In response to your concerns we have reviewed our advice, taking into account stock assessment information received from Marine Scotland Science. In reaching our conclusion, we have considered the impact of the mortality event on FCS for Atlantic salmon at a series of geographical scales, and we accept the point that you have raised that this is the correct approach to considering FCS in relation to the Environmental Liability Directive, in line with the recently published 'UK Statutory Nature Conservation Bodies Common Statement on FCS'. We are now revising our guidance on ELR casework to ensure that it takes into account this updated interpretation of FCS. Our revised assessment is set out below.

#### Evidence of damage

Your original letter describes, in Annex A, observations of significant numbers of dead and damaged salmon in pools in the lower reaches of the River Blackwater. Based on these observations and others reported to [SEPA via their 2018 water scarcity management group](#) (and noting the potential for some double counting between these totals) we have concluded that there is evidence of at least 380 salmon being lost. As far as we are aware, there is no evidence of such damage during this period to the Langavat SAC.

#### Blackwater at regional scale

In order to consider the impact of losses at regional/local levels, we have compared the Blackwater salmon population against the population within the Outer Hebrides fishery district. We have reviewed the [Scottish salmon fishery statistics](#) and extracted the total rod catch recorded each year between 2011 and 2017 within the Outer Hebrides. The figures, including those for both catchments, are set out below. Bearing in mind that these figures are for the rod catch (and not the estimated overall stock estimate which Marine Scotland Science derived separately – see later), the figures show that Blackwater River provides between 5 and 20% of the overall rod catch recorded in the Outer Hebrides. Typically though the salmon catch in the Blackwater is much smaller than that recorded in the Grimersta. If you combine the total catch in the Grimersta and the Blackwater, then these two rivers support between 30 and 52% of the total catch recorded in the Outer Hebrides. So, locally, they are important river systems for the Outer Hebrides and make important contributions to the local salmon population. And, assuming catch is directly related to stock size, they can support up to 50% of the local salmon population in some years.

Taking the Blackwater on its own (as that is the river for which we have seen evidence of damage) then the potential worst case scenario of a loss of the total adult run population during the summer would result in a loss of 5 to 20% of the local salmon population. That could be significant but would be buffered by the losses being in a single year, with the potential for rapid natural recovery should the underlying population otherwise be in good condition (see later). This is because salmon spend a number of years maturing in fresh waters before migrating to the sea (so catchments support a number of year classes) and smolts that leave rivers such as the Blackwater also stay at sea for a variable number of years. Therefore, of the fish that left in 2017 the majority will probably have returned in 2018 but others will return in 2019 and, perhaps, beyond. The salmon’s lifecycle thus provides a degree of buffering against even a very significant one-off stochastic event such as the loss of a whole year’s annual adult return (provided the underlying population is healthy).

	Outer Hebrides - total catch	Langavat/ Grimersta catch	% regional catch	<b>Blackwater catch</b>	<b>% regional catch</b>	Grimersta & Blackwater total % regional catch
2011	2330	561	24.1	<b>258</b>	<b>11.1</b>	35.2
2012	2686	500	18.6	<b>555</b>	<b>20.7</b>	39.3
2013	1746	423	24.2	<b>252</b>	<b>14.4</b>	38.7
2014	1184	279	23.6	<b>176</b>	<b>14.9</b>	38.4
2015	1086	266	24.5	<b>50</b>	<b>4.6</b>	29.1
2016	1149	394	34.3	<b>199</b>	<b>17.3</b>	51.6
2017	968	317	32.7	<b>127</b>	<b>13.1</b>	45.9

### Blackwater population status

Marine Scotland Science provided us with information on whether Grimersta and Blackwater have met their conservation limits between 2013 and 2017. They are



quite clear in their assessment that both the Grimersta and the Blackwater have met their Conservation Limit in every year bar one (2015). In other words, the number of fish required to achieve the egg deposition target is exceeded - leaving a surplus which can be exploited almost every year. Therefore one could conclude, based on rod fishery returns, that the Blackwater is a relatively robust population and exceeding its targets nearly every year. And this mirrors the situation in the neighbouring Grimersta catchment. A more detailed assessment will be possible for 2018, which will include juvenile production assessments placed in a national context for the first time, but those results won't be available until 2019.

It is also worth considering the Site Condition Monitoring results from the neighbouring Langavat SAC that was carried out in 2011, which was favourable for its adult salmon component during the spring, summer and autumn. This supports the more recent data presented by Marine Scotland Science. The only reason that the Langavat SAC was considered to be in unfavourable condition was because it failed one of the two juvenile assessment components (passed the 'fry' component, but failed the parr element). There can be a multitude of reasons for this - not least the restricted number of sites that we were able to survey. Our conclusion was that the site was recovering because all the conditions seemed to be in place for the local salmon population to be sustainable in the long term.

#### Blackwater at national scale

Marine Scotland Science have provided us with information describing the rod catch from both the Blackwater and the Langavat/Grimersta catchments between 2011 and 2017, alongside their median stock estimates for each catchment (Annex A). Marine Scotland Science also compared the median to the same estimate for all of Scotland. For the Blackwater the estimates show (see Table below) that the river contributes between 0.1 and 1% of the median total Scottish stock between 2011 and 2017. Over the same time period the Langavat/Grimersta supports between 0.4 and 1% of the median total Scottish stock of Atlantic salmon.

Year	Catch	Median stock estimate	Median % of all Scotland stock
2011	258	1849	0.319
2012	555	6016	1.027
2013	252	1941	0.399
2014	176	957	0.314
2015	50	369	0.085
2016	199	1402	0.308
2017	127	885	0.22

At the national level we would advise that even considerable damage to the Blackwater salmon population would not constitute an adverse effect on the FCS of Atlantic salmon in Scotland as it is such a small percentage of the overall resource.

#### Blackwater at EU biogeographic scale

Given the above conclusion, it is evident that the damage to the Blackwater salmon population (which is not considered to be significant at the regional or national scale), would not constitute an adverse effect on the FCS of Atlantic salmon at the EU Atlantic biogeographic region level. For this reason, whilst agreeing that Langavat SAC should be considered to be at the north-westerly edge of the EU range for Atlantic salmon, given the above conclusions, we do not consider that the range of the species has been reduced in this case.

### Conclusion

The evidence of considerable damage to the Blackwater salmon population during summer 2018 is compelling and clear. And, compared to recent catch returns, it could potentially represent the loss of a very considerable proportion of the river's population of returning adult salmon in that year.

However, taking into account the apparently good underlying health of the Blackwater and Langavat/Grimersta catchments that drain into Loch Roag, and also the life history of salmon, we conclude that the evidence does not support a significant adverse effect on the favourable conservation status of Atlantic salmon at the regional scale, and hence at wider Scottish / UK / EU scales. **For that reason, we maintain our previous position that this case does not meet the threshold for further consideration under ELR.**

As stated previously, we agree that your letter raises serious concerns about the health of Atlantic salmon in the Blackwater River area and we continue to work closely with partners to ensure that wild salmonid interactions with aquaculture can be more effectively dealt with through the regulatory system. It may also be worth noting that we may have come to a different conclusion if the 2018 incident was repeated over more than one year and/or there was evidence of similar impacts in other local catchments.

I hope this response is helpful. Please contact Iain Sime or Cathy Tilbrook if you require any further information.

Yours sincerely

Nick Halfhide  
Director of Sustainable Growth

### **Annex A**

Catch data, along with estimated stock levels and what percentage of the all Scotland stock this represents, for the Grimersta and Blackwater. Also included is information on the uncertainty around these estimates. The information was generated and supplied to us by Marine Scotland Science.

### **Blackwater**

Year	Catch	Median stock estimate	Median % of all Scotland stock
2011	258	1849	0.319
2012	555	6016	1.027
2013	252	1941	0.399
2014	176	957	0.314
2015	50	369	0.085
2016	199	1402	0.308
2017	127	885	0.22

### Uncertainty around stock estimate

(90% of the 10,000 bootstrap estimates fall between the Lower and Upper 90% figures presented below etc)

Year	Lower 90%	Lower 70%	Lower 50%	Median	Upper 50%	Upper 70%	Upper 90%
2011	1204	1395	1534	1849	2236	2470	2958
2012	3729	4411	4921	6016	7410	8255	10036
2013	1231	1440	1594	1941	2363	2609	3154
2014	611	713	787	957	1164	1288	1548
2015	233	274	303	369	451	502	605
2016	892	1045	1154	1402	1700	1890	2260
2017	554	653	725	885	1080	1197	1436

### Uncertainty around % of all Scotland stock

(90% of the 10,000 bootstrap estimates fall between the Lower and Upper 90% figures presented below etc)

Year	Lower 90%	Lower 70%	Lower 50%	Median	Upper 50%	Upper 70%	Upper 90%
2011	0.293	0.303	0.308	0.319	0.33	0.335	0.344
2012	0.891	0.936	0.967	1.027	1.092	1.131	1.197
2013	0.373	0.382	0.388	0.399	0.409	0.414	0.423
2014	0.288	0.297	0.303	0.314	0.324	0.33	0.339
2015	0.079	0.081	0.083	0.085	0.088	0.09	0.093
2016	0.284	0.293	0.298	0.308	0.319	0.325	0.336
2017	0.207	0.212	0.215	0.22	0.225	0.228	0.232

### Grimersta

Year	Catch	Median stock estimate	Median % of all Scotland stock
2011	561	4464	0.768
2012	500	5594	0.955
2013	423	3608	0.742

2014	279	1961	0.642
2015	266	1792	0.414
2016	394	2747	0.603
2017	317	2376	0.591

### Uncertainty around stock estimate

(90% of the 10,000 bootstrap estimates fall between the Lower and Upper 90% figures presented below etc)

Year	Lower 90%	Lower 70%	Lower 50%	Median	Upper 50%	Upper 70%	Upper 90%
2011	2845	3326	3675	4464	5432	5997	7216
2012	3435	4076	4561	5594	6913	7712	9397
2013	2268	2664	2961	3608	4414	4889	5906
2014	1219	1443	1603	1961	2400	2663	3212
2015	1119	1324	1467	1792	2187	2433	2930
2016	1714	2027	2245	2747	3352	3738	4489
2017	1491	1757	1950	2376	2905	3214	3867

### Uncertainty around % of all Scotland stock

(90% of the 10,000 bootstrap estimates fall between the Lower and Upper 90% figures presented below etc)

Year	Lower 90%	Lower 70%	Lower 50%	Median	Upper 50%	Upper 70%	Upper 90%
2011	0.719	0.737	0.748	0.768	0.787	0.798	0.816
2012	0.824	0.868	0.897	0.955	1.017	1.053	1.117
2013	0.692	0.71	0.722	0.742	0.762	0.772	0.789
2014	0.588	0.607	0.62	0.642	0.663	0.674	0.693
2015	0.381	0.393	0.4	0.414	0.428	0.436	0.451
2016	0.554	0.572	0.583	0.603	0.625	0.637	0.66
2017	0.556	0.569	0.577	0.591	0.605	0.612	0.624

## Enclosure 5.0 – Email sent from NatureScot.

[Redacted – Out of scope]

**From:** Cathy Tilbrook <[Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)>

**Sent:** 14 June 2019 13:28

**To:** Mitchell A (Alastair) <[Alastair.Mitchell@gov.scot](mailto:Alastair.Mitchell@gov.scot)>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] ([Redacted - Regulation 11(2)]@sepa.org.uk) <[Redacted - Regulation 11(2)]@sepa.org.uk>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; Iain Sime <[Iain.Sime@nature.scot](mailto:Iain.Sime@nature.scot)>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>

**Subject:** Urgent - comments requested on draft letter to SSC by Tue 18 June

**Importance:** High

Hi all

I'm afraid it has taken some time to re-draft the note of our 3 May meeting (attached - thanks for comments) and to draft a letter to Scottish Salmon Company to set out our proposed way forward and further information requested from them.

I want to ensure that you are content with the draft letter, but am also keen that we issue this without undue further delay.

**Please can I therefore ask you to contact me with any comments on the letter by close of play next Tuesday 18 June.** A brief no comment reply would be useful if you are content.

Iain has separately circulated a doodle poll for the meeting of the SAC technical group to discuss the Loch Roag case. I would stress again how important it is that we quickly agree wild salmonid monitoring plans to ensure that Planning Condition 2 associated with the SSC Aird Taranaish consent can be fully implemented.

Thanks for your input and please let me know if you have any queries.

Thanks, Cathy

**Cathy Tilbrook | Sustainable Coasts & Seas Activity Manager**

Scottish Natural Heritage | Battleby | Redgorton | Perth | PH1 3EW | t: [Redacted - Regulation 11(2)]

| m: [Redacted - Regulation 11(2)]

Dualchas Nàdair na h-Alba | Battleby | Ràth a Ghoirtein | Peairt | PH1 3EW  
[nature.scot](http://nature.scot) – Connecting People and Nature in Scotland – [@nature\\_scot](https://twitter.com/nature_scot)

Please note my email address is now: [Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)

## Enclosure 5.1 – Email attachment (docx)

### Environmental Liability Regulations – Investigation regarding potential ‘imminent threat’, Loch Roag Teleconference meeting: Friday 3 May 2019, 10-12 am

#### Attendees:

Alastair Mitchell, [Redacted - Regulation 11(2)], [Redacted - Regulation 11(2)],  
[Redacted - Regulation 11(2)] MS  
[Redacted - Regulation 11(2)], SEPA  
Cathy Tilbrook, Iain Sime, [Redacted - Regulation 11(2)], [Redacted - Regulation  
11(2)], [Redacted - Regulation 11(2)], SNH  
(Apologies from [Redacted - Regulation 11(2)], MS, [Redacted - Regulation 11(2)],  
SEPA, [Redacted - Regulation 11(2)], SNH)

#### 1. Background and context to the case

Cathy outlined the background to this investigation. SNH received a request for action under the Environmental Liability (Scotland) Regulations 2009 (ELR) in response to concerns about the health of Atlantic salmon in the Blackwater and Grimersta Rivers, related to salmon farming operations by The Scottish Salmon Company (TSSC) in Loch Roag, Isle of Lewis.

SNH is the competent authority for dealing with cases of ‘environmental damage’ to biodiversity on land (including inland waters) and Marine Scotland has this role for marine biodiversity. We have agreed to work together on this case.

#### Timeline of key correspondence on case (key letters marked \*):

\*15/8/18 Initial letter from [Redacted - Regulation 11(2)] to MS and SNH – request to take action under ELR in relation to mortality incident affecting Atlantic salmon in the Loch Roag area in summer 2018

20/9/18 SNH response – considered case to be out of scope for ELR due to scale of impact

27/9/18 [Redacted - Regulation 11(2)] response challenging issue of scale, based on new published guidance

\*26/11/18 SNH response – considered impacts at different scales. Concluded no case under ELR at this time, but highlighted that if situation was repeated then this could trigger impacts relevant under ELR.

19/12/18 [Redacted - Regulation 11(2)] challenged SNH assessment of local scale

25/1/19 SNH contest that local scale was assessed but repeat point about multiple year effect

\*29/1/19 [Redacted - Regulation 11(2)] detailed letter suggesting 'imminent threat' under ELR

6/3/19 SNH response to [Redacted - Regulation 11(2)] confirming investigation of imminent threat under ELR; SNH letter to The Scottish Salmon Company explaining that there is considered to be a credible risk of environmental damage to Atlantic salmon that must be further investigated. The investigation will carefully examine the measures that the company has in place to control sea lice on their farmed fish and to monitor the interactions of their farming operations with wild Atlantic salmon in the area.

\*22/3/19 TSSC response contesting the 'imminent threat' and asserting that operation is in compliance with EMP

Cathy highlighted that the investigation is not about whether ELR has been breached in the past, but about being satisfied that appropriate measures are in place to avoid an imminent threat of environmental damage to Atlantic salmon (which could arise if a further year of similar pressures were to occur).

[Redacted - Regulation 11(2)] clarified that an offence can be committed under ELR if an operator is shown to be at fault or negligent. They must, without delay, take necessary preventative measures to avoid damage. There are exemptions in relation to natural events.

## **2. Review and discuss the submission received from TSSC**

Iain summarised the submission from TSSC, which makes three main points:

- TSSC do not agree that there is evidence of 'imminent threat'
- they consider that the summer 2018 events arose due to natural phenomena and that if there was impact on wild fisheries then the fisheries managers should take responsibility
- they consider that they are in compliance with their consents, including the Environmental Management Plan.

### Discussion on TSSC submission

1. All agreed that the Aird Taranaish planning conditions and associated EMP have not yet been fully implemented. This partly relates to the need to undertake monitoring of wild salmonids and to urgently establish and effectively operate a group to oversee the monitoring and protection of Langavat SAC. It was acknowledged that TSSC do not carry responsibility for the effective operation of such a group and that this is an urgent priority for all agencies to progress. It was agreed that, rather than convening a separate Langavat SAC group, the existing national SAC Technical Group should urgently meet to focus on the needs of the Loch Roag case, and to provide the oversight required by the EMP provisions.

2. The references in TSSC's letter were useful and informative. But the source of the lice infection in Loch Roag in 2018 is not clear.
3. It wasn't clear what made some of the items listed on p4 innovative.
4. In relation to the measure to increase freshwater bathing availability, it is unclear where the freshwater would come from. There are no known licences to abstract from sources around Loch Roag and, in times of water scarcity such as experienced in 2018 there would be no availability. It would be useful to be clear how the freshwater would be sourced.
5. The same list of items mentions that additional farmed lumpfish will be deployed. It is understood that lumpfish are not as effective when water temperatures are warmer, so that measure may not be effective during a repeat of the conditions experienced in 2018.
6. In relation to "imminent threat", we considered that this applies to 2019 but also to 2020 – the latter will be the 2nd year of their current production when the risk of increased sea lice numbers is greatest. But we noted too that there has been relatively little rain in Lewis in recent weeks and the area is at the 'alert' water scarcity level, so similar climatic conditions may re-occur this summer.

### **Feedback on 2018 incident and measures taken / lessons learned**

[Redacted - Regulation 11(2)] outlined the Fish Health Inspectorate's experience of the incident in Loch Roag. The situation deteriorated quickly and it is still not clear what the source of the sea lice infection was, but conditions (drought, water temperature) were very suitable for sea lice. Situation took around 10 weeks to bring under control, although equipment was quickly obtained (thermolicer and hydrolicers) and the company now have greater resources in place locally.

There were clear lessons learned about communication and the need for greater transparency when problems arise. Better relations are now established between the company and local wild fisheries interests, which should ensure that there would be much quicker awareness and response if any future incident arose.

There was no obligation on the company to reduce biomass quickly, although they did take a commercial decision to accelerate harvest of the stock. The planning condition / EMP process in relation to sea lice management was not invoked as the Langavat SAC Management Group was not functional.

### **Related issues (e.g. planning application at Vuia Mor, Loch Roag)**

[Redacted - Regulation 11(2)] provided an update on the TSSC expansion proposal at Vuia Mor (currently at EIA/HRA screening/scoping stage). The SNH response made reference to the live ELR investigation and suggested that it would be difficult to conclude an HRA assessment until the investigation is completed.

TSSC is proposing some consolidation in its operation within Loch Roag, and this could be a welcome development, especially if sites are located further from



sensitive rivers. However, consolidation has been under discussion for some time with limited evidence of progress, and it is difficult to condition robustly through the planning system (although may be possible to word conditions so that one site cannot be operated simultaneously with another).

There was broad agreement that, whilst reconfiguration could be supported, there should be no consent for overall biomass increase in Loch Roag until compliance with the EMP / planning consent is clearly demonstrated.

### **Next steps and actions**

1. SNH/MS to rapidly convene the existing national SAC Technical Group (see terms of reference in annex) to focus on the Loch Roag case, determine monitoring requirements and assess regulatory preparedness. This group to consist of: SNH (Iain, [Redacted - Regulation 11(2)]), MS ([Redacted - Regulation 11(2)], [Redacted - Regulation 11(2)], [Redacted - Regulation 11(2)]), SEPA ([Redacted - Regulation 11(2)]) and a LA rep from CnES, in an observer role. The need for input from the Local Fisheries Trust should also be considered. This group will set out required measures, and implementation of these by the company will be required to demonstrate compliance with the EMP. In addition, a clear process should be defined on how the group would provide urgent advice to the LA on these issues if any future such incident were to arise.
2. MS to clarify recent results / future plans for juvenile wild salmonid monitoring in River Blackwater / surrounding area.
3. SNH to seek clarification on points in TSSC response where questions have been raised (e.g. on efficacy in use of lumpsucker in warm conditions and in relation to freshwater availability) NB since the meeting, SEPA have noted that no freshwater abstraction licences are in place in the area)
4. SEPA to provide an update on local river levels and comparison with last year.
5. SNH to write to [Redacted - Regulation 11(2)] to provide an update on progress with this investigation.
6. All to share details of any media interest and communications issues to enable coordinated approach and Ministerial briefings, etc where required.

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## **Annex - Extract from ToR for SAC Technical Group**

### **Aims**

1. The aim of the Group is to be aware of any potential impacts on the relevant SAC and to ensure appropriate mitigation of these where possible.

### **Membership and Frequency of Meetings**

2. Frequency of meetings to be determined by the amount of information that needs to be considered. It is expected that information relating to a single SAC will be considered on an annual basis. The number of SACs requiring to be considered may necessitate more than one meeting to be organised.

3. Where information comes to light that suggests a significant impact to the integrity of the SAC, an additional meeting may be called.

Members include:

- 1) Chairperson and vice chair - Marine Scotland / SNH
- 2) Secretariat: to be provided by Marine Scotland / SNH
- 3) Membership of the group will compose of: SNH, Marine Scotland, SEPA
- 4) The relevant Local Authority/Authorities will be invited to future meetings in observer capacity.

### **Roles and Responsibilities**

Members of the Group are responsible for:

- Reviewing monitoring information (including sweep netting and electrofishing data) for the relevant SACs;
- Bringing information to the meeting about any issues they are aware of that might impact on the integrity of the SAC;
- Identifying sources of concern and seeking additional information (if needed);
- Developing and monitoring individual farm or SAC management plans relating to sea lice with operators;
- Requesting action where necessary;
- Updating relevant Local Authorities and other parties as required.

## Enclosure 5.2 – Email attachment (doc).

[Redacted - Regulation 11(2)]  
The Scottish Salmon Company  
Head Office  
8 Melville Crescent  
Edinburgh  
EH3 7JA

5 June 2019

Dear [Redacted - Regulation 11(2)]

### **SSC site in Loch Roag, Isle of Lewis Request for Action – Environmental Liability (Scotland) Regulations 2009**

Thank you for your letter of 22 March 2019 and please accept our apologies for the delay in replying. This was due to difficulties in finding a date to convene relevant bodies to consider your response and subsequent time taken to agree the meeting outputs.

The meeting took place on 3 May 2019, with representatives from Marine Scotland, SEPA and SNH in attendance. We reviewed the submission you provided on 22 March, and would like to pick up on the following points.

We note your view that the 2009 Regulations do not apply; that the 2018 incident was largely related to natural phenomena; and that SSC has and continues to take all necessary preventative measures to avoid an imminent threat of damage to wild Atlantic salmon.

Whilst we agree that the temperature and drought conditions in summer 2018 were likely to have been a major factor in the wild salmon mortality event, we suggest that sea lice burden was also likely to have been a contributory factor, and that there is uncertainty about the source of the sea lice infection. We are therefore obliged to consider whether, if such circumstances were to be repeated, sea lice emanating from SSC sites in the area could contribute to an imminent threat to wild salmonids. Provided that we can conclude that adequate measures are in place to avert such 'imminent threat' then we can close this investigation.

### **Environmental Management Plan**

We note your assertion that SSC is in compliance with consents, including the Taranaish Environmental Management Plan (EMP). The Aird Taranaish planning consent (Sept 2015) includes condition 2, requiring that SSC '*shall abide by agreements of the Langavat SAC Management Group in respect to controls over sea lice at...Aird Taranaish and any of its other sites in Loch Roag*'. In reality the Langavat SAC management group has not been active for some time and has not fulfilled its foreseen role in defining and implementing a monitoring programme for wild salmonids (including sea lice burden on wild fish) and providing advice on elevated risk in relation to sea lice and interactions with wild fish populations, which could inform any required changes to sea lice management in the Loch Roag SSC sites. We acknowledge that SSC do not carry responsibility for the effective operation of such a group and have agreed that this is an urgent priority for all agencies to progress.

At our meeting, we agreed that, rather than convening a separate Langavat SAC group, the existing national SAC Technical Group should urgently meet to focus on the needs of the Loch Roag case, and to provide the oversight required by the EMP provisions. This meeting will take place in the next few weeks and will provide advice on future wild fish monitoring requirements to inform the conclusions of this investigation.

We note that the Aird Taranaish EMP refers to twice yearly meetings of the Loch Roag Working Group (LRWG) and arrangements for liaison with the local Fisheries Trust biologist in relation to sea lice monitoring. It is our understanding that the LRWG is not an active group and that communication with local wild fisheries interests during the 2018 incident was not effective. We would welcome any further information from SSC on how these communication aspects have been (or will be) strengthened so that the response to any future such incident would be better coordinated.

### **Management initiatives**

These improvements are all greatly welcomed and provide some reassurance that any future incidents would be rapidly identified.

### **Innovative measures**

Again, there is much here that we welcome but we do wish to seek clarification on two specific points:

- Increased freshwater bathing availability. SEPA has confirmed that there are no licences in place to abstract from sources around Loch Roag and, in times of water scarcity such as experienced in 2018 such abstraction would not be consented. We request clarification on where such freshwater would be rapidly sourced.
- Use of farmed lumpfish. It is understood that lumpfish are not as effective when water temperatures are warmer, so we seek clarification on the likely effectiveness of such treatment during a repeat of the conditions experienced in 2018.

### **Consolidation plans**

We welcome the proposals to consolidate SSC operations within Loch Roag, which would allow the consideration of focusing production in areas of lower sensitivity for wild fish interactions. We look forward to working further with SSC and the local planning authority to discuss the consolidation options once the current investigation is completed.

We greatly welcome your continued cooperation in this matter and I would be happy to discuss this with you further.

Yours sincerely

[Redacted - Regulation 11(2)]

CATHY TILBROOK

Sustainable Coasts & Seas Activity Manager

Cc: Marine Scotland, SEPA, Comhairle nan Eilean Siar

### Enclosure 5.3 – Email attachment (msg).

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>

**Sent:** Friday, June 14, 2019 2:52 PM

**To:** Cathy Tilbrook <Cathy.Tilbrook@nature.scot>; Mitchell A (Alastair) <Alastair.Mitchell@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@gov.scot; [Redacted - Regulation 11(2)] ([Redacted - Regulation 11(2)]@sepa.org.uk) <[Redacted - Regulation 11(2)]@sepa.org.uk>; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@nature.scot; Iain Sime Iain.Sime@nature.scot; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@nature.scot; [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]@nature.scot

**Subject:** RE: Urgent - comments requested on draft letter to SSC by Tue 18 June

Hi, thanks that looks fine to me Cathy

Note the Langavat SAC Management Group as envisaged in the Taranaish/Eughlam condition was never convened (final para page 1 states it's not been active for some time)

You specifically asked me to check

*We note that the Aird Taranaish EMP refers to twice yearly meetings of the Loch Roag Working Group (LRWG) and arrangements for liaison with the local Fisheries Trust biologist in relation to sea lice monitoring. It is our understanding that the LRWG is not an active group and that communication with local wild fisheries interests during the 2018 incident was not effective. We would welcome any further information from SSC on how these communication aspects have been (or will be) strengthened so that the response to any future such incident would be better coordinated.*

It's my understanding that the LRWG has not met for a considerable period of time and therefore can't be considered functional.

Secondly it is also my understanding that in 2018 there was no communication relating to EMPs from TSSC with OHFT in the run up to the incident. Their biologist told me the only thing they have recently discussed is consolidation of sites as proposed in the Vuia Mor application. It was only after finding wild fish with a significant sea lice burden at Garynahine that the biologist phoned TSSC who then confirmed they were experiencing high levels of sea lice on their farms in the area.

My understanding is the OHFT would like to see the LRWG formalised as the current approach is ineffective.

Hope that helps?

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)] | [Redacted - Regulation 11(2)]

Scottish Natural Heritage | 32 Francis Street | Stornoway | Isle of Lewis | HS1 2ND | t: [Redacted - Regulation 11(2)] m: [Redacted - Regulation 11(2)]

Dualchas Nàdair na h-Alba | 32 Sràid Fhrangain | Steòrnabhagh | Eilean Leòdhais | HS1 2ND  
[nature.scot](http://nature.scot) – Connecting People and Nature in Scotland – [@nature\\_scot](https://twitter.com/nature_scot)

please note my e-mail address has recently been changed to [Redacted - Regulation 11(2)]@nature.scot

**From:** Cathy Tilbrook

**Sent:** 14 June 2019 13:28

**To:** [Alastair.Mitchell@gov.scot](mailto:Alastair.Mitchell@gov.scot); [Redacted - Regulation 11(2)]@gov.scot; [Redacted - Regulation 11(2)]@gov.scot; [Redacted - Regulation 11(2)]@gov.scot; [Redacted - Regulation 11(2)] ([Redacted - Regulation 11(2)]@sepa.org.uk); [Redacted - Regulation 11(2)]; [Redacted - Regulation 11(2)]; Iain Sime; [Redacted - Regulation 11(2)]; [Redacted - Regulation 11(2)]

**Subject:** Urgent - comments requested on draft letter to SSC by Tue 18 June

**Importance:** High

Hi all

I'm afraid it has taken some time to re-draft the note of our 3 May meeting (attached - thanks for comments) and to draft a letter to Scottish Salmon Company to set out our proposed way forward and further information requested from them.

I want to ensure that you are content with the draft letter, but am also keen that we issue this without undue further delay.

**Please can I therefore ask you to contact me with any comments on the letter by close of play next Tuesday 18 June.** A brief no comment reply would be useful if you are content.

Iain has separately circulated a doodle poll for the meeting of the SAC technical group to discuss the Loch Roag case. I would stress again how important it is that we quickly agree wild salmonid monitoring plans to ensure that Planning Condition 2 associated with the SSC Aird Taranaish consent can be fully implemented.

Thanks for your input and please let me know if you have any queries.

Thanks, Cathy

**Cathy Tilbrook | Sustainable Coasts & Seas Activity Manager**

Scottish Natural Heritage | Battleby | Redgorton | Perth | PH1 3EW | t: [Redacted - Regulation 11(2)]

| m: [Redacted - Regulation 11(2)]

Dualchas Nàdair na h-Alba | Battleby | Ràth a Ghoirtein | Peairt | PH1 3EW  
[nature.scot](http://nature.scot) – Connecting People and Nature in Scotland – [@nature\\_scot](https://twitter.com/nature_scot)

Please note my email address is now: [Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)

## Enclosure 6.0 – Email sent to Scottish Government.

[Redacted – Out of scope]

**From:** Cathy Tilbrook <[Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)>

**Sent:** 02 July 2019 13:00

**To:** Mitchell A (Alastair) <[Alastair.Mitchell@gov.scot](mailto:Alastair.Mitchell@gov.scot)>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk> <[Redacted - Regulation 11(2)]@sepa.org.uk>

**Cc:** Iain Sime <[Iain.Sime@nature.scot](mailto:Iain.Sime@nature.scot)>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>

**Subject:** Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

**Importance:** High

Hi all

Please see attached just received from [Redacted - Regulation 11(2)]. There is a lot to consider here and some points that will be challenging to respond to.

I will send a brief holding response to [Redacted - Regulation 11(2)] today and have asked colleagues to start to develop a more detailed response while I am away on annual leave (3-17 July).

Please respond with any comments in the meantime. Aspects of this latest submission may be picked up in the SAC Technical Group meeting on Thursday, but I think we will need a further discussion prior to finalising our response to the letter.

Please can you complete the doodle poll below for a teleconference to discuss the letter and outcomes from the SAC Technical Group. <https://doodle.com/poll/d3i72mti39bg4a3g>

Thanks, Cathy

**Cathy Tilbrook | Sustainable Coasts & Seas Activity Manager**

Scottish Natural Heritage | Battleby | Redgorton | Perth | PH1 3EW | t: [Redacted - Regulation 11(2)]

| m: [Redacted - Regulation 11(2)]

Dualchas Nàdair na h-Alba | Battleby | Ràth a Ghoirtein | Peairt | PH1 3EW  
[nature.scot](http://nature.scot) – *Connecting People and Nature in Scotland* – [@nature\\_scot](https://twitter.com/nature_scot)

Please note my email address is now: [Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)

**From:** [Redacted - Regulation 11(2)] [mailto: [Redacted - Regulation 11(2)].co.uk]  
**Sent:** 02 July 2019 11:19  
**To:** Cathy Tilbrook  
**Cc:** Nick Halfhide; Francesca Osowska; [Redacted - Regulation 11(2)]; [Redacted - Regulation 11(2)]  
**Subject:** Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

Dear Cathy

Please see attached letter.

Kind regards

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]

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[Redacted - Regulation 11(2)] is authorised and regulated by the Solicitors' Regulation Authority (524741) and the Law Society of Scotland (30663)

VAT Registration No. 117 8721 06



## Enclosure 6.1 – Email attachment (PDF).

2nd July 2019

Cathy Tilbrook  
Sustainable Coasts & Seas Activity Manager  
Scottish Natural Heritage  
Battleby  
Redgorton  
Perth PH1 3EW

By email only

Dear Cathy

### **Request for Action – Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis**

Thank you for your letter of 19<sup>th</sup> June 2019.

I continue to act for Salmon and Trout Conservation Scotland.

I look forward to receiving the representations you received from The Scottish Salmon Company as part of your investigation, as requested in my email of 20<sup>th</sup> June 2019.

In respect of the substance of your letter, I note that this an update and that SNH's investigations have not been completed. However, I have to record that I am disappointed at the distinct lack of detail in your update.

I note your request that given the sensitivities involved in this case you would appreciate a discussion before any wider release of the details covered in your letter of 19<sup>th</sup> June. I will accede for now, but I reserve the right to publish any correspondence we may have over this matter.

You state that "*if we can conclude that adequate measures are in place to avert such imminent threat then the investigation will be closed*". However, I do not see that SNH as competent authority under Regulation 7(1)(b), will be able to reach that conclusion.

From the very little public information available - and although TSSC's sea lice data is absent from the SSPO figures published for May 2019, <http://scottishsalmon.co.uk/wp-content/uploads/2019/06/Industry-averages-May-2019.pdf> - I note that in April, Vuia Mor had already reached 1.7 adult female lice per farmed fish monthly average. Kyles Vuia was at 1, Taranaish at 1.4, Eughlam at 1.6.

Vuia Mor was only re-stocked in December 2018, Kyles Vuia in January 2019, Taranaish in February 2019, and Eughlam only in March 2019. In other words, lice levels are already over CoGP thresholds at all Roag stocked farms a matter of a few short weeks into the production cycles and before sea temperatures start to rise.

As you are aware, the CoGP states that "*in general, treatments should be guided by the build-up of pre-adults as indicated by weekly counts, the objective being to prevent the development of gravid females. Suggested criteria for the treatment of sea lice on individual farm sites are:* • An average of 0.5 adult female *L. salmonis* per fish during the period 1<sup>st</sup>

February to 30<sup>th</sup> June inclusive” <http://thecodeofgoodpractice.co.uk/wp-content/uploads/2015/02/cogp-chapter-4-seawater-lochs2.pdf> and that “*a primary objective of the strategy should be a target of zero adult female lice on the farmed fish in the spring period when wild salmonids are migrating*” <http://thecodeofgoodpractice.co.uk/wp-content/uploads/2015/02/cogp-annexes-feb-15.pdf>.

All real data shows that the Loch Roag farms are some way off that level of control. By March 2019, TSSC was already failing to prevent the build-up of adult female lice on its Loch Roag farms.

Given that, SNH should require information from TSSC as to what treatment it has applied for sea lice, and when, in the first few months at each of its stocked farms. Actual performance so far does not encourage trust or confidence in TSSC’s ability or willingness to control lice during key parts of the year.

In any event, please could you let me have the up-to-date information on on-farm sea lice levels on the stocked Loch Roag farms (on-farm sea lice data for May to June 2019), which I presume you must have examined as part of your investigation.

Most significantly, SNH has already made it plain, in its response to the Screening and Scoping Exercise at Taranaish, that the requisite Appropriate Assessment, required as a result of the proximity Langavat SAC:

“....should in particular be based on an appraisal of the following:

a) *The ability of the applicant to maintain average sea lice levels in line with our position paper Marine Aquaculture and Wild Salmonids see Appendix 1:*

**0.1 adult female lice per fish between February and June inclusive**

**0.5 adult female lice per fish between July and January inclusive”**.

[emphasis added]

In other words, SNH made it clear that the test in Article 6(3) of the Habitats Directive could not be met without the farms on Loch Roag being able to meet and maintain these tighter standards of 0.1 (February to June) and 0.5 (July to January) adult female lice per fish.

The Appropriate Assessment itself for the Taranaish farm (Habitats Regulations Appraisal) then concluded that

Although recorded sea lice levels on fin fish farms in Loch Roag have recently been higher than preferred by Marine Scotland, they have not been significantly above the preferred levels; they remain lower than elsewhere in the Western Isles (notably on the east coast of Lewis and Harris); and there is evidence of steady improvement, despite a blip when fish were compromised due to AGD and algal blooms. Between January and September 2013, average female adult lice numbers for the area did not rise above 0.01 (August) lice levels which met the levels required by SNH.

Patently, the Loch Roag farms were way off meeting those levels of adult female sea lice in 2018 and into 2019.

If it now cannot be said that it is beyond reasonable scientific doubt that the current operations of the fish farms on Loch Roag will not have an impact on the site integrity of the Langavat SAC or the species for which it was designated (Atlantic salmon), then it follows logically that SNH cannot now reasonably conclude now that there is no threat of imminent damage, given actual on-farm sea lice numbers in March 2019, shortly after restocking when sea lice levels should be very low, already exceed by between 10 and 17 times “*the levels required by SNH*”.

The levels of sea lice on the Roag farms in 2018 clearly breached those levels required by SNH by many orders of magnitude and that is being repeated in the current production cycle beginning late 2018/early 2019.

To re-iterate, in my view, SNH cannot reasonably conclude now that there is no threat of imminent damage.

Given that, please could you confirm that if you are unable to conclude soon that there is not an imminent threat of environmental damage, then SNH will seek, and if necessary, order the removal of the farmed fish in the four stocked Roag farms as a matter of some urgency, as you are empowered to do by Regulation 10 of the Environmental Liability (Scotland) Regulations.

I also have specific questions, requests and comments relating to your interim update:

1. I note that you state that there is agreement that temperature and drought conditions in summer 2018 were likely to have been a major factor in the wild salmon mortality event.

Please could you provide temperature and rainfall data that shows those conditions were unusual in 2018 at the key periods and explain how you then conclude from such data that the conditions "*were likely to have been a major factor in the wild salmon mortality event*".

You will appreciate that it is a significant theoretical jump from unusual temperature and rainfall to suggest that those conditions are a major factor in a mortality event. What is the causative pathway and how has this been assessed by SNH in Loch Roag?

2. You state that "*there was uncertainty about the source of sea lice infection*".

What assessment has been done by SNH of the likely background or natural levels of sea lice infective pressure in Loch Roag in 2018 and 2019, as compared to the likely production of juvenile sea lice from the fish farms operated by TSSC in Loch Roag in 2018?

Presumably, SNH will have examined average adult female ovigerous lice numbers for the farms concerned in 2018 and 2019 and will have made an estimate of the likely juvenile lice production caused by the presence on such a large number of farmed fish at the average adult female lice numbers reached on TSSC farms. No doubt SNH will also have examined the lice stages found on the Blackwater wild fish in 2018.

Please could you confirm what SNH (or other public authorities involved) have done and provide all information concerning any such calculations or analysis as may have been performed.

3. You state that you have advised TSSC that you are obliged to consider "*whether if such circumstances were to be repeated, sea lice emanating from SSC sites in the area could contribute to an imminent threat to wild salmonids*".

I am puzzled by the language used here. A contribution suggests that SNH considers there are other contributors to the imminent threat.

Please note that the Environmental Liability (Scotland) Regulations are addressed to operators carrying out activities. You are obliged to consider whether or not there is an imminent threat of environmental damage from operations. I accept that damage may or may not be made worse by natural factors, but those factors should not be confused with operators, which the Regulations then oblige to take, inter alia, preventive measures.

Specifically, it is quite conceivable that Loch Roag might experience what might be considered 'normal' temperature and rainfall conditions this year or next year, but the sea lice control mechanisms employed on TSSC sites remain inadequate to avoid sea lice production from those farms, creating an imminent threat to wild salmonids. Put another way, an imminent threat of environmental damage does not necessarily require unusual temperature or rainfall conditions.

4. I note your reference to the Environmental Management Plan attached to the September 2015 Taranaish farm planning permission, requiring TSSC to abide by the agreements of the Langavat SAC Management Group.

Planning Condition 2 requires the application of that Group's agreements to all TSSC's Loch Roag farms, inter alia, to prevent any adverse impact on the integrity of the Langavat SAC, in particular, arising from sea lice.

Please now provide all correspondence with any other party as may be held by SNH concerning that Group, including any consideration given to establishing such a group prior to the granting of the September 2015 planning permission, anything subsequent to the planning consent being granted, and the failure to establish that management group, including any information on the roles to have been played in establishing that group by SNH, the Western Isles Council, SEPA or Marine Scotland.

I note from the appropriate assessment attached to the 2015 permission that *"it is the view of SNH that if the site management group's monitoring and risk appraisal mechanisms are sufficiently robust mitigation can be delivered within a reasonable time scale that will still protect site integrity"*.

The fact that the group has never met - and so such mitigation was never delivered - therefore constitutes a clear and unambiguous breach of the Habitats Directive and I would ask SNH to explain fully how that occurred and how it will now remedy that breach.

More generally, it would seem to be a matter of some urgency that relevant planning authorities, Marine Scotland and SNH conduct an urgent review of their respective roles in any and all similar groups that are associated with any other salmon farming operations across Scotland, checking whether or not such groups actually meet, perform the role that they were supposed to, publish information on their activities and have any real effect on fish farm management – or whether, as seems to have been the case here, they constitute mere devices designed only to enable the grant of planning permission, by appearing to meet the test in Article 6(3) of the Habitats Directive.

5. I note that the existing National SAC Technical Group has now met to discuss Loch Roag / Langavat SAC. Please provide minutes of that latest meeting together with any documentation considered by the parties to that meeting, including the advice produced by that Technical Group meeting on the *"future wild fish monitoring requirements to inform the conclusions of this investigation"*.

6. Please provide full information on the workings of the Loch Roag Working Group and the arrangements for liaison with the local fisheries trust biologist in relation to sea lice monitoring as referred to in the Taranaish EMP.

Please provide full information held by SNH, Marine Scotland or SEPA on the workings of that group to date including any minutes or records of actions taken.

Please provide the further information from TSSC on how the communication aspects referred to, have been or will be strengthened, as described in your letter of 19<sup>th</sup> June.

If you do not hold this information, please indicate which Scottish public authority does and transfer this request to them, per Regulation 14 of the Environmental Information (Scotland) Regulations 2004.

7. Please provide the information provided by TSSC on the new management initiatives to control sea lice on its Loch Roag sites.

8. Please provide full information on the clarification requested from TSSC on freshwater abstraction from sources in and around Loch Roag and also on the use of farmed lumpfish and their likely effectiveness in warmer weather.

9. I note your comments on consolidation of TSSC operations within Loch Roag.

Consolidation plans for Loch Roag have in fact been subject to multiple promises and consultation over many years and have been 'rolled out' on numerous occasions by TSSC to support planning applications.

The Loch Roag Site Optimisation Plan is based on an original document produced in 2005 by the Western Isles Aquaculture Association.

Optimisation has been referred to in previous applications made by TSSC on Loch Roag, for example in relation to its site at Eughlam, which received planning permission for expansion in 2015 on the basis that "*the modifications proposed are part of the Loch Roag Optimisation Plan which aims to reduce the number of sites by two or more and reduce the total number of cages in Loch Roag so there are fewer larger cages*" – see the Council's Report on Handling of Planning Application Reference 15/00389/FFPAES.

As pointed out by Marine Scotland Science at that time, although "*the plan appears to be positive for the future management of Loch Roag if implemented in the manner suggested... there is no guarantee that the plan will be implemented... there have been several other applications submitted for modifications at other sites in Loch Roag to date and the applicant has confirmed that this plan will go ahead as long as all the necessary permissions are received to the modifications required... it is unclear what the overall impact on total biomass of Loch Roag is following realisation of the plan; this should be provided*".

Additionally, a Screening and Scoping Opinion issued by the Council in relation to the Vuia Mor site in June 2015 [planning reference 15/00069], required the Environmental Statement to be provided in relation to that application to deal with "*clarification on the status and full extent of the proposed Loch Roag Optimisation Plan*".

The application for screening and scoping made at that time by TSSC stated that the modification proposed for Vuia Mor in 2015 *“is part of a larger Loch Roag optimisation; the purpose of which is to reduce the number of sites and thus cages in the loch while maintaining biomass at existing levels”*. However, it seems TSSC never went ahead with the full application, nor the site optimisation.

The latest application from TSSC, for screening and scoping at Vuia Mor, made in January / February 2019, is again unclear and contradictory as to the optimisation plans for TSSC’s seven farm sites across Loch Roag, but again prays this in support of its application to expand at that farm.

So, while TSSC has promised site optimisation in Loch Roag on a number of occasions, it has always been vague and has not been delivered. I am therefore very surprised that SNH is happy now to ‘welcome’ such re-hashed proposals, given the failure to deliver them to date.

I look forward to hearing from you as a matter of some urgency. Given the delays that have already occurred and the fact that we are entering warmer-water days, with sea lice levels likely to start rising on the TSSC farms on Loch Roag, I think it is reasonable to request a substantive response from SNH by Tuesday 23<sup>rd</sup> July.

Yours sincerely

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

**Enclosure 7.0 – Email from NatureScot.**

[Redacted – Out of scope]

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>  
**Sent:** 03 July 2019 12:11  
**To:** [Redacted - Regulation 11(2)].co.uk; 'Andrew Graham-Stewart' <[director@salmon-troutscotland.org](mailto:director@salmon-troutscotland.org)>  
**Cc:** Mitchell A (Alastair) <[Alastair.Mitchell@gov.scot](mailto:Alastair.Mitchell@gov.scot)>; Mike Palmer <[Mike.Palmer@gov.scot](mailto:Mike.Palmer@gov.scot)>  
**Subject:** RE: URGENT - Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis - email 1 of 2

Dear [Redacted - Regulation 11(2)],

Many thanks for sharing this letter. I have forwarded it, together with your second email, to Mike and Alastair. Mike is on leave until 19 July.

Kind regards,  
[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)],  
Marine Scotland, Area 1B North, Victoria Quay, Edinburgh, EH6 6QQ  
Tel: [Redacted - Regulation 11(2)] [Redacted - Regulation 11(2)]

**From:** [Redacted - Regulation 11(2)].co.uk <[Redacted - Regulation 11(2)].co.uk>  
**Sent:** 03 July 2019 11:41  
**To:** 'Andrew Graham-Stewart' <[director@salmon-troutscotland.org](mailto:director@salmon-troutscotland.org)>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>  
**Subject:** FW: URGENT - Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis - email 1 of 2

As sent  
[Redacted - Regulation 11(2)]

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[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]  
[Redacted - Regulation 11(2)]

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VAT Registration No. 117 8721 06

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)].co.uk>  
**Sent:** 03 July 2019 11:39  
**To:** 'Francesca Osowska' <[ceo@nature.scot](mailto:ceo@nature.scot)>  
**Cc:** 'Nick Halfhide' <[Nick.Halfhide@nature.scot](mailto:Nick.Halfhide@nature.scot)>; 'Cathy Tilbrook' <[Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)>  
**Subject:** URGENT - Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis - email 1 of 2

Please see attached letter.

Enclosures follow in a second email.

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[Redacted - Regulation 11(2)] is authorised and regulated by the Solicitors' Regulation Authority (524741) and the Law Society of Scotland (30663)

VAT Registration No. 117 8721 06

**From:** Cathy Tilbrook <[Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)>  
**Sent:** 02 July 2019 18:05  
**To:** [Redacted - Regulation 11(2)].co.uk  
**Cc:** Nick Halfhide <[Nick.Halfhide@nature.scot](mailto:Nick.Halfhide@nature.scot)>; Francesca Osowska <[ceo@nature.scot](mailto:ceo@nature.scot)>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>; Iain Sime <[Iain.Sime@nature.scot](mailto:Iain.Sime@nature.scot)>  
**Subject:** RE: Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

Dear [Redacted - Regulation 11(2)]

Thanks for your detailed letter, which we will consider and respond to as soon as we can. Unfortunately, it will not be practical to get back to you by 23 July due to annual leave commitments (the Scottish school holidays have just started and several of us are away over the next fortnight).

As we are working on this case jointly with MS and SEPA, I need to liaise with them over our response. I have therefore requested an urgent meeting to discuss and respond to the points you have raised on my return from annual leave. In the meantime, colleagues will be progressing these issues in my absence.



I regret that I have not yet been able to obtain authorisation to release the full submission from SSC to you, but will follow this up again on my return.

If you have an urgent query during this period please contact Nick Halfhide.

Many thanks, Cathy

**Cathy Tilbrook | Sustainable Coasts & Seas Activity Manager**

Scottish Natural Heritage | Battleby | Redgorton | Perth | PH1 3EW | t: [Redacted - Regulation 11(2)]

| m: [Redacted - Regulation 11(2)]

Dualchas Nàdair na h-Alba | Battleby | Ràth a Ghoirtein | Peairt | PH1 3EW  
[nature.scot](http://nature.scot) – *Connecting People and Nature in Scotland* – [@nature\\_scot](https://twitter.com/nature_scot)

Please note my email address is now: [Cathy.Tilbrook@nature.scot](mailto:Cathy.Tilbrook@nature.scot)

**From:** [Redacted - Regulation 11(2)].co.uk [mailto:[Redacted - Regulation 11(2)].co.uk]

**Sent:** 02 July 2019 11:19

**To:** Cathy Tilbrook

**Cc:** Nick Halfhide; Francesca Osowska; [Redacted - Regulation 11(2)]; [Redacted - Regulation 11(2)]

**Subject:** Request for Action - Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis

Dear Cathy

Please see attached letter.

Kind regards

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

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[Redacted - Regulation 11(2)] is authorised and regulated by the Solicitors' Regulation Authority (524741) and the Law Society of Scotland (30663)

VAT Registration No. 117 8721 06

**Enclosure 7.1 – Email attachment (msg).**

**Duplicate – see enclosure 7.0 above.**

## Enclosure 7.2 – Email attachment (PDF).

### URGENT

3rd July 2019

Francesca Osowska  
Chief Executive  
Scottish Natural Heritage  
Battleby  
Redgorton  
Perth PH1 3EW

By email only

Dear Ms Osowska

### **Request for Action – Environmental Liability (Scotland) Regulations 2009 Blackwater and Grimersta Rivers, Loch Roag, Isle of Lewis**

I act for Salmon and Trout Conservation Scotland (S&TCS).

On behalf of S&TCS, a formal request for action and review was made to SNH under the Environmental Liability (Scotland) Regulations (ELRs) on 29<sup>th</sup> January 2019, concerning the imminent threat of environmental damage to the wild salmon populations of Loch Roag etc. SNH is the competent authority pursuant to Regulation 7(1)(b) of the ELRs.

This followed two earlier formal requests, made in mid-2018, concerning environmental damage from last year following the death of hundreds of wild Atlantic salmon in Loch Roag, at the end of which SNH concluded that “*the recorded local fish losses occurred as a one year event*” but that “*if this impact were repeated then it might well trigger a case for consideration under ELD*”.

S&TCS’ request of 29<sup>th</sup> January 2019 is attached, as is all subsequent correspondence with Cathy Tilbrook of SNH. I refer particularly to my letter to Ms Tilbrook of 2<sup>nd</sup> July 2019 and her email response of the same date.

I would ask you to note that the ELRs transpose the EU Environmental Liability Directive (ELD) into Scottish law. Article 12(4) of the ELD requires SNH to respond to S&TCS’ request for action “**as soon as possible** and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it”.

For the provisions of Article 12 to make any legal sense in respect of a request for action in relation to an imminent threat, logically SNH has to decide on whether such a threat exists and give reasons for it before that threat is likely to materialise, in order to be able to secure the requisite preventive action pursuant to Article 5.

However, following last year’s damage to adult populations, Atlantic salmon smolts leaving the Loch Roag rivers between March and June this year will already have been subjected to high lice levels emanating from the fish farms in Loch Roag in March 2019, as the on-farm sea lice data shows, and the population therefore damaged further.

It is important for SNH to note, as my letter to Ms Tilbrook of 2<sup>nd</sup> July 2019 indicates, adult female sea lice levels on the Loch Roag fish farms in 2019 were already again well over the levels that SNH indicated in a 2015 Habitats Regulations Appraisal (appropriate assessment) were required to protect SAC site integrity of the Langavat SAC.

Further damage is potentially imminent to the returning adult salmon that are likely to appear in Loch Roag very shortly (July to August).

That SNH has therefore failed to come to a decision on the 29<sup>th</sup> January request constitutes a failure to perform your statutory functions under the ELRs in such a way as to meet the requirements of the ELD. Ms Tilbrook's email response to me yesterday, informing me that no decision can be made and progress will be delayed yet further as staff are about to go on holiday is unacceptable. SNH was sent the request in January 2019, five months ago.

Indeed, Ms Tilbrook has personally expressed her own frustration at the pace of this investigation. However, SNH has legal duties with respect to the SAC and the species for which it is designated. SNH's performance with respect to the Loch Langavat SAC Management Group – failing even to convene it, despite its central role, SNH said, in ensuring compliance with the Habitats Directive - is nothing short of disgraceful.

Importantly, at law, SNH is the competent authority under the ELRs. SNH cannot simply seek to pass blame to other Scottish public authorities, however disinterested they may be, as the legal responsibility to inform S&TCS of your decision on the request "as soon as possible" remains with SNH.

You should also note that Article 13 of the ELD requires that S&TCS "*shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or **failure to act** of the competent authority under this Directive*".

S&TCS wants to give and has given SNH as much time as it can, but further delay is unacceptable – the biology of the situation simply does not allow for it. Therefore, if SNH does not now respond urgently and substantively to this letter and to my letter to Cathy Tilbrook of 2<sup>nd</sup> July, S&TCS will be left with no choice but to examine the options set out in Article 13.

In any event, you are reminded that SNH must deal with my request to Cathy Tilbrook of 20<sup>th</sup> June for TSSC's submissions as a formal request made under the Environmental Information (Scotland) Regulations 2004 (EIRs). The EIRs do not require me to invoke the EIRs when making a request. You are required to respond as soon as possible and no later than 20 working days after the request was made. The 20 working days expires on 18<sup>th</sup> July. The 20 working days for the further requests for information in my letter of 2<sup>nd</sup> July expires on 30<sup>th</sup> July.

Yours sincerely

[Redacted - Regulation 11(2)]

Encs

## Enclosure 8.0 – Email from NatureScot.

[Redacted – Out of scope]

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>

**Sent:** 15 January 2020 13:40

**To:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted - Regulation 11(2)]@nature.scot; [Redacted - Regulation 11(2)]@nature.scot; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@SEPA.org.uk>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>

**Subject:** RE: Loch Creran Microplastics ELR Request

Thanks for getting back to me [Redacted - Regulation 11(2)]

The letter, dated 30 December 2019, was submitted to [Redacted - Regulation 11(2)] in Marine Scotland, along with the SNH and SEPA CEOs.

Whilst I would like to progress this promptly, the most important thing I think (others can disagree) is that our 3 organisations get together on this one. So if you cannot make next week and we need to push it back until the following week, we should do that. Or we could see if we can find a slot later this week?

Would you be ok to suggest some dates/times that work for you?

Best

[Redacted - Regulation 11(2)]

**From:** [Redacted - Regulation 11(2)]@gov.scot <[Redacted - Regulation 11(2)]@gov.scot>

**Sent:** 15 January 2020 12:34

**To:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>; [Redacted - Regulation 11(2)]@nature.scot; [Redacted - Regulation 11(2)]@nature.scot; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@SEPA.org.uk>; [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>

**Subject:** RE: Loch Creran Microplastics ELR Request

I haven't seen this [Redacted - Regulation 11(2)]?

I am out of office pretty much all next week. How urgent is this?

Best Wishes

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

Scottish Government | Area 1A South | Victoria Quay | Edinburgh | EH6 6QQ

Tel: [Redacted - Regulation 11(2)] | Mob: [Redacted - Regulation 11(2)]

**From:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>

**Sent:** 15 January 2020 12:04

**To:** [Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@nature.scot>;  
[Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@gov.scot>; [Redacted  
- Regulation 11(2)]@nature.scot' <[Redacted - Regulation 11(2)]@nature.scot>;  
[Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>;  
[Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@SEPA.org.uk>;  
[Redacted - Regulation 11(2)] <[Redacted - Regulation 11(2)]@sepa.org.uk>

**Subject:** Loch Creran Microplastics ELR Request

Good Afternoon All

Would you be available to participate in a telecom to chat around the above ELR request which we have all had sight of? If so, would you let me know if you would be available for a call at 12 midday next week on Monday 20th, Tuesday 21<sup>st</sup> or Thursday 23<sup>rd</sup> please. If none of these days work I'll circulate a survey monkey to find a suitable slot.

All the best

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

SEPA, Silvan House, Costorphine Road, Edinburgh, Scotland, UK

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

## **Enclosure 8.1 – Email attachment (PDF).**

My ref: [Redacted - Regulation 11(2)]/Creran

30th December 2019

Graham Black  
Director  
Marine Scotland  
1B South  
Victoria Quay  
Edinburgh EH6 6QQ  
marinescotland@gov.scot; DirectorMarineScotland@gov.scot

Francesca Osowska  
Chief Executive Officer  
Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
Inverness IV3 8NW  
enquiries@nature.scot; ceo@nature.scot

Terry A'Hearn  
Chief Executive, SEPA  
Edinburgh Office  
Silvan House  
SEPA 3rd Floor  
231 Corstorphine Road  
Edinburgh EH12 7AT  
enquiries@sepa.org.uk

Dear Sirs / Madam

### **Request for action and review in relation to damage and the threat of further damage to protected species and habitats in Loch Creran**

This request is made pursuant to Regulation 14 of the Environmental Liability (Scotland) Regulations 2009 by Friends of Loch Creran, a non-governmental organisation promoting environmental protection.

Damage is occurring to Loch Creran and there is an imminent threat of further damage.

The damage has been and is being caused by the negligent disposal on the shoreline of waste plastics from the construction and assembly of fish farm equipment by the company Gael Force Fusion.

The loch has been polluted by innumerable plastic strips, shavings and offcuts from the activities of Gael Force Marine, which wash ashore and litter local beaches. It is a reasonable assumption that the bed of the loch will also have been polluted. See <https://youtu.be/LAqE9yfVn7w> for further details.

The waste comes from grinding, cutting and drilling large plastic tubes used to make floating circular pens for farming salmon. The work has been carried out for years on a public beach

on Loch Creran, discarding pieces of plastic on the ground, and this work has intensified since 2009.

The matter has been reported to SEPA in the past. A SEPA Environmental Event Report, August 2018, refers. However, the pollution continues.

On 27<sup>th</sup> October 2019, a beach clean at the Creagan Inn beach, at the top end of Loch Creran, found a substantial amount of plastic swarf and shavings from the manufacturing of fish farm cages on the Loch, by Gael Force Fusion. This was despite a beach clean undertaken just 5 weeks previously. <https://www.lochcreran.org.uk/more-fusion-waste-on-the-beach>.

As a result of Gael Force Fusion's activities, large quantities of microplastics will already have entered Loch Creran. Further, large pieces of plastic are still easily visible on the beaches of Loch Creran, which have not degraded but will inevitably break up into smaller pieces. There may well also be such large pieces on the bed of the loch. The process of large items breaking down into smaller pieces will continue and can be expected to ensure that high levels of microplastics continue to enter Loch Creran for many years to come.

As is well documented in scientific literature, interactions between plastics and marine fauna are commonly described in various locations around the world. Deleterious effects of plastics are regularly detected in reefs in several locations. When the particles enter the feeding apparatus of filter-feeding animals, damage is caused. Plastics also cause tissue abrasion and mortality in marine invertebrates. Plastics are also widely recognised to scavenge pollutants already present in the marine environment, leading to the process of bioconcentration of persistent toxic marine contaminants in filter-feeders ingesting plastics.

For the purposes of the 2009 Regulations, this amply demonstrates in a plausible manner that the environmental damage or an imminent threat of such damage exists in Loch Creran

Importantly, the widespread direct and indirect deposition by Gael Force Fusion of plastic shavings, swarf and other plastics onto beaches and into Loch Creran is considered potentially to have caused, or be likely to cause significant adverse effects on the conservation status of the Loch Creran SAC and the serpulid reefs for which that site is designated.

The damage to Loch Creran is also considered to be water damage, per Regulation 4(1)(b), the damage potentially also relating to the status of the relevant water body. The assessment of water status includes a consideration of qualitative descriptors set under the Marine Strategy Framework Directive which address the issue of marine litter, including plastics, noting that Good Ecological Status is only achieved where "properties and quantities of marine litter do not cause harm to the coastal and marine environment". Ingestion of microplastics is a secondary criterion to that descriptor,.

### **Request for action and review**

Therefore, FoLC makes this request for action and review both to Scottish Ministers, as competent authority in respect of damage occurring to protected species in coastal waters, per Regulation 7(1)(a), and to SEPA as the competent authority for water damage, per Regulation 7(1)(b).

Pursuant to Regulation 14(4), you are requested to determine whether or not you are satisfied that there is an imminent threat of damage or of actual damage in this case and, if so satisfied, you are requested to advise Gael Force Fusion of the same and seek representations from them, including in relation to Regulation 12, the duty to remediate



damage already done and/or Regulation 10, the duty to take preventive measures to avoid damage, particularly in respect of the many larger items of plastic on Loch Creran's beaches and, potentially, the loch bed.

Due to the protected nature of the habitats and species in Loch Creran, this request for action and review is also copied to Scottish Natural Heritage.

I look forward to hearing from you as soon as possible.

Yours sincerely

[Redacted - Regulation 11(2)]

**Enclosure 8.2 – Email attachment (PDF).**

**marinescotland**



**Scottish Government**  
Riaghaltas na h-Alba  
gov.scot

T: [Redacted - Regulation 11(2)] F: 0131-244 7163

E: [DirectorMarineScotland@gov.scot](mailto:DirectorMarineScotland@gov.scot)

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

[Redacted - Regulation 11(2)]

By email: [Redacted - Regulation 11(2)].co.uk

12th February 2020

Dear [Redacted - Regulation 11(2)],

Thank you for your letter dated 30 December 2019 which included a request for action and review under Regulation 14 of the Environmental Liability (Scotland) Regulations 2009.

Marine Scotland, acting as competent authority on behalf of Scottish Ministers, is required to determine whether or not it is satisfied that the request, and the accompanying observations, demonstrate in a plausible manner that environmental damage, or an imminent threat of such damage, exists. The Environmental Liability (Scotland) Regulations 2009 define environmental damage as being where there has been significant adverse effects on reaching or maintaining the favourable conservation status of the protected species or natural habitat, or there is an imminent threat thereof.

I have taken advice from Scottish Natural Heritage on this matter as shown in the annex to this letter. This advice has been confirmed by scientists within Marine Scotland. Based on the advice received I have concluded that I am not satisfied that this case demonstrates that environmental damage, or an imminent threat of such damage, exists.

That said, the unnecessary and avoidable loss of plastic into the marine environment is unacceptable. I understand that local officers from Scottish Natural Heritage and the Scottish Environment Protection Agency are going to visit the company to remind them of their obligations to avoid such loss of plastic.

Yours sincerely,

[Redacted - Regulation 11(2)]

Graham Black  
Director, Marine Scotland

**ANNEX – Advice from Scottish Natural Heritage**

## Background

1. Marine Scotland has received a request for action and review in relation to damage and the threat of further damage to protected species and habitats in Loch Creran under the Environmental Liability (Scotland) Regulations 2009. Scottish Ministers and SEPA are the competent authorities for this case, and SNH has been asked to provide advice on whether loss of plastic into Loch Creran, as evidenced in this case, would have significant adverse effects on reaching or maintaining the favourable conservation status of the protected features of Loch Creran SAC.

## Site description and condition

2. The protected features of the Loch Creran SAC are reefs, including biogenic reefs built by *Serpula vermicularis* (known as serpulid reefs) and *Modiolus modiolus* (known as horse mussel beds). Loch Creran is also designated as a Nature Conservation Marine Protected Area for flame shell (*Limaria hians*) beds.

3. The most recent condition assessment is summarised below and contained within the following report: <https://www.nature.scot/snh-research-report-1156-current-status-serpulid-reefs-horse-mussel-beds-and-flame-shell-beds-loch>.

Feature	Condition in Loch Creran	Conservation status in Scotland
Rocky reefs	Favourable	Favourable
Serpulid reefs	Unfavourable declining	Unfavourable declining
Horse mussel beds	Favourable	Favourable
Flame shell beds	Favourable	Favourable

4. Loch Creran contains the only example of serpulid reef in Scotland and is the only SAC in Europe designated for the habitat. Although the habitat has been reported in a few other places in the world, Loch Creran contains by far the largest known extent of this habitat globally. Therefore any significant damage to this particular protected feature within the SAC would have an impact on FCS at UK level. The current condition of the serpulid reefs in the Loch Creran SAC is described as Unfavourable Declining. This is due to deterioration over the last few years, which we believe is part of the natural cycle of reef growth and collapse

## Discussion of issues

5. Loss of plastic into Loch Creran has the potential to affect the SAC features in two ways. The first is the risk of large pieces of plastic smothering the habitats and the surrounding seabed and preventing settlement of larvae and new growth of the habitat. From the evidence presented this would seem like the biggest potential impact if large amount of plastics are entering the loch locally. However, the dive team who performed recent monitoring of the loch did not report observing any significant amounts of plastic in the loch close to the features of interest that we believe would be necessary to cause this effect.

6. The second potential effect is longer term and incremental and involves the gradual breakdown of plastic waste to form microplastics (general definition is any plastic <5mm). Serpulid worms, horse mussels and flame shells are filter feeders and there is potential for them to filter microplastics from the water. Documented impacts of microplastics on filter feeders are varied and this is an evolving area of investigation, with some contradictory findings. Impacts may include various physiological effects such as tissue alteration, decrease in egg numbers and sizes and delayed larval growth and blocking of their filtration and digestive systems preventing them from feeding and causing them to die. Bioaccumulation of microplastics has also been recorded in the literature, with varying effects, such as magnifying chemicals or even 'cleaning' contaminants from organisms. It is

difficult to determine how long large pieces of plastic entering the loch now would take to break down to become microplastics and this would also depend on the size of the pieces of plastic entering the loch, but we understand that this is likely to take hundreds of years to occur.

7. Based on our understanding of the current literature, we consider that in order for microplastics from the breakdown of any plastic waste currently entering Loch Creran to have a significant adverse effect on the favourable conservation status of the protected features, a large amount of plastic would have to enter the loch, and a lengthy period would be required for its breakdown to microplastics. As stated earlier, the dive team that performed the recent monitoring of the loch did not report observing large amounts of plastic in the loch, and although the issue of plastic waste has clearly persisted for some time in this location, it has not persisted for the decades that might lead to such breakdown.

### **Conclusion**

8. In summary, although we believe the loss of plastics into Loch Creran is an important issue that requires to be addressed through removal of the current lochside waste, there is currently no evidence of damage to the protected features in Loch Creran SAC that we consider likely to be attributed to plastic pollution. We also consider that the amount of plastic which could have entered the loch, and the duration of this issue to date, is very unlikely to prevent the favourable conservation status of the SAC protected features being reached or maintained. By the same consideration, we do not believe there is an 'imminent' threat (in relation to the Environmental Liability Regulations) of this damage occurring due to the relatively long timescales of microplastic breakdown.

### **Recommendations**

9. The presence of microplastics in the water column and sediments is not part of a routine monitoring programme within Loch Creran. Also, linking any particular terrestrial litter source with marine pollution effects is not straightforward and we suggest that hydrodynamic modelling might help to clarify the dispersion of any such waste within a site like Loch Creran. SNH would welcome discussion with SEPA and MS on whether such monitoring could be introduced in future.

10. There are evidence gaps regarding the potential long term impacts of microplastics on filter feeding organisms, particularly restricted features like *Serpula vermicularis*, which are likely to require further investigation. We will consider how such evidence could be obtained to inform future management.

11. Microplastics are unfortunately ubiquitous in our marine environment and we support the work of others to help address this issue, especially through the removal of plastic litter before it enters the marine environment and begins to degrade.