

OSCR
Compliance & Investigation Team
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July 26th 2012

Dear Sirs

Wester Ross Fisheries Trust (SC024787)

I hereby wish to make a formal complaint to OSCR in relation to the Wester Ross Fisheries Trust (SC024787) ("WRFT") in respect of what I consider to be mismanagement on the part of the charity and a failure to act in a manner consistent with its key charitable purpose.

I am the owner of Rhidorroch Estate, Ullapool, Wester Ross. I am also the proprietor of the River Ullapool which flows into Loch Broom at Ullapool. As an Estate owner and river proprietor I have a direct interest in conserving the genetic diversity and populations of wild salmonids (Atlantic salmon and brown trout, including sea trout). Atlantic salmon are in themselves a species afforded protection under Annex II of the European Habitats Directive 92/43/EEC. I declare that being owner of the River Ullapool I have a vested economic interest in the wild fish population in the River Ullapool being maintained.

The River Ullapool falls within the geographical remit of the WRFT and as such is directly affected by its decision-making. The WRFT was formed in 1996 and since that period I have communicated regularly with the Trust in seeking to encourage greater protection of wild fish in the Wester Ross area in light of threats posed by aquaculture.

1. Charitable Purposes of WRFT

The WRFT includes within its charitable purposes “the advancement of environmental protection or improvement”.

In addition, the Trust’s principal aim is (taken from the Trust’s website www.wrft.org.uk) “to conserve the genetic diversity and structure of wild fish populations and the habitats that support them within the WRFT area”.

2. Submissions

It is my opinion and submission that WRFT have failed to adhere to the above charitable purpose and constitutional aim. In this regard, I consider that this failure constitutes mismanagement.

I am greatly concerned at what I consider to be a lack of clear reporting in the way funds generated by river proprietors (such as myself) via the Wester Ross Area Salmon Fishery Board are used by WRFT. These funds should be dedicated solely to advancing environmental protection or improvement of wild fish and their habitats, and I can find no clear evidence of this.

I am also of the view that the Chairman of WRFT, Mr MacKenzie, has not acted in the best interests of the charity in that I believe he has a conflict of interest between the aims of the charity and the interests of the aquaculture industry.

I shall expand on each of these submissions below.

3. WRFT failure to act in accordance with charitable purpose and aim

As highlighted above, WRFT’s principal aim is to protect and promote wild fish in the Wester Ross region. As a proprietor of a river in the Wester Ross region, I am deeply concerned that this organisation has acted in ways which do not have any accord with this aim. Furthermore, as shall be highlighted below, I am of a clear view that WRFT have not been acting in the interests of the advancement of environmental protection or improvement, which is one of their two key charitable proposes. My position can be summarised as follows:

a) Managing Interactions Aquaculture Programme

As a member of the Rivers and Fisheries Trusts of Scotland (“RAFTS”), WRFT have become engaged in the ‘Managing Interactions Aquaculture Programme’ (“MIAP”) promoted by Marine Scotland (an overview of the programme is annexed for the reference of OSCR). The programme’s overall aims are to “help identify optimal and sub-optimal locations of aquacultural locations where aquaculture can best proceed with reduced or acceptable risks to wild fish populations and fisheries; and to support the sustainable growth of the aquaculture industry by providing information”. The funding for MIAP comes from the Scottish Government via RAFTS to WRFT.

It is my clear view that this programme, designed to identify additional new sites for aquaculture on the west coast of Scotland, has been established to facilitate an increase in the salmon farming industry in Scotland in order to supply principally the Chinese market (see for example, ‘Chinese Appetite for Scottish Salmon’ <http://www.scotland.gov.uk/News/Releases/2011/10/14123711> , and ‘Scottish salmon leaps into Chinese markets’ <http://www.bbc.co.uk/news/uk-scotland-scotland-business-12169191>)¹. RAFTS, being the “umbrella” organisation of which WRFT is a member, have previously provided evidence of the devastating impacts to salmonid stocks that aquaculture causes, as well as the dilution of the genetic integrity of wild salmonids caused by the operations of the aquaculture industry through side effects that include the increased presence of sea lice^{2,3}.

It is in my opinion inappropriate for an organisation such as WRFT, whose aim is the conservation of wild fish and their habitats, to be engaged in a programme that is ultimately identifying further aquaculture operations off the west coast of Scotland. Increased aquaculture means increased adverse impacts to wild fish. Such a programme does not fit with the charitable purpose of WRFT being the advancement of environmental protection or improvement.

1 Trout & Salmon “Comment” - wild fish concerns to satisfy Chinese demand

2 References relating to the detrimental affects of salmon farming to the wild salmon and sea trout

3 RAFTS, media articles & Scottish Government concerns over wild salmon in fish farming areas

During 2011 and 2012, I have contacted WRFT on several occasions to obtain further information about MIAP and how WRFT reached its decision to take part in MIAP, but have been met with what I consider to be hostile correspondence from the Chairman of WRFT and a lack of transparency regarding MIAP. For example, there has been no consultation with river owners, and any minutes and background information as to how WRFT came to support MIAP have not been available⁴.

b) Corry fish farm, Loch Broom

In 2008 an application was presented to Highland Council for the grant of a lease renewal at an aquaculture farm at Corry in Loch Broom operated by Wester Ross Fisheries Ltd. Relying on a planning policy entitled “Coastal Plan for the Two Brooms Area”, in which Highland Council identified that the existing fish farm operation at Corry should be relocated in light of the need to protect wild salmon stocks in the River Broom, Highland Council ultimately granted permission to the fish farm operator.

In this case, WRFT failed to lodge an objection in relation to Corry despite the fact that the proposal ran contrary to the charitable purpose and aims of WRFT. It is of note that at the time of this application, the Chairman of WRFT was a fish farm owner and one of a number of trustees with fish farm interests but otherwise able to vote in such instances to protect wild fish. This was in my view a major omission on the part of WRFT given the powers vested in it by its members.

c) Stattic Point fish farm, Little Loch Broom

In the planning application in relation to a proposed salmon farm at Stattic Point in 2010, one of the WRFT Trustees, Ben Hadfield, who is also a representative of Marine Harvest (the largest farmed salmon producer in Scotland and the applicant for Stattic Point) sought to influence the decision making of the WRFT biologist so that WRFT would agree to a two-year cycle of farmed salmon production^{5,6}.

4 Correspondence between J Scobie and WRFT for information regarding WRFT support of MIAP

5 Mr Hadfield production Manager of Marine Harvest fish farm Company and trustee of WRFT

6 Letter from E Scobie WRASFB member to all WRFT trustees and Board members re Mr Hadfield

The location of Stattic Point is environmentally sensitive given its close proximity to the Little Gruinard SAC (a special area of conservation afforded protection under the European Habitats Directive). Ben Hadfield remains a Trustee of WRFT and has recently been unanimously voted in for another three years by the WRFT even though he is an employee of Marine Harvest.

It is in my submission improper for a representative of a farmed salmon producer to act as a Trustee for WRFT when the impacts of the aquaculture industry are so incompatible with those of a charity whose aims are to protect wild fish ^{7,8,9}.

d) Failure to report sea lice outbreak

There had been concern amongst river owners over the transporting of live fish between three fish farms in the Wester Ross region belonging to the salmon farming company, Wester Ross Fisheries Ltd, and the likelihood of sea lice being moved from one area to another and causing a detrimental effect on wild salmon and sea trout. This activity was reported to WRFT again in 2010 but no concrete action was taken or minuted ¹⁰.

In 2011 there was a significant case of sea lice concentration in the Loch Brooms area involving Wester Ross Fisheries Ltd, caused in part from this transportation of farmed fish from one fish farm to another in the area. The Chairman of WRFT, Mr MacKenzie, was asked to report this serious sea lice incident to Marine Science of the Scottish Government so that it could be recorded and the farms investigated. However WRFT failed to file any such report .

7 Trout & Salmon "Comment" on the shock of fish farm employees acting as trustees on Trusts

8 Letter to Mr Wallace RAFTS/ASFB regarding concerns re WRFT from 8 river owners

9 Correspondence to Mr MacKenzie trustee of WRFT, chair WRASFB from E & J Scobie

10 E-mail from E Scobie WRASFB member with concerns to WRFT for WRF over transporting live fish

A solicitor's letter was sent on my behalf to Mr MacKenzie highlighting my concerns regarding what I considered to be his conflict of interest in not reporting this sea lice incident ¹¹.

Wester Ross Fisheries Ltd is one of the fish farming companies whose performance will be taken into account by MIAP and with whom the WRFT Chairman, Mr MacKenzie, has declared an interest.

In summary against the above four examples, it is my submission and opinion that WRFT has not been acting in accordance with its key charitable purpose and in accordance with its main aim.

4. Reporting on use of funds by WRFT

Aside from funding that reaches WRFT from RAFTS (such as for MIAP referred to earlier), the principal funding that sustains WRFT comes from levies charged upon river proprietors in the Wester Ross area by the Wester Ross Area Salmon Fishery Board and which in turn is passed onto WRFT. The money that originates from river proprietors (such as myself) is identified to support the aims and purposes of the Wester Ross Area Salmon Fishery Board and WRFT, those aims being the conservation of wild fish stocks and their habitats within the region.

However there is no breakdown of expenditure reported that I am aware of which details the way in which this funding is ultimately used. Given the points raised above where I consider WRFT to have acted contrary to its aims and main charitable purpose, I believe that this level of reporting should be available – and especially to funders such as myself.

5. Instances of a conflict of interest within WRFT

The following sets out my views on various examples of what I consider to have been a conflict of interest on the part of WRFT along with its Chairman:

a) WRFT being chaired by a fish farmer in 2008 gave cause to considerable concerns from the river owners and employees ¹². In one case a longstanding trustee of WRFT had no alternative but to resign citing given what was considered an unacceptable position and a situation which the trustee cited as having been bad business practice ¹³.

11 Solicitors letter regarding Mr MacKenzie declining to report sea lice outbreak concerning WRF

12 Letter from 9 river owners with concens to Mr MacKenzie WRFT trustee, chair WRASFB

13 Letter from longstanding WRFT trustee resigning over cited bad business practice

During a meeting in 2008 of the Wester Ross Area Salmon Fishery Board and chaired by Mr MacKenzie, many of the ghillies and river owners present expressed strong opinions that WRFT should be taken back in hand by those able to promote wild fish interests. However even this did not produce an immediate resignation from the fish farmer at the time chairing WRFT.

The present situation whereby Mr MacKenzie holds the position of chairmanship of WRASFB and WRFT is yet another cause for concern regarding conflict of interest.

When a solicitor's letter was sent on my behalf to Mr MacKenzie highlighting my concerns regarding what I considered to be his conflict of interest, it was WRFT that replied by saying that the trustees had carried out a unanimous vote of confidence in Mr MacKenzie ^{14,15,16}.

The chairmanship and make-up of some of the trustees within WRFT has consisted of fish farm interests with voting powers. Recently the WRFT minuted that they were in support of having a second full time fish farmer as a trustee in addition to other trustees already in place with a history of fish farming involvement ¹⁷. Such interests are in my view incompatible.

I find it alarming that for an area where fish farms have such presence, their impacts are hardly noted by the WRFT. My conclusion is that this silence in WRFT reviews, action plans and website is a deliberate omission and a failure to address the biggest threat facing wild salmon ^{18,19,20}. For the time being and given the grip over the WRFT by fish farming interests, it seems very unlikely to me that the culture of the WRFT will be able to change on its own towards one of honouring its charitable purpose and aim of conserving wild fish and their habitats ²¹.

14 Solicitors letter to Mr MacKenzie regarding conflict of interest and how bias is to be perceived

15 Reply to solicitors letter from WRFT

16 Solicitor letter re-iterating that test is of perceived bias and not actual bias

17 WRFT meeting March 29th 2012 looking for a 2nd full time fish farmer as a WRFT trustee

18,19,20 Letters from E& J Scobie over lack of fish farm interest from WRFT

21 Letter from Mr MacKenzie to J Scobie stating criteria demanded before queries addressed

- b) As mentioned above, the Chairman of WRFT is also Chairman of the Wester Ross Area Salmon Fishery Board. Whilst river boards are a creature of statute (the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003) and differ in their remit from fisheries trusts, my principal concern has been that I do not consider the Chairman to be acting in the best interests of the charity.

As the Chairman of WRFT is also the chairman of the Wester Ross Area Salmon Fishery Board, and as the administrator also acts for both WRFT and the Board, the distinction between WRFT and the Fishery Board has become blurred in my experience. In effect the two are but one organisation along with a shared premises owned by the Chairman, Mr MacKenzie ²²

- b) It is my view that the Chairman has been acting with a conflict of interest given that he allows Wester Ross Fisheries Ltd to site salmon cages at Loch Tollie, and he allows a salmon hatchery to operate at the mouth of the River Kerry (a river which he owns). Wester Ross Fisheries Ltd have aquaculture interests at a number of farms in the Wester Ross area including Corry, Ardessie and Ardmair. Despite Mr MacKenzie declaring his interest, it is my opinion that such vested interests render it impossible for a trustee to act with the necessary independence that is required of a charitable trustee ²³
- c) Against the background of actions carried out during the period of time while Mr MacKenzie has been Chairman of WRFT, and given what I consider to be a lack of attention given to the underlying charitable purpose and aim of WRFT during this period, it is my view and submission that Mr MacKenzie and those WRFT trustees who do not acknowledge the aims of the charity are compromised from acting in the proper interests of the charity²⁴.

22 Letter from Mr MacKenzie using WRASFB administrator to answer questions addressed to WRFT

23 Trout & Salmon "Comment" on river owners benefiting from the aquaculture industry

24 Trout & Salmon magazine June 2012 Salmon farming pollution and Salmon farming talks collapse

Against the above background, I formally request that OSCR examines what I consider to be a failure on the part of WRFT to act in accordance with its main aim and charitable purpose. I request that appropriate action is taken against WRFT in order to protect the wild fish population that is in my opinion being threatened and put at risk through the mismanagement of WRFT and its relationships with the aquaculture industry.

I also ask that OSCR investigates the way in which levies from river owners paid via the Wester Ross Area Salmon Fishery Board to protect wild fish are being used by WRFT, and whether project funding for MIAP provided via RAFTS is compatible with the charitable aims of WRFT.

If I can provide any further information, please do not hesitate to let me know.

Thank you for your assistance and time in this matter.

Yours faithfully

Jenny Scobie
Rhidorroch Estate

Overview on Managing Interactions Aquaculture Programme referred to, and sourced from www.rafts.org.uk/aquaculture

West Coast Wild Fisheries – Aquaculture Mitigation, Management and Liaison Programme

Aquaculture is a contentious and divisive issue on the west coast of Scotland and has caused conflict between wild fish and aquaculture interests for many years. This project programme is managed by RAFTS and its member fishery trusts and partner district salmon fishery boards on the west coast of Scotland to support the better coordination and management of wild fisheries and stocks with the aquaculture industry.

The project maintains some of the positive aspects of the Tripartite Working Group (TWG) <http://www.tripartiteworkinggroup.com/content.asp?ArticleCode=2> programme, which closed earlier in 2011. The TWG process made a number of positive contributions to informing the debate and dialogue between the wild fish and aquaculture sectors and the support of the Scottish Government has been crucial in maintaining this work. In addition, the renewed Scottish Aquaculture Framework provides further impetus and priority to improve practice and develop policy on issues such as farm location and licensing, prevention of escapes and control of sea lice levels.

The programme's overall aims are to:

- Help identify optimal and sub-optimal locations of aquaculture operations where these activities can best proceed with reduced or acceptable risks to wild fish populations and fisheries;
- Support the sustainable growth of the aquaculture industry by providing information that underpins the economic, environmental and social principles of sustainable development by:
- Helping to support and direct growth to appropriate locations via the provision of **locational guidance** in terms of wild fish and fisheries;
- Supporting the reduction of risk to the environment via **lice monitoring** and dialogue with the sector to negotiate local accommodations;
- Allowing aquaculture to provide strong social benefits in the areas in which it operates having identified preferred and non-preferred locations for development and operation.
- By the use of applied **genetics tools** and a strategic sampling programme identify when or if genetic material of aquaculture origin is present in

sampled wild fish populations to inform the need for further improved stock retention measures and demonstrate conclusively when such genetic ingress takes place.

The project will deliver activities which:

- Transparently gather and report data and information;
- Seek to reduce or support the reduction of aquaculture impacts on wild fish and fisheries and which lead to better understanding and recognition of these impacts and interactions;
- Develop policy and guidance on fish farm location sensitivities and priorities in respect of wild fish and fisheries in order to:
- Support better informed responses to aquaculture planning applications made by wild Provide guidance to the Marine Spatial Planning process, fish interests; and planners more generally and other policy and decision makers so that the concerns of wild fish bodies are more clearly expressed, known and understood and can be incorporated and/or considered in planning and policy related decisions.
- Gather and provide data that, in conjunction with locational guidance, will support the consideration of most appropriate aquaculture site locations and realignments or targeted reallocation of biomass and production from sensitive to less sensitive locations in the future.
- Gather and provide data to inform local management of aquaculture operations and maintain and develop good local relationships and dialogue between aquaculture and wild fish bodies to support the negotiation of local agreements and protocols using this data and information.
- Via a strategic programme of sampling and screening and the application of cost effective and robust genetic tools will allow the identification of genetic material of aquaculture origin in wild fish populations. This will support the ongoing development of improved containment regimes and demonstrate conclusively when genetics of aquaculture origin are present in wild fish populations.

Project partners:

A number of RAFTS members and related District Salmon Fisheries Boards support this programme. In the main, work will be undertaken by the participating fisheries trusts.

The participating fishery trusts and boards are:

- Argyll Fisheries Trust
- Argyll District Salmon Fishery Board
- Lochaber Fisheries Trust
- Wester Ross Fisheries Trust
- Wester Ross District Salmon Fishery Board
- Skye Fisheries Trust
- Skye District Salmon Fisheries Board
- West Sutherland Fisheries Trust
- Outer Hebrides Fisheries Trust
- Western Isles Salmon Fisheries Board