

**COMPLAINT BY THE SAVESEILSOUND CAMPAIGN GROUP  
TO THE COMMISSION OF THE EUROPEAN COMMUNITIES  
CONCERNING FAILURE OF THE UNITED KINGDOM TO COMPLY WITH  
COMMUNITY LAW IN RELATION TO THE SAFE DISPOSAL OF CATEGORY  
TWO WASTE IN ARGYLL**

The saveseilsound campaign group is an unincorporated non-governmental group formed in order to campaign against the damage to the environment caused by industrial fin-fish farming in the sea loch system comprising Seil Sound, Shuna Sound, Loch Shuna and Loch Melfort in Scotland (Seil/Shuna/Melfort). Information about the activities of the group can be found on our website [www.saveseilsound.org.uk](http://www.saveseilsound.org.uk)

This is our first approach to the Commission's services and our first approach to a Community body or authority.

Our approaches to the national authorities are described in the papers.

We authorise the Commission to disclose our identity in its contacts with the authorities of the Member State against which the complaint is made.

We are represented in the presentation of this complaint by our secretary Mr Ewan G Kennedy, Kinloch, Degnish Road, Kilmelford PA34 4XD, Argyll, Scotland, email address [ewangkennedy@gmail.com](mailto:ewangkennedy@gmail.com), telephone number (UK) 01852 200261.

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## 1 EXECUTIVE SUMMARY OF COMPLAINT

- 1 The production of salmon in cages on an industrial scale leads to mortalities which occur both routinely and occasionally in large quantities resulting from events such as outbreaks of infectious disease, unsuccessful medical treatments, human error or bad weather. These occasional “event mortalities” have been occurring with increasing frequency in recent years.
- 2 The remains of fish which die in event mortalities are classified as Category Two Waste, which means that special measures must be taken to ensure that they are disposed of safely with regard to the risks to human health and to the environment. These measures were introduced following the BSE disaster which occurred in the UK meat industry many years ago, resulting from the remains of diseased animals re-entering the food chain.
- 3 As part of the measures the UK legislated to put an end to intra-species feeding by making it a criminal offence to feed animal waste in any category to animals belonging to the same species.
- 4 Industrial fin-fish farming does not take place in England and it is not allowed in many parts of Scotland, officially in order to “safeguard migratory species” but in truth probably to protect the financial interests of the owners of the major salmon rivers on the East coast of Scotland. As a result fish farms are almost all located on the “aquaculture coast” extending down most of the West of Scotland.
- 5 Derogations were put in place to deal with the disposal of Category Two waste in remote areas, but such disposal must be “under official supervision”. Almost all of the aquaculture coast has been designated as remote.
- 6 In December 2011 an event mortality occurred at Ardmaddy in Argyll as a result of which more than 80,000 mature salmon died, creating about 256 tonnes of Category Two waste. There was no official supervision of the disposal thereof and the means of disposal remains secret.

- 7 The saveiseilsound campaign group has discovered that the event in December 2011 was not an isolated event. Event mortalities are happening with increasing frequency as industrial fish farming expands. It seems that instead of supervising disposal to ensure compliance with the Directive, as they are obliged to do, government bodies are not even collecting information about what is going on.
- 8 We have two complaints against the United Kingdom Government:
  - (i) Failure to supervise the disposal of Category Two waste in specific instances, including the December 2011 incident; and
  - (ii) Failure to respect the meaning of the Directive by designating almost the whole of the aquaculture coast as remote and so exempting almost an entire industry from regulation.

## **2 FACTS GIVING RISE TO THIS COMPLAINT**

### **1 Introduction**

The Seil Sound, Shuna Sound, Loch Shuna and Loch Melfort in Argyll together form a large inshore sea loch system with a wide opening to the South and limited openings to the North and West, resulting in limited tidal flushing. Although the official policy of the Scottish Government is to discourage new installations and the expansion of existing ones in sea lochs Seil Sound itself has escaped formal classification, with the result that the area has seen considerable expansion of fish farming in recent years.

The fish farm at Ardmaddy was established around 1992 by a company named Pan Fish, with a permitted biomass of 800 tonnes. In 2005 the site was selected as a pilot relocation project after another site located at Loch Riddon in the Firth of Clyde caused extensive environmental damage, including the virtual extinction of the local wild salmon. As a result permission was given to increase the biomass at Ardmaddy to 1300 tonnes and the site at Loch Riddon was shut down.

Pan Fish was then taken over by Marine Harvest, who were required to divest themselves of certain sites to comply with anti-monopoly legislation and duly sold the farm at Ardmaddy to Lakeland Marine Farm Limited, part of the Meridian Group. Recently Meridian has been acquired by Marine Harvest, who are thereby owners once again.

### **2 Recent History**

There have been problems with the site at Ardmaddy, which has been causing pollution to be deposited beyond the “allowable zone of effects” permitted in its licence to discharge waste into the sea, apparently because tidal flows proved stronger than had been predicted by computer modelling. As a result Lakeland Marine Farm decided to relocate the farm to a site further down the Seil Sound, where tidal streams were thought to be weaker.

At the same time Lakeland decided to seek permission to increase the permitted biomass to 2500 tonnes, which would place it among the largest farms in Scotland. They have received the required licence to discharge this amount from the Scottish Environment Protection Agency (SEPA) and are seeking planning consent from the local authority. The latter application attracted objections from nearly 800 individuals, some of whom formed the saveseilsound campaign group.

### **3 The December 2011 event**

In the course of campaigning against the applications at Ardmaddy members of saveseilsound obtained certain environmental information. As a result the group discovered that 82,663 mature salmon had perished at Ardmaddy over a few months, ending in December 2011. The total waste created thereby was reported by the operators as 256 tonnes. The group decided to seek assurances that the dead fish had been disposed of safely and legally.

## 4 Problems of Disposal

Ardmaddy is quite a remote site. There is no direct access by road and the fish cages have been serviced by boat, originally from Loch Craignish but more recently, it seems, from the Craobh Haven yachting marina in Loch Melfort. The economy of this area of mid-Argyll depends mainly on tourism and leisure with not only large numbers of visiting and local yachts but also sea-kayaking a major activity. There are no obvious ways whereby substantial quantities of waste could be removed from Ardmaddy without seriously disrupting local tourism and leisure activities.

## 5 Summary of Requests for Information

Saveseilsound asked the SEPA for information about how the fish had died and how the waste had been disposed of. We discovered, in summary, that

- 1 SEPA did not enquire about the cause of death.
- 2 SEPA were not asked to consent to any exceptional medications in the period before the event.
- 3 SEPA did not and still do not know what was done to ensure the safe disposal of the dead fish.

We next asked Argyll & Bute Council as the local authority for the same information. The local authority did not know what had happened. We refer to their reply in detail later on.

Finally we asked Marine Scotland, which is part of the Scottish Government for the same information. They also did not know what had happened.

## 6 The Cause of Death

Although none of the said government bodies had made enquiries about the cause of death some information about what happened has entered the public domain, via the Fish Veterinary Group. Here is an extract from an information request to them.

162	Ardmaddy	FS0484	Lakeland Marine Farm Ltd	06/12/2011	20110723	Sea Sound to Loch Craignish	Stock and mortality details unknown; site suffering AGD	SAV, gill pathology; IPN; Vibrio
166	Port Na Cro	FS0659	Lakeland Marine Farm Ltd	06/12/2011	20110600	Sea Sound to Loch Craignish	Losses of 20% following periodic treatment; AGD confirmed by FVG	Gill pathology; SAV pathology
162	Kames Bay West	FS0871	Kames Marine Fish Farming	12/12/2011	20110626	Sea Sound to Loch Craignish	36k RTR @ 2.5kg; Mortality up to 1.75% lke reported mortality associated with AGD	AGD; kidney pathology; Vibrio sp; unidentified bacteria

Here is one from the Fish Health Inspectorate.

2011	Lakeland Marine Farm (Kames)	Ardmaddy	The staff reported the experts last this year - a few fish seen with fin damage. c. 20k fish were lost following possible treatment. Lots found on other CAIP (mortality) during period that records are inspected. AlphaMax and Ictosan did not have significant effect.
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After receipt of these details we submitted a further information request to the Scottish Government and received a copy of a report of a routine inspection that took place on 6 December 2011, which contained the following:

Diagnostic following reports of ACD - hydrogen  
Peroxide treatment carried out last week  
Fish not feeding well

Manager not available - no paperwork completed  
Manager is to send in all paperwork.  
Site staff reported lice especially bad this year - a few  
fish were seen with lice damage. ~ 20% of fish  
were lost following peroxide treatment.

This suggests that the salmon at Ardmaddy were suffering from amoebic gill disease, which the operators had attempted to treat unsuccessfully with Hydrogen Peroxide, killing many of the fish in the process.

### 3 Environmental Information Requests

We now describe in detail the substance of our requests for environmental information from various official bodies.

#### **Our request to SEPA, to which they responded on 18 December 2012.**

##### Question 1

Figures for Ardmaddy between June 2011 and September 2012 show a production cycle starting in July 2011 with 486 tonnes of fish, rising to a peak biomass of 1105 tonnes in November falling to 496 tonnes by June 2012 and all fish being removed by July 2012.

It seems that the site was hit by an event in late 2011 resulting in mortalities rising from 2.112 tonnes in August to 203.156 tonnes in December, then falling off to 0.510 tonnes by June 2012. The total tonnage lost through death is 256.559, (82,663 individual salmon) or approximately 23% of the gross product, which suggests that the site was affected by an event, rather than the losses resulting from the usual causes (oxygen starvation, stress etc).

I assume that on receipt of the self-monitoring report for December 2011 SEPA would have asked for an explanation of the cause and would ask you to let me know the outcome.

1. We are unable to provide you with this information as SEPA did not request an explanation of the cause of mortalities, therefore this information is not held by SEPA. This information is exempted under Regulation 10(4)(a) of the Environmental Information Regulations 2004. The text of which is reproduced below;

(4) A Scottish public authority may refuse to make environmental information available to the extent that- (a) it does not hold that information when an applicant's request is received.

##### Question 2

Please also inform me if the licence-holder asked for consent to use quantities of pesticides or medicines in excess of permitted levels in the period from June to December 2011 and if so please supply details, including the reasons for such request(s) and the outcome.

2. We are unable to provide you with this information as SEPA do not hold information relating to this request. This information is exempted under Regulation 10(4)(a) of the Environmental Information Regulations 2004.

Under SEPA's duty to advise and assist under the terms of The Environmental Information (Scotland) Regulations 2004 regulation 9, we advise that the licence holder did not make any request to use quantities of pesticides or medicines in excess of permitted levels in the period from June to December 2011.

##### Question 3

Please let me know what arrangements were made for the safe disposal of the dead fish, which would be Category Two waste in terms of the Animal By-Products (Scotland) Regulations 2003.

3. We are unable to provide you with this information as SEPA do not hold information relating to this request. This information is excepted under Regulation 10(4)(a) of the Environmental Information Regulations 2004.

Under SEPA's duty to advise and assist under the terms of The Environmental Information (Scotland) Regulations 2004 regulation 9, we advise that Animal By-Products are principally regulated by the local authority and this information may be held by them. The contact details for all local authorities can be found on the link below:

<http://www.cosla.gov.uk/scottish-local-government>

## **Our Request to Argyll & Bute Council**

When we asked the local authority we got a reply that was detailed and honest but took us no further towards discovering what had happened. We quote it in full (questions in black, answers in red).

*"Environmental Information Response from Argyll & Bute Council dated 21 December 2012*

*Request for information: Animal By-Products (Scotland) Regulations 2003 (ABPR)*

*Reference: argyllbuteir:1603.*

*I refer to your request for information which was dealt with in terms of the Freedom of Information (Scotland) Act 2002 (FOISA).*

*I have attached the following information in fulfilment of your request:*

- 1. Please list the fish farm sites within Argyll & Bute in respect of which permission to use landfill was granted and the length of time in which such permissions remained in place. Records regarding waste disposed at Shanks run landfill will be kept by them and reported through waste data-flow SEPA. The Council are licensed on Mull and Islay to take fish waste, but the fish farms all deal with the waste themselves, we only need the License for emergency situations.*
- 2. Please also supply the locations of the respective landfill sites licensed to receive such waste. Council run landfill - Mull and Islay.*
- 3. Please explain the conditions on which any such dumping took place, for example in relation to the ensiling of waste before dumping. Raw fish no ensiling.*
- 4. Please inform me about the arrangements for inspecting and monitoring such dumping to ensure compliance with ABPR. Records kept and held by Shanks Argyll for Shanks run landfill. Site licensed and inspected by AHVLA (formerly State Veterinary Service) and SEPA.*

5. Please confirm the total tonnage of fish farm waste, if any, dumped in landfill in each year since 1 October 2003, distinguished by site and whether Category Two or Three. *We do not hold this information. All waste will be Cat 2.*

6. Data obtained from SEPA shows that in the period between August 2011 and June 2012 a total of 256.559 tonnes (82,663 individual salmon) died at the Lakeland Fish Farm in Ardmaddy, about 203 tonnes in December 2011 alone. Where did this waste go? *We are not aware of any request in respect of this operation. Most fish farm waste in Argyll is removed by road for processing in plants out-with Argyll.*

7. I note that there was once in existence a Fish Waste Management Group, with representatives from inter alia local authorities, but have been unable to find any trace of it after 12 April 2005, when it appears to have met at the Kingsknowe Golf Club in Edinburgh. Does it still exist? If so please supply copies of the minute of all meetings after the date referred to. If the body no longer exists please inform me of any arrangements now in place to monitor disposal of Category Two fish farm waste. *I am not aware of a Fish Waste Management Group. The Gyrodactilis Salaris Contingency Planning Group met in 2005 and having presented the contingency plans to the Scottish Government, ceased to meet. I am not aware of any national body monitoring fish farm waste.*

## **AHVLA England**

As suggested in the reply we then contacted AHVLA in England and got a negative reply – apparently they have had no involvement with waste disposal from Scotland.

## **Marine Scotland**

We also sent a request to Marine Scotland on 27 December 2012 and got a reply on 28 January 2013. Here is the text with the replies in red:-

*Request for Information under the Freedom of Information (Scotland) Act and/or the Environmental Information Regulations*

*Dear Sirs*

***Disposal of fish dying in “event mortalities” on industrial fish farms in Argyll & Bute.***

*As secretary to the saveseilsound Campaign Group I am trying to get an understanding of the procedures currently in place to ensure the safe disposal of Category 2 waste from the fish farms in the Argyll & Bute Council area. The Animal By-Products (Scotland) Regulations 2003 (ABPR) were enacted to give effect to a European Directive introduced after the BSE crisis, which had seemingly resulted from the feeding of infected foodstuffs to cattle, but they apply across the board and are relevant to the disposal of fish farm*

mortalities. Responsibility for enforcing the ABPR was split between the State veterinary service, now the Animal Health Veterinary Laboratory Agency (AHVLA) and the local authorities.

In 2004 SEPA produced a report for the Scottish Government following the coming into force of the ABPR on 1 October 2003, which disclosed that there were problems with implementing the regulations in Scotland.

The regulations define fish farm mortalities as Category Two waste, i.e. waste that cannot go to animal feed and require that such should not be sent untreated to landfill. However the report noted the “two currently operating rendering facilities in Scotland are unwilling to take fish waste for technical reasons.” It was considered that in order to comply strictly with the ABPR fish waste would need to be ensiled (i.e. treated with formic acid or some similar process) then exported to Norway to go to landfill there.

Because of the total lack of facilities and the cost of the alternative it was proposed that a derogation be granted by the Scottish Ministers permitting the temporary use of landfill sites in Scotland in “designated remote areas” for a period of one to two years, while a regulation-compliant solution was worked out. The report acknowledged that the recommended temporary solution was not best practice.

It seems that certain areas including Highlands and Islands and Argyll & Bute were then designated and that over nine years later the designations remain in place. These areas would include almost all the fish farm sites in Scotland.

### **Question 1**

**Please supply a copy of the ministerial instrument designating these areas and confirm whether or not it remains in force.**

*Attached is a copy of the Animal By-Products (Enforcement) (Scotland) Regulations 2011. It can also be found on the following website: <http://www.legislation.gov.uk/ssi/2011/171/contents/made> Regulation 9 of the Animal By-Products (Enforcement) (Scotland) Regulations 2011 identifies the areas in Scotland that are categorised as remote areas where category 1, 2 and 3 animal by-products may be disposed of by burning or burial on site or by other means under official supervision which prevents the transmission of risks to public and animal health.*

*It is not clear what if anything is being done to address the problem and provide safe means of disposal. A Scottish Fish Waste Management Group (FWMG) was set up with representatives from Scottish Government, local authorities and industry and produced a report in March 2005 (accessible online here: <http://www.scotland.gov.uk/Publications/2005/02/20715/52849>), but it does not seem to have met since shortly after that date.*

### **Question 2**

**Please inform me about what happened to the FWMG. If it no longer exists please supply details of any successor body.**

*The Fish Waste Management Group (FWMG) produced a report on “Developing a Framework for a Sustainable Fish Waste Management Infrastructure” in February 2005. The FWMG was commissioned to produce this report and once it was complete the group was disbanded. No successor group has replaced the FWMG.*

*It seems that farmed fish die fairly routinely in small numbers and that occasionally there are “event mortalities” when large numbers die at the same time from some exceptional cause. In the case of land-based activities farmers are instructed that they must notify SEPA of any exceptional mortalities in order that the cause(s) of death can be identified. There does not seem to be any comparable instruction in relation to operators of fish farms.*

### **Question 3**

**Please confirm whether or not there is such an instruction to operators of fish farms and if so supply a copy thereof.**

*There are conditions in the authorisations for fish farms to keep a record of fish farm mortalities in the Aquatic Health (Scotland) Regulations 2009. Regulation 6, (2)(a)(ii) states that it is a condition of an authorisation that the business must keep a record, in such form and manner as the competent authority may specify, of the number of any aquaculture animals that have died in each epidemiological unit within that area. Regulation 6, (2)(d) states that it is a condition of an authorisation that the business must have a system in place which enables the operator to demonstrate to the competent authority that the requirements of Regulation 6, 2(a) are being met.*

*Under the Animal By-Products (Enforcement) (Scotland) Regulations 2011, the waste originator, transporter and waste receiver must retain all animal by-product commercial documents for at least 2 years. This requirement can be found in Commission Regulation (EU) No 142/2011, Annex VIII, Chapter IV. For some of the information required by the Regulation, the commercial documents can be used as records.*

*Where the fish farm has its own approved disposal plant (i.e. on-farm incinerator) there will be no commercial documents but records must be kept of the animal by-products that have been incinerated.*

*I recently attempted to discover what had happened to the carcasses of about 256 tonnes of salmon (about 82,663 individual fish) that died at Ardmaddy, 203 tonnes in December 2011 alone. I annex the replies received from SEPA dated 18 December Argyll & Bute Council dated 21 December 2012. These replies give very serious cause for concern. It seems that despite being aware of a major event mortality SEPA chose not to request an explanation of the cause of death and Argyll & Bute Council hold no information about where the dead fish went.*

#### **Question 4**

**Please explain the circumstances in which SEPA are required to seek an explanation for an event mortality. In what circumstances is there a duty on anyone to inform the local authority?**

*The conditions of authorisations issued under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) require that fish farmers furnish SEPA with certain information in the form of returns. These returns contain monthly data about the operation of fish farms and are made to SEPA on a quarterly basis. Amongst the data which farmers are required to supply to SEPA is information on the weight of mortalities at individual fish farm sites during each month of production.*

*SEPA does not require that farmers provide explanations for the mortalities at a fish farm where these mortalities are in the form of an "event" or the more routine day-to-day loss of fish. There are no circumstances where SEPA would routinely seek an explanation for a mortality event. SEPA considers that such information would be of limited value to the process of regulating farms under CAR although that they may be of interest to other regulators with a remit which includes fish health and welfare. These regulators may place requirements on farmers to provide such information.*

*There is an obligation to notify in case of suspicion of a listed disease or increased mortality in Regulation 23 of the Aquatic Health (Scotland) Regulations 2009. Regulation 23 states:*

***23. Obligation to notify in case of suspicion of a listed disease or increased mortality***

- (1) A relevant person is guilty of an offence if that person—
  - (a) knows or suspects that a listed disease is present in aquatic animals; and*
  - (b) fails immediately to notify the competent authority of that knowledge or suspicion.**
- (2) A relevant person is guilty of an offence if that person—
  - (a) knows or suspects that increased mortality has occurred or is occurring in aquaculture animals; and*
  - (b) fails immediately to notify the competent authority or a veterinarian of that knowledge or suspicion.**

*If the Scottish Government is notified of an increased mortality, we would investigate in relation to listed or emerging disease.*

*In general it seems that information about the fate of fish waste in Argyll & Bute is held by Shanks, but as a private contractor they do not require to disclose data held by them. It seems that in the tenth year after the Directive was introduced very little if anything has been done to implement it, or even to gather data that would enable a policy for the safe disposal of fish waste to be developed.*

#### **Question 5**

***Please explain what steps are currently being taken to gather data on the basis of which policy can be formed for the disposal of Category 2 fish waste in a manner compliant with the Directive.***

*The Scottish Government are not gathering data to form policy on the disposal of category 2 fish waste. The Animal By-Products (Enforcement) (Scotland) Regulations 2011 states what disposal options are available for category 2 fish waste and we expect fish farms to use one of these disposal options.*

*Options for the disposal and use of category 2 material can be found in Article 13 of Regulation (EC) No 1069/2009.*

## 4 The Regulatory Regime

The basic European regulation was Number 1774/2002 Animal By-Products Regulation, implemented by SSI 2003/411. Both have now been replaced by European Regulation Number 1069/2009 and SSI 2011/171 respectively.

It must have been clear to those in government that Scotland was very ill-equipped to service the new regulatory regime. To advise them the then Scottish Executive set up a Fish Waste Management Group, which produced an interesting report in 2005. It can be accessed here:- <http://www.scotland.gov.uk/Publications/2005/02/20715/52849>

The FWMG frankly listed the problems of implementing the original EU Regulation, noting for example that at the time there were no disposal facilities in Scotland willing to accept fish farm waste. An option looked at was sending the waste to Norway to go into landfill there, as that country was outwith the EU (and of course responsible as owner of most of the “Scottish” companies for producing most of the waste).

The FWMG looked at the various options for disposal, expressing the hope that new methods would be invented. It acknowledged that there was a need for derogations for remote areas to be put in place and expressed the hope that these would be temporary.

FWMG also stated that responsibility for enforcing the regulations would be shared between the local authorities and the State Veterinary Service.

We couldn't find minutes of any meetings after April 2005 and have now found that the body was wound up after producing the report. This seems a great pity, as the report that was produced was helpful and suggested that much more needed to be done. Even in the period since 2005 there has been a substantial increase in production.

We now consider the measures in detail.

### **EU 1069/2009**

This is a nicely written document starting with a long preamble that explains the history. The relevant provisions are as follows, edited by us to remove irrelevant provisions.

**Article 4** provides

“Member States shall monitor and verify that the relevant requirements of this Regulation are fulfilled by operators along the entire chain of animal by-products and derived products ..... For that purpose, they shall maintain a system of official controls in accordance with relevant Community legislation.

Member States shall ensure that an adequate system is in place on their territory ensuring that animal by-products are

(a) collected, identified and transported without undue delay; and

(b) treated, used or disposed of in accordance with this Regulation.”

**Article 9** defines event mortalities as Category 2 waste, being animals or parts of animals

“that died other than by being slaughtered or killed for human consumption, including animals killed for disease control purposes.”

**Article 13** provides that Category 2 waste shall be

“(a) disposed of as waste by incineration:

(i) directly without prior processing; or

(ii) following processing, by pressure sterilisation if the competent authority so requires, and permanent marking of the resulting material;

(b) recovered or disposed of by co-incineration, if the Category 2 material is waste:

(i) directly without prior processing; or

(ii) following processing, by pressure sterilisation if the competent authority so requires, and permanent marking of the resulting material;

(c) disposed of in an authorised landfill, following processing by pressure sterilisation and permanent marking of the resulting material;

(d) used for the manufacturing of organic fertilisers or soil improvers to be placed on the market in accordance with Article 32 following processing by pressure sterilisation, when applicable, and permanent marking of the resulting material;

(e) composted or transformed into biogas:

(i) following processing by pressure sterilisation and permanent marking of the resulting material; or

(ii) *not relevant*

(f) *not relevant*

(g) in the case of material originating from aquatic animals, ensiled, composted or transformed into biogas;

(h) used as a fuel for combustion with or without prior processing; or

(i) used for the manufacture of *certain* derived products *reference deleted*.”

**Article 19 1** provides that a derogation can be given to allow disposal *inter alia*

“(b) by burning or burial on site or by other means under official supervision which prevent the transmission of risks to public and animal health of Category 1 material referred to in Article 8(a)(v) and (b)(ii), Category 2 and Category 3 materials in remote areas;

(c) by burning or burial on site or by other means under official supervision which prevent the transmission of risks to public and animal health of ..... Category 2 ... materials in areas where access is practically impossible or where access would only be possible under circumstances, related to geographical or climatic reasons or due to a natural disaster, which would pose a risk to the health and safety of the personnel carrying out the collection or where access would necessitate the use of disproportionate means of collection; ...

d) by means other than burning or burial on site, under official supervision, in the case of Category 2 and Category 3 materials which do not pose a risk to public and animal health, when the amounts of materials do not exceed a particular volume per week, this volume being determined in relation to the nature of the activities carried out and the species of origin of the animal by-products concerned;”

The remainder of Article 19 provides

“2. The animal population of a particular species in the remote areas referred to in paragraph 1(b) shall not exceed a maximum percentage of the animal population of this species in the Member State concerned.

3. Member States shall make available to the Commission information on:

(a) the areas that they categorise as remote areas for the purpose of applying paragraph 1(b) and the reasons for that categorisation, and updated information concerning any change to such categorisation; and

(b) the use they make of the authorisations provided for in points (c) and (d) of paragraph 1 with respect to Category 1 and Category 2 materials.

4. Measures for the implementation of this Article shall be laid down relating to the following:

(a) conditions aimed at ensuring control of risks to public and animal health in the event of burning and burial on site;

(b) the maximum percentage of the animal population as referred to in paragraph 2;

(c) the volume of animal by-products, in relation to the nature of activities and the species of origin, as referred to in paragraph 1(d); and

(d) the list of diseases referred to in paragraph 1(e).

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 52(4).”

Later Articles contain detailed provisions for inspection of disposal sites, record keeping etc.

**SSI 2011/171**

This is in the usual obscure form adopted by British parliamentary draftsmen. The important part is **Section 9** which lists the remote areas for the purposes of the above Article 19 (b) as:-

“(a) the area of the Argyll and Bute Council, excluding the Parishes of Arrochar (339), Cardross (347), Dunoon and Kilmun (140), Inverchaolain (141), Kilfinan (142), Kilmodan (143), Kingarth (276), Lochgoilhead and Kilmorich (144), Luss (349), North Bute (other than the island of Inchmarnock) (277), Rhu (340), Rosneath (341), Rothesay (278), Strachur (145) and Strathlachlan (146);

(b) the area of Comhairle nan Eilean Siar;

(c) the area of the Highland Council, excluding the Parishes of Abernethy and Kincardine (438), Alvie (439), Ardclach (605), Ardersier (445), Auldearn (606), Boleskine and Abertarff (433), Cawdor (607), Cromdale, Inverallan and Advie (586), Croy (446), Croy and Dalcross (608), Daviot and Dunlichity (447), Dores (448), Duthil and Rothiemurchus (440), Inverness and Bona (449), Kingussie and Insh (441), Kirkhill (436), Moy and Dalarossie (450), Nairn (609) and Petty (451);

(d) in the area of North Ayrshire Council, the parishes of Cumbrae (279), Kilbride (274) and Kilmory (275);

(e) the area of the Orkney Islands Council;

(f) in the area of the Perth and Kinross Council, the Parish of Fortingall (679); and

(g) the area of the Shetland Islands Council.”

## 5 Discussion

The list of remote areas appears to cover almost all of the aquaculture coast. All of the Scottish offshore fish farms are located within five local authority areas, namely Argyll & Bute, Comhairle nan Eilean Siar (the Western Isles), Highland, North Ayrshire, Orkney and Shetland Islands. Ardmaddy is situated within the parts of Argyll & Bute that are subject to the derogation.

It is regrettable that although the derogations were intended to be temporary they are still in place after nearly ten years. We understand that to date there is no facility in Scotland for disposal of Category Two waste. The most significant area to which the derogation does not apply is the Island of Arran and there is anecdotal evidence to the effect that waste produced in event mortalities there is taken by road to a disposal facility in Widnes in Cheshire for ensiling.

It can be argued that the Island of Arran is neither more nor less remote than for example the islands of Skye or Mull. In any of these cases the waste has to be removed from the cage or well-boat where the fish died, transhipped to a (presumably enclosed) road vehicle and then taken to a disposal site. For a mainland site like Ardmaddy there will be no ferry journey involved and it can be argued that the area is in fact less remote than Arran.

In view of this and the obligations specified in Article 19 2, 3 and 4 to justify the categorisation of remote areas and the extent to which the derogations are used we respectfully ask the Commission to inform us about any information given to you by the United Kingdom in respect of these matters. We are suspicious that the United Kingdom has taken the opportunity to exempt almost all of its aquaculture industry from the ABPR Directive by this expedient.

Obviously the provisions of Article 19 1 were intended to apply generally and not just to offshore fish farms. But plainly waste cannot be burned or buried at sea, so disposal from a site such as Ardmaddy must be by “other means under official supervision.”

This leads to the two questions,

First, What are the “other means”?

We have exhausted all official channels in trying to find out how the waste produced at Ardmaddy in December 2011 was disposed of. 256 tonnes is a substantial quantity that would have presented difficulties in handling, assuming the fish died in the cages. Possibilities would appear to be the transportation by sea to a country such as Norway, which seems to permit unrestricted dumping in landfill, or a shorter sea journey to a land base and transhipment by road. The latter would have required a fleet of lorries.

Our efforts to find out what happened came to the attention of a renowned environmental journalist, Rob Edwards, who made his own enquiries and wrote about the subject in the Sunday Herald newspaper with a fuller version on his blog,

which can be accessed here: <http://www.robedwards.com/2013/02/where-have-all-the-dead-fish-gone.html>

Mr Edwards disclosed a growing trend in fish deaths with 8.5 million tonnes of salmon dying accidentally in Scottish Fish farms in 2012.

Particularly disturbing was his account of another incident on Shetland and the quotation from a spokeswoman for Shetland Islands Council to the effect that the dead fish there went into fishmeal. This statement of course could not have been correct, as intra-species feeding is a criminal offence.

Whatever the position truly is, the failure of the authorities to collect information about disposal of Category Two waste from fish farms inevitably leads to suspicions that things may not be being done correctly.

Second, what does “*under official supervision*” mean?

We conclude that the minimum that would be required officially to supervise the disposal of waste would be to obtain details from operators of what they are doing. This would involve requiring operators to notify the authorities of incidents occurring, quantities and locations, together with proposed methods of disposal, whether by sea or road and an indication of the ultimate destination. We respectfully submit that the obligations imposed in the Directive cannot be satisfied by a deliberate unwillingness to do any of this.

We have two complaints against the United Kingdom Government:

- (iii) Failure to supervise the disposal of Category Two waste in specific instances, including the December 2011 incident; and
- (iv) Failure to respect the meaning of the Directive by designating almost the whole of the aquaculture coast as remote and so exempting almost an entire industry from regulation.