



Association of Salmon Fishery Boards



Working arrangement

Requirements of Statutory Consultees (Scottish Environment Protection Agency, Scottish Natural Heritage, Marine Scotland Science and the District Salmon Fisheries Boards) and consultation protocol for marine aquaculture planning applications.

Scotland's 4th National Planning Framework has recently been published. This document is therefore being reviewed and updated to reflect the new policies. You can still find useful and relevant information here but be aware that some parts may be out of date and our responses to planning applications may not match the information set out here.

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1. Introduction

Under “Delivering Planning Reform”, one of the key objectives is for public organisations to collaborate in the development of improved services. The aim is to clarify roles and responsibilities, to avoid duplication and overlap, to ensure that requirements for information and analysis is proportionate, and to approach issues collaboratively.

This Working Agreement between the Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), Marine Scotland Science (MSS) and District Salmon Fishery Boards (DSFBs) has been drawn up to provide an agreement covering what each organisation is responsible for and why and on how each organisation provides input to planning authorities on aquaculture developments including the sharing of relevant information currently held by consultees. The agreement will aid the provision of consultee comments such that there will be minimal overlap or duplication of subject area and importantly to ensure that nothing relevant is missed. This process will enable each organisation to increase its efficiency and effectiveness in its statutory role in aquaculture planning in line with the Scottish Government and Ministerial aims to increase joined-up working.

2. Scope of working agreement

The role and purpose of ‘Planning’ and the subject areas of interest for each organisation are set out in the following sections. Those organisations with significant interest in a particular subject are listed at the end of each subject section. As this agreement covers both shellfish and finfish the applicability of each section to shellfish, finfish, or both is stated at the start of each section.

3. The planning system, legislation and policy

3.1 The planning system

The planning system is about where development should happen, where it should not and how it interacts with its surroundings. This involves promoting and facilitating development while protecting and enhancing the natural and built environment in which we live, work and spend our leisure time. The planning system has a critical balancing role to play when competing interests emerge in the consideration of future development.

Development plans lie at the heart of the planning system. Every planning authority requires to have a development plan which is intended to provide a clear vision of how its area including the marine environment (for fish and shellfish farming) should develop. The development plan sets out the vision, policies and proposals for future development in the area and is the core document against which planning applications are assessed for determination.

Under planning legislation planning permission must be obtained for ‘Development’ which is defined as “the carrying out of building, engineering,

mining or other operations in, on, over or under land or the operation of a marine fish or shellfish farm or the making of any material change to such developments. In making a determination on a planning application under the planning Acts, regard is to be had to the Development Plan, and the determination is to be made in accordance with the Plan unless material considerations indicate otherwise.' A material consideration is a planning issue which is relevant to the application and can include national policy, comments by the public and by organisations the council has consulted, the design of the proposed development, and the effect of the development on the environment.

3.2 Key planning legislation

The principal Planning Act in force in Scotland is the Town and Country Planning (Scotland) Act 1997 ("the Act"). Amendments introduced by the Planning etc (Scotland) Act 2006 and The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 brought marine aquaculture under planning control with effect from the 1 April 2007.

Under the provision of the above, new aquaculture developments and modifications to existing aquaculture developments require an application to planning authorities for planning permission while marine fish and shellfish farms with an existing Crown Estate Development Consent or works licence granted by either Shetland Islands Council or Orkney Islands Council require Scottish Ministers to review (if granted pre 1999) or audit (if post 1999) the consent to determine whether permanent planning permission should be granted.

Marine Fish Farming is listed as a Schedule 2 development in the Environmental Impact Assessment (Scotland) Regulations 1999 (as amended) requiring that marine fin fish farms in excess of 0.1ha in area or producing more than 100 T deadweight of fish or located in a sensitive area be assessed to establish whether or not the proposed development is an EIA development. Under these Regulations, a planning authority or Scottish Ministers cannot grant planning permission for development unless they have first established and taken into account the likely significance of the effect of the development on the environment. Planning authorities require to seek the expert advice of statutory consultees, for their respective interests, at various stages of the process before reaching a decision on an EIA development. The EIA Regulations refer to finfish sites and do not apply to shellfish.

3.3 Scottish planning policy

In February 2010, the Scottish Government published its consolidated Scottish Planning Policy (SPP) www.scotland.gov.uk/Resource/Doc/300760/0093908.pdf providing a focused statement of national planning policy.

The SPP sets out:

- the Scottish Government's view of the purpose of planning,
- the core principles for the operation of the system
- statutory guidance on sustainable development and planning
- concise subject planning policies, including the implications for development planning and development management, and

- the Scottish Government's expectations of the intended outcomes of the planning system.

Paragraphs 104 -109 contain the planning policy for Fish Farming including fin fish and shellfish developments. The policy provides guidance on what is relevant to planning and in particular requires authorities to take into account the direct and cumulative effects of the proposed development on the environment, including:

- carrying capacity,
- visual impact and the effects on the landscape,
- effects on the marine historic environment and the sea or loch bed.

The needs of local communities and other interests should also be taken into account alongside the economic benefits of the sustainable development of the aquaculture industry and the operational needs of fish and shellfish farms. The capacity of an area to accommodate aquaculture development can be considered on a loch or voe wide basis. Where adverse cumulative impacts are significant and cannot be mitigated, planning permission should not be granted. Developments can be fitted into their surroundings to avoid or minimise visual intrusion and mitigation strategies should be incorporated into development proposals. Applications should be accompanied by information on:

- the extent of the site,
- type, number and physical scale of structures,
- the disposition of structures across the lease area,
- on-shore facilities, ancillary equipment, lighting and noise impact and
- proposed restoration following cessation of operations.

There are a number of regulatory controls covering the sector in addition to planning permission. The planning system should not duplicate other control regimes but can take other regimes into account when reaching a decision. Planning authorities and applicants should engage with other regulators to improve understanding of relevant requirements. Industry Codes of Good Practice have been produced by fish farming stakeholders which address a range of issues outwith planning control (but used by developers to support planning applications) such as:

- cage and equipment design,
- security,
- management and operational practices.

There is potential for conflict between aquaculture businesses and local fishing interests including commercial inshore fishing and recreational fishing. The effects of aquaculture development on traditional fishing grounds, salmon netting stations and angling interests should be considered.

4. Areas of interest

The following sections detail the information that is normally required by the statutory consultees in order for them to be able to make adequate comment upon an aquaculture application.

4.1 Areas common to all organisations

Many aspects of a proposed or modified aquaculture site (both EIA and non EIA development) are of common interest to planners, regulators and consultees. Such information for sites shall include: location, site plans (both OS and chart based), equipment, and species. Information requirements associated with EIA developments may include the above plus details of husbandry practice, projected food conversion ratios, stocking density and fallow periods. Comments arising from this essential common information would not be restricted to any one organisation.

4.2 Benthic (seabed)

Cage sites have the potential to impact upon the sea bed in a variety of ways by means of smothering with carbon (from waste feed and faecal material) and from chemical toxicity. These potential impacts can be grouped into three categories:

4.2.1 Enrichment impacts upon sea bed

Applies to:

- ***Finfish routinely***
- ***Shellfish farms may be required to provide limited benthic data if near to an SAC***

A requirement of the EIA Directive (85/337/EEC) is that all significant environmental effects from developments exceeding EIA thresholds should be assessed. Therefore where proposed developments have not already been assessed by SEPA under CAR regulation, benthic enrichment impacts should be assessed through the EIA process. SEPA, as the primary environmental regulator of the marine fin fish industry, requires detailed information of the condition of the sea bed below and in proximity to the fish cages. This takes the form of benthic surveys: collecting samples for analysis of biological, chemical and physical parameters. SEPA also requires modelling to be carried out to predict the size of the farm and the scale of its impacts upon the sea bed. This information is used to inform SEPA on the condition of the sea bed in order to satisfy statutory requirements under: EIA, natural heritage and CAR regulations.

It is important that benthic enrichment impacts for proposed developments that exceed the EIA thresholds are addressed in all planning applications. In many cases (for some modifications and EIA reviews) this will have already been done to satisfy the conditions of CAR licence applications and the results of modelling assessments submitted to SEPA. In instances where planning permission is being sought for new sites or modifications involving an increase in biomass or

change of equipment likely to result in an increase in the level of benthic effects from carbon deposition, evidence will be required to satisfy SEPA that these impacts will be within acceptable limits before it can be recommended to the planning authority that a proposed development can proceed

Lead Body SEPA: For impacts of carbon upon the sea bed SEPA will lead on assessing the data submitted within the planning application. Marine Scotland Science is also a consultee under CAR and will liaise with SEPA in determining whether information on direct benthic impacts from carbon is required for EIA eg in relation to impacts beyond the immediate vicinity of the cages.

This information is relevant to both EIA and Non-EIA development.

Information requirements (SEPA, MSS):

- *Appropriate benthic survey – see SEPA Marine Fish Farm Manual for details*
- *Benthic enrichment impact modelling when appropriate*

4.2.2 Biodiversity benthic impacts

Applies to:

- ***Finfish applications***
- ***Shellfish applications***

SNH will advise on the impact of development on the biodiversity of the seabed, in particular those habitats and species considered to be of conservation value through statute or policy. For example, benthic habitats vulnerable to sedimentation and nutrient enrichment include maerl beds, horse mussel beds and seagrass meadows. For its role, SEPA will consult with SNH and take advice on natural heritage matters.

Assessing if there will be an impact upon biodiversity draws upon information about the conservation status of a feature(s) present, its sensitivity to a change in environmental conditions, and the geographical extent and significance of that impact. Visual surveys may be necessary. Surveys can be used as part of the supporting application for CAR licences and will also be suitable to meet data requirements for application for planning permission and EIA. Guidance on survey design meeting the requirements of SEPA and SNH The collaborative guidelines can be found at SEPA's online fish farm manual Annex F, with protocols for surveys found in associated templates.

Lead body: SNH

This information is relevant to both EIA and Non-EIA development.

Information requirements (SNH)

- *Depositional maps of waste and chemical chemotherapeutants for finfish sites*
- *Visual seabed survey is necessary for new and possibly modified sites. Information found in the SEPA Marine Fish Farm Manual, Annex F, at*

www.sepa.org.uk/water/water_regulation/regimes/aquaculture/marine_aquaculture/fish_farm_manual.aspx

- *Proportionate benthic visual surveys may also be required for shellfish farms if scale or extent warrants.*

4.2.3 Sea lice therapeutants

Applies to:

- ***Finfish applications only***

To predict the amounts of in-feed and bath-treatment sea lice medicines that will not exceed EQS, SEPA uses well-established models that are run by the applicant. SEPA checks the outputs from the models and uses them as a basis for numeric conditions within the CAR licence. Some restrictions to medicine use may be applied in some circumstances. In order to ensure that reasonable measures are in place to prevent significant sea lice infestations (with potential risk to wild salmonids), MSS will require to see evidence that sea lice control strategies are likely to be effective. This evidence can take the form of details of site history and past treatment efficacy or the licensable quantities of sea lice treatments that can be used at the site without breaching SEPA EQS. Required information will include details on the time it will take to treat the whole site with bath treatments without breaching licence conditions and the maximum treatable biomass that in-feed treatments can be applied to details of the method used for administering treatments.

Lead body for effects of chemotherapeutants on environment: SEPA

Lead body for efficacy of chemotherapeutants: MSS

These information requirements are only required for EIA development.

Information requirements (SEPA, MSS):

- *Details of planned sea lice treatments (c.f. benthic impacts / sea lice chemotherapeutants and how they will be administered).*
- *Sites with CAR licence - evidence that licensed chemotherapeutants likely to be effective (see above).*
- *New or expanding sites without CAR licence - modelling to show likely licensable quantities of chemotherapeutants that can be discharged without breaching EQS.*
- *Other non treatment based strategies for dealing with sea lice should also be documented e.g. operating as part of a management area agreement, single year class stock, synchronous fallowing, biological control e.g. use of wrasse.*

4.3 Predator control and interactions with wildlife

Applies to:

- ***Finfish applications***
- ***Shellfish applications***

SNH will advise on the potential impacts of aquaculture development, containment and husbandry on all protected wildlife affected by predator control methods, this will include predator species and non-target species. (MSS also advises on containment – see Section 4.7). As regards seals, provisions in the Scottish Marine Act determine the statutory basis for lethal control and reporting. Good practice in managing interactions with seals involves initial farm site selection, appropriate husbandry practices, choice of the most appropriate net designs and tensions, creation of seal-exclusion barriers, reduction of attractants to seals and use of Acoustic Deterrent Devices (ADD).

Determining if there will be a significant environmental effect of a development on a protected species requires adequate information. The types of information required may include the collation of information on protected species and details of predator control methodologies. If all of this type of information is not readily available it may be requested as part of an EIA. SNH publishes the location of designated areas and is looking at ways that information on protected species can be collated, interpreted and made available in a strategic map-based format.

Developers may develop their own views on methods of predator control that work best for them. SNH welcomes the opportunity for further engagement with developers so as to understand these differences and refine best practice guidance that reduces the risks to protected wildlife from predator control. Detailed information on wildlife most commonly involved in predator interactions and the species potentially affected by predator control are given in Appendix 1. Note that proposals affecting European Protected Species (cetaceans and otters) may require a special licence (see Appendix 1).

This information is relevant to both EIA and Non-EIA development.

Information required (SNH):

- *Site-specific predator control strategy, giving due consideration to conservation legislation*
- *Collation of information on protected species and details of predator control methodologies*

4.4 Landscape

Applies to:

- ***Finfish applications***
- ***Shellfish applications***

SNH's role is to advise on the potential impacts of development on landscape and visual amenity. SNH seeks to safeguard and enhance the distinct identity, diverse character and special qualities of Scotland's landscapes.

Some landscapes are of particular value and justify special care. National Scenic Areas (NSAs) are Scotland's only nationally designated landscapes and are representative of Scotland's finest landscapes. In addition to the NSAs, some

landscapes are designated by the local authorities. Information on these designations is available from planning authorities.

Choosing an appropriate location for development is the first, and perhaps most important, step in ensuring that aquaculture development fits in well with the landscape.

For aquaculture proposals or modifications requiring EIA, landscape and visual impact assessments are likely to be required as part of the Environmental Statement. Guidance (currently being updated) on siting and design, and information about how landscape and visual impacts are assessed, is given in *Marine Aquaculture and the Landscape: the siting and design of marine aquaculture developments in the landscape*, at www.snh.org.uk/publications/online/heritagemanagement/aquaculture/index.shtml, produced for Scottish Natural Heritage, the Crown Estate and Scottish Quality Salmon (2001). SNH has also published "Guidance on Landscape/Seascape Capacity for Aquaculture" to encourage the preparation of landscape capacity studies, and inform marine planning and management.

*This information is relevant to both EIA and Non-EIA development.
Information requirements (SNH)*

- *Appropriate information on details of the proposal will be needed. This will include the type, size, layout and sometimes the colour of structures (on-shore and off-shore) and, where relevant, feeding systems. It may also need to consider likely changes such as the use of larger buoys as lines become progressively heavier.*
- *Visual and landscape assessments may be required*

4.5 Water column and assimilative capacity

Applies to:

- ***Finfish applications***
- ***Carrying capacity will be a consideration for shellfish applications in heavily developed areas and when appropriate models become available***

The impact of nutrient discharges from all sites should be appropriately assessed. MSS and SEPA are likely to request such assessments for nitrogen (the key nutrient species limiting planktonic growth in marine waters) in cases where new sites are being applied for or where modifications involve an increase in maximum biomass within a water body. Modifications not involving an increase in maximum biomass or EIA reviews where nutrient enhancement has already been assessed previously for a lease application or for CAR may not be required to provide assessments of nutrient enhancement.

In embayments such as sea lochs, nutrient enhancement calculations should be performed according to e.g. Equivalent Concentration Enhancement (ECE) modelling described on the MSS website, at www.frs-scotland.gov.uk/Uploads/Documents/Report63.pdf. This should be done to take

account of cumulative effects from other farms in the water body. For sites outside of sea lochs an 'open water' box model approach is more appropriate to calculate the enhancement caused by fish farms above background concentrations. Again this should be undertaken in a manner to account for the cumulative effects from other fish farms within the box.

The estimates of enhancement of nitrogen concentration should be assessed against quality standards. The SEPA EQS for nitrogen is 168 microg/L. Enhancement values should be added to locally relevant worst case (winter) background concentrations to assess against this quality standard. Oslo & Paris Commission (OSPAR) assessment criteria for nutrients is 50% above background. Therefore the calculated ECE should not be more than 50% of locally relevant background winter concentrations.

Lead body: MSS

This information is relevant to EIA development only.

Information requirements (MSS, SEPA):

- *nutrient enhancement calculations (e.g ECE), particularly considering cumulative effects with discharges from other farms in the area.*

4.6 Locational guidelines

Applies to:

- ***Finfish applications only***

The Locational Guidelines categorise sea lochs, voes and embayments into 3 Categories based on predictions of the impacts from the existing scale of development. Two simple models predicting the nutrient enhancement (ECE see above) and proportion of sea bed likely to be degraded are used to identify areas more likely to be able to support additional farmed fish biomass. Currently, no further increases in maximum biomass are permitted in Category 1 areas. Increases are more likely to be permitted in Category 2 and 3 areas (subject to site specific assessment through EIA and CAR). These Categorisations are updated quarterly and are available at www.frscotland.gov.uk/Delivery/Information_Resources/information_resources_view_document.aspx?contentid=1416. Marine Scotland Science will consider the suitability of applications against the Locational Guidelines Categorisation and will respond with this information at pre-application consultation and screening and scoping.

This information is relevant to EIA development only.

Information requirements (MSS)

- *None*

4.7 Fish health, containment and impact upon wild fish

Applies to:

- ***Finfish applications only***

Marine Scotland (MS) has statutory responsibilities for the health of both farmed and wild fish. Health of farmed fish is dealt with under The Aquatic Animal Health (Scotland) Regulations 2009. Containment and parasite (sea lice) control is covered under The Aquaculture and Fisheries (Scotland) Act 2007. MSS conducts a surveillance program of inspections under The Aquatic Animal Health (Scotland) Regulations 2009 and The Aquaculture and Fisheries (Scotland) Act 2007.

SNH is a non-departmental public body whose role is to provide scientific advice on SAC sites for wild fish and freshwater pearl mussel, such that they comply with the Habitats Regulations. SNH also advises on impact on wild fish populations for species listed on Schedules of the Wildlife and Countryside Act 1981 (as amended) and the UKBAP/Scottish Biodiversity Strategy. The DSFBs are committees elected by an association of proprietors of salmon fisheries in a salmon fishery district and formed for the purpose of the conserving and improving the fisheries and fisheries management within their district.

In assessing risk of disease transfer, consideration is required of species, site position, husbandry techniques and interactions among sites. Information relating to fish health required in this section is concerned with husbandry and stocking. Wild fish, particularly Atlantic salmon and sea trout, are an important economic resource and component of biodiversity. Protection and enhancement of fish populations and fisheries involves SNH, MS and the District Salmon Fisheries Boards (DSFBs). Functions of DSFBs are assumed by Scottish Government (MS) in those catchments where they are absent, which include those in Orkney, Shetland, Loch Lomond, Strathclyde and North Ayrshire.

The major areas for consideration are the potential for:

- impacts of escaped farmed fish through inter-breeding and competition with wild fish;
- impacts of disease and parasites on wild fish resulting from the presence of fish farms;
- introduction of non-native farmed species.

These issues are recognised as hazards to wild salmonid populations at an international level by the Scottish and UK Governments as signatories (through the EU) to the North Atlantic Salmon Conservation Organisation (NASCO). Containment of farmed fish is important for the economic benefit of developers. It is also a key consideration because escaped fish provide a route for dispersal of disease and parasites, have potential to inter-breeding with wild stocks, and may also compete with and consume wild fish. Consultees expect developers to adhere to the industry CoGP to minimise such risks from escaped fish. Once in the wild, most escapees are unlikely to be recovered. However, some fish may enter local rivers and developers are expected to produce a realistic plan for preventing damage caused by escaped salmon on wild spawning fish. Although this expectation is relevant in all areas where marine aquaculture is practised, particular consideration should be given to areas near to sites designated for nature conservation, and in particular those identified as Atlantic salmon SACs.

Information required (MSS, SNH, DSFBs)

This information is relevant to both EIA and Non-EIA development

Applications categories:

- *Information is required in association with applications for new sites, modifications to existing sites and in review of existing sites.*
- *Not all the information required for applications for new sites will be required for review and modifications. The sub-set of information required will depend on the nature of the proposed modification, which will be evaluated in the first instance.*

To ensure each business has taken adequate consideration of measures to minimise the impact of escapes the following is required:

- *Evidence that the risk of damage to equipment posed by predators has been evaluated and minimised, including details of equipment and/or strategies in use to deter predator interaction and minimise the risk of damage to equipment.*
- *An appropriate site specific contingency plan detailing actions to be taken in the event of an escape.*

To allow MSS to comment on suitability of equipment for use at a particular site one of the following is required:

- *Attestation from the manufacturer or another suitably qualified person that equipment in use (nets, cages, moorings) is suitable for purpose on the site in question.*

OR

- *Equipment specifications detailing the environmental conditions the cages and moorings can withstand should be provided, in combination with details of the environmental conditions experienced at the site location.*

To allow evaluation of the husbandry procedures used by the site in relation to the removal and disposal of mortalities to minimise the risk of disease spread and with regard to deterring predation the following is required:

- *Details of how mortalities will be removed from cages, how often these procedures will be performed and the method of mortality disposal used by the site in question.*
- *In order to calculate stocking density, full details of the cage dimensions (including net depth) should be provided. A stocking plan should be submitted for all applications where permission exists (or is sought) for the production of multiple species on site.*

To allow the assessment of the potential impact of a development upon wild fish the following information is required:

- *The developer should provide an assessment of the potential impact of the proposed development on fisheries, and on species protected under*

the UKBAP/ Scottish Biodiversity Strategy. This information must be supplied under EIA.

- In a situation where an SAC for wild salmon or freshwater pearl mussels will potentially be affected, this assessment must be considered with respect to the Habitats Directive to gain as clear a picture as possible of fish populations and their movements. The developer would be expected to provide sufficient detail that would allow the competent authority to undertake an appropriate assessment in terms of the Directive. Information may be required from existing published data sources, and the local knowledge base of DSFB and Fishery Trust biologists to gain as clear a picture of fish populations and their movements as possible
- In the case of an EIA, the developer must provide information on how the proposed development would combine with existing activities to increase the potential for cumulative impacts upon wild fish.
- The developer may wish to demonstrate that alternative sites were considered.

Shellfish applications

- *Containment aspects should also be considered in shellfish applications where Pacific Oysters (*Crassostrea gigas*) are to be farmed on site as these are not native to Scotland and therefore must be farmed in containment. Details of how this will be achieved should be provided.*

5. Agency consultation processes

Consultations on planning applications are sent to statutory consultees for their comment. To avoid replication of information requests (such as video surveys) and to ensure that an unfair burden of response is not placed upon the applicant arising from un-coordinated requests, it is essential that the relevant statutory consultees communicate effectively with each other. They should concentrate on their immediate lead areas of expertise and discuss any concerns which they may have with the other lead agencies prior to making their final comments back to the planning authority.

SNH and SEPA are developing arrangements to steer responses to the planning process in relation to land based developments. The nature of the aquaculture industry justifies these separate procedures to deal with this sector which may in some cases be at odds with the guidance for terrestrial developments

5.1 Consultee contact details

The contact details for each of the consultees for each local authority area are set out in the Table below:

| Aquaculture planning contacts for consultees by local authority area | | | |
|---|--|--|--|
| Local Authority | SEPA Contact | SNH Contact- www.snh.org.uk/pdfs/publications/corporate/whoweare2009.pdf Aquaculture advisor- Suzanne.henderson@snh.gov.uk | MSS Contact |
| Shetland Islands Council | Planning.Dingwall@sepa.org.uk | Northern_isles@snh.gov.uk | stainerp@marlab.ac.uk |
| Orkney Islands Council | | | stainerp@marlab.ac.uk |
| Highland Council | | North Highland: Tamara.lawton@snh.gov.uk West highland: Fraser.symonds@snh.gov.uk East Highland: Mary.gibson@snh.gov.uk | stainerp@marlab.ac.uk |
| Comhairle nan Eilean Siar | | Western_isles@snh.gov.uk | stainerp@marlab.ac.uk |
| Argyll and Bute Council | planningaberdeen@sepa.org.uk | Argyll_stirling@snh.gov.uk | stainerp@marlab.ac.uk |
| North Ayrshire Council | planning.ek@sepa.org.uk | Strathclyde_Ayrshire@snh.gov.uk | stainerp@marlab.ac.uk |

5.2 Consultation time periods

Planning applications – 2 weeks* (4 weeks if EIA development). Screening and Scoping – 6 weeks*

* deadlines are determined from the date of letter.

The following inter-agency procedures are predicated upon the deadlines given to the statutory consultees.

5.3 Planning applications

5.3.1 SEPA

All planning consultations (except those involving the Scottish Government's review of existing Crown Estate fish farm consents and Works Licences in the Northern Isles) on fish farms come into SEPA's Planning Service and are dealt with by either the Dingwall Office (fish farms in waters in/around Highlands, Western Isles, Orkney and Shetland); the Aberdeen Office (fish farms in waters in/around Argyll & Bute) or the East Kilbride Office (fish farms in the Ayr region). Currently under SEPA's new planning procedures (which commenced August 2009) it has been agreed that they should continue to be consulted by planning authorities on all fish farm consultations, including those solely for an equipment change.

The consultation and supporting documents are logged into the SEPA Planning Casework System and internal consultation takes place with the Marine Science section and the local Environment Protection and Improvement (EPI) team who would be dealing with any associated CAR licence application. Once internal comments are received, the planning officer co-ordinates a draft response.

The draft response is emailed out to MSS and the relevant local SNH office which is given a minimum of 4 working days to respond with any comment/concerns (occasionally, due to meeting consultation deadlines it is not always possible to give 4 working days and a quicker turnaround may be requested). This allows MSS and SNH to be aware of any historical data which SEPA holds for the site/area which may alleviate the need for further information to be requested from the applicant. It also ensures consistency between the agencies and allows each agency to bring to the others notice any significant concerns they have about a site/proposal.

Following the consultation period, if no significant issues are highlighted, the response is emailed to the planning authority. If significant issues are highlighted, the planning officer discusses these with the internal consultees and either further information is provided to SEPA's agency partners to help with their responses or, if relevant to SEPA's interests, its response is amended to reflect the further information received.

If SEPA has significant concerns regarding a biodiversity issue then it will contact SNH to seek their comments on any such issue. [Note: work is currently underway by SEPA Planning Support Unit and SNH with regard to who should lead on which aspects of biodiversity (and how this is coordinated between the two agencies) when responding to planning consultations on all types of development not just fish farms and the outcome of this work will also update this document]. SEPA email contact addresses: planning.dingwall@sepa.org.uk , planningaberdeen@sepa.org.uk , planning.ek@sepa.org.uk

5.3.2 SNH

SNH has a number of local offices, supported by central staff who provide specialist advice. All planning (and CAR) consultations are received from the

Local Authority at the local office by the relevant Area Officer (AO) at these local offices. It is the AO's role to coordinate and respond to the consultations, drawing on more specialised advice as required. The consultation response is to the Local Authority from the Area: depending upon the issue it may be signed off by the Area officer, Area Manager or Director.

Where SNH has a concern over benthic biodiversity impacts, SNH is now able to check SEPA's database (via an internal GIS platform) for information gathered from visual surveys. If necessary the Area Officer will liaise with their respective SEPA planning office to discuss. Where SNH have a concern over wild fish impacts, Area Officers will liaise with MSS freshwater fisheries to discuss the issues and information that may be readily available. Area Officers will then discuss the issues with the SNH freshwater advisor prior to responding to applications. Where there could be impacts on Natura sites, SNH will advise MSS on the information necessary to assess impacts and comply with the Habitats Directive.

5.3.3 MSS

Consultations are received centrally at Marine Scotland Licensing Operations Team (Paul Stainer: stainerp@marlab.ac.uk, ffplanning@marlab.ac.uk) from local authorities. An internal consultation phase is then initiated and responses are requested from a number of work groups within Marine Scotland Science: the Environment Programme (Matt Gubbins, gubbinsm@marlab.ac.uk), the Fish Health Inspectorate (Katy Urquhart, urquhartka@marlab.ac.uk) and the Freshwater Fisheries Programme, Pitlochry (Mike Miles, milesm@marlab.ac.uk; and Alisdair McDonald, mcdonalda@marlab.ac.uk). These workstreams provide responses covering:

- Environment: benthic impacts, impacts of nutrients on the water column, local capacity (Locational Guidelines) and impacts of chemotherapeutant use,
- Shellfish Hygiene: site status and history for microbiological contamination (shellfish applications only),
- Fish Health Inspectorate: containment, sea lice treatment strategies, husbandry, fish health and welfare, management areas, CoGP compliance,
- Freshwater Fisheries: risk to wild salmonid populations, and the fisheries that depend upon them.

Licensing Operations Team then compile the comments from the workstreams. They are checked for compatibility and where relevant a summary concerning required additional information is added and returned to the applicant (pre-application consultation) or the Local Authority.

During the statutory consultation process the Freshwater Laboratory will undertake consultation concerning wild fish populations and fisheries with other Statutory Consultees (SNH, DSFB) according to the procedure outlined below:

- Receive application
- Preliminary review of application to check the information that has been provided.

- Note any further information required from the applicant.
- If the review highlights any concerns we will contact other statutory consultees and agencies as required, for further information, data or discussion, and to clarify a shared understanding of the knowledge base as a foundation for a common scientific approach. FL is also open to approaches from the other statutory consultees should they have similar concerns.
- The assessment is then completed using all the information provided and sent to the MSS coordinator.

Aquatic Environment Programme staff also send their draft responses to SEPA for comment (and receive draft SEPA responses for comment) this provides a short window of opportunity to ensure that:

- Neither consultee is requesting environmental information already held by the other.
- A consistent view is reached concerning the relevant environmental receptors 'sea bed' and 'water column'.

5.4 Fish farm review process

When aquaculture was brought under the Town and Country planning regime, it was decided that a review process would be established to facilitate the migration of existing sites into the new regime. This process involves the Scottish Government, with input from statutory consultees, undertaking a focused review of these sites as they reach the end of the period of the development permit issued by authorities previously empowered to handle spatial planning issues. Following the review, Ministers can either issue permanent planning permission for the site or require the submission of further information or request that an EIA be undertaken.

5.4.1 SEPA

All aquaculture review consultations are sent to Janet Davies Janet.davies@sepa.org.uk. Internal consultation takes place with SEPA Marine Science section and the local Environment Protection and Improvement (EPI) team who would be dealing with any associated CAR licence application. Once internal comments are received, Janet Davies drafts a response and forwards it to SNH and MSS as part of the inter-agency consultation process before sending the response back to SG.

5.4.2 SNH

All aquaculture review consultations from Scottish Government are sent to a central email address fishfarmreview@snh.gov.uk. The consultations are then sent on to the correct Area Officer to compile a response. Responses are sent back via the central email account for the Aquaculture advisor to take an overview, prior to being sent on to SEPA and MSS for comment as part of the inter-agency consultation process at least 4 working days prior to deadline. If no comments are received then the final response will be sent on to Scottish Government.

5.4.3 MSS

All aquaculture farm review applications are handled in nearly exactly the same way as normal planning applications from local authorities. Applications are received centrally at Marine Scotland Licensing Operations Team (Paul Stainer, stainerp@marlab.ac.uk, ffplanning@marlab.ac.uk copied to Matt Gubbins, the MSS review panel representative) from MS, Aquaculture Planning Policy (APP) and distributed internally for comment. The same external consultation process for wild fisheries and environment issues is undertaken and the responses are compiled centrally by the Licensing Operations Team.

Appendix 1

Natural heritage legislation and further information on species involved in predator interactions

A1.1 Conservation and biodiversity

- The Conservation (Natural Habitats, etc) Regulations 1994 (as amended in Scotland) are also referred to as the Habitats Regulations. These Regulations transpose the European Union's Habitats and Birds Directives, which give protection to a network of Natura sites; Special Areas of Conservation and Special Protected Areas (SACs and SPAs). It also identifies a number of species to be afforded strict protection, wherever they occur, as European Protected Species under Schedule 2 (e.g. cetaceans, otters and marine turtles).
- The Marine (Scotland) Act 2010. This Act introduces marine planning, improved marine nature conservation including new MPAs, better arrangements for seals, and a range of enhanced powers for marine conservation and licensing.
- Wildlife and Countryside Act 1981, as amended The Act protects some marine species on Schedule 5, and prohibits the release into the wild of certain animals listed in Schedule 9, to prevent the establishment of non-native species
- Nature Conservation (Scotland) Act 2004. This legislation places a duty on all public bodies to further the conservation of biodiversity, linking this duty to the Scottish Biodiversity List (SBL), a list of species and habitats considered to be important in biodiversity conservation. The Act also provides measures for establishing and protecting SSSIs, replacing those formerly set out in the WCA. In addition, it extends the protection given to species on Schedule 5 of the WCA, including the basking shark, and requires a new code of guidance covering marine wildlife watching activities.
- Scottish Biodiversity Strategy and associated documents. The Marine and Coastal Ecosystem Group plan guides biodiversity delivery in Scotland
- Marine Consultation Areas, although not statutorily designated, are of particular distinction in respect of the quality and sensitivity of their marine environment and where the scientific information available substantiates their nature conservation importance.
- Aquaculture and Fisheries (Scotland) Act 2007 contains measures to control parasites on fish farms and shellfish farms and to improve the containment of, prevention of escape of, and recovery of escaped, fish. It provides powers for the containment and treatment of *Gyrodactylus salaris*, should it be introduced into Scotland, and regulates the movement of live fish.

A1.2 Wild fish

The 2003 Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act empowers District Salmon Fisheries Boards with duties to protect and conserve salmon fisheries in Scotland.

A1.3 Seals

Seals within and in the vicinity of SACs for which seals are a protected feature are protected under the Habitats Regulations. For farms in the vicinity of such SACs, non destructive predator control methods should be used to minimise the need to shoot seals and ensure that their disturbance from day to day activities is minimal. If farms require as a last resort the option to shoot problem seals that have been identified attacking the nets, then a full assessment taking into account the Potential Biological Removal (PBR) may be required to comply with Natura legislation. This assessment will be incorporated into a new licensing procedure under the Marine (Scotland) Act 2010 and requires any shooting of seals to be licensed and numbers shot to be reported. This will enable the best possible PBR to be set, thus ensuring that the necessary level of protection can be maintained whilst at the same time enabling reasonable seal management to continue.

Seals are particularly sensitive to disturbance when they are hauled out on rocks and beaches. Common seal populations in Scotland have been declining dramatically in the last 5 years. This decline is a matter of concern particularly as no one clear reason for it has as yet been identified. Aquaculture activity within 500m of known seal haul outs has the potential to cause disturbance. (Harwood and Hall, 1996).

Harwood J, and Hall A.J. 1996. Options for the sustainable management of discrete seal populations as part of a site-based conservation strategy. Scottish Natural Heritage Review No.45.

A1.4 Birds

All wild birds are protected by legislation and it is an offence to intentionally or recklessly kill, injure or take any wild bird. It is also an offence to disturb certain birds. It is possible to apply for a licence from Marine Scotland to permit an act otherwise illegal if actions are shown to be necessary in "preventing serious damage to fisheries".

SNH may advise that certain farm locations and practices may cause disturbance to wild birds. Where proposals are near designated sites, then survey work may be needed to demonstrate there will be no adverse effect on site integrity or on the species' favourable conservation status.

It is important that anti-predator netting is properly managed, well tensioned and of the correct mesh size to avoid unnecessary entanglement of wild birds. Brightly coloured top nets, which may be more successful in deterring birds, have the potential to create visual impacts; SNH welcomes discussions on a site-by-site basis on this matter.

A1.5 European Protected Species (EPS): cetaceans and otters

It is an offence to deliberately or recklessly disturb any cetacean (dolphin, porpoise or whale) or otter (please see the SNH website at www.snh.gov.uk/protectingscotlands-nature/protected-species/legal-framework/ for further legislation details.) Under the relevant legislation, disturbance is seen as a significant environmental impact on EPS.

- Cetaceans - Certain areas are more important to cetacean populations than others. The use of ADDs in these areas may cause disturbance. To allow assessment, further information on the use of the area by cetaceans may have to be gathered by the developer. SNH will assist where it can, but does not hold all cetacean information. SNH may advise the developer that a licence to disturb EPS (cetaceans) will be required from Marine Scotland in order to deploy ADDs at their farm. The licence process allows a proper assessment to be undertaken, and conditions potentially attached to any licences issued.
- Otters - SNH may advise that certain farm locations or practices may cause disturbance to otters. This is most likely to be linked to shore-based activities, and otter surveys may be requested to determine the likelihood of disturbance. SNH recommends avoiding the use of ADDs near otter breeding sites (particularly Shetland; where otter numbers are in decline).

Otters are also protected by the Habitats Regulations (see above) and farms within the vicinity of otter SACs may require more detailed assessment because of this legislation. The cumulative impacts from aquaculture activities within SACs may be of concern.

Appendix 2

Examples of acceptable attestations

Moorings Manufacturer

This is to confirm that [BUSINESS NAME] mooring equipment is manufactured from certified components and constructed by fully trained [BUSINESS NAME] employees. Based on the environmental conditions supplied for the [SITE NAME] site [BUSINESS NAME] can confirm that the design and construction of the mooring system would be of the highest standard required by the Scottish and International Fish Farming Industry and that the mooring system which we would supply for this site would be more than suitable to endure the environmental conditions at [SITE NAME] at [SITE LOCATION].

Nets Manufacturer

This is to confirm that [BUSINESS NAME] is a BSI registered company satisfying the standard of BS EN ISO 9001:2000. The staff employed in the design and construction of all of our nets are all fully trained and experienced in their roles. We also source the finest raw materials from companies operating within similar quality schemes. The nets proposed for this site exceed the specification required by the Scottish and International salmon farming industry. They will be capable of withstanding the environmental conditions at the proposed site, namely [SITE NAME] at [SITE LOCATION].

Cages Manufacturer

This is to confirm that the [CAGE TYPE] is manufactured and constructed by fully qualified and trained [BUSINESS NAME] operators. Based on the correct mooring arrangement and specifications; [BUSINESS NAME] can confirm that the design and construction of this specific cage is of the highest standard required by the Scottish Fish and International Fish Farming industry and that the [CAGE TYPE & SIZE] is more than suitable to endure the environmental conditions at the proposed site, [SITE NAME] at [SITE LOCATION].

Suitably qualified individual

The specifications of the pens, nets and moorings used by [BUSINESS NAME] are fully appraised by our in-house moorings team. Each site is assessed for geographic location, wind and wave analysis and hydrographic and bathymetric data with appropriate equipment chosen on these criteria. The 1 in 50 year storm event is the minimum standard to which our equipment is rated and guaranteed by our chosen manufacturers. All equipment is specified to Norwegian and UK engineering quality standards whilst its implementation is undertaken by a dedicated team of suitably qualified staff. This team is under direct supervision of the pens and moorings manager who has over 20 years experience in this particular field. By nature of our business [BUSINESS NAME] will only use the best available equipment to ensure our stocks are secure, have high welfare conditions and the ability to grow to their maximum potential. [BUSINESS NAME] have fully appraised the [SITE NAME] site, at [SITE LOCATION] using the above criteria and rated the equipment accordingly.