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Consultation on Proposals to Increase SEPA Charges for Marine Pen Fish Farms: Analysis and Response

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1. Purpose

- 1.1 This document provides SEPA's response to the feedback that it has received from its consultation to increase application fees and annual charges for marine pen finfish farms. The consultation was published on 25 September 2020 and the consultation period closed on 20 November 2020. During the consultation process, SEPA met with industry and stakeholder groups to discuss any questions that they had about the consultation.
- 1.2 The responses within this document provided the basis upon which Ministers will decide whether to approve the new charges.

2. Introduction

- 2.1 SEPA has been given direction by Parliament to transform its approach to regulating the aquaculture industry. SEPA has started this process by creating a new science-based regulatory framework in June 2019 which is now being progressively implemented. During the period from June 2019 to January 2020 we phased-in the new application process and in 2020 we developed the processes for applying the regime to existing sites. In 2022, we plan to transfer all existing sites into the new framework.
- 2.2 Over the last three years, we have been discussing the new framework with the industry and with community interest groups and have progressively evolved it to address concerns or proposals. We expect this process to continue because aquaculture is an expanding dynamic industry where technological and husbandry innovation is driving rapid change. Both the industry and SEPA (aquaculture sector plan) have ambitions to reduce the environmental footprint of the industry to move to more sustainable low-carbon production of protein.
- 2.3 The existing practice in the aquaculture industry has led to the development of a vigorous collection of stakeholder groups representing communities, nature conservation and wild fisheries interest. SEPA does consider that these groups have legitimate concerns about the potential environmental impacts from aquaculture which were expressed in the parliamentary enquires and thereby led to the development of the new regulatory framework.
- 2.4 SEPA is not able to resource the implementation of developing new framework, the scale of innovation from the industry and addressing the issues of concern from stakeholders. Consequently, SEPA developed proposals to increase application fees and annual charges.
- 2.5 These increases have been approved and we will look to deploy additional resources directed to deliver three high-level objectives:
 - Delivering an efficient and timely regulatory process that complies with the Regulators code of practice
 - Supporting innovation in the industry to move towards a more sustainable and, in particular, a low carbon future
 - Work with stakeholder groups to address concerns and thereby develop a more positive relationship between stakeholders, SEPA and the industry.

3. Overview of Consultation Responses

- 3.1 SEPA received consultation responses from stakeholder groups including a mixture of community and wild fisheries interests. These representations asked for greater ambition and higher charges.
- 3.2 There were five industry representations which included all the major salmon companies and the British Trout Association representing the trout companies. The industry responses highlighted previous increases over the past five years and largely opposed increases of the scale proposed.
- 3.3 The following sections describe the response to the key questions raised by the consultation.

4. Proposed increase in application fees

Introduction

- 4.1 The consultation proposed increasing application fees as described in table 1.

Maximum permitted biomass (in Tonnes)			
	≤50	50 to ≥1,500	>1,500
Existing	£3,333	£4,444	£4,444
Proposed	£3,333	£25,553	£32,000

- 4.2 These proposals represent very substantial increases in charges. These new charges are much higher than the charges for most discharges to the water environment. This is because the aquaculture industry uses the assimilative capacity in the sea to treat the effluent from the farms. This means that SEPA requires extensive modelling and environmental monitoring information in order to determine whether the environment around a proposed site can assimilate the waste material produced. Most other discharges to the water environment provide treatment prior to discharge which simplifies substantially the assessment process.

Industry views

- 4.3 The individual headline responses to the proposed increase were as follows:
 - Do not believe this is an agreeable increase in application fees at this time. If the level of service from SEPA was to increase proportionately we would agree broadly that this increase would be acceptable.
 - The increase in application fees would be acceptable subject to the increased charging income being used to improve regulatory service levels by SEPA.
 - We had anticipated and accepted some increase in fees associated with improvements to be brought about by the new framework, but the scale presented here is far higher than expected or suggested to be justified.

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- There is absolutely no justification for increased costs and disproportionate regulatory activity on SEPA's part.
- [The consultation] Failed to acknowledge the implications of increased charges for smaller fish farming businesses, and the differences that exist between marine rainbow trout farming and salmon farming businesses.

SEPA response. The proposed increase in resources allow SEPA to deliver a step change improvement in the way we manage applications to the benefit of applicants and those making representations. We accept that improved levels of service is not just a matter of increasing the amount of resources available to delivery our responsibilities.

We recognise the importance of being able to demonstrate the scale of this change and will therefore work with industry and stakeholders to identify key steps in the pre-application and determination process so that service performance can be tracked.

Industry questions/statements of detail

- 4.4 We welcome that charges are not applied until the formal application stage, as this helps spread the burden on prospective applicants with much other cost being incurred during the process of application development. This is particularly important for smaller operators such as ourselves, for whom the increases in both pre-application activity costs and application fees are most impactful.

SEPA response: Noted

- 4.5 It is unclear why a threshold of 1500t has been used to represent the cut off for the tiered costing. If it has been chosen to represent the average tonnage of marine pen fish farms across Scotland, we expect in time it would need reviewing, to align with industry growth.

SEPA response: Agreed.

- 4.6 Welcome is the principle of a tiered fee structure, with farms up to 1500T having a slightly lower application fee than above this threshold. Again, as a smaller operator successfully farming sites in near-shore locations that are around this scale, a tiered structure does help reduce the impact of fee increases.

SEPA response. Noted

- 4.7 Only perceived "higher risk" developments over 2500T should attract a top-tier fee

SEPA response. Noted

- 4.8 Charging systems that recognise differences between marine trout and salmon farming have already been established, for example under the CES rent scheme, and we strongly encourage SEPA to take account of this.

SEPA response. In general there is little difference in the work that SEPA undertakes when assessing an application from trout and salmon farms. SEPA charges have to recover our costs and consequently we see no basis upon which we can separate the charges. The legal basis of our charges are very different to the CES rent scheme. We have introduced a lower threshold for application and subsistence charges with a ">50 to < 500 tonne" to reflect a need for graduating in this area.

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- 4.9 In terms of information provision at the submission stage, if this is a matter that could be quickly rectified then the operator should be given the opportunity to do so (e.g. inaccessible file format). It would be wholly unreasonable for SEPA to return the application at a cost of £1500 in these instances.

SEPA response. We agree.

Other stakeholder views

- 4.10 The individual headline responses to the proposed increase were as follows.
- The engagement of SEPA at several stages of the process, from community engagement, data collection and modelling, planned baseline modelling and develop of an environmental modelling plan are all essential steps that require financial support to achieve.
 - This seems very reasonable, given that fish farmers routinely spend huge sums of money preparing new farm applications. The proposed charges are a tiny fraction of this.
 - Only if SEPA is fully accounting for all costs and is truly committed to full cost recovery will the charge be appropriate.
 - Marine fish farming industry has chosen to operate in a way which requires far more detailed scrutiny of its wastes, including waste food, faeces and chemical residues.
 - A number of the responses questioned whether we were really fully recovering costs and expressed concerns that public money was being used to support/coach the industry.

Stakeholders questions/statements of detail

- 4.11 SEPA's charges should cover the costs of third parties who have to provide input to the application process (such as SNH).

SEPA response: we will investigate this.

- 4.12 SEPA should charge for pre-application work that doesn't end up with an application being submitted for determination.

SEPA response: noted but we currently do not have a legal mechanism to do this.

- 4.13 Fish farms currently benefit enormously from environmental services delivered by Scotland's marine ecosystems, particularly in the disposal of toxins and pollutants, the costs of which are entirely externalised. It would be preferable to develop a system of charging the operators for some of substantial amounts of damage that result from their operations. It is therefore important to move towards a system of charging that goes considerably beyond recovering SEPAs costs.

The system of charging for annual operating licences for fish farms in Norway imposes large costs on the farms. The system of applying substantial discounts to these licences where environmental improvements are introduced provides a considerable incentive for advances in farming practice. A similar mechanism should be developed in Scotland.

SEPA response. This is a question for Government rather than for SEPA's charging scheme.

5. Proposed charges for varying permits

Introduction

5.1 The consultation proposed methods for separating variation charges into four categories:

- Full (100% of application charges);
- Substantial (70%);
- Standard (30%); and
- Admin (no charge).

5.2 Most of the responses to the consultation in this sector raised questions of detail.

Industry responses

5.3 We do not agree with a 70% of the total of the activity application charge to be applied for surrendering a licence. We understand SEPA would like unused/fallow licences to be surrendered in the coming years, however, having such a high percent charge does not give operators that incentive.

SEPA response. Agreed. We do want to encourage farms to surrender unused licences and therefore we will reduce the surrender charge to zero.

5.4 The sector is looking to innovate in terms of equipment evolution which has the potential for many operational and environmental benefits. For changes in site design (equipment only) the application process and the 'rules' for applications involving such change, including fees, should be structured such that they incentivise change.

SEPA response. Agreed, we do want to promote innovation. In the vast majority of cases changes of equipment (such as increasing the size of cages but not the biomass, footprint, nor medicine usage) will be dealt with as administrative variations.

5.5 What would the charge be for the addition of 2 pen units with no change to biomass or medicines – Environmental benefits should be taken into account – intensity would be reduced (larger pen area but no increase in biomass) and non-medicinal health controls supported (low-salinity treatments), alongside other farming-efficiency benefits including improved growth/survival and reduced predation risk.

SEPA response. This would be a standard variation (30%). Because intensity would be decreasing but work would be required to assess where the extension of the footprint would affect sensitive features or other people's interests. No marine modelling would be required as the biomass and medicine use was not increasing.

5.6 Minor modification of a proposal in application due to late stakeholder representation. Quoting a real example: A change was made to address visual impact concerns a slight rotation of farm angle was proposed. While this delayed CAR determination slightly, there was no fee for making the change. It is hoped that in cases such as this, where late concerns are being addressed and the majority of the work burden is with the applicant, no fee would

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be applied. As such, some nuance around scale of the change, and possibly use of the pre-application process, should be included.

SEPA response. It will depend upon the scale of change and whether the applicant has been through the pre-application process. If it does not invalidate the existing risk-assessments but only require minor changes then the same approach will continue and we will not impose a charge.

- 5.7 Some wording within the Consultation document (Table 2) suggests this would attract the full new application fee due to an increase in biomass; elsewhere information differs. With no additional monitoring required and farm growth being within the already consented Allowable Mixing Zone (AMZ), this proposal should not constitute a major change. However, as modelling would be required (calibration of NewDepomod using self-monitoring results), this case sits as either a Substantial (70%) or Standard Variation (30%).

SEPA response. This would be a standard variation. Only NewDepomod modelling would be required to assess the impacts upon the pen-edge and to ensure that the existing mixing zone limits were not exceed. No baseline monitoring would be required because the farm would not exceed its permitted footprint. For similar reasons there would be no public consultation.

- 5.8 The biomass increase limit of 10% for a substantial application is extremely restrictive and should be removed.

SEPA response. The intention of this section is to ensure that small increases in biomass are not charged the full fee. This part of the consultation then goes on to say that the full charge also does not apply (no matter what scale of biomass) if we do not have to do the same amount of work as would be required for a new application (i.e., that information was already available). We will make sure that this section is more clearly explained.

- 5.9 We understand that SEPA are unwilling to populate the Permitted Substances List (PSL) based on active component. With that in mind, substantial variation fees should not apply where applications are made to add an additional trade name product with fundamentally the same formulation as previously consented.

- 5.10 The PSL process as outlined in stakeholder events introduces even more delay and bureaucracy than the current licence-specific Permitted Substances Working Plan system. If operators are to put forward additions each summer for inclusion the following January, an 18m delay could ensue where that initial deadline was missed, or (following the above) face a £22,400 application fee.

- 5.11 Routine PSL reviews should be covered by the subsistence charging scheme, not borne by a single operator/applicant.

SEPA response. Agreed. We will change the way we manage the process of developing the PSL. We will allow additions to the list at any time. Costs will be borne by annual charges.

6. New areas of work to be funded by an increase in annual charges

Introduction

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- 6.1 We identified the broad areas of new work which would be funded by the new charges and asked for views on the scope of the proposed work.

Industry views

- 6.2 The individual headline responses to the proposed increase were as follows:
- We agree in part with the areas of new work identified as part of the new regulatory framework. However, we do not believe there would be the need for increased regulatory activity as a direct result of stakeholder scrutiny, if the misconception that the industry's environmental performance is worsening was addressed.
 - We would agree that there are areas that would benefit from increased investment that would lead to more informed decision making. However it is important not to overstate the response to the claims that have been made. As a starting point we would contend that there remains no scientific evidence to suggest that Scottish aquaculture is giving rise to significant environmental harm.
 - Appropriate areas are identified in part. We appreciate the improvements proposed, however as per our response to 4A we question the fundamental logic of the enhanced scrutiny given the levels of compliance at the majority of farms, including our own.
 - Our compliance was recently confirmed by SEPA as 92.6% for 2019. For the period 2017-2019, our average compliance was 91.8%. In that context there is absolutely no justification for increased costs and disproportionate regulatory activity on SEPA's part.

SEPA response.

The pressure from Parliament and stakeholders to transform the way aquaculture was regulated was not related to concerns about compliance rates recorded under the old regulatory framework. The concerns were focused upon how the regulators address environmental issues of concern and the extent to which the old framework adequately addressed these. This is our focus in developing the new framework.

Industry comments on additional areas of work.

- 6.3 We note and welcome the intention to develop a more transparent process of compliance assessment and this is welcome but such promises have been made before and never delivered. The present structure of the Compliance Assessment Scheme is resulting in an unfair and disproportionate assessment of environmental performance across the sector and a review is overdue. A delivery and implementation plan would be warmly welcomed.
- 6.4 While we appreciate that 2020 has been a disrupted year, recent experience with the Compliance Assessment Scheme (CAS) has been problematic, despite being a desk-based function, and long talked of improvements to CAS have not progressed.

SEPA response. Agreed we are developing proposals which we will present to the industry and stakeholders. This is included in our costings.

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- 6.5 We are encouraged by the one point relating to the support of innovations to reduce local/global environmental impacts, but against a backdrop of SEPA's One Planet Prosperity aims, Scottish Government Net Zero targets and an innovative food production sector with a low carbon footprint we feel that more weight should be given to such matters.

SEPA response. Agreed; this is included in our costings.

- 6.6 We would also like to see a greater emphasis on SEPA-operator interaction to ensure that SEPA has excellent and up-to-date understanding of the sector. This should include at least annual on-site visits with Company Contacts, senior SEPA personnel regularly engaging with the industry, improved dissemination of information within SEPA and training for staff involved in aquaculture, and increased visibility of SEPA 'on the ground' with the sector.

SEPA response. Agreed this is helpful and positive suggestion.

Other stakeholder views

- 6.7 The individual headline responses to the proposed increase were as follows:

- As a conservation organisation we are looking for regulation to be comprehensive, robust, transparent and enforceable and enforced. It is essential in that case for the new charging scheme to facilitate additional staff to undertake key work.
- The subject areas that you have identified are all valid but do not go far enough.
- There are a range of activities that modern EPA should be capable of undertaking that SEPA is not delivering, nor apparently has any intention of delivering.

SEPA response. We do believe that our proposals represent a major improvement in the services delivered by SEPA which will provide strong science-based information on the issues of concerns.

Stakeholders comments on additional areas of work

- 6.8 There should be a focus on analysis of data to enable an adaptive management approach.

SEPA response. We have costed improvements in data analytics.

- 6.9 We welcome the intention to engage in more unannounced monitoring by SEPA but it is essential that sufficient resources are devoted to this. There is no indication of the level of SEPA monitoring that will be funded by the charges in future.

- 6.10 An inspection regime that would carry with it a genuine threat of detection as a deterrent. In terms of sea water production, the current proposals would see SEPA inspecting just seven salmon farms per year, from approximately 300 licensed sea water facilities, 150 active sites and 70-90 in the second year of the production cycle.

SEPA response. We have costed an audit sampling programme which will assess 10% of sites per year.

- 6.11 Future proofing regulation. SEPA should be investigating, analysing and planning to implement the latest environmental monitoring technologies which allow for the collection

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of independent data. Provision should be made that would allow for headcount and capital spending to for research into regulatory innovation. Such a sensing buoys located at salmon farms.

SEPA response. We agree and we have costed the implementation of number of innovate technologies such as eDNA and remote sensing.

- 6.12 Further SEPA needs to be aware of industry innovation and plan proactively to regulate any such changes that may be reasonably assessed to likely to pose increasing or changed environmental risks. Such as the stocking of "super size smolts" and/or changes in feed composition (such as transition from fish meal/oil based feeds to vegetable based) which result in the production of faecal matter at a greater rate, hence increased deposition than modelling currently assumes.

SEPA response. We agree.

- 6.13 "Jam tomorrow". Developing a more extensive programme of SEPA sampling involving unannounced visits and the assessment of cumulative impacts does not appear to have the urgency that the situation requires. "Developing" a more extensive programme of the same is not the same as delivering it. Charges must be levied upon the industry such that these 'community-facing' initiatives are put into effect at once, so that the urgency here matches that in the delivering the pre-application process, which so assists the industry.

SEPA response. We agree and we have costed the delivery as well as the development of these initiatives.

- 6.14 Ability to collect genuinely independent data points. It is essential for the purposes of a genuine threat of prosecution that SEPA is able to present data has been independently collected. Currently all environmental data is collected and reported by the industry itself. Counsel have advised that this makes prosecution impossible on the basis operators can run a defence of not self-incriminating themselves. Hence it is essential that SEPA collects data independently. Feed would be a good place to start. Use can be monitored independently and remotely through the use of tamper-proof sensors on salmon farms that are networked. This independent data point would allow self-reported data to be cross checked for agreement of implied values such as biomass, required chemical use etc.

SEPA response. Noted -we are aware of the issues and we are looking for opportunities to progressive improve confidence in the data provided by industry and our ability to independently audit it.

7. Proposed increase in annual charges

Introduction

- 7.1 We propose to increase the annual charges by £3,511 per fish farm site. This will nearly double the activity charge for farms. Small farms only pay the activity charge. Larger farms also pay a separate environmental charge which progressively increases according to the load of pollutants released. For larger farms, the proposed increase of £3,511 will represent a percentage increase of 20% to their existing bills.

Industry views

7.2 The individual headline responses to the proposed increase were as follows:

- We do not believe this is an acceptable level of increase to the activity component charge at this time. If significant improvement was seen in the level of service to justify this percentage of increase we would broadly agree.
- The primary focus for the increased funding that will be available from this review should be on addressing the present poor performance with regulatory work delivery and only then on delivering the key tasks associated with new framework implementation. We welcome the introduction of the new regulatory framework for aquaculture but effective implementation will only succeed if the underlying and core regulatory duties of SEPA are delivered in an effective, timely and proportionate manner.
- We do not agree that the increase is appropriate. As an industry we had anticipated and accepted some increase in associated with improvements to be brought about by the new framework, but the scale presented here is far higher than expected or suggested to be justified
- There is absolutely no justification for increased costs and disproportionate regulatory activity on SEPA's part. SEPA should instead focus existing resource on bringing the small proportion of non-compliant sites into compliance.
- The proposed annual charge will increase costs for marine trout production, with the potential to create an even greater difference in the marketplace than at present

SEPA response. As we said in our response in the application fees section, we understand that we need to improve the levels of service that we provide to the industry. We appreciate, for example, that the time taken to respond by SEPA to benthic surveys needs to improve dramatically. We do consider that the proposed increase in resources allow SEPA to deliver a step change improvement in the way we manage applications to the benefit of applicants and those making representations. We accept that improved levels of service is not just a matter of increasing the amount of resources available to delivery our responsibilities.

We recognise the importance of being able to demonstrate the scale of this change and will therefore work with industry and stakeholders to identify key steps in the regulatory process so that service performance can be tracked.

Industry questions/statements of detail

7.3 The previous charging scheme was subject to a phasing in period over a number of years. As the proposed increase of 92% is significantly more than 2015 consultation increase of 33% we would expect a similar phasing in approach be adapted. There are clear areas of service levels which require improvement, a phased approach may be more suitable to allow results of these improvements to be seen over time

SEPA response. The proposed increase in annual charges is £3,511 per site which is equivalent to a 20 to 50% increase. This compares to the average 266% increase in annual charges introduced in 2015. We do not consider that the proposed scale of the increase

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justifies phasing. Phasing would also delay the delivery of improvements on service and would complicate the implementation process.

- 7.4 While we have heard from SEPA that current charges do not adequately cover the costs of the service being provided, the proposed new annual charge does not reflect the scale of sites attracting the charge, so a 500 tonne site would be charged at the same rate as a 5000 tonne site and we think this is unreasonable.

SEPA response. We accept that the increase in charges as a flat rate across all farms is regressive. We will therefore lower charges for the smallest sites so we have introduced a “>50 to < 500 tonne” category both for subsistence and applications fees. We will reallocate these charges to the larger farms. The change in charges for the larger operators will be small.

- 7.5 On monitoring there needs to be a recognition that the new regulatory framework has resulted a four-fold increase in monitoring costs associated with enhanced monitoring. We will work with SEPA on a transparent science based regulatory approach but as the introduction to the consultation highlights the objectives of regulation must be balanced with minimising costs. It is disappointing that there is no recognition in the consultation of the additional costs being borne by the sector and we would ask SEPA reflects on the ‘overall cost’ on operators in the post consultation review period.

SEPA response. We agree that SEPA needs to consider the overall costs of the regulatory regime and not just the charges. With reference to the monitoring costs, we have developed proposals to focus the analysis of samples on the minimum number of stations needed to assess compliance. This will significantly reduce the analysis costs associated with sites that clearly comply.

Other stakeholder views

- 7.6 The individual headline responses to the proposed increase were as follows:
- Given the additional work areas being taken on by SEPA because of the new sector plan, including wellboat discharge, this increase is fair and proportional.
 - It is not clear that the proposed increased charges will fund the level of increased [independent] monitoring that is required. Given that current monitoring is substantially inadequate it seems that SEPA should be asking for more resources than is currently proposed.
 - The industry can support a hugely increased funding settlement for SEPA, and SEPA should set its aspirations higher than modest incremental changes to the existing framework, which is demonstrably inadequate.
 - Strongly objects to any effective subsidy of the open cage salmon farming industry by way of any non-recovery of charges by SEPA.
- 7.7 The consultation indicates that it is intended to ensure that the larger operators pay proportionately more than smaller operators but the proposed scale of charges does not achieve this. Very few farms produce less than 50t and so the charge is effectively the same for all farms ranging from 51-5000t. This is manifestly not fair.

SEPA response. We have introduced a new a “>50 to < 500 tonne” category both for subsistence and applications fees recognising the points raised in this consultation.

8. Supporting innovation

8.1 The industry has asked us to ensure that innovation which delivers environmental improvements should not be disincentivised by the charging scheme. Stakeholders and SEPA also want to see such innovation from the industry.

SEPA Response. We will make the following changes for a period of not less than five years:

- *We will reduce the application charges for variations for proposals that introduce full containment at existing sites or introduce well-boat-based use of medicines followed by treatment that reduces discharge loads by more than 80%.*
- *We will reduce the charges for applications for new farms which include containment of the wastes such that loads are reduced by more than 80% by the containment process.*
- *We will reduce annual charges for farms that include containment of the wastes, such that loads are reduced by more than 80%. In the case of larger farms, the introduction of containment may reduce the environmental charge, and therefore the overall annual charge by more than 50%.*

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