



## **Advice to Boards/Trust on engaging with the planning process for finfish aquaculture**

**June 2012**

### **Background**

This briefing was drawn together following meetings with a number of local authority coastal and aquaculture planners. It is an attempt to clarify the process for inputting to the consideration of applications for new sites or alteration to existing sites made to Planning Authorities, and also the Scottish Government review of sites approved by Scottish Government prior to 1<sup>st</sup> April 2007. This document will be subject to on-going review as new information becomes available and subject to feedback from Boards/Trusts. It should be considered alongside advice that the SSPO has recently produced for preparing planning applications for aquaculture development<sup>1</sup>.

Due to the nature of this document, the focus is inevitably on situations where Boards/Trusts are concerned about planning applications. However, where an application does not present a risk to wild fishery interests and it is clear that the developers have taken a decision to proactively avoid sensitive areas, the Board/Trust might consider supporting that application. This will generate good will with the developer in question and any subsequent objections to other applications may carry more weight with both the planners and the applicant in question. We recognise that in many instances it may be difficult for a Board/Trust to be reassured that sensitive areas have been avoided and that risks to wild fish and fisheries have been appropriately mitigated. In such situations it is appropriate for the Board/Trust to adopt a presumption against development initially and until appropriate reassurance is provided.

### **New Applications**

It is highly recommended that other Boards/Trusts are alerted when an application comes in where a farm has the potential to affect wild fish populations from another district. This will allow concerns to be aired, that otherwise may not be picked up.

#### **1. Applicant approaches council**

Pre-application discussion between applicant and council. At this stage the council will advise the applicant to contact the board if they have not already done so. There is no legal requirement on the developer to do this<sup>2</sup> but this is a requirement of the industry protocol issued through ISLAD (part of the Ministerial Group on Aquaculture) and will be referenced in the code of good practice (CoGP - the document commits the industry to ensuring comprehensive pre-application activity). Clearly, this represents an important early opportunity to highlight any concerns from a wild fishery perspective.

Where such discussions do take place, Boards and Trusts are encouraged to highlight any concerns to

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<sup>1</sup> [http://www.scottishsalmon.co.uk/userFiles/826/Planning\\_Protocol\\_1-4-11.pdf](http://www.scottishsalmon.co.uk/userFiles/826/Planning_Protocol_1-4-11.pdf)

<sup>2</sup> Until and unless the surface equipment area of a proposed aquaculture development is greater than 2 hectares, at which point it would be considered as a major application. All major applications require full pre-application discussion.

the Local Authority at that stage, perhaps by forwarding notes/minutes of any such pre-application meeting. If such discussions are not taking place, this should be highlighted to ASFB/ RAFTS who will take this up with SSPO.

## 2. Screening and Scoping Application

This allows the council to determine whether an EIA is required and what that EIA should cover (what information is currently available; who holds it; what additional information is required in order to assess impacts; how should the applicant obtain/present such information). The applicant is encouraged to use the templates developed through the Scottish Aquaculture Research Forum (SARF)<sup>3</sup>. It is important that Boards/Trusts highlight the information they hold that is relevant to the decision as to whether an EIA is necessary (i.e. whether, in the view of the Board/Trust the development is *likely to have a significant impact*). Data does not have to be provided at this stage. At a very basic level, the presence of salmon and sea trout should be highlighted (as the council do not hold information on this) and if possible the relative importance of the fishery should also be stressed (primarily from an environmental perspective, but social and economic importance can be highlighted here). The locational tool under development by RAFTS will be a key information source here. In particular, the sections relating to 'Interaction with wild salmonids' and 'Impacts upon species or habitats of conservation importance' should be completed. Attention should be given to information held by the Board/Trust which differs from that stated by the developer.

The focus should be local knowledge and local research findings as opposed to wider concerns. However, it is appropriate to briefly consider the body of evidence demonstrating the impact of aquaculture on wild fish, prior to putting this into context by providing local data specific to the proposed development. Boards/Trusts should also emphasise any extra information that is required to allow them to properly assess a subsequent application (e.g. migration routes of salmon/inshore habitats for sea trout; potential cumulative effects arising from multiple sites in an area etc.). It should be noted however, that the council will be likely to take the view that some of these information needs (e.g. migration routes) are beyond the scope of a single operator. It may not therefore be realistic to request this information once a formal application is made. ASFB and RAFTS will continue to seek such information at a strategic level.

The screening and scoping stage is not the point to comment on the application *per se*. However, it is useful to state what information will be required to properly assess a formal planning application if the application does not trigger an EIA, as the council will advise the applicant of any further requirements following this stage.

One issue of note is that on many occasions the submissions by Marine Scotland Science and/or SNH are not necessarily consistent with those by the Boards/Trusts. This continues to be an important reason for lack of progress via the planning process. It is important therefore to highlight concerns to MSS and the local SNH area officer responsible for aquaculture, to ensure that they are aware of any specific concerns, prior to the deadline for comment, ideally during the screening and scoping stage. In the case of MSS, pertinent local information should be shared with Alisdair Macdonald at Faskally via the planning co-ordinator Anna Donald ([Anna.M.Donald@scotland.gsi.gov.uk](mailto:Anna.M.Donald@scotland.gsi.gov.uk)). It should be noted that MSS responses are based on the information provided in Appendix 1. There is a clear trend for fish farm applicants to state that they will have a target of no lice during critical periods and MSS tend to respond

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<sup>3</sup> <http://www.sarf.org.uk/cms-assets/documents/29275-6854.eia-temp-screen-scoping-050608-n2.doc>

to this by stating that if the target is met then the impact will be minimised. This should be challenged at both a national level (by ASFB and RAFTS) and in individual responses to planning applications. In the absence of full public access to farm lice data (which ASFB and RAFTS are pursuing at a national level), one potential route of assessing the likelihood of meeting industry CoGP lice treatment thresholds is to examine the aggregated industry figures provided by the SSPO<sup>4</sup>. An example of this information is summarised below. The full data set from February 2011 onwards is available from ASFB/RAFTS.

*June-August 2011*

North Mainland: Information gathered through the application of the system indicates that, during June lice numbers across the North Mainland region, on average, were 138% above the suggested lice treatment threshold set out in the NTS and CoGP (i.e. 0.5 adult female lice per fish). During July and August, lice numbers were, on average, 149% above the suggested lice treatment threshold (i.e. 1.0 adult female lice per fish).

South Mainland: Information gathered through the application of the system indicates that, over the present reporting period, lice numbers across the South Mainland region, on average, remained below the suggested lice treatment threshold set out in the NTS and CoGP (i.e. 0.5 adult female lice per fish from February until June, and 1.0 adult female lice per fish from July until January).

Western Isles: Information gathered through the application of the system indicates that, over the present reporting period, lice numbers across the Western Isles region, on average, remained below the suggested lice treatment threshold set out in the NTS and CoGP (i.e. 0.5 adult female lice per fish from February until June, and 1.0 adult female lice per fish from July until January).

Orkney: Information gathered through the application of the system indicates that, over the present reporting period, lice numbers across the Orkney region, on average, remained below the suggested lice treatment threshold set out in the NTS and CoGP (i.e. i.e. 0.5 adult female lice per fish from February until June, and 1.0 adult female lice per fish from July until January).

Whilst planners have confirmed that this information is not at a sufficient resolution to have a major bearing on the planning decision, the SSPO information could be used to ask MSS to assess the success or otherwise of integrated sea lice management (as set out in the industry code) or to assess the potential for cumulative impacts from existing farms. This could be achieved by examining any local data previously collected during sea lice audits or by requesting information from existing farms in the same area. Where the developer already has an existing site in the area under consideration, information on lice levels on existing farms should also be requested by Boards/Trusts in order to assess that company's ability to manage sea lice under those specific local conditions. It is vital that this is done as part of the formal planning process as any information on sea lice levels accessed through Area Management Agreements cannot be used in this way, due to the confidentiality under which such agreements operate. It should also be noted that some operators in Scotland, already use much lower treatment thresholds than those set out in the CoGP.

<sup>4</sup> Available at [http://www.scottishsalmon.co.uk/science/sea\\_lice/regional\\_reports\(1\).aspx](http://www.scottishsalmon.co.uk/science/sea_lice/regional_reports(1).aspx)

Information on the number of *reported* escapes can also be assessed via the Scottish Government website<sup>5</sup> and this information should also be used as part of the risk assessment.

There are 3 SACs designated for Atlantic salmon in areas of Scotland where the aquaculture industry operates. There are also a number of SACs designated for pearl mussels (for which salmon and sea trout act as parasitic hosts at the larval stage). Trusts may wish to highlight these SACs as part of a planning response, but pearl mussel SACs are outside the remit of DSFBs. As aquaculture developments are likely to have a significant effect on the site (either alone or in combination with other plans or projects) an Appropriate Assessment will be required in these areas. The need for an appropriate assessment to determine whether a development will adversely affect the integrity of the site should be highlighted in the response.

### **3. Possible further discussion between applicant and council**

There is not much scope to influence this stage of the process, but it should be noted that this meeting often occurs due to the applicant making changes to the original application. If this is in relation to the results of the screening and scoping exercise/environmental statement this may not be an issue, but Boards/Trusts should be alert to any significant changes from the original application.

### **4. Formal Application (supported by Environmental Statement if EIA required)**

It is important to start the response with a simple, unequivocal statement making clear that you object/do not object to the proposed development. Should a DSFB wish to formally object, it is vital to make this absolutely clear in the planning submission, with clear reasoning as to the basis for that objection. The local authority should also be advised if there is scope to withdraw such an objection, subject to appropriate mitigation. In responding to the formal consultation on a fish farm application, the information should be complimentary to the response to the screening and scoping exercise, rather than duplicating the same information. Again this response should consider the application in relation to the local issues. The Board/Trust should also consider whether there are any mitigation measures which might be put in place.

There have been a number of occasions in recent years where planning consent has been granted on a time-limited basis. The main driver behind this is a lack of knowledge and advice on the effects of a development on wild salmonids. Boards/Trusts might consider such a planning condition, alongside appropriate monitoring of wild populations, as a possible mitigation for the effects of a development. Whilst it might be considered unreasonable from an investment perspective to set such time limits at a very short duration, given the uncertainty surrounding the effects of sea lice on wild fish under specific local conditions, it might also be considered unreasonable that planning consent should be given on a permanent basis with no current means of revoking such consents.

It is important to note here, that even if a formal EIA was not required, the response to a planning application should assess potential environmental impacts.

If there is no board covering a particular area there is no requirement for the Local Authority to consult with a Trust instead. Therefore, in order that Trusts are aware of planning applications in areas where no Board is in existence, it would be prudent to monitor the weekly planning lists published for that area.

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<sup>5</sup> <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/18692/escapeStatistics>

#### **5. Decision usually made under delegated powers by local officer**

There is no third party right of appeal. Should a Board wish to object to an application, this must be done at the formal application stage, and will be considered in determining the application. As a statutory consultee an objection from a board (assuming it cannot be resolved) will result in the application being determined by the council committee rather than being delegated to a planning officer. A decision taken by the council committee (rather than the original delegated decision) also has a bearing on the route of appeal by the applicant (see below).

#### **6. Appeal by applicant if application refused**

The applicant has the right to appeal any decision for refusal, or any conditions attached to an approval. If the decision has been made at officer level (i.e. a delegated decision) then the appeal is heard by the Council Planning review panel. If the decision was made at a committee level then the appeal goes directly to Scottish Ministers.

### **Marine Fish Farm Audit and Review process**

The Audit and Review process is a process by which marine fish farms granted development consent by the Crown Estate prior to 1<sup>st</sup> April 2007 are subsequently consented for planning permission under the Town and Country Planning (Scotland) Act 1997 (as amended). This process is operated by Scottish Ministers rather than Local Authorities and the process is outlined in full in Appendix 2.

Unless the Scottish Government feels that an EIA is necessary some farms consented prior to 1999 will never have been subject to public consultation or a proper planning appraisal. As of August 2011, only one EIA has been triggered by this process across Scotland. There is no second chance to object, so it is vital that these screening and scoping reviews are treated as full planning applications – any responses should cover the points made in both 2 and 4 above.

Any new site applications, alterations to planning consent or extensions to current sites, should be dealt with by councils according to the process outlined above.

#### **Change of equipment/biomass**

There have been instances of farms consented under A&R which appear to have different equipment to that originally consented. This is because of the Crown Estate policy (prior to the transfer of planning control in 2007) which allowed the specification of cages as stated within the schedule to the Crown Estate lease to vary, provided that the number of cages, the total cage surface area and the total area of seabed does not exceed that stated in the Crown Estate lease. This aspect should be examined particularly closely, as there are concerns that increases in cage area etc. have been granted in the past.

## **Appendix 1: MSS Overview on the current state of scientific knowledge relating to sea lice**

### **Summary of information relating to impacts of sea lice from fish farms on Scottish sea trout and salmon.**

Sea lice infest both farmed and wild salmonids to the potential detriment of aquaculture and angling economies. Several reviews have recently considered information concerning interactions between salmon farms and wild salmonids (Revie *et al.* 2009; Costello 2009; Salmon & Trout Association 2010; Whelan, 2010). Here, the evidence available to assess the likelihood and scale of impact of sea lice from salmon farms on Scottish wild salmonids is summarised. The aim is not to repeat extensive review but to focus on key issues relevant to locating fish farms in the Scottish coastal zone.

#### **Are salmon farms a significant source of lice?**

Yes, salmon farms have been shown to be a more important contributor than wild fish to the total lice in the environment (Penston & Davies, 2009; Revie *et al.*, 2009).

#### **Is there an association between levels of lice on salmon farms and in the surrounding environment?**

Yes, there is a strong correlation between levels of lice on fish farms and in the local environment (Penston *et al.*, 2008). Lice levels on farms correlate with stage of salmon rearing cycle (Revie *et al.* 2002; Lees *et al.* 2008), indicating that the imposed farm regime drives the association between lice on farms and in the surrounding water.

#### **Is there an association between levels of lice on salmon farms and on sea trout?**

Yes, stage of farm cycle relates to level of lice infestation on sea trout with higher levels of infestation during the second year of production (Butler 2002; Hatton-Ellis *et al.* 2006; Middlemas *et al.*, 2010), when lice numbers are known to be greater on farms (Revie *et al.* 2002; Lees *et al.* 2008). This relationship has been noted in a number of areas (Butler 2002) and was found to be significant across a 10-year period in Loch Shialdaig and across the Scottish west coast in 2002-03 (Middlemas *et al.*, 2010).

#### **Is there an effect of sea lice on wild trout at the individual level?**

Yes, infestation levels on wild trout associated with years of high lice on farms (2nd years of production) are predicted to be sufficient to kill a proportion of individual fish sampled (26% of fish sampled at Shialdaig during 2000-2009 and 21% across the West Coast in 2002-2003) (Middlemas *et al.*, 2010).

#### **Is there evidence of the scale of effect of sea lice on wild trout at the population level?**

No. Although there is a relationship between infestation rates on wild trout and lice levels on farms, sampling of the wild fish may be biased towards catching infested individuals and cannot account for those fish that had already died. Therefore, the scale of any impact at a population level cannot be determined from existing published information.

In the west coast area, rod-and-line catches of sea trout and have decreased to current historically low levels (MacLean & Walker 2002; Anon 2009). This pattern contrasts to the east coast catches where there is no general trend in rod catches of sea trout. The causes of the decline on the west coast are unclear. Salmon farming is not the only factor involved because declines in catch commenced before aquaculture in the region.

#### **Is there an association between levels of lice on salmon farms and on wild salmon?**

Although this has been shown in Norway no information is available for Scotland.

#### **Is there an effect of sea lice on salmon at the individual level?**

No information is available for Scotland.

### **Is there an effect of sea lice on wild salmon at the population level?**

There is evidence that declines in catches of wild salmon have been steeper on the Scottish west coast than elsewhere in Scotland and Norway but there is no clear evidence of causative mechanisms (Vollestad et al., 2009).

### **Over what distance do farms influence lice levels?**

Mackenzie et al. (1998) found no significant variation in infestation of sea trout within 14km of farms. Butler & Watt (2003) suggested that there is a clear decline in infestation rates up to 25km from farms but provided no statistical analysis. Interpretation of these data is made difficult by the variety of methods used to collect the information.

Gillibrand & Willis (2007) produced a general sea lice dispersal model that showed that infective sea lice levels peaked 7 to 12km seawards of the source. However, it is clear that site specific factors such as prevailing wind and currents, and local topography can have a large impact on the direction and distance of lice dispersal (Amundrud & Murray 2009).

### **Do we understand the dispersal patterns of sea trout and salmon?**

Salmon smolts depart rapidly from home rivers but there is no knowledge of their subsequent distribution in relation to the Scottish coast. In general sea trout remain near shore for their first two months at sea and then disperse more widely, although some move further afield after entering the sea. There is no understanding of the scale of dispersal or whether it is uniform in direction relative to the home river.

### **SUMMARY**

There is no evidence of an impact of lice from fish farms on wild salmon in Scotland, but the relatively acute declines in salmon catches on the Scottish west coast give cause for concern.

There is evidence of an effect of lice from fish farms on sea trout, although the extent to which the fish populations are affected is not clear. It appears that the range of effect of lice is at least 14km from farm source. This range will depend on both movements of lice and trout, which are not well understood. There is no published evidence of an effect of lice on trout at a population level, however, such an effect would be expected in view of the high infestation intensities observed near farms in the second years of salmon production cycles. Prevailing seasonal wind direction is an important factor in determining lice dispersal patterns.

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## **Appendix 2: Marine Scotland Audit and Review Guidance**

### **1 PURPOSE OF THIS GUIDANCE**

1.1 This guidance is to help people understand the Fish Farm Audit and Review Process, how decisions are made, the timescales involved in processing applications, and to provide an indication of the future work programme.

### **2 WHO SHOULD USE THIS GUIDANCE**

2.1 This guidance is designed to bring together all relevant information in relation to the Audit and Review Process or to clearly signpost where other information can be found. It will be relevant to a wide range of people, but it will be of particular use to:

- fin fish and shellfish farm operators who wish to understand the processes involved and how their sites will be administered;
- statutory consultees who wish to understand their and others' roles in the process and the future work programme; and
- other stakeholders who want to know more about how decisions are made.

### **3 POLICY AND LEGISLATIVE BACKGROUND**

3.1 From 1976 the Crown Estate operated a non-statutory scheme of development consent based on Landlord / Tenant lease contracts (typically of 10-15 years duration) for marine fish farm proposals in all areas except Shetland and Orkney. In Shetland and Orkney, the local authority was responsible for issuing works licences under, respectively, the Zetland County Council Act 1974 and Orkney County Council Act 1974. The dual role of the Crown Estate as the owner of the sea bed and consenting body for marine fish farming development, led to concerns over conflict of interest and accountability of decisions, and resulted in calls for a change.

3.2 In November 1997, Lord Sewel, Minister for Agriculture, Environment and Fisheries at the then Scottish Office announced, in response to the Scottish Salmon Strategy Task Force Report, that the aquaculture development responsibilities exercised by the Crown Estate should be transferred to Scottish local authorities. Responses to a consultation paper, Marine Fish Farming-Review of Planning Arrangements (issued in December 1997), endorsed the proposal

3.3 A non-statutory "Interim Scheme" was introduced in 1999 in advance of this transfer of responsibility (which would require primary legislation). This Interim Scheme maintained the formal decision-making role for the Crown Estate but required that they consult the relevant local authorities for their views and take decisions in line with these. This ensured that the views of the local authorities were taken into account and reflected in development decisions.

3.4 In 2003, the Water Environment and Water Services (Scotland) Act provided enabling powers to bring marine fish farms into the land use planning regime. Following further consultation in 2006, the Planning etc. (Scotland) Act 2006 amended the Town and Country Planning (Scotland) Act 1997, to extend the planning regime to fish farming (out to the twelve nautical miles limit).

3.5 The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 came into force on 1 April 2007 and gave planning authorities full planning responsibility for aquaculture developments in marine waters.

3.6 All new aquaculture development applications (as well as modifications to existing ones) are now made to the planning authority. An important change is that sites are now granted permanent planning permission, as opposed to previous arrangements where consent lasted only for the duration of the lease.

3.7 On the transfer of responsibility to local authorities, there were some 917 farms (both finfish and shellfish) that had been consented under the previous scheme and which needed to be assessed to determine whether they ought to be granted permanent planning permission.

3.8 Scottish Ministers concluded that they would assess farms consented under the previous schemes to determine whether they should be awarded permanent planning permission. These include farms whose applications were made under the Interim Scheme but where a development consent decision was not made by 1 April 2007.

3.9 Ministers also concluded that farmers should not be disadvantaged by having to cease operation should their lease expire before the site could be assessed. An interim arrangement was introduced by The Town and Country Planning (Prescribed Date) (Scotland) Regulations 2007 and Amendment Regulations 2010. These Regulations provide that farms whose leases or works licences expired (or will expire) before 31 March 2013 do not require planning permission until then. Farmers can therefore continue to operate until then unless Scottish Ministers have assessed the farm and refused planning permission.

3.10 The power on Scottish Ministers to determine permanent planning permission for existing farms is provided by Section 31A of the 1997 Act (as amended). Officials in the Scottish Government Aquaculture Planning Team, Marine Scotland, grant planning permission on the Ministers behalf administratively, while seeking approval for any contentious decisions (in this document "Marine Scotland" will be used to denote this role performed on Ministers behalf).

#### **4. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

4.1 Marine fin fish farms come within the scope of intensive fish farming in Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 2011 (and, before that, the 1999 Regulations). The Regulations require 'Schedule 2' developments in a sensitive area, or which exceed certain thresholds or meet certain criteria, to be screened for their environmental impact before they can be granted planning permission.

4.2 For a fin fish farm (shellfish farms do not come under the scope of the Regulations) the thresholds are:

- the proposed development is designed to hold a biomass of 100 tonnes or greater; or
- the proposed development will extend to 0.1 hectares or more of the surface area of the marine waters, including any proposed structures or excavations.

In practice, these criteria apply to the majority of fin fish farms.

4.3 The Review process which determines whether an EIA is required is described below in section 7. Should an EIA be required, Marine Scotland will defer a decision on planning permission until the

environmental impacts (giving cause for concern) have been examined in depth in an Environmental Statement; this is consulted on and views are considered.

## **5. APPROPRIATE ASSESSMENTS**

5.1 The Conservation (Natural Habitats, &c.) Regulations 1994, usually called simply 'the Habitats Regulations', require competent authorities (in this case Marine Scotland) to undertake an Appropriate Assessment when a plan or project affecting a Natura site (the term given to Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)):

- is not connected with management of the site for nature conservation; and
- is likely to have a significant effect on the site (either alone or in combination with other plans or projects).

5.2 An Appropriate Assessment is therefore required for developments having the potential to affect a Natura site, no matter how distant the site. The Assessment will focus on the qualifying interests of the site and consider the development's impacts on the conservation objectives of the site. There is no set format to an Appropriate Assessment but it must answer the question as to whether a development will adversely affect the integrity of the Natura site.

5.3 Scottish Natural Heritage will advise Marine Scotland of fin fish and shellfish sites that require an Appropriate Assessment. If a farm is assessed and it is determined that it does not adversely affect the integrity of the Natura site, then planning permission may be granted. If not, planning permission can only be given for the development site if there are no alternative solutions and if there are imperative reasons of over-riding public interest for doing so.

## **6 AUDIT AND REVIEW PROCESS**

6.1 Existing fish farms go through one of 2 processes - either a Review or an Audit. These are explained in more detail below.

## **7. THE REVIEW PROCESS**

7.1 Fin fish sites are Reviewed if they were consented before 1999 (and have not been modified since then in a way that would require a whole-farm EIA screening under the 1999 Regs). These farms were likely to have been assessed under the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988, which are regarded as less robust than the 1999 Regulations. The Review considers whether the farm is likely to have a significant impact on the environment or affect the integrity of a designated site or species under the Habitats Directive.

### **Site Operator**

7.2 Marine Scotland will identify pre-1999 fin fish sites that have not been subjected to EIA screening. It will contact the fish farm operators to explain the process and to determine whether they would like the sites to be Reviewed. Operators have 4 weeks to confirm whether they want a particular site to be Reviewed. (NB. It is worth noting that, for any number of internal reasons, an operator will not necessarily wish to have the site Reviewed or may prefer this to take place at later date.)

7.3 If operators confirm that they do not wish a site to be Reviewed at all, Marine Scotland will remove it from the list of Reviews and take no further action. This means that the site will have no development consent when the lease runs out or at 31 March 2013 (whichever is the latter), and if it is operating after this date, will be doing so illegally.

7.4 If the operator does wish to commence a Review, Marine Scotland will upload partially-completed application and EIA screening forms to 'SharePoint' for completion by the operator. Participants in the review are given edit permissions for SharePoint (introduced to avoid the problem of large files blocking e-mail inboxes or being blocked themselves by e-mail server size limits). The site operator is alerted when the application form is uploaded and is asked to complete it within 6 weeks.

7.5 The screening template in particular asks for information on a range of environmental impacts that will inform statutory consultees and assist consideration as to whether an Environmental Statement is required.

7.6 The EIA screening form asks operators to identify nearby sensitive sites or habitats, provide documentation relating to environmental management at the site and to provide their assessments of the site as regards twelve specific potential impacts. An example of the application and EIA screening forms are included at Annexes A and B.

### **Statutory Consultees**

7.7 The statutory consultees are-

- The planning authority (plus adjacent one, if appropriate)
- Scottish Environment Protection Agency (SEPA)
- Scottish Natural Heritage (SNH)
- Marine Scotland Science (MSS)
- the local District Salmon Fishery Board (DSFB)
- Historic Scotland

7.8 Ministry of Defence is consulted if the site is close to a military installation or military remains. Courtesy notification of the review is also given to the Association of Salmon Fisheries Boards.

7.9 The statutory consultees are invited to provide their assessment of the twelve EIA screening impacts and on any other issues important to the consultee. They are also asked to provide a formal 'screening opinion' on whether an EIA is needed and, if so, to identify the issues that an Environmental Statement ought to address. They are asked to respond within 6 weeks.

### **Marine Scotland**

7.10 Marine Scotland will consider consultees' responses. Where supplementary information is sought by consultees, it will consider the merits of the request in the context of the historic operation of the site before asking the operator to provide it. Where the supplementary information is of a scientific or technical nature the operator and consultee will be encouraged to engage and resolve the consultee's concern direct.

7.11 Marine Scotland will assess the information provided by the operator and consultees. If it appears that the continued operation of the site will not give rise to any significant environmental impacts, a

Negative Screening Opinion will normally be issued. It should be noted that a Negative Screening Opinion means that the development has been screened out of requiring an EIA.

7.12 Should it appear that significant impacts are taking place that cannot readily be mitigated by changes to the site's management or operational practices, Marine Scotland will determine that an EIA is required.

7.13 Before reaching a formal Negative Screening Opinion and deciding on the review application, Marine Scotland will ask the planning authority if it wishes to express any planning views not covered in its screening response. This is an opportunity for the authority to advise Marine Scotland of any issues not directly related to the twelve specific impacts and to request that mitigating planning conditions be attached to the consent. The planning authority is asked to respond within two weeks.

7.14 Subject to any response, Marine Scotland will then confirm the Negative Screening Opinion and grant planning permission. Planning permission may be subject to conditions deemed appropriate by Marine Scotland and as may be sought by the planning authority.

7.15 When Marine Scotland have made their decision all parties will be notified of the decision and the documentation circulated as follows-

- to the site operator and planning authority –
  - planning decision and, if permission granted, the approved plans;
  - a consolidated response to the screening and scoping exercise;

the Negative Screening Opinion or the scoping opinion and Environmental Statement, as appropriate.

- to Crown Estate –
  - planning decision and, if permission granted, the stamped plans;
- to statutory consultees –
  - the consolidated response to the screening and scoping exercise; and
  - the Negative Screening Opinion or the scoping opinion and Environmental Statement, as appropriate.

If Appropriate Assessment needed

7.16 SNH will advise if an Appropriate Assessment is required in its EIA screening response. If this is the case, Marine Scotland will ask the operator to provide additional information about the site and its operation that SNH requires and will defer making a decision on the application until such time as SNH has expressed itself satisfied.

## **8. THE AUDIT PROCESS**

8.1 Fin fish sites are Audited if they have already been assessed under the EIA Regulations 1999 and benefit from a Negative Screening Opinion, or have been the subject of a published Environmental Statement. In addition the site must deploy the same equipment at the time of the Audit as it did when the Negative Screening Opinion or Environmental Statement was issued.

8.1 The Audit seeks to establish that the proper processes had been carried out prior to consent being given and that there have been no changes to the consented equipment at the site in the meantime. Sites are also considered as to whether they are likely to affect the integrity of a designated site or species under the Habitats Directive, and thus require an Appropriate Assessment.

8.2 All shellfish sites are Audited, because they are not subject to EIA Regulations. The Audit seeks to establish that the proper processes had been carried out prior to consent being given and that there have been no subsequent changes to the consented equipment at the site. The main consideration for shellfish farms is whether the farm is likely to affect the integrity of a designated site or species under the Habitats Directive, and thus require an Appropriate Assessment.

8.3 Marine Scotland will identify shellfish sites and fin fish sites that meet the above criteria. It will then seek the opinion of SNH as to whether the location of the site is such that it requires an Appropriate Assessment.

#### **Site Operator**

8.4 For sites not requiring an Appropriate Assessment, Marine Scotland will contact site operators to explain the process and to determine whether they would like the site to be audited. Operators have 4 weeks to confirm whether they want the site to be Audited. (NB. It is worth noting that, as with the Review process, an operator may not necessarily wish to have the site Audited or may prefer this to take place at a later date.)

8.5 If the operator confirms that they do not wish the site to be Audited at all, Marine Scotland will remove it from the list of Audits and take no further action (i.e. no development consent will be awarded and when the lease runs out, or after 31 March 2013 (which ever is the latter) and if it is operating, it will be doing so illegally).

#### **Marine Scotland**

8.6 If an operator does wish to commence an Audit, Marine Scotland will prepare an application form based on its understanding of what the operator is entitled to deploy at the site. It will send it to the operator for verification and signature. An example Audit application is at Annex C. Courtesy notification of the Audit is given to the planning authority at the same time. This is an informal opportunity for the authority to advise Marine Scotland of any issues arising and to request that mitigating planning conditions be attached to the consent.

8.7 Operators are given 4 weeks to complete and return the application. On receipt, Marine Scotland will satisfy itself that the site's current configuration is the same as:

- that consented by the Crown Estate lease or Islands Council works licence, as appropriate; and
- on which the Negative Screening Opinion or Environmental Statement was based.

8.8 Planning permission will then be granted. Permission will be subject to conditions as deemed appropriate by Marine Scotland and as may be sought by the planning authority. A copy of the permission and approved plans will be sent to the operator, planning authority and Crown Estate.

8.9 If the configuration is not as described above, Marine Scotland will decline to process the application and advise the operator to apply to the planning authority instead.

#### **If Appropriate Assessment needed**

8.10 For sites requiring an Appropriate Assessment the process is essentially the same. However, when being sent the pre-completed application form the operator will be asked to provide such additional information about the site and its operation as is required by SNH to make the assessment. Marine Scotland will defer granting permission until such time as SNH has expressed itself satisfied.

## **9 TIMESCALE**

9.1 Reviews are envisaged to take approximately 12 weeks to complete although this will be longer if further information is sought from the operator. How much longer will depend on how time consuming it will be to gather data and to have this assessed by Marine Scotland or the requesting consultee.

9.2 Due to the large number of cases to process and the limited timeframe in which this can take place (until 31 March 2013), it is crucial that operators and statutory consultees adhere to the timescales set out for providing information and consultation responses whenever possible.

## **10. RIGHT OF APPEAL**

10.1 The only right of appeal against Scottish Ministers' decision to refuse an application is through the courts. If, however, Ministers are minded to refuse planning permission the operator will be given an opportunity to make representations before a decision is made.

10.2 If planning permission is then refused the operator will be offered the opportunity to relocate. As part of their consideration of any refusal, Ministers will consider whether any extant production cycles may be completed before the refusal comes into effect.

## **11. FUTURE WORK PROGRAMME**

11.1 As previously noted, the deadline for obtaining planning permission under the Reviews and Audits programme is 31 March 2013. As of [date] there were approximately xxx fin fish Reviews, yyy fin fish Audits and zzz shellfish Audits that need to be undertaken.

11.2 Marine Scotland aims to upload an average of 20 Reviews per month onto the SharePoint site and, once the process is underway, to determine planning permission at an average rate of 16 per month.

11.3 Where practicable, uploaded applications will be spread equally between council areas so that statutory consultees' local staff will not be overburdened.

11.4 The Audits programme aims to send approximately 25 application forms a month to operators and to determine planning permission on approximately 25 a month.

11.5 Actual numbers will vary according to pinch points such as Christmas or summer holidays.

11.6 Achieving these targets is dependent on a number of factors, including

- applicants submitting completed applications within the expected 4 weeks;
- Statutory Consultees commenting on applications within the expected 6 weeks; and
- complex cases (which may require time-consuming data collection by the operator) being limited in number.

11.7 Progress towards these targets will be monitored and quarterly updates provided to the Improved System for Licensing Aquaculture Developments (ISLAD) Working Group; timetables may need to be altered if targets are not achieved for whatever reason.

## **13. FREQUENTLY ASKED QUESTIONS**

**When can I expect my site to go through the Audit or Review Process?**

Marine Scotland will focus on active sites whose leases have expired or will expire before 31 March 2013. However, farmers may ask for a particular site to be reviewed at any time.

**What happens if I don't agree to my site going through the process?**

That depends on the expiry date of your lease. If it is on or before 31 March 2013 you may continue farming until 31 March 2013. If it is later than that you may run down your lease to its natural expiry date. If you farm beyond whichever of these dates applies to your sites you will be liable to enforcement action by the planning authority.

**What happens if there has been a change in configuration from the site lease or works licence?**

Operators sometimes seek planning consent for a configuration that differs from the site lease or works licence. Prior to the Crown Estate losing responsibility for consenting fish farms, it was its policy to allow variations in the size and / or type of cages provided that the new cage footprint was consistent with that permitted by the lease (i.e. allowing for a minimal amount of rounding up of fractions of a cage).

Marine Scotland has continued this policy in relation to the Audit and Review process. However we are aware that the planning authority and other stakeholders have concerns with this policy and we plan to discuss these concerns and potential options further. We would be grateful for any comments on this issue.

For the purpose of this guidance, the current policy is set out in more detail below:

For the avoidance of doubt, Marine Scotland will accept changes in cage configuration provided that any increase in the total cage surface area does not exceed the equivalent of 0.5% of a new cage. It will also accept changes to the size and position of a consented feed barge but will not entertain an application for a feed barge where none has been consented by the lease.

Operators should note that this policy does not apply to sites in Orkney and Shetland, where local authority works licences take precedence over developments permitted by the Crown Estate's lease.

Operators may also seek consent for a site whose mooring boundaries are not wholly contained within the lease area. We recognise that there may be sound operational reasons for placing the moorings where they are. Section 26AA of the 1997 Act provides that it is the operation of a fish farm that constitutes development irrespective of whether any particular piece of equipment falls on one side of the lease boundary or the other. This means that Marine Scotland has the ability to accept such applications.

Statutory consultees will be notified where there is such a variation to the original consent.