



Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Customer Services
Executive Director: Douglas Hendry

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8 May 2019

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **TAYINLOAN VILLAGE HALL, TAYINLOAN, ARGYLL** on **WEDNESDAY, 15 MAY 2019** at **9:30 AM**, which you are requested to attend.

Douglas Hendry
Executive Director of Customer Services

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST**
3. **SCOTTISH SALMON COMPANY: RELOCATION AND ENLARGEMENT OF EXISTING MARINE FISH FARM (CURRENTLY COMPRISING; 12 NO. 80 METRE CIRCUMFERENCE CAGES AND FEED BARGE) BY RE-EQUIPMENT WITH 12 NO. 120 METRE CIRCUMFERENCE CAGES AND FEED BARGE: EAST TARBERT BAY, ISLE OF GIGHA (REF: 18/01561/MFF)**

Report by Head of Planning, Housing and Regulatory Services (Pages 3 – 52)

Planning, Protective Services and Licensing Committee

Councillor Gordon Blair	Councillor Rory Colville (Vice-Chair)
Councillor Robin Currie	Councillor Mary-Jean Devon
Councillor Lorna Douglas	Councillor Audrey Forrest
Councillor George Freeman	Councillor Graham Hardie
Councillor David Kinniburgh (Chair)	Councillor Donald MacMillan
Councillor Roderick McCuish	Councillor Jean Moffat
Councillor Alastair Redman	Councillor Sandy Taylor
Councillor Richard Trail	

Contact: Fiona McCallum

Tel. No. 01546 604392

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Argyll and Bute Council**Development and Infrastructure Services**

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 18/01561/MFF

Planning Hierarchy: Local Application

Applicant: Scottish Salmon Company

Proposal: Relocation and enlargement of existing marine fish farm (currently comprising; 12 No. 80 metre circumference cages and feed barge) by re-equipment with 12 No. 120 metre circumference cages and feed barge.

Site Address: East Tarbert Bay, Isle of Gigha

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION**(i) Development Requiring Express Planning Permission**

Relocation of East Tarbert Bay Fish Farm to a location approximately 280 metres to the east of the existing site;

Installation of 12 No. x 120 metre circumference cages, held in one group in a 65 metre x 65 metre grid matrix, with a seabed mooring area of 35.4 ha;

Increase in maximum standing biomass to 2,500 tonnes (existing site 600 tonnes);

Installation of feed barge;

Installation of underwater lighting.

(ii) Other specified operations

Removal of consented equipment from current East Tarbert Bay Fish Farm;

Servicing from the existing shore base at Highfield.

(B) RECOMMENDATION:

It is recommended that planning permission be granted subject to

- i) the holding of a discretionary pre-determination local hearing;
 - ii) the conditions and reasons set out in this report.
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(C) HISTORY:

01/00129/MFF – Prior notification for marine fish farm. No objections 6/3/01

06/02067/MFF - Installation of barge and feeding system. Approved 14.11.2006

10/01854/MFF - Addition of feed barge. Approved 22.02.2011

16/00719/SCRSCO – Screening and scoping request for increase in size and number of cages and relocation of site – opinion issued 19.04.2016.

(D) CONSULTATIONS:

Marine and Coastal Development Manager: No response to date.

Historic Environment Scotland (dated 9/8/18): No comments to make on this proposal.

Northern Lighthouse Board (1/8/18): No objections.

Clyde Fishermens' Association: No response to date.

Marine Scotland Science (dated 31/8/18, 11/10/18,23/10/18 and 19/12/18): There are two other active farms within 15km of the site (Druimyeon and South Drumachro) as such cumulative impact factors may come into play.

Aggregate lice figures for the Add and Ormsary region show that in the period September – December 2017 the region experienced lice levels above the CoGP treatment levels. This suggests periodic difficulties of lice control within the region, although the reporting region includes the entire west coast of Kintyre and therefore may not represent the lice control capabilities of the site.

The development has the potential to increase risks to wild salmonids. The applicant appears to be aware of the potential impacts on salmon and sea trout and has indicated that they intend to manage the site as part of the local FMA. They undertake to follow the practices recommended in the industry CoGP.

Sea trout are present in these waters all year round and not just during the spring smolt migration period. It is therefore suggested that the control of sea lice should be practiced throughout the year.

Adherence to the suggested criteria for treatment of sea lice stipulated in the industry CoGP may not necessarily prevent release of substantial numbers of lice from aquaculture installations.

Information from the west coast of Scotland suggests lice from fish farming can cause a risk to local salmon and sea trout. This information can be used to give an idea of the relative risk to salmon and sea trout which is governed, and can be mitigated by a number of factors in particular the siting of the farm and its ability to effectively control sea lice.

The initial consultation response requested further information on the risk assessment for non-synchronous production in the FMA and confirmation of the quantity of emamectin benzoate consented.

Subsequent response received:

The applicant has resubmitted the risk assessment with an updated title to include adjacent Farm Management Areas (FMAs). No specific changes have been made to the remainder of the risk assessment, therefore, it is deduced that the applicant considers the mitigation measures taken for the sites within the FMA are also sufficient for the sites outwith the FMA. No further information is required.

Response dated 19/12/18. MSS was re-consulted following the publication of SEPA's Interim Position Statement. In relation of the use of emamectin benzoate MSS advise that it is noted that the applicant will continue to operate the site under the current CAR licence for the duration of the next production cycle, and providing the planning consent is granted for the proposed modification, utilise the new licence which has already been granted by SEPA in September 2018 which permits the biomass being proposed in this application. Given that the CAR licence is granted for the biomass and cage arrangement being proposed, it is therefore assumed there will be no change to the permitted quantities of emamectin benzoate at this time and therefore no impact on the sea lice management strategies on site. Providing this is case MSS has no additional comments to make.

SNH – Argyll and Outer Hebrides (dated 3/9/18 and 10.01.2019):

Protected Species - The proposal could affect a nationally important population of a protected species as described in an accompanying confidential annex. SNH either object to the proposal until further information requested is supplied and / or object to the proposal unless conditions are put in place to mitigate the potential impacts on the population.

Sound of Gigha Proposed Special Protection Area - This proposal could be progressed with appropriate mitigation. However, because it could affect internationally important natural heritage issues, SNH object to this proposal unless it is made subject to conditions so that the works are done strictly in accordance with the mitigation detailed in our appraisal. The relocation of the proposed fish farm will cause a likely significant effect for the designated species of interest as result of potential effects on mortality, disturbance from vessel movement, displacement of foraging areas and loss or damage to supporting habitat. Therefore, Argyll and Bute Council will be required to undertake a Habitats Regulations 'appropriate assessment' for the Sound of Gigha pSPA

Benthic Impacts / Horse mussel beds Priority Marine Feature habitat - Horse mussels occur in the general area but it is considered that the proposal is unlikely to result in any significant impacts on the national status of the horse mussel beds PMF habitat.

Inner Hebrides and the Minches candidate Special Area of Conservation - The proposal is likely to have a significant effect on the harbour porpoise interest of the site. Consequently Argyll and Bute Council is required to carry out a Habitats Regulations 'appropriate assessment' in view of the site's conservation objectives for its qualifying interest.

The findings of the Landscape and Visual Impact Assessment are accepted.

Updated response 10.01.19: In response to our consultation on 3rd September 2018 when we objected to the proposal on the basis of potential impacts on a confidential special and suggested ways that the application could be amended to safeguard this interest. The Scottish Salmon Company have amended their confidential Addendum to the associated Environmental Management Plan. The addendum describes procedures for monitoring wild fish components in the vicinity of the fish farm, reporting on the results, and feedback mechanisms for adjusting management of the fish farm should concerns arise regarding impacts on the confidential protected species. We feel that this provides a robust structure for safeguarding the confidential protected species, and consequently we can withdraw our objection to this issue on this basis.

Argyll and District Salmon Fishery Board (dated 25/10/18): The application for an increase in biomass from 600 to 2,500 tonnes should not be granted due to the anticipated harmful impacts on wild salmonids.

Royal Yachting Association (9/8/18): No objections.

Biodiversity Officer (dated 10/8/18): The application lies in the Sound of Gigha which is currently being proposed as a Special Protection Area albeit that it is in draft; the selected non-breeding bird species are Great Northern Diver, Common Eider and Red-breasted Merganser.

The Area is noted for Harbour Porpoise (Biodiversity Action Plan Species) and that ADDs are proposed as a deterrent.

Burrowed Mud, a biodiversity action habitat was identified allied with a scattering of Horse Mussel in the form of aggregations (as Biodiversity Action Plan species which can form Beds), these are deemed not large enough to be classified as Beds.

Environmental Health (3/8/18): No comments.

Scottish Environmental Protection Agency (dated 6/9/18): SEPA has received and evaluated an application for a technical variation for this proposal under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR). The variation is in the process of being issued.

The fish farm would lie approximately 1.5 south of the Inner Hebrides and The Minches Special Area of Conservation designated for Harbour Porpoise. SEPA has a responsibility under the Habitats Regs. to carry out an assessment as part of the CAR application process; this relates to the discharge of nutrients, organic waste and chemical therapeutants only. The assessment considered that the controlled activities will not have a likely significant effect on the designated feature in the protected area.

West Highland Anchorages and Moorings Association (dated 25/7/18): No objections.

West Coast Regional Inshore Fishery Group: No response to date.

Gigha Community Council (dated 12/10/18): Support the application. The Isle of Gigha and its community have benefitted hugely from the industry of fish farming for more than 30 years with very little detriment to the environment. Without the fish farm supporting local business there is the very real possibility there would be no or very limited provisions available such as petrol, diesel etc. and also the fish farms greatly assist with the

transportation of necessary items to the island. The fish farms also provide much needed local employment and good wages which is another reason we must support this sustainable industry.

(E) PUBLICITY:

Environmental Assessment Regs Advert – expired 31.08.2018

Regulation 20 Advert Local Application – expired 24.08.2018

(F) REPRESENTATIONS:

MSP Objection

John Finnie MSP The Scottish Green Party 16/22 Market Hall Victorian Market
Inverness IV1 1PJ 29.08.2018

Objectors

Salmon & Trout Conservation Scotland, No address given 16.08.2018

Friends of The Sound of Jura, No address given 16.08.2018

RSPB c/o Andy Robinson South and West Scotland Regional Office, 10 Park Quadrant,
Glasgow 09.10.2018

Argyll Bird Club c/o Mr Nigel Scriven, 14 Taylor Avenue, Kilbarchan, Johnstone PA10
2LS 05.09.2018

Argyll and Bute Branch of the Scottish Green Party, c/o Anneliese O'Brien, Gate Lodge
Strachur, Argyll PA27 8BX 29.08.2018

Argyll and Bute Branch of the Scottish Green Party, c/o Mary MacCallum Sullivan No
Address Given 27.08.2018

Mr Dennis Archer, 2 The Meadows, Toward, Dunoon 26.08.2018

Mr Christopher Thornton, Fasgadh, Kilmartin, Lochgilphead 27.08.2018

Mr Philip Price, Hawthorn, Ardlarach Road, Ardfern, Lochgilphead 31.08.2018

Mr Nigel Scriven, 14 Taylor Avenue, Kilbarchan, Johnstone PA10 2LS 31.08.2018

Mrs Elaine Morrison-Jures, Heather Lea, Ardmish, Isle of Gigha 29.08.2018

Mrs Christine McLelland, Larachbeag, North Campbell Road, Innellan, Dunoon
27.08.2018

Ed Tyler, Ron Mara, North Beachmore, Muasdale PA29 6XD 27.08.2018

Carina Spink, Ron Mara, North Beachmore, Muasdale PA29 6XD 27.08.2018

Catherine M Cameron, No Address Given 28.08.2018

Lucy Hollingworth, Aonach Mor, Hamlet Hill, Cove, Helensburgh 28.08.2018

Anne Archer, 2 The Meadows, Toward, Dunoon PA23 7UP 28.08.2018

Toni Calam, Gleniffer, Victoria Park, Minard, Inveraray 28.08.2018

Supporters

Mr Ewen Ferguson, Ardmaleish Boat Building Company, Rothesay, Isle of Bute
01.10.2018

Mr David Huthchens, Geantrees, Ceum-Dhun-Righ, Benderloch, Oban 19.09.2018

Mr Finlay Oman, 2 Burnside Way, Largs KA30 9DL 19.09.2018

Mr William Mcsporrán, 10 Ardmish, Isle of Gigha PA41 7AB 12.10.2018

Rhuaraidh Douglas Edwards, 29 Achlonan, Taynult PA35 1JJ 20.09.2018

Fusion Marine Ltd, European Marine Science Park, Malin House, Suite 5, Dunbeg
20.09.2018

Mr Joseph Teale, Post Office House, Ardminish, Isle of Gigha 10.09.2018
Mr Ben Wilson, Bairneach, Lochdon, Isle of Mull 18.09.2018
Arran Workboats, Whiting Bay, Arran KA27 8PR 26.09.2018
Mr Jamie Young, 136 Anderson Street, Inverness IV3 8DH 19.09.2018
Mr John Bannatyne, 1 Grianan, Isle of Gigha PA41 7AE 04.10.2018
Mrs Audrey Dickie, Gigulum Cottage, Isle of Gigha PA41 7AD 18.09.2018
Mr Keith Helm, Gigulum, Isle of Gigha PA41 7AD 04.10.2018
Christopher Hyde, OTAQ Ltd, Office Scottish Marine Institute, Dunstaffnage, Dunbeg
Oban 17.09.2018
Ken Deacon, Gigha Hote,l Ardminish, Isle of Gigha 14.09.2018
Gavin Kerr, Drimdarroch, New Build Strathlachlan, Cairndow 20.09.2018
Mr Mark Johnstone, 1 Achahoish, Achahoish, Lochgilphead 19.09.2018

(i) Summary of issues raised

Objections

Disturbance to cetaceans

- ADDs should not be allowed on this fish farm as they will disturb porpoises and other cetaceans which regularly use the Sound of Jura.

Comment: In order to maintain containment in the interests of both securing production and avoiding escapees posing adverse consequences for wild fish, the applicants may need to resort to the use of ADD's as a non-lethal means of deterring persistent seal attack where there is risk of containment being lost. Successful use of ADD's avoids need to resort to the licensed shooting of seals, which are themselves a protected species. SNH as the government's nature conservation advisory body advises the Council as part of the planning process as to whether ADD use is appropriate at a particular site, and if so, under what circumstances. SNH has concluded in this case that although the development poses potentially significant effects, provided that ADD deployment is controlled via condition in the manner recommended by them, SNH does not object to the proposal.

Wild Fish Interactions

- Sea lice infections are likely to be transmitted to wild fish and the chemical treatments used cause pollution to surrounding waters.
- The sea lice produced by the fish farms in these regions will have severely damaged wild salmon and sea trout populations over the last three production cycles. If the company could not achieve CoGP levels at Tarbert East with only 600 tonnes biomass, what hope have they of doing better with 300% more fish?
- The sea lice larvae from East Tarbert Bay farm have a cumulative effect with those from Druimeyeon Bay. Together they are major threat to wild salmonids.

- There is clear evidence that fish farmers do not currently succeed in controlling sea lice on farms to the detriment of wild salmon and sea trout populations outside the cages.
- The SAMS Report for the ECCLR Committee has concluded that the main treatment methods used in Scotland are experiencing reduced efficacy in dealing with sea lice on farms.
- The Council has a duty to further the conservation of biodiversity in exercising its functions. That must include furthering the conservation of Priority Marine Features (PMF) such as wild salmon and sea trout and the likely impact of the application being made on that aim.
- The East Tarbert Fish Farm has had a poor record of controlling sea lice figures in the past. These used chemical sea lice treatments which will be relied on should the proposal be approved.
- It is considered that the Council cannot grant permission at the same time as meeting its duties under the Nature Conservation (Scotland) Act 2004.

Comment: See assessment

Nature Conservation Designations

- The Sound of Gigha is of significant environmental importance as identified by its designation as a proposed Special Protection Area under the Habitats Directive 1994. Of particular interest are the three qualifying species; Great Northern Diver, Common Eider and Red-breasted Merganser. Recorded Argyll Bird Club numbers show that spring numbers of Northern Divers can exceed 600.
- The EIA Report contains no assessment on the potential implications of the fish farm impacts on the pSPA with no consideration of impacts on supporting habitats and therefore prey species of the pSPA qualifying features. Insufficient information is contained within that to inform a formal Habitat Regulation Appraisal (HRA).
- Disagrees with previous advice provided by the Marine and Coastal Officer who has stated that burrowed mud PMF indicator species were not found at the site. Also questions the conclusions of the video survey report. It is contended that burrowed mud PMF within the Allowable Zone of Effect (AZE) will be destroyed by effluent from the farm, such that the Infaunal Trophic Index will be less than 30 – there will be only a few species of burrowing worms left.
- The survey in relation to the horse mussel PMF was not exhaustive and the PMF should be protected and allowed to recover.
- There is no indication of what kind of mitigation can protect the horse mussel PMF from harm, or the burrowed mud PMF. Has SNH advised that no significant impacts on species or habitats of national conservation importance will result from the proposed development?

- It would seem likely that Great Northern Divers could be affected by chemicals that are used to treat sea lice given the medicines effect as a nerve agent in arthropods and their inferred impact on marine bethos.
- The applicant's EMP envisages no monitoring of adaptive management and is totally inadequate to allow the Council to meet its duty under the Nature Conservation (Scotland) Act 2004 in respect of the conservation of biodiversity.
- The local seal population and many wild fish species are likely to suffer as a result as they are considered to be both predators (in the former instance) and prey (in the latter).

Comment: See assessment and appropriate assessments in appendices B and C

Amenity Considerations

- The EIA Report details mitigation measures to reduce disturbance by vessel movements, however, there does not appear to be any proposed mechanism to monitor the effectiveness of any of these mitigation measures.

Comment: It is the responsibility of the operator to conduct the activity in accordance with the EIA report. Under European Protected Species (EPS) legislation it is an offence to knowingly or recklessly disturb an EPS.

Tourism Impacts

- The island is dependent on tourism and a clean environment. Fish farming is damaging to the environment.

Comment: There is no demonstrable evidence to suggest that aquaculture materially influences the decisions of tourist to visit or to return to areas where developments have been carefully located under the auspices of the planning system.

Economic Considerations

- The proposal will do substantial harm to the environment and will only create one further FTE position.
- The area is prime creel and dredger fishing ground for prawns. Prawns and other crustaceans are poisoned by emamectin benzoate.
- There is a risk to local fishermen's livelihood through damage to the sea bed and marine life.

Comment: Anticipated economic benefits in terms of direct and indirect employment associated with the construction and operation of a fish farm, and downstream economic activity and benefits to the export economy will all be material considerations which weigh in favour of a development proposal, whilst adverse effects upon existing non-fish farm related businesses and activities

should be regarded as negative influences. It is for the decision-makers to weigh the relative merits of these in the balance of decision-making. It should be noted that SEPA's regulatory process is the appropriate function to control discharges (including chemical treatments) from the proposed development to the marine environment.

Procedural issues

- The Council is not capable of judging the significance of the harm to wild salmonids because it lacks critical expertise and is given ambiguous advice by Marine Scotland which it has described as "sitting on the fence".
- No new marine fish farms, including any increase in farmed fish biomass at existing sites, should be licenced until the environmental problems the industry causes as identified by the Environment, Climate Change and Land Reform Committee, are understood and resolved.
- Too little focus on the application of the precautionary principle has been applied by the sector and decision makers.

Comment: See assessment regarding sea lice. SPP advises that decisions should be taken in the context of available information and policy and that impediment should not be placed in the way of development on the grounds of anticipated changes in circumstances which do not pertain at the point of decision making. SPP requires that in the event of apprehended significant environmental damage, consideration should be given to elimination of that risk. That is clearly the preferential course of action and should be explored in the first instance. SPP goes on to note that if there is uncertainty, the potential for research, surveys or assessment to remove or reduce uncertainty should be considered. It is therefore legitimate in those circumstances to consider whether measures to reduce risk can render acceptable an otherwise unacceptable proposal. With regard to the precautionary principle, this would be adopted in cases of 'reasonable scientific doubt' in relation to European Habitats and Species. The conclusions of the accompanying appropriate assessments do not suggest that a precautionary approach is required.

Support

- The fish farming industry are major employers not only on Gigha but throughout the Kintyre area. They bring much needed employment to the area, which in turn keeps families living in our rural communities and supporting the rural economy.
- The fish farms are needed particularly on Gigha where there are limited employment opportunities. The employment helps to sustain the island population and local businesses.
- The fish farming industry is constantly monitoring and upgrading their operational systems to keep the local environment safe.

- Farmed salmon is now the largest food export from the UK and is contributing significantly to levelling the balance of payments of both Scotland and the UK's economy.
- Wild salmon populations were devastated long before the advent of salmon farming and continue to be pressurised by illegal fishing, seal predation and angling in the rivers, not to mention damaged gravel beds caused by afforestation.
- Aquaculture employment provides justification for young people to stay within or come back to a community they grew up in. A career in aquaculture offers multiple levels of employment.

Note: The foregoing comments represent a summary of the representations. Full details of all representations can be viewed on the Council's Public Access System at: www.argyll-bute.gov.uk

(G) SUPPORTING INFORMATION

Has the application been the subject of:

(i) EIA Report: Yes

The EIA Report sets out the details of the proposal, site selection process; identifies the main characteristics, nature and scape of the impacts of the development and includes assessment of the impact of the proposals and necessary mitigation measures in respect of:

Benthic Impacts;

Water Column Impacts;

Interaction with wild salmonids and fisheries;

Impacts upon species or habitats of conservation importance, including sensitive species;

Landscape and Visual Impacts.

(ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: Yes

Habitats Regulations 'appropriate assessments' are required as follows:

Sound of Gigha proposed Special Protection Area: The relocation of the fish farm will likely have a significant effect upon the designated species of interest as a result of potential effects on mortality, disturbance from vessel movements, displacement of foraging areas and loss or damage to supporting habitat.

Inner Hebrides and the Minches candidate Special Area of Conservation: The proposal is likely to have a significant effect on the harbour porpoise interest of the site.

These are attached as Appendices B and C to this report.

(iii) A design or design/access statement: No

- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** Yes

East Tarbert Bay ADD Deployment and Usage Plan dated August 2018

Consultation Analysis Summary Report dated September 2018

Letter date 8th November 2018 in response to the consultation response from the Argyll District Salmon Fisheries Board (ADSFB).

It should be noted that these supporting statements have been provided for additional clarification and are not considered to constitute 'additional environmental information'. As such, these additional documents have not been advertised under the EIA Regulations.

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No
-

- (J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

Argyll and Bute Local Development Plan adopted March 2015

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones

LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment

LDP 5 – Supporting the Sustainable Growth of Our Economy

LDP 9 – Development Setting, Layout and Design

Supplementary Guidance

SG LDP ENV 1 – Development Impact of Habitats, Species and Our Biodiversity (i.e. biological diversity)

SG LDP ENV 2 – Development Impact on European Sites

SG LDP ENV 3 – Management of European Sites

SG LDP ENV 7 – Water Quality and the Environment

SG LDP ENV 13 –Development Impact on Areas of Panoramic Quality (APQs)

SG LDP ENV 14 –Landscape

SG LDP CST 1 - Coastal Development

SG LDP AQUA 1 – Aquaculture Development

Annex A – Planning Process for Aquaculture Development

Annex B – Council Adopted Marine and Coastal Plans

Annex C – Responsibilities of Statutory Authorities in Relation to Aquaculture Development

Annex D – Marine Planning Area for Aquaculture Development

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.**

Scotland's National Marine Plan (2015)

Scottish Planning Policy (2014)

Scottish Parliament Rural Economy and Connectivity Committee: Salmon Farming in Scotland (November 2018)

Circular 1/2007 'Planning Controls for Marine Fish Farming'

'A Fresh Start – the Renewed Strategic Framework for Scottish Aquaculture' (Scottish Government 2009)

Scottish Executive – *'Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters'* (updated March 2018)

'Argyll and Bute Economic Development Action Plan' 2013 -18 (Argyll and Bute Council)

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- (K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No**
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(L) Has the application been the subject of statutory pre-application consultation (PAC): No

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: Yes

In deciding whether to exercise the Council's discretion to allow respondents to appear at a discretionary hearing, the following are of significance:

- How up to date the Development Plan is, the relevance of the policies to the proposed development and whether the representations are on development plan policy grounds which have recently been considered through the development plan process.
- The degree of local interest and controversy on material considerations together with the relative size of community affected set against the relative number of representations, and their provenance.

The current Local Development Plan was approved in 2015 and the relevant policies within it are not considered to be outdated.

At the time of writing this application has attracted 19 objections and 17 expressions of support. Objection has been raised by the Argyll District Salmon Fishery Board in its capacity as a statutory consultee. Given the level of interest in the application and the complexity of the issues raised, it is considered that there would be merit in holding a pre-determination Local Hearing to allow Members to visit the site, question participants and consider the arguments on both sides in more detail. It is the view of officers that this would add value to the decision-making process.

(P) Assessment and summary of determining issues and material considerations

This application seeks permission for the relocation, re-equipment and enlargement of an existing fish farm to a location approximately 280 metres to the east of an existing fish farm located off the north-east coast of the Isle of Gigha, at East Tarbert Bay. The proposed fish farm would comprise 12 No. 120m circumference cages (the existing farm has 12 No. 80m circumference cages). A feed barge is also proposed and this would have a capacity of 350 tonnes. The maximum stocked biomass would be increased to 2500 tonnes (the existing site is currently 600 tonnes). The proposal represents what would be,

in effect, an alternative enlarged farm to that which is currently authorised and the existing site would be de-equipped. In planning terms this has been viewed as a new fish farm site. An EIA Report accompanies this application.

The main determining issues relation to this application which are covered within the EIA Report include benthic (seabed) impacts, water column impacts, interaction with wild salmonid and fisheries, impacts upon species of conservation importance including sensitive species and landscape and visual impacts.

The proposal has been assessed against the polies of the adopted Local Development Plan with particular regard to the criteria based approach of the aquaculture supplementary guidance policy AQUA 1 as well as other material considerations and policies within the plan.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why planning permission or a Planning Permission in Principle should be granted

The proposal satisfies the criteria set out in Policy SG AQUA 1 . It is considered that there would be no significant seascape / landscape or visual impacts raised by the proposal and that effects on habitats, species and nature conservation would be acceptable subject to mitigation. The proposals for sea lice management contained within the Environmental Management Plan provides measures to address elevated sea lice levels should they occur. The positive economic contribution of the fish farm also gives weight in favour of this development.

The proposal also complies with other relevant policies of the Council's Local Development Plan and there are no material considerations, including matters raised by consultees and third parties, which would indicate that the provisions of the development plan ought not to prevail.

(S) Reasoned justification for a departure to the provisions of the Development Plan

Not applicable

(T) Need for notification to Scottish Ministers or Historic Scotland: Not required.

Reviewing Officer: Richard Kerr

Date: 7/11/18

Angus Gilmour
Head of Planning, Housing and Regulatory Services

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO.18/01561/MFF

1. The development shall be implemented in accordance with the details specified on the application form dated 5/7/18 and the approved drawings:

General Location of Proposed Development;
Location Plan showing surface equipment of existing sites and proposed site location;
Location Plan showing existing East Tarbert Bay location and proposed East Tarbert Bay location;
Location Plan showing proposed development location only;
KNN-01-0299 Rev 1;
T4003D120/48/BNSP;
MGL2x6TSSC ETB (1);
KNN-02-0370 rev 4;
Grid Layout Plan
GFE_SM_SSC_350_GA_00001 rev A 1of 3;
GFE_SM_SSC_350_GA_00001 rev A 2of 3;
GFE_SM_SSC_350_GA_00001 rev A 3of 3;
Admiralty chart extract showing proposed development;
Schematic diagram showing proposed development.

unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

2. The stocking of the site shall not exceed a maximum biomass of 2,500 tonnes.

Reason: In order to restrict production to that assessed for the purposes of this application in the interests of managing wild fish interactions.

3. Notwithstanding the details provided with the Escapes Contingency Plan contained within Annex 6 of the EIA Report, gillnets shall not be used for recovering escaped fish during the period from mid-August to mid-May in any year (which is the over-wintering period which encompasses all pSPA qualifying species).

Reason: In the interests of the conservation of the qualifying species of the pSPA.

4. No anti-predator nets shall be used at the development hereby approved.

Reason: In the interests of the conservation of the qualifying species of the pSPA.

5. The new fish farm shall not be brought into use until the existing fish farm has been permanently de-equipped and the Crown Estate lease surrendered. The decommissioning of the existing fish farm and the installation of the fish farm hereby approved shall only take place between the beginning of June and the end of August in any year.

Reason: In the interests of the conservation of the qualifying species of the pSPA.

6. The code of conduct laid out in Table 32 of the EIA Report for boat movements shall be strictly adhered to during the construction and operational phases of the

development.

Reason: In the interests of the conservation of the qualifying species of the pSPA.

7. The development shall be operated with sea lice management shall be carried out fully in accordance with the Environmental Management Plan and the confidential Addendum dated November 2018, July 2018 contained within Annex 11a of the EIA Report.

Reason: In the interest of the protection of wild salmonids.

8. The development shall be carried out and operated in accordance with the mitigation measures identified in the EIA Report. Section 7 of the EIA Report provides a summary of all mitigation measures proposed.

Reason: In order to ensure that the development can be installed and brought into use without causing significant environmental effects.

9. Any deployment and use of Acoustic Deterrent Devices (ADD's) at this site shall be in accordance with the ADD deployment plan dated August 2018 included in the supporting information accompanying the application submission, or such alternative as may be agreed in advance in writing by the Planning Authority in consultation with Scottish Natural Heritage. In the event of ADD deployment, the operator shall maintain a log which details:

- a. the model and specification of any ADD deployed at the site;
- b. the dates and durations of ADD operation;
- c. the prompt for use (manual or auto sensor)
- d. details of any predation events;
- e. other anti-predation measures deployed at the time of ADD use;
- f. details of person(s) responsible for maintaining the log.

The log shall be maintained available for inspection on request by the Planning Authority.

Reason: In order to avoid disturbance of harbour porpoise and to maintain the favourable conservation status of this species within the Hebrides and Minches candidate Special Area of Conservation and to avoid disturbance of other marine mammals in the interests of nature conservation.

10. The moorings required for the fish farm hereby approved shall be attached using drop down video to allow them to be micro-sited to avoid any areas of horse mussel.

Reason: In order to protect this Priority Marine Feature.

11. In the event that the development or any associated equipment approved by this permission ceases to be in operational use for a period exceeding three years, the equipment shall be wholly removed from the site thereafter, unless otherwise agreed in writing by the Planning Authority.

Reason: In the interest of visual amenity and to ensure that redundant development does not sterilise capacity for future development within the same water body.

12. In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, the developer shall carry out or make suitable arrangements for the carrying out of all measures necessary for lighting, buoys, raising, repairing, moving or destroying, as appropriate, the whole or any part of the equipment.

Reason: In the interest of visual amenity. The finished surfaces of all equipment above the water surface, excluding the feed barge, but inclusive of the surface floats and buoys associated with the development hereby permitted (excluding those required to comply with navigational requirements) shall be non-reflective and finished in a dark recessive colour in accordance with colour schemes to be agreed in advance of development commencing in writing by the Planning Authority (by way of BS numbers or manufacture's specifications) unless otherwise agreed in advance in writing by the Planning Authority. The feed barge shall be finished externally in a colour scheme which has been agreed in advance in writing by the Planning Authority and shall be maintained as such thereafter unless any variation thereof is subsequently agreed in writing.

Reason: In the interest of visual amenity.

NOTES TO APPLICANT

1. **The length of this planning permission:** This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
2. In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
3. In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
4. The Aquatic Animal Health (Scotland) Regulations 2009 requires the authorisation of all Aquaculture Production Businesses (APBs) in relation to animal health requirements for aquaculture animals and products thereof, and on the presentation and control of certain diseases in aquatic animals. The authorisation procedure is undertaken on behalf of the Scottish Ministers by the Fish Health Inspectorate (FHI) at Marine Scotland Marine Laboratory. To apply for authorisation for an APB or to amend details of an existing APB or any site that an APB is authorised to operate at, you are advised to contact the FHI as follows: Fish Health Inspectorate, Marine Scotland Marine Laboratory, 375 Victoria Road, Aberdeen AB11 9DB Tel. 01224 295525 Email: ms.fishhealth@gov.scot
5. All marine farms, whether finfish, shellfish or algal, are required to apply for a marine licence under Part 4 of the Marine (Scotland) Act 2010. To apply for a marine licence, or to amend details of an existing marine licence (formally Coast Protection Act 1949 – Section 34 consent), please visit the Scottish Government's website at <http://www.scotland.gov.uk/Topics/marine/Licensing/marine/Applications> where application forms and guidance can be found. Alternatively you can contact the Marine Scotland Licensing Operations Team (MS-LOT) by emailing MS.MarineLicensing@Scotland.gsi.gov.uk; or calling 01224 295 579.
6. It is an offence to recklessly or intentionally disturb a European Protected Species, other than in the event of an activity subject to a EPS Mitigation Licence. It is open to the operator to apply for such licensing from the Scottish Government in circumstances where operational activity would have impacts upon an EPS which would otherwise be illegal. This could arise from, for example, de-equipment of the existing farm during a sensitive time of year for protected birds or by activity likely to disturb cetaceans.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 18/01561/MFF

PLANNING LAND USE AND POLICY ASSESSMENT

A. Introduction

This application is for the relocation re-equipment and enlargement of an existing fin fish farm to a site approximately 300 metres to the east of the existing farm at East Tarbert Bay off the north-east coast of the Isle of Gigha. The proposed site will comprise 12 x 120m circumference flotation rings from which nets will be suspended, held in one group within a 65 m by 65 m grid matrix. The net depth would be 10m. A feed barge is also proposed. The proposed maximum biomass for the site would be 2,500 tonnes.

This differs from the existing site which has 12 x 80m circumference cages within a 50m x 50m mooring grid. The feed at the existing site is delivered by cannon feeders based on a work boat and the maximum stocked biomass of the farm is 600 tonnes. The existing site has a stocking density of 19.5 g/m³, whereas the proposed fish farm would be 18.2 g/m³.

Feed for the existing fish farm is delivered by lorry to the shore base where it is then stored until required and then transported to the site by boat. As the new development includes a feed barge, feed will normally be delivered by boat although feed deliveries by road may still be required at the start of the production cycle. The overall number of road deliveries will, however, be significantly reduced when compared to the existing situation. Stocking and harvesting of fish would be by well boat.

B. Location

There has been a long standing fin fish site at East Tarbert Bay which was originally authorised under the Crown Estate leasing process, following consultation with the Council in 2001. The site has subsequently been granted planning permission by the Scottish Government under the Audit and Review process. In the event that permission is granted for this proposal, the existing site would be permanently de-equipped.

The application site lies off the LDP defined 'countryside' development management zone, which in turn confers 'undeveloped coast' status. The closest aquaculture development is a further fin fish farm at Druimeyeon Bay also operated by the applicant, which is to the south of the proposed site. The site lies outwith any marine, landscape, nature conservation or historic environment designations.

C. Planning Policy

The proposal benefits from general support from the Scottish Government's National Marine Plan and from Scottish Planning Policy, which together recognise the contribution of the aquaculture sector to the rural economy and which seek to support sustainable economic development. The National Marine Plan and Scottish Planning Policy both support the expansion of marine fish farming where it can take place in environmentally sustainable locations, where it does not exceed the carrying capacity of the water body within which it is to be located, and where it does not give rise to significant adverse effects

upon nature conservation, wild fish, historic environment or other commercial or recreational water users.

LDP Supplementary guidance SG LDP AQUA 1 – Aquaculture Development provides a general framework against which fish farm applications should be considered, along with other relevant LDP policy and SG.

The following Local Development Plan provisions are applicable to this development:

Policy LDP STRAT 1 – Sustainable Development supports the presumption in favour of sustainable economic development established by Scottish Planning policy and lends weight to aquaculture developments unless there are environmental considerations which outweigh this presumption.

Policy LDP DM 1 – Development within the Development Management Zones – Land immediately west of the site is designated as ‘countryside’ zone.

Policy LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment – seeks to control development in a manner which protects, conserves or where possible enhances the built, human and natural environment.

Policy LDP 5 – Supporting the Sustainable Growth of Our Economy – requires regard to be had to economic benefit and the spatial needs and locational requirements of business sectors.

Policy LDP 9 – Development Setting, Layout and Design – requires that regard should be had to the setting of developments, the sensitivity of the receiving environment and the need to secure appropriate forms of scale, design and appearance.

Supplementary Guidance SG LDP AQUA 1 – Aquaculture Development stems from Policy LDP 5 which identifies aquaculture as a key economic sector in Argyll & Bute. It sets out criteria against which the locational and operational characteristics of a development require to be assessed. Proposals are to be supported if direct, indirect or cumulative significant effects are avoided, or adverse effects can be minimised or mitigated by operational measures.

Beyond development plan considerations, in determining the application regard has to be had to the Council’s Economic Development Action Plan which identifies aquaculture as an important contributor to the local economy, and to national government economic and sectoral policy, the stated intention of which is to seek to expand the finfish sector substantially to meet internal and export demands and to help sustain direct and indirect employment in rural areas.

A further recent consideration prompted by continuing demands from wild fish interests for more stringent controls over marine fish farming, has been the Scottish Parliament’s Rural Economy and Connectivity Committee Inquiry into Salmon Farming in Scotland, the adopted remit of which is:

'to consider the current state of salmon industry in Scotland, identify opportunities for its future development and explore how the various fish health and environmental challenges it currently faces can be addressed'.

The report on salmon farming in Scotland was published on 27th November 2018. This contains 65 recommendations for the Scottish Government to consider. Whilst the report is critical of the way in which the salmon industry operates, recommendation 3 concludes that there is insufficient evidence to support a moratorium on new salmon farm development and the expansion of existing sites.

D. Assessment Against Policy Criteria

Assessment of the proposal in this case will primarily be against the criteria set out in sector specific supplementary guidance SG LDP AQUA1. There is a requirement to consider the locational and operational characteristics of the development against each of the specified criteria with the presumption that proposals will be supported where:

- Direct, indirect or cumulative significant adverse effects on the criteria are avoided in relation to the locational characteristics of the development (*this would be relevant in this case in terms of the impact of the development upon nature conservation designations, for example*);
- The applicant can demonstrate that the level of risk of potential impacts on criteria relating to the operation of the site can be effectively minimised or mitigated by appropriate operational measures (*this would be relevant in this case to the impact of the operation of the development upon wild fish interests*);

- Proposals are consistent with other local and national policies and guidance

The eight development criteria set out in SG LDP AQUA 1 are reviewed in the sections below.

1) Landscape/Seascape and Visual Amenity

The EIA Report includes a Seascape and Visual Impact Assessment. Following an initial site assessment and review of the Zone of Theoretical Visibility (ZTV) it was considered that any potentially significant effects on the seascape character and visual amenity would be likely to occur within 5km of the proposed development, therefore, a 5km radius study area from the proposed barge centre has been adopted.

In landscape and visual terms the key components of the proposed development have been identified as:

- Relocation of the farm into deeper water approx. 280m further offshore than the existing site;
- The replacement of 12 circular cages (80m circumference, 25.5m diameter) by 12 larger circular cages (120m circumference, 38m diameter).
- The existing cages have anti predator bird nets supported by a hamster wheel support structure, with a maximum height of 2m above sea level. The proposed cages have

nets supported by perimeter poles with top nets with a maximum of 5 metres above sea level.

- There is no feed barge on the existing site. Feeding is via a cannon feeder from a boat. It is proposed to install a Seamate 350T feeding barge (max 6m height above sea level, with displacement dependant on feed tonnage).

Visualisations have been produced from five viewpoints in accordance with SNH guidance.

There are no nationally designated landscapes / seascapes with the study area. In terms of the regional context, there is an Area of Panoramic Quality (APQ) 4km from the site, and, therefore this is included in the seascape assessment. There are also small stretches of isolated coast within the study area. These are limited to a number of small islets 1-5km from the site and these are also included within the seascape assessment.

Two Local Coastal Character Types (LCCTs) have been identified within the study area. These are:

LCCT1: Smooth shoreline with shingle margins and low, pastoral hinterland;

LCCT2: Indented, rocky shoreline with small sandy bay, low cliffs and knolly hinterland.

In terms of visual amenity, two categories of visual receptor have been identified. These are receptors in buildings and receptors on routes (roads, boats and land-based recreational routes). Receptors in buildings with theoretical visibility are limited to those in properties along the public road just north of Ardmish and at a distance from Point House / Point Sands Holiday Park on the mainland (although views from the latter are screened by foreground coniferous trees). Potential views from 'Kinerarach', the closest dwelling (1.2km away), are screened by a foreground conifer plantation. A house under construction nearby with a view unobstructed by trees was uninhabited at the time of the assessment. Potential views from the village of Ardmish are limited to the high point adjacent to the village store and post office.

Receptors on the roads with theoretical visibility are located on some of the minor roads between East Tarbert Bay and Ardmish. The mainland A83(T) lies outwith the ZTV study area.

Theoretical visibility on boats are indicated by the north-south Royal Yachting Association (RYA) sailing route. This is represented by Viewpoint 4 in the assessment. There are also two ferry routes between Islay and West Loch Tarbert to the north and the Gigha ferry to the south. These are in excess of 2km away and considered unlikely to experience any significant visual effects. Receptors on recreational routes with theoretical visibility of the development are located along the Kintyre Way long distance walking route.

In order to represent the views obtained by visual receptors five representative viewpoints have been selected. These are as follows:

VP1: Near Tarbert Farm on minor road;

VP2: East Tarbert Bay below minor road;

VP3: Ardminish, near shop;

VP4: Boat transit, shipping lane;

VP5: Kintyre Way near A83

The seascape assessment concludes that there would not be significant effects on the seascape character of the two LCCTs. This is largely due to the context of the existing fish farms reducing sensitivity to changes and the juxtaposition to the Gigha coastline which acts as a back-cloth to the development when experienced from seaward and mainland coastal seascapes. Potential views of the proposed development from 'Kinerarach' are screened by a foreground conifer plantation. It should however be noted that where commercial forestry is concerned cyclical felling and replanting will give rise to periods when the development would be more visible. Nearby landward views from roads are largely restricted to VP 2 and 3. However, there would be 'moderate' and therefore 'significant adverse effects' from VP2, 1.7km from the site. No other significant landward effects were identified.

In terms of boats, the study concludes that most would experience the development from a distance generally from a moving boat as part of a longer journey in which there are various point of visual interest in multiple directions, which would not lead to significant effects arising.

The report concludes that the proposed development would either be screened or viewed at a distance, and change would not be perceived as being significant. The new fish farm would be aligned with a longer, smoother stretch of coast rather than the more fragmented coastline of East Tarbert Bay. It would have relatively limited inter-visibility with both local coastal character areas and visual receptors due to screening from potential receptor locations by foreground topography and trees. Where there is theoretical visibility, effects are limited to the local area, where the difference in size, orientation and relationship could be perceived.

The conclusions of the assessment have been accepted by officers and have not been contested by SNH. The proposal does not present landscape/seascape character or visual amenity consequences of such a magnitude as to warrant refusal of planning permission on these grounds.

2) Isolated Coast and Wild Land

There are no designated areas of wild land which would be impacted by the proposal. The site itself lies within the designated 'undeveloped coast'. As noted above, there are small areas of more sensitive 'isolated coast' within the study area. These occur on the islets around Gigha and these have been fully considered in the Seascape and Visual Impact Assessment which has been considered in the previous section. This concludes that the proposal would not result in significant effects on either the seascape or visual resource and would not significantly degrade assets within the designated 'isolated coast'.

3) Historic or Archaeological Sites and their settings

The proposal does not lie within any protected wreck sites and does not pose significant impacts upon the settings of any terrestrial historic environment assets. Accordingly, the proposal may be accepted in terms of its implication for the historic environment.

4) Priority Habitats and Species (including wild migratory salmonids) and designated sites for nature conservation

SNH has advised that the proposal could affect a nationally important population of a protected species, details of which have been submitted in a confidential annex. In this regard SNH noted that they either object to the proposal until the further information requested is supplied or they object to the proposal unless conditions are put in place to mitigate the potential impacts on the population. Following further discussion between the applicant and SNH a confidential Addendum to the proposed Environmental Management Plan has been agreed. This addendum describes procedures for monitoring wild fish components in the vicinity of the fish farm, report on the results, and feedback mechanisms for adjusting management of the fish farm should concerns arise regarding impacts on the confidential protected species. SNH has subsequently withdrawn the objection.

The proposed site is located within the Sound of Gigha proposed Special Protection Area (pSPA) selected for its qualifying interest of wintering great northern diver, red-breasted merganser, eider and Slavonian grebe. SNH has indicated the need for the Council as determining authority to carry out a Habitats Regulations 'appropriate assessment' as part of the decision-making process. This can be found in Appendix B to this report. It concludes that although without mitigation the proposal could present significant effects, with identified mitigation in place, significant effects will not result upon the site's conservation objectives for its qualifying interest.

The proposed site also lies 1.5km south of the Inner Hebrides and Minches candidate Special Area of Conservation (cSAC) which has been selected for its qualifying interest of harbour porpoise. Again SNH has indicated the need for the Council as determining authority to carry out a Habitats Regulations 'appropriate assessment' as part of the decision making process which can be found in the Appendix C to this report. It concludes that although without mitigation the proposal could present significant effects, with identified mitigation in place, significant effects will not result upon the site's conservation objectives for its qualifying interest.

The operation of Acoustic Deterrent Devices employed to repel seals (ADD's) poses potential consequences for the harbour porpoise cSAC designation, and in response to this the applicant has submitted an ADD deployment plan, which has been produced in consultation with SNH. SNH has recommended that the deployment of ADD's be controlled by condition, and that their usage should be subject to monitoring and reporting. It is important to note that this can be secured by means of a condition; but if Members are minded to approve the application in the absence of such a condition, SNH's stance will in that circumstance be one of objection, in turn prompting notification to the Scottish Ministers before any decision may be made.

SEPA has responsibility under the Habitats Regulations to carry out an assessment as part of the CAR application process. This relates to the discharge of nutrients, organic waste and chemical therapeutants only. Their assessment concluded that the controlled activities would not have a likely significant effect on the designated features of the protected area.

In terms of benthic impacts, SNH has advised that the benthos directly beneath the site consists of mud habitat some of which may represent a Priority Marine Feature (PMF) habitat; Burrowed Mud. This is not considered to be a high quality example and due to the widespread distribution of this PMF in Argyll, including areas of much higher quality habitat, SNH does not consider any potential impacts as a result of this proposal to be of regional or even local significance.

Horse mussel beds are a further PMF and these have been identified to the north of the proposed site. SNH disagree with the survey which state that horse mussels present would not be considered a bed. SNH has defined horse mussel beds as being formed from clumps of horse mussels and shells covering more than 30% of the sea bed over an area of at least 5m x 5m. They contend that some of the areas identified in the survey appear as though they may meet this criteria and would therefore represent area of PMF habitat. It is estimated that the closest horse mussel record is approximately 80 – 100m from the closest cage edge, and the occurrence and density of the horse mussels generally increases with distance from the proposed development location, with denser areas appearing to occur mostly beyond approximately 150m from the cage edge. Whilst horse mussels are considered to be sensitive to the pressures associated with finfish farming, the energetic nature of this location is predicted to result in a very limited benthic footprint. SNH has concluded that the risk of any significant impacts occurring on any areas of horse mussel bed will be low. It is therefore considered unlikely that the proposal will result in any significant impacts on the national status of the horse mussel bed PMF habitat. It is further noted that it would appear as though the moorings could overlap the most southerly records of horse mussels. It is however likely to be possible to avoid direct impact on these areas through the placement of moorings by using drop down video to allow micro-siting to avoid any areas of horse mussel.

5) Wild Fish Interactions

a) Containment and risk of escapes

The EIA Report states that there have been no reported escape incidents at the existing Gigha sites whilst under the management of the applicant. However, it is recognised that there are various scenarios which may result in escape events including operational accidents, predator interaction, equipment failure or extreme weather events. The equipment that is installed on site is designed specifically for the conditions predicted at site and attestations for the site equipment have been provided. An Escapes Contingency Plan has been drafted for the proposed site which details the measures to be taken to reduce the potential risk of escape events. The measure contained within this plan are detail within the EIA Report.

It is further noted that the Scottish Government has published a Technical Standard for Scottish Finfish Aquaculture, which outlines requirements for training, equipment specifications and operating procedures with the aim of minimising the risk of escapes across the industry. The applicant is working towards all sites being able to meet the standard by 2020, which is the target date set by the Scottish Government for compliance.

b) Sea lice management

The most intractable issue influencing the interaction between farmed fish and wild fish species is that of sea lice transmission. Farmed fish are routinely hosts to parasitic sea lice, the numbers of which require to be controlled, in order to assure the health of farmed fish and to avoid lice dispersal into surrounding waters. Lice are distributed in the surface level of the sea by wind and tide, and available science suggests that they may travel up to 35km from their source. Wild salmon can be exposed to sea lice from fish farms close to salmon rivers during their migration periods, whilst sea trout tend to remain in coastal waters throughout the year, so are potentially at greater risk.

Sea lice are naturally occurring marine parasitic crustacea that attach to the skin of salmon, and harm the fish by feeding on skin and blood and by causing wounds. Eggs laid by female lice hatch into free-living young that are transported by water movements to both farmed and wild fish. Generally, lice prevalence will be expected to be greater in the second year of production when host fish are more developed. Wild fish interests consider that increased abundance of lice on farmed salmon may correlate with increased numbers of lice on wild salmon in the same water-body. However, cause and effect in the marine environment is difficult to substantiate, and hence whilst it is asserted that there is a correlation between increased numbers of farmed fish and declining wild fish numbers, it is not possible to be scientifically definitive. Wild salmon may be affected by a wide range of environmental conditions including climate change, river modification, and commercial fishing, and naturally occurring sea lice, as well as sea lice derived from farms, so lice transmission from farms is not the only factor affecting conservation status of wild fish populations. Indeed, sea lice levels themselves will be the subject of natural fluctuation in the environment, regardless of the presence of farmed fish.

The well-established method of controlling sea lice has been by chemical means, generally by way of a combination of in-feed treatments and periodic bath treatments. There are five chemicals licensed for use for the purposes of lice control and SEPA imposes limits on usage at individual sites via its CAR licensing process. Over time, resistance developed by lice to the effect of in-feed chemicals has diminished their effectiveness, although this has been offset to a degree by improved bath treatments some of which now take place in contained conditions on board well-boats moored alongside a farm, as an alternative to the more common practice of net shallowing using tarpaulins as a means of containing fish for the administration of chemicals in situ within the cages. The aquaculture industry accepts that consentable chemical treatments alone no longer provide an adequate means of controlling lice on farms, and operators have begun to introduce a broader suite of methods, including biological controls by the use of 'cleaner fish' (wrasse and lumpsucker) and freshwater, water temperature and mechanical cleaning processes, all of which are intended to reduce the lice burden on farmed fish.

The Scottish Salmon Producers Organisation has for some years adopted 'Code of Good Conduct' (CoGP) standards as a means of self-regulating the practices of its constituent members. These include a threshold for the presence of ovigerous lice per fish, based upon weekly counts. The criteria prompting lice treatment are an average of 0.5 adult female per fish (Feb – June) and an average of 1.0 per fish (July – January).

The stocking of greater numbers of fish necessarily increases the potential hosts for sea lice, so even when there is an ability to meet the Scottish Salmon Producers 'Code of Good Practice' (CoGP) targets for sea lice management, increased fish numbers necessarily mean that more sea lice will be released into surrounding waters. It is important therefore to bear in mind that even when adherence with CoGP trigger levels for treatment can be attained by operators, the expansion in the size and numbers of fish farms will in any event, as a result of the increased number of potential hosts, still prompt the release of lice into the environment in substantial numbers. However, it is not necessarily the case that additional biomass will increase the risk to wild fish proportionately to the additional tonnage. Biomass reflects the total permitted tonnage to be held rather than the number of fish to be stocked, so if fish are grown to a larger size before harvesting this will present a lesser number of hosts than if stocking density is higher and harvesting is sooner. Potential host numbers are therefore partly a result of production decisions and are not dependant solely upon maximum biomass.

Wild salmon are a European Protected Species, and having regard to the division of regulatory responsibilities acknowledged in the National Marine Plan, and as part of its biodiversity duty, the Council in its capacity as Planning Authority must assume responsibility for the consideration of the implications of aquaculture development for the welfare of this species. In considering aquaculture applications, the Council therefore has to satisfy itself that there is both an effective and a consentable sea lice strategy identified, and that there are controls in place to ensure that necessary steps are taken in the event that sea lice levels prove not to be capable of being controlled in a satisfactory manner using the measures identified at the application stage. Similarly, the Council has to satisfy itself that proposed containment is adequate in order to minimise the risk of escape events.

Marine Scotland's Fish Health Inspectorate have the responsibility for regulating the health of fish being produced on the farm, but this responsibility does not extend to the consideration of the effects of fish farming upon wild fish; although Marine Scotland does provide wild fish interaction advice to the Council to inform decision-making. SEPA are the regulatory body responsible for licensing biomass permitted to be held on farms and for the permitted use of chemicals, but the propagation of sea lice into the wider environment from within farms is not construed to be 'pollution', and therefore wild fish impacts are not considered as part of their licensing process.

The government is a participant in North Atlantic Salmon Conservation Organisation (NASCO) established by an inter-governmental Convention in 1984. The objective of NASCO is to conserve, restore, enhance and rationally manage Atlantic salmon through international co-operation, taking account of the best available scientific information. It seeks to avoid lice induced mortality which is attributable to the operation of marine farms.

In 2016, in response to declining wild salmonid numbers, NASCO urged operators and regulators to adopt additional corrective measures to ensure that convention obligations can be met.

In response, in July 2017, having regard to the demand by NASCO for more stringent controls, and the government's obligations under the Aquaculture and Fisheries (Scotland) Act 2007, Marine Scotland's Fish Health Inspectorate (FHI) introduced a new Sea Lice Management Policy which now obliges salmon farmers to develop site specific escalation action plans to be implemented when sea lice levels rise above an average of 3 female lice per farmed fish. Furthermore, if levels exceed an average of 8 female adult lice, the new policy prompts enforcement action by the FHI. This can include *inter alia* a requirement for measures such as medicinal treatment, topical bath treatment, mechanical removal, biological interventions, or reduction of the biomass held on the site. The FHI lice control standards have been prompted by Marine Scotland's responsibility for the health of farmed fish. They do not specifically take into account the conservation interests of wild fish, which are the separate responsibility of Planning Authorities. These new standards do, however, provide a regulatory 'backstop' which indirectly benefits wild fish, insofar as they prompt action when lice numbers on farmed fish are elevated well beyond CoGP limits.

In terms of sea lice management, the existing Druimyeon Bay site and the proposed East Tarbert Bay site lie within the Marine Scotland ISA Management Area (MA) 18b and Code of Good Practice (CoGP) Area M-46. The Scottish Salmon Company is the only operator in the CoGP Area M-46. A draft Farm Management Statement (FMS) for the proposed site is contained within Annex 10 of the EIA Report. The measures to be taken at East Tarbert Bay and threshold levels against which decisions regarding action will be taken are detailed in an Environmental Management Plan (EMP) which is contained within Annex 11a of the EIA Report. The purpose of the EMP is to illustrate the proposed actions to ensure effective sea lice management. It identifies strategies and procedures which apply to all SSC sites in the Sound of Gigha. SSC operated an Integrated Sea Lice Management Plan (ISLM) which aims to reduce the use of medicinal products whilst increasing the use of cleanerfish and systems which physically remove sea lice (e.g. hydrolicer). It is advised that the company intends to operate the proposed development in synchrony with the adjacent development at Druimyeon Bay in terms of fallowing, stocking, harvesting and sea lice treatments.

The site is located within the Add and Ormsary region for SSPO quarterly reporting of sea lice counts. There are six active farms in this region resulting in aggregated data, therefore, it is impossible to relate these figures to sea lice control at the Gigha Farm. MSS has advised that the sea lice for this region were 'medium' from October 17 to December 17 with an average lice count of 3.69 over this period. It is also noted that while the biomass is proposed to increase, the stocking density will be slightly lower than the existing farm.

The Argyll District Salmon Fishery Board (ADSFB) is of the view that an increase in biomass from 600 tonnes to 2,500 tonnes should not be permitted. It is the Board's view that this poses a significant increase in risk through sea lice infection and escaped farm

fish. Under the Conservation of Salmon (Scotland) Amendment Regulations 2018 all of the principal salmon and sea trout rivers in the area are categorised as Grade 3 meaning that stocks have already fallen below safe conservation levels. It is also noted that sea lice numbers during the reporting period were high in 2015 and 2106 and it is contended that an increase in biomass will further threaten fish stocks. It is advised that the applicant has not provided or agreed the scope of detail of an EMP in advance with the ADSFB. The ADSFB advise that the applicant needs to demonstrate how they will monitor the response of the environment and wild salmonid fish to the application. They consider that measuring and reporting key indicators are necessary to provide feedback and inform management decisions. The applicant has responded to this advising that the Scottish Salmon Company has developed a robust, integrated sea lice management plan which is outlined in the Environmental Management Plan. This focuses on keeping lice levels to a minimum all year round and details a number of options available and scenarios by which lice control can be achieved.

The nature of the sea lice issue is that the absence of reliable science means that it is not possible to attribute a magnitude of likely impact to a particular farm. Accordingly, judgement has to be made on a risk based approach having regard to what is understood about the characteristics of the receiving environment, background conditions, previous experience in sea lice control at or near the site, and the magnitude of the threat likely to be posed by a particular scale of development once mitigation has been applied.

What is understood in this case is that wild salmonids will be exposed to risk in the Sound of Gigha during the migratory period in the case of Atlantic Salmon, and on an all year round basis in terms of sea trout. It is known that the effectiveness of in-feed treatments against lice on farms is diminishing, and alternative methods are being employed (cleaner fish, mechanical treatments etc.) in order to reduce reliance on periodic chemical treatments. However, where a large increase in biomass is proposed, as in this case, even when SSPO Code of Good Conduct lice levels can be attained in terms of numbers of lice per fish, a substantial increase in the number of host fish will nonetheless still result in lice being released into surrounding waters in elevated numbers.

A development such as this will therefore inevitably pose some enhanced risk to wild salmonids and it is therefore necessary for decision-makers to conclude, on a risk basis, whether after the application of mitigation (lice treatments and the application of Environmental Management Plan obligations) the risk attributable to the operation of a particular farm, both in isolation and cumulatively with the operation of other farms within influencing distance, would be likely to be such as to warrant refusal of permission in terms of adverse impacts upon wild salmonids.

In this case, the East Tarbert Bay site benefits from only being associated with one other salmon farm, which has the additional benefit of being in the applicant's control and which would therefore be operated synchronously with the proposed farm. This is not a location with a high concentration of farms, nor is it one where a confined water body presents enhanced risk, (as may be experienced by salmonids associated with salmon rivers at the head of sea lochs, for example).

The Gigha area has experienced elevated lice levels in the past, but more recent experience has shown that the wider range of treatments at the disposal of the applicants has enabled better control to be achieved. The DSFB points out that wild salmonid numbers in surrounding waters have fallen drastically in recent years to below safe conservation levels. Whilst that is the case, a range of environmental factors may be responsible for this. Although it is reasonable to assume that elevated lice levels arising from the operation of fish farms may well be contributing to this trend, it is not known whether this is the primary cause. In particular, it is not possible to conclude reliably what the magnitude of impact would be likely to derive from a particular location and scale of farm, so the focus has to be upon the extent to which management and mitigation measures provide re-assurance that the operator will be able to minimise lice numbers, once those measures have been applied. Furthermore, should lice numbers escalate to levels posing significantly increased risk, there would need to be credible sanctions in place (such as reduction in biomass or premature harvesting) in order to ensure that increasing lice numbers could be addressed.

In this case, the applicants have advanced containment and lice treatment methods which are credible and which offer the prospect that a larger scale farm with new equipment and access to a wider range of lice control methods could be capable of operating in a manner which would not significantly prejudice wild fish interests. However, it could prove to be that despite the applicant's best endeavours, operation of the site does not progress as anticipated, and despite enhanced intervention, it transpires that lice numbers cannot be kept to low levels. In that event, the opportunity to require by condition that the site should be operated in accordance with an EMP would provide reassurance that if the operator were not to be able to control lice levels satisfactorily, then sanctions could be imposed in accordance with the escalating response provided for in the EMP. The EMP provides details of the proposed sea lice management with the strategies outlined in the EMP relating to all fish farms in the Sound of Gigha. This confirms that the company follows a quality assured, integrated sea lice management plan. This aims to actively reduce the use of medicinal products, whilst increasing the use of biological control (i.e. cleanerfish) and systems which physically remove lice (i.e. Hydrolicer flushing system). Lice monitoring is conducted as soon as the fish are able to be caught with food. Each stocked cage is checked on a weekly basis for both lice and gill health. The EMP also confirms that the company's sea lice thresholds for treatment are significantly lower than those stated in the CoGP.

The DSFB's position is that any increase in the number of farmed fish, irrespective of the efficacy of lice controls, of itself poses an unacceptable risk to wild salmonids. In that scenario there would be no capacity for additional biomass, either as a result of the establishment of new sites, or the enlargement of existing ones. The position of officers is rather that on a risk basis with identified mitigation in place and an EMP in effect, the enhanced threat posed to wild fish interests would not be such as to warrant the refusal of the application on grounds of unacceptable impacts upon the wild fish environment. This accepts that there will be some increased risk simply as a result of there being additional hosts (irrespective of whether lice numbers per fish can be managed to low levels), but that the additional risk is proposed to be managed to a low level by plausible means at the

disposal of the applicants, and there is a mechanism in place to curtail farming should that not prove to be the case.

6) Ecological Status of Water Bodies and Biological Carrying Capacity

The site is located within 'uncategorised' waters under Marine Scotland's Locational Guidelines, which indicates better prospects of fish farm developments being acceptable in environmental terms given the open situation, and the depth of water with unconstrained water exchange. SEPA are responsible for controlling water column impacts via its CAR licensing process and are in receipt of an application for a variation to address the revised siting, additional equipment and biomass proposed.

7) Commercial and Recreational Activity

In terms of non-commercial maritime use, it is considered unlikely that recreational interests will be significantly affected by the proposed development. Fish farms in this location off the east coast of the Isle of Gigha are a long established feature of the locality and have proven capable of co-existing with recreational boat traffic and inshore fishing. The Royal Yachting Association has no objections and the fishermen's associations consulted have not responded. ScotMAP July 2018 identifies the surrounding marine area of the farm of not being of high value for nephrops trawling and creel fishing. The overall change in seabed area that might interact with fishing activity is not considered significant. The proposal will not present adverse navigational safety issues, subject to navigational markings to satisfy Northern Lighthouse Board requirements.

8) Amenity issues arising from operational effects (waste, noise, light and colour)

The EIA Report mitigation notes that the site would be fallowed for approximately 8 weeks in every 24 months. Access to the site will be taken via the shore base at Highfield. Unlike the existing fish farm, this proposal includes the installation of a feed barge. This will remove the requirement for boat based canon feeding, thus reducing boat activity and noise around the site. The overall number of road deliveries of feed will also be reduced from the existing situation as feed will predominantly be delivered by boat direct to the barge although there may still be a requirement for deliveries by lorry at some points in the cycle. The EIA Report estimates that despite the increase in the scale of the farm, this will result in a 70% reduction in lorry deliveries required for feed transport.

There are no dwellings or sensitive receptors in close proximity to the site. The nearest dwelling is at 'Kinerarach' which is some 1.2km from the site. It should be noted that separation will be increased as a result of the movement of the farm further offshore. This dwelling is currently approximately 300m away from the existing site which is to be removed. It is not therefore considered that the proposal would raise any adverse issues on residential amenity grounds.

A Waste Management Plan has been included within Annex 15 of the EIA Report. This follows the 'waste hierarchy' set out in the revised EU Waste Framework Directive. This waste hierarchy has been transposed into UK law through The Waste (Scotland) Regulations 2012 and The Waste Management Licensing (Scotland) Regulations 2011

which places a duty on all persons who produce, keep or manage waste to apply the waste hierarchy. The waste hierarchy is on a sliding scale promoting prevention and recycling with disposal as a last resort. The Waste Management Plan details how the various types of waste streams are dealt with in the company.

Underwater maturation lighting is proposed for use January to July as per past practice. Navigational lighting would require a light to be visible at a range of two nautical miles.

9) Economic Impact

It is necessary to have regard to net economic impacts, taking account of any negative effects imposed upon existing businesses as well as economic benefits accrued by the applicants and any indirect benefits to the manufacturing/service sector. No adverse impact of significance has been identified in terms of commercial fishing or recreational boating, and there is no suggestion that expansion of the site would prejudice operator viability within any of these sectors. In the event that Members are persuaded that the proposal would seriously prejudice wild fish interests, then there could well in turn be some adverse implications for the tourism and economic value of the fisheries in the area, although the attribution of such effects to the scale of the project at hand and the quantification of those effects would be difficult.

The expansion of the aquaculture sector is being actively encouraged by government policy in view of the contribution it makes to the national and export economy, and in view of the employment it sustains. It is supported by development plan policy unless there are locally significant adverse effects which cannot be avoided, reduced or mitigated to an extent which renders development acceptable. The Council's Economic Development Strategy identifies the food and drink sector as being one of the areas key sustainable economic assets helping to retain and create jobs in rural areas.

The site currently support 10 FTE staff working between the East Tarbert Bay and Druimyeon Bay sites, with an average salary of £21,346.35. The proposed development would require one additional post to be created. The EIA Report notes that the Scottish Salmon Company sites on Gigha support local businesses both on the island and on mainland Kintyre. Local contractors will be used when required for special projects as well as dive teams on a regular basis. The report advises that in 2017, the Scottish Salmon Company spent £18,118.00 on businesses in Gigha. The company also provides in-kind support to various local businesses and community support. Economic benefits associated with the equipping and operation of this site, including indirect benefits arising from locally sources components, supplies and services, all lend weight to the application proposal in the balance of decision-making.

APPENDIX B – HABITATS REGULATIONS ‘APPROPRIATE ASSESSMENT’

HABITAT DIRECTIVE 92-43-EEC THE CONSERVATION (NATURAL HABITATS AND C.) REGULATIONS 1994 AS AMENDED

Purpose of the designation

The Habitats Directive aims to conserve biodiversity by maintaining or restoring Annex I Habitats or Annex II species to favourable conservation status. The Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC) was identified in 2016 covering an area of 13,000 square kilometres between the Isle of Lewis and the Isle of Jura. It does not contain any Annex I habitats and is confined to a single Annex II species interest; namely harbour porpoise *Phocoena phocoena*.

Candidate SAC's are sites which have been identified as fulfilling European designation criteria and have been submitted to the European Commission for adoption. They are afforded protection in the interim in the same way as if they had been adopted

The purpose of this designation is to maintain the favourable conservation status of harbour porpoise in the marine Atlantic Biogeographic region, by providing protection for habitats that support high predicted an observed densities of this species, likely to be a consequence of the variety of sediments in the designated area and the prey species they support which provides a productive foraging area supporting the species in higher densities.

Consequences of the designation

In circumstances where European Protected Species could be subject to significant effects as a consequence of development proposals, the competent authority, in considering whether development should be consented, is required to undertake an 'appropriate assessment' to inform its decision-making process, on the basis that where unacceptable effects are identified, or in cases of 'reasonable scientific doubt', then permission ought not to be granted.

An 'appropriate assessment' is required to be undertaken in cases where any plan or project which:

- (a) Either alone or in combination with other plans or projects would be likely to have a significant effect on a European site designated for nature conservation; and
- (b) Is not directly connected with the management of the site.

It is considered by Scottish Natural Heritage that the development proposed by means of above planning application (reference 18/01561/MFF) has the potential to have a significant effect on the qualifying interests of The Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC). The proposed site lies approximately 1km to the south of the boundary of the cSAC. As a consequence, Argyll and Bute Council has conducted an 'appropriate

assessment', as per the Conservation (Habitats and C.) Regulations 1994 (as amended), having regard to the anticipated effects of development and the conservation objectives for the site's qualifying interests. This assessment is detailed below.

Characteristics of the development

The proposal is for the equipment and operation of a marine fish farm in coastal waters with farmed fish to be contained in nets supported from flotation rings secured to a mooring grid anchored to the sea bed. The presence of farmed fish in large quantities poses an attraction to seals and attempted predation poses a risk to containment. In the event of net damage due to predation it poses the possibility of farmed fish escaping into the marine environment. Loss of containment of farmed fish would not be in the interests of production at the site and escapees would present a risk to the health of wild salmonids. This foreseeable operational characteristic and its undesirable consequences requires the operator to have a predator control plan in place with a range of measures available to deter seals and to avoid predation. The range of measures identified by the applicant in order to deter attacks by seals at this site includes the potential use of acoustic deterrent devices (ADD's), the operation of which would present conflicts to the conservation interests of harbour porpoise as a non-target species during the operational phases of the development when the cages are stocked with fish, but not during the equipping, fallowing or decommissioning of the farm.

Assessment

The assessment considers the impact of the proposals on harbour porpoise within the designated area and has regard to the applicant's submitted information in support of the planning application, and to consultation advice provided by Scottish Natural Heritage.

Scottish Natural Heritage has raised concerns about the submitted proposal on the basis that the operation of the farm, as envisaged by the applicants, is in their view likely to have significant effects on the conservation interests of the qualifying interests of the Hebrides and Minches cSAC.

The impact of the proposal has been considered in terms of the following:

Potential entanglement in equipment – cetacean entanglement is not a feature of fish farm operation and entanglement risk not considered to be significant;

Risk of auditory injury – the species is unlikely to spend significant periods of time within the distances likely to present risk of injury due to exposure to noise emitted from ADD's and therefore the risk presented is low.

Disturbance – The proposed fish farm site is located outside the cSAC will only impact on the southern boundary. SNH has advised that the area of the cSAC which could be impacted by the use of ADDs is open and unconstrained in nature and is not considered to be at high risk of cumulative impacts. However, the sound frequencies emitted from the ADDs proposed at this site will extend to within the boundary of the cSAC. Harbour porpoise are known to be sensitive to the frequencies of sound that are emitted by most 'standard frequency' ADD devices. On this

basis SNH conclude that the use of ADDs at this site has the potential to result in the disturbance of harbour porpoise within the cSAC.

The applicant has submitted an ADD deployment plan. This advises that various measures which are detailed in the Predator Control Plan (Annex 7 of EIA Report) will be employed prior to ADDs being considered necessary. The proposed ADD for this site is the QTAQ SealFENCE Seal Deterrent System. This system uses a bespoke ultrasonic transmission to create an acoustic fence around the cages, specifically for seals. The decision to activate the ADD will be made by the site manager in accordance with the ADD deployment decision flow diagram contained within the ADD deployment plan. The ADD deployment plan and decision flow will be followed if mortalities which are directly attributable to seal kills are recorded. The ADD will remain operational for as long as seal mortalities are no longer being recorded, within a 2 week period. The continued use of the ADD will be reviewed at the end of this period. Record will be kept by the applicant which detail deployment cues, operational dates, sound frequency and duration.

SNH has advised that if ADDs are to be activated continuously, whilst the farm is stocked, then this could result in a significant disturbance and long term exclusion of harbour porpoise from an area within the cSAC. However, the applicant's deployment plan outlines an appropriate decision-making process that will ensure that ADDs are not activated continuously. If they are required they will be activated and deactivated in response to the identification of fish mortalities that can be attributed to seal predation. This will ensure that ADDs will not be activated continuously over a long term period. SNH therefore conclude that this will avoid the risk of resulting in any significant disturbance to the harbour porpoise feature of the cSAC.

Recommended mitigation to be secured by planning condition

- a) ADD's to be deployed at the site shall be as per the East Tarbert Bay ADD Deployment and Usage plan dated August 2018 supplied as supporting information with the planning application.

Conclusion

The potential impacts of the development in relation to the conservation objectives cited in the cSAC designation have been considered in the light of the above and it has been concluded that with identified mitigation measures in place the impacts arising from the construction, operation and decommissioning of the development as proposed, in combination with the operation of other farms nearby will not with identified mitigation in place have a significant impact upon qualifying interests, and accordingly there is no reason to withhold permission on European nature conservation grounds.

Further to the consideration of the impact upon the wider European designation, there may be circumstances where individual porpoise could be subject to disturbance, either within or without the designated area, as a result of the operation of ADD's. Given that it is an offence to intentionally disturb a European Protected Species, other than in the event of an activity subject to a EPS Mitigation Licence, it would be open to the operator to apply for such licensing from the Scottish Government, in circumstances where operational activity would have impacts upon

an EPS which would otherwise be illegal. Such licensing is separate from the planning process and is not a material planning consideration.

APPENDIX C – HABITATS REGULATIONS ‘APPROPRIATE ASSESSMENT’

HABITAT DIRECTIVE 92-43-EEC THE CONSERVATION (NATURAL HABITATS AND C.) REGULATIONS 1994 AS AMENDED

Purpose of the designation

The Habitats Directive aims to conserve biodiversity by maintaining or restoring Annex I Habitats or Annex II species to favourable conservation status. The Sound of Gigha Proposed Special Protection Area (pSPA) comprised an area of 363.27 square kilometres. The site lies around the island of Gigha and extends northwards to Knapdale, Loch Caolisport and West Loch Tarbert and southwards from Gigha to Machrihanish. The qualifying species of the pSPA are:

Great northern diver (non-breeding): non-breeding season is October to mid-May (inclusive). Sound of Gigha pSPA supports the second largest aggregation of non-breeding great northern divers in Scotland. The proposed area for the relocation of the fish farm is within the greatest density of great northern divers;

Common eider (non-breeding) non-breeding season is September to mid-April, with moult taking place for eider between mid-June to October. The proposed area for the relocation of the fish farm is within the greatest density of eiders.;

Red-breasted merganser (non-breeding); Non-breeding season is mid-August to March (inclusive). Distribution of red-breasted mergansers is low in the proposed fish farm location.

Slavonian grebe (non-breeding): Non-breeding season is mid-September to April (inclusive). Slavonian grebes were an additional species following the original site selection documentation. Slavonian grebes are found in large numbers in the region near the fish farm.

Consequences of the designation

In circumstances where European Protected Species could be subject to significant effects as a consequence of development proposals, the competent authority, in considering whether development should be consented, is required to undertake an ‘appropriate assessment’ to inform its decision-making process, on the basis that where unacceptable effects are identified, or in cases of ‘reasonable scientific doubt’, then permission ought not to be granted.

An ‘appropriate assessment’ is required to be undertaken in cases where any plan or project which:

- (a) Either alone or in combination with other plans or projects would be likely to have a significant effect on a European site designated for nature conservation; and
- (b) Is not directly connected with the management of the site.

Characteristics of the development

The proposal is for the equipment and operation of a marine fish farm in coastal waters with farmed fish to be contained in nets supported from flotation rings secured to a mooring grid anchored to the sea bed. The nets which are used to contain the farmed fish have the potential

to cause injury and mortality to the qualifying bird species of the pSPA. The operation of the fish farm will also require the use of vessels to and from the fish farm. The noise and vibration generated by these has the potential to cause disturbance to the qualifying species. The proposed fish farm will occupy space within the pSPA. This may have the potential to cause damage and displacement to foraging areas used by the qualifying species. Organic waste in the form of uneaten fish food and fish faeces could also cause loss or damage to the habitat as could the chemicals used to treat the farmed fish. The proposal lies less than 1km from an existing farm and cumulative effects also require to be considered.

Assessment

The assessment considers the impact of the proposals on the qualifying species within the designated area and has regard to the applicant's submitted information in support of the planning application, and to consultation advice provided by Scottish Natural Heritage.

Scottish Natural Heritage has raised concerns about the submitted proposal on the basis that the operation of the farm, as envisaged by the applicants, is in their view likely to have significant effects on the designated species of interest within the Sound of Gigha proposed Special Protection Area.

The impact of the proposal has been considered in terms of the following:

Mortality: There is the potential for mortality of the qualifying bird species through entanglement with net. The details given for bird nets within the applicant's supporting information advises that 25mm mesh is use for bottom of walls and 100mm mesh for the top 3m of wall with 300mm mesh in the top section. The EIA Report advises that there are bird and cage netting daily checks for tensioning and high site husbandry standards. It is considered that these are necessary in order to mitigate potential entanglement effects. Procedures on daily net checks should continue, as should reporting to SNH should any entanglement event occur. SNH has recommended that no gill nets are to be used in the event of escaped fish when wintering birds are present (mid-August to mid-May: the period which encompasses all qualifying species). In addition anti-predator net should not be used for this proposal. No entanglements have been recorded for the current fish farm and it is considered unlikely that that there would be mortality through entanglement to such a level that it would cause significant mortality to the qualifying features as stated in the conservation objectives.

Disturbance from vessel movements: Red-breasted merganser and Slavonian grebes are classified as having very high sensitivity to vessel movements, great northern diver is classified as high and common eider as medium (Jarett et al 2018). The EIA Report notes that great northern divers and eiders have been seen around the site but red-breasted mergansers have not been recorded. The distribution maps recorded in the Sound of Gigha pSPA site selection documentation demonstrates that the fish farm is in the densest area of the pSPA for eiders and great northern divers, but in a low density area for red-breasted mergansers. Shore-based counts show that Slavonian grebes are in large numbers in the area close to the proposed fish farm location.

The greatest disturbance is likely to occur during the decommissioning of the old fish farm and the installation of the new one. It is proposed to carry this out between June and August to avoid the non-breeding periods of the qualifying species. SNH has advised that this is welcomed although it should be noted that eiders start to moult from mid-June onwards and are less able to move away from disturbance during this period. The timing of the equipping of the new site can be regulated by means of planning condition. There are no planning conditions associated with the current site which would enable control to be exerted over the timing of decommissioning of the existing site. Given that it is an offence to intentionally disturb a European Protected Species, other than in the event of an activity subject to a EPS Mitigation Licence, it would be open to the operator to apply for such licensing from the Scottish Government should it wish to undertake work at a sensitive time of the year, in circumstances where operational activity would have impacts upon an EPS which would otherwise be illegal. Such licensing is separate from the planning process and is not a material planning consideration.

SNH had advised that the code of conduct detailed in Table 32 of the EIA Report is strictly adhered to. This report advises that this includes the following practices:

- Restricting (to the extent possible) vessel movement to existing navigation routes;
- Maintaining direct transit routes (to minimise transit distances);
- Avoidance of over-revving of engines (to minimise noise disturbance); and
- Briefing of vessel crew on the purpose and implications of these vessel management practices (through, for example, tool-box talks).
- Larger vessels servicing the East Tarbert Bay site will be similar to the current route and measures will be taken to avoid any roosting sites of divers, eiders or Slavonian grebes.

During the operational phase of the fish farm no additional boat journeys are anticipated although these will take marginally longer as new fish farm is further away from the shore base. SNH advise that there is potential for disturbance during the operational phase, particularly for those species with high overlapping distributions (great northern diver and eider). All species are predicted to be sensitive to disturbance caused by vessel activity, which could cause displacement from areas used for foraging, moult and shelter. Therefore Likely Significant Effects are predicted for all species. However, there is not expected to be significant disturbance of the features, to the extent that the distribution of the species and ability to use the site would be compromised.

Subject to carrying out the decommissioning and installation operations outwith the non-breeding period of the qualifying species within the pSPA and following the practices on vessel movements detailed above, it is not considered that there would be any likely significant effects associated with vessel movements.

Displacement of foraging areas

The EIA Report assessed the area which would now be limited to birds as being 0.052% of the total area of the Sound of Gigha pSPA. SNH has taken issue with this as it is not considered that this presents a true representation of the amount of area available to the qualifying species. It is advised that the birds will, to some extent, be accustomed to where the current fish farm is, so may be displaced as a result of the relocation.

The depth profile from the EIA Report suggests that the fish farm footprint will be in water depths of between 10-50m, with the cages themselves being lowered to 10m within water of 50m depth. Great northern divers are capable of diving to depths in excess of 60m, whereas eiders and red-breasted mergansers are more likely to feed at depths not exceeding 15m (SNH 2016) and Slavonian grebes up to 25m depth (Furness et al 2012). Red-breasted merganser is low and none have previously been recorded in the site. Great northern divers and eiders are known to be in the area and therefore there is potential for them to be displaced. Slavonian grebes are recorded in greatest densities to the east of the proposed site and also have the potential to be displaced. The qualifying species will be feeding on a variety of fish but also on crustaceans and molluscs. As it is a relatively small area that they will be displaced from in relation to the entirety of the pSPA, it is unlikely to compromise the conservation objectives. Taking account of the above, it is anticipated that no adverse effect on site integrity would occur due to displacement during the operation of the fish farm.

Loss or damage to supporting habitat: The benthic habitat survey carried out as part of the proposal revealed burrowed mud, a potential horse mussel bed and muddy sand, all of which are high quality environments for diving birds. The increase of moorings area with the expansion is 188,372 sqm.

The area of horse mussel bed, if within the diving depths of the eiders, would be a potential foraging area for them. Depending upon the anchoring set up of the fish farm, this area could become damaged during installation which would reduce the food resource or the eiders in particular. From the benthic survey, it appears this horse mussel bed has already been disturbed by fishing activity and it is not known how important this horse mussel bed is for eider.

During the operational phase loss or damage to supporting habitat can occur due to organic waste from excess feed and farmed fish faeces is released into the environment. With the introduction of an automated feed system from the new feeding barge, it is predicted that there will be less waste feed reaching the seabed. This potentially means the supporting habitat will not be affected as much as the current set up. The EIA Report also notes that the hydrographic conditions at the site means the dilution and dispersion of nutrients occurs within the water column. The EIA Report proposes mitigation measures to ensure that waste is minimised.

Chemicals used in the treatment of farmed fish can also cause damage to habitat. The applicant intends to use emamectin benzoate or EMBZ. This has been known to reduce crustacean abundance which could have implications for the birds feeding on them. It is also a known neurotoxin to birds. It is the remit of SEPA to assess the potential effects of these chemicals on the surrounding environment and to ensure that measures are in place to minimise these effects, as part of its CAR licensing process.

The proposal does have the potential to affect the habitat, however, due to the relatively small area covered by the fish farm compared to the overall extent of the pSPA, it is anticipated that there would be no adverse effect on site integrity. Provided that the proposed mitigation measures are strictly adhered to and following SEPA's own assessment on water quality and environmental effects of the farm it is anticipated that there would be no significant adverse effects.

Cumulative Effects

SNH has noted that the EIA Report did not take into consideration the cumulative effects of nearby fish farms in relation to potential effects on the qualifying species. There is another fish farm less than 1km from the proposed new location less than 1km from the proposed location of the fish farm which means that there is the potential for a combined effect of disturbance and displacement from foraging areas. However as the existing fish farm which to be removed is also close to the applicant's Druimyeon Bay site there is not expected to be much change from the existing set up in terms cumulative effects. Though Likely Significant Effects are predicted for all species, there are not expected to be such significant further impacts on the features that the site is compromised subject to all mitigation measures being implemented.

Recommended mitigation to be secured by planning condition

- a. Gillnets are not to be used as a method of recovering escaped fish when wintering birds are present (mid-August to mid-May);
- b. Antipredator nets shall not be used;
- c. The proposed decommissioning of the existing fish farm and installation of the new one shall take place between the months of June and August.
- d. The code of conduct for boat movements laid out in Table 32 of the EIA Report shall be strictly adhered to.

Conclusion

The potential impacts of the development in relation to the qualifying species within the pSPA designation have been considered in the light of the above and it has been concluded that with identified mitigation measures in place the impacts arising from the construction, operation and decommissioning of the development as proposed, in combination with the operation of other farms nearby will not with identified mitigation in place have a significant impact upon qualifying interests, and accordingly there is no reason to withhold permission on European nature conservation grounds.



Location Plan Relative to planning application: 18/01561/MFF



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ARGYLL AND BUTE COUNCIL
PROCEDURE NOTE FOR USE AT

- | | |
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| (1) Statutory Pre Determination Hearing | <input type="checkbox"/> |
| | <input type="checkbox"/> |
| (2) Council Interest Application | |
| (3) Discretionary Hearing | X |

HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE

1. The Director of Customer Services will notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not. Statutory consultees (including Community Councils) will be invited to attend the meeting to provide an oral presentation on their written submissions to the Committee, if they so wish.
2. The Director of Customer Services will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.
3. The hearing will proceed in the following order and as follows.
4. The Chair will introduce the Members of the Panel, ascertain the parties present who wish to speak and outline the procedure which will be followed.
5. The Director of Development and Infrastructure's representative will present their report and recommendations to the Committee on how the matter should be disposed of.
6. The applicant will be given an opportunity to present their case for approval of the proposal and may include in their submission any relevant points made by representees supporting the application or in relation to points contained in the written representations of objectors.
7. The consultees, supporters and objectors in that order (see notes 1 and 2), will be given the opportunity to state their case to the Council.
8. All parties to the proceedings will be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Panel may extend the time for a presentation by any of the parties at their sole discretion.

Ref: ABH1/2009

9. Members of the Panel only will have the opportunity to put questions to the Director of Development and Infrastructure's representative, the applicant, the consultees, the supporters and the objectors in that order.
10. At the conclusion of the question session the Director of Development and Infrastructure's representative, the applicant, any consultees present, the supporters and the objectors (in that order) will each be given an opportunity to comment on any particular information given by any other party after they had made their original submission and sum up their case.
11. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.
12. The Panel will then debate the merits of the application and will reach a decision on it. No new information can be introduced at this stage.
13. The Chair or the Committee Services Officer on his/her behalf will announce the decision.
14. A summary of the proceedings will be recorded by the Committee Services Officer.
15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he will be entitled to invite them to conclude their presentation forthwith.

NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Councillors (other than those on the Panel) who have made written representations and who wish to speak at the hearing will do so under category (1) or (2) above according to their representations but will be heard by the Panel individually.
- (4) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

Ref: ABH1/2009

The Director of Development Services' representative – not more than half an hour

The Applicant - not more than half an hour.

The Consultees - not more than half an hour.

The Supporters - not more than half an hour.

The Objectors - not more than half an hour.

- (4) The purpose of the meeting is to ensure that all relevant information is before the Panel and this is best achieved when people with similar views co-operate in making their submissions.
- (4) Everyone properly qualified as a representee recorded on the application report who wishes to be given an opportunity to speak will be given such opportunity.
- (6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development and Infrastructure which is attached hereto.

I:data/typing/planning/procedure note

COMPETENT MOTIONS

- Why is there a need for a competent motion?
 - Need to avoid challenge by “third party” to local authority decision which may result in award of expenses and/or decision being overturned.
 - Challenges may arise from: judicial review, planning appeal, ombudsman (maladministration) referral. All appeal/review processes have rights to award expenses against unreasonable/unlawful behaviour.
- Member/Officer protocol for agreeing competent motion:
 - The process that should be followed should Members be minded to go against an officer’s recommendation is set out below.
- The key elements involved in formulating a competent motion:
 - It is preferable to have discussed the component parts of a competent motion with the relevant Member in advance of the Committee (role of professional officers). This does not mean that a Member has prejudged the matter but rather will reflect discussions on whether opinions contrary to that of professional officers have a sound basis as material planning considerations.
 - A motion should relate to material considerations only.
 - A motion must address the issue as to whether proposals are considered consistent with Adopted Policy or justified as a departure to the Development Plan. Departure must be determined as being major or minor.
 - If a motion for approval is on the basis of being consistent with policy reasoned justification for considering why it is consistent with policy contrary to the Head of Planning’s recommendation must be clearly stated and minuted.
 - If a motion for approval is on the basis of a departure reasoned justification for that departure must be clearly stated and minuted. Consideration should be given to holding a PAN 41 Hearing (determined by policy grounds for objection, how up to date development plan policies are, volume and strength of representation/contention)
 - A motion should also address planning conditions and the need for a Section 75 Agreement.
 - Advice from the Scottish Government on what are material planning considerations is attached herewith. However, interested parties should always seek their own advice on matters relating to legal or planning considerations as the Council cannot be held liable for any error or omission in the said guidance.

DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision,
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal, and
 - Assess whether these considerations warrant a departure from the development plan.
3. There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
 - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy, and UK Government policy on reserved matters
 - The National Planning Framework
 - Scottish planning policy, advice and circulars
 - European policy
 - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance

Ref: ABH1/2009

- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
 - A National Park Plan
 - The National Waste Management Plan
 - Community plans
 - The Environmental impact of the proposal
 - The design of the proposed development and its relationship to its surroundings
 - Access, provision of infrastructure and planning history of the site
 - Views of statutory and other consultees
 - Legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.