

Unused Consents

5. *Do you agree we ought to review the question of unused consents?*

YES

~~NO~~

Unused aquaculture sites have unnecessarily reduced capacity for development in certain areas of Argyll and Bute and unused sites with equipment in place can become a hazard to navigation. While the Council has powers to impose planning conditions on new planning permissions that could be used to deal with long term cessation of use, abandonment and removal of derelict equipment, there are difficulties in removing planning permissions for unused sites.

Instances where other aquaculture consents such as a marine licence and SEPA CAR licence are held for a specific location without intent to apply for planning permission, can restrict capacity for development. It is therefore considered that the question of unused consents should be reviewed to maximise the capacity for sustainable aquaculture development.

6. *What do you consider are suitable options to promote use or relinquishment of unused consents?*

Planning permission

The Scottish Government Review/Audit of Crown Estate Leases granted prior to 1st April 2007 provided an opportunity to ensure that only those existing sites that were in use were granted planning permission. While The Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011, issued in March 2011, granted planning permission to sites deemed active within a specified time period, it is not yet clear which sites have been granted planning and therefore whether this process has fully assisted in removing development consent for unused sites. The issue of this order has also removed the opportunity to consider imposing additional appropriate planning conditions on these existing sites to assist management of planning permissions which become inactive in the future.

Planning authorities can impose planning conditions on new planning permissions granted for aquaculture to manage some of the issues surrounding unused sites. Standard planning conditions agreed by planning authorities can include:

- Requirement for development to be started within three years;
- Requirement for removal of equipment where sites have not been in use for a period exceeding three years; or where equipment is in a state of disrepair.

It should be noted that the second condition does not remove the planning permission.

In addition, planning authorities have powers to revoke planning permission under Section 65 of the Town and Country Planning (Scotland) Act 1997. The exercise of these powers are however complex, likely to be time consuming and resource intensive, particularly where a developer opposes any such removal. It is also only possible to use revocation in the first three years of an unimplemented planning permission and for a site granted planning permission under part 3 of the Act. It is therefore our understanding that any site given planning permission through the Scottish Government review/audit process cannot be revoked under Section 65 of the Act. Revocation is therefore not considered as an appropriate route to tackle unused sites.

The use of a 'discontinuance notice' under Section 71 of the Act might be a potential option which would be relevant to all planning permissions, but still needs confirmation by Scottish Ministers and incurs compensation liability.

Crown Estate seabed lease

It is the Council's understanding that once all existing aquaculture sites are either transferred over to planning or not given planning consent then any sites not given consent should have to rescind their Crown Estate Seabed lease as an operator cannot have a full lease without all relevant consents i.e. planning permission, marine licence and SEPA CAR licence for finfish developments. This should effectively remove the seabed lease from the issue of unused sites.

CAR licence

It is suggested that where operators hold a number of SEPA CAR licences without planning consent and a marine licence, this consented biomass should not be considered in the Locational Guidelines calculations as these consents cannot be used without the other relevant consents being granted. This would prevent restrictions on capacity as a result of unused CAR consents and allow operators to keep hold of existing CAR consents while applying for other permissions.

Other options for all consents

It is considered that there needs to be a consistent approach for management of all types of unused consents (planning permission, CAR licence & marine licence) and therefore the Scottish Government should consider how best to apply the management options in relation to planning conditions available to planning authorities, to both SEPA CAR licences and marine licences.

Where unused consents (planning permission, CAR licence, marine licence) are being used as firebreaks or a buffer between finfish developments, the Scottish Government should consider options for Farm Management Agreements to include suitable measures that would ensure these firebreaks remain if the unused consents are given up. This may then free up capacity for other types of aquaculture development such as seaweed or shellfish farming that would not affect finfish farm management.

7. *Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents?*

YES

~~NO~~

Given the difficulties expressed under question 6 above, a simpler route for revoking appropriate consents, which is consistent across all the relevant consents needs to be considered.

8. *Should any such power relate to all or to particular consents (and if the latter, which)?*

The power to revoke consents should relate to all consents, including planning permission, SEPA CAR licence and marine licences.