

**THE HIGHLAND COUNCIL**

**NORTH PLANNING APPLICATIONS COMMITTEE  
4 April 2017**

Agenda Item	<b>5.3</b>
Report No	<b>PLN/028/17</b>

**16/03352/FUL: The Scottish Salmon Company  
Site 1525M SE of 2 Torvaig, Portree, Loch Portree/Sound of Raasay**

**Report by Area Planning Manager**

**SUMMARY**

**Description:** New Atlantic salmon fish farm comprising 10 x 38m diameter cages in one group (of 5 x 2) within a 80m grid layout

**Recommendation - APPROVE**

**Ward:** 11 – Eilean A' Cheò

**Development category :** Local Development

**Pre-determination hearing :** None Required

**Reason referred to Committee:** Number of objections including Community Council and local Fishery Board objecting as statutory consultees

**1. PROPOSED DEVELOPMENT**

- 1.1 This application seeks full planning permission for the installation of a new Atlantic Salmon fish farm; the applicants have referred to this site as the Outer Portree Fish Farm. The development will comprise of 10 x 38m circular diameter cages moored in one group of 5 x 2 cages. The surface area for each cage will be 1146m<sup>2</sup>. The cage grid spacing is 80m x 80m and will run in a south-west to north-east direction. The application also proposes 14 buoys and 3 x 1000w underwater lights per cage. The maximum stocked biomass will be 2191.6 tonnes, with a maximum production biomass cycle of 3506.6 tonnes. Each production cycle will be 22 months, with 2 months fallow. Stocking densities will be 15.9kg/m<sup>3</sup>.
- 1.2 EIA screening (15/00254/SCRE) and scoping (15/00466/SCOP) applications were submitted prior to the submission of the current planning application. These concluded that the development was considered to fall under schedule 2 of the EIA regulations and that a full EIA Environmental Statement (ES) needed to be submitted with any subsequent planning application.
- 1.3 Access to the site will be via the sea from Portree Harbour. The existing feed barge at the applicant's adjacent Torvaig fish farm will be utilised for the feed and materials storage associated with the proposed development.

- 1.4 The application is accompanied by an EIA Environmental Statement and an Environmental Management Plan. In addition, the applicants submitted a follow-up statement responding to third party and consultee comments made during the first round of public consultation.
- 1.5 **Variations:** An amended Environmental Management Plan (received 02.12.2016) and clearer site layout plans were submitted (28.10.2016), the latter of which showed the site in the context of the applicant's existing adjacent site.

## 2. SITE DESCRIPTION

- 2.1 The proposed site is located approx. 500m to the east of the existing 10 x 38m diameter cage Fish Farm and associated feed barge (Torvaig) which is also operated by the applicants.

Whilst the existing farm sits adjacent to a small bay, the proposal is further to the north and more in line with the small headland of this bay. Above the bay the landform consists of steep cliffs.

## 3. PLANNING HISTORY

- 3.1 **15/00254/SCRE:** Marine Fish Farm – Atlantic Salmon – EIA screening request for new fish farm consisting of 10 x 120m circumference circular cages in an 80m x 80m mooring grid. Response issued 10.02.2015
- 15/00466/SCOP:** Marine Fish Farm – Atlantic Salmon – EIA Scoping request for new fish farm consisting of 10 x 120m circumference circular cages in an 80m x 80m mooring grid. Response issued 15.06.2015

## 4. PUBLIC PARTICIPATION

- 4.1 Advertised : EIA development

Representation deadline : 5 January 2017 following re-advertisement for amendments

Timeous representations : 19 from 17 addresses

Late representations : 0

- 4.2 Material considerations raised are summarised as follows:

- Allowable zone of effects (AZE) is an unacceptable environmental impact
- Raised nutrient levels have a wider negative ecological impact
- Sea bed video survey poorly carried out and analysed in ES
- Fish farms result in raised levels of sea lice in the surrounding environment, a raised level of infestation on wild salmonids and a negative impact on their population levels
- Catches of salmon and trout in the River Varragill have declined severely in last two decades and have not recovered despite re-stocking
- Annual organic waste from fish farms such as this produce 800-900 tonnes annually

- Norwegian government now prohibit in-shore net-cage farms such as this and are promoting closed containment, land based production in recognition of negative ecological impacts including wild fish stocks
- Impact of ADDs on harbour porpoise in the cSAC has not been properly assessed by the applicant
- A second farm in this location will negatively impact on the scenic quality of the SLA especially from the core path
- Farm could affect the ability of cruise ships to anchor close to Portree harbour
- Doubt the farm will create more jobs than it destroys in the tourist industry
- Salmon and Sea Trout catches in the Varragill river have continued their long term decline since the early 1980s despite the proprietors of the river fishing rights releasing 5000 Salmon fry per annum into the river since 2004 and an additional 5000 Sea Trout fry each year since 2006.
- Suggested that the local seal population in Portree Bay has increased due to the attraction of the existing caged Salmon. This colony is having a serious impact on Varragill fish stocks.
- Lobster have all but disappeared from the Bay since fish farm operations began
- Almost all west coast rivers have seen have a serious decline in wild salmonids – most now require catches to be returned to the water. Northern and western river numbers (where there are no farms) have held up. Must be due to sea lice effects
- Fish farm feed is based on unsustainable fishing in other parts of the world
- Chemical sea lice treatments are becoming less effective
- Scientific literature points to a strong linkage between declining wild salmonid numbers and sea lice from fish farming
- Fish farm operations need to be monitored for environmental impacts throughout the lifetime of the permission
- Farm will support local and wider economy and business directly and indirectly through the supply chain

4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet [www.wam.highland.gov.uk/wam](http://www.wam.highland.gov.uk/wam). Access to computers can be made available via Planning and Development Service offices.

## 5. CONSULTATIONS

5.1 **Harbour Master:** no response received at time of writing the report

5.2 **Coastal Planner:** No objection subject to clarification and conditions regarding ADDs and sea lice control

5.3 **Environmental Health:** No objection

5.4 **Development Plans:** No objection

- 5.5 **Access Officer:** No objection but confirms visibility of proposal from core path
- 5.6 **SEPA:** No objection – CAR license has been issued
- 5.7 **Marine Scotland Science:** No objection
- 5.8 **Marine Scotland Licence:** No response
- 5.9 **SNH:** No objection subject to condition controlling the deployment and use of ADDs
- 5.10 **MOD:** No safeguarding objections.
- 5.11 **Skye District Salmon Fishery Board:** Object – combined sea lice impact with existing farm will harm wild salmonids associated with the Varragill river
- 5.12 **Northern Lighthouse Board:** No objection – advice in respect of navigation marking
- 5.13 **Crown Estates:** No objection but applicant has no lease in place for this location
- 5.14 **Portree and Braes Community Council:** Object – visual impact and pollution

## 6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

### 6.1 Highland Wide Local Development Plan 2012

Policy 28	Sustainable Design
Policy 29	Design Quality and Place-making
Policy 36	Development in the Wider Countryside
Policy 49	Coastal Development
Policy 50	Aquaculture
Policy 58	Protected Species
Policy 59	Other Important Species
Policy 60	Other Important Habitats and Article 10 Features
Policy 61	Landscape
Policy 63	Water Environment

## 7. OTHER MATERIAL CONSIDERATIONS

### 7.1 Draft Development Plan

Not applicable

## 7.2 **Highland Council Supplementary Planning Policy Guidance**

Highland's Statutorily Protected Species (March 2013)

Highland Coastal Development Strategy (2010)

## 7.3 **Scottish Government Planning Policy and Guidance**

See sections on 'Promoting Rural Development' (para 77), 'Development Management' (paras 202-203), and 'Supporting Aquaculture' (para 251 bullet list).

Scotland's National Marine Plan (March 2015)

## **8. PLANNING APPRAISAL**

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

### 8.3 **Development Plan Policy Assessment**

Sections 25(1)(a) and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that this application be determined in accordance with the development plan unless material considerations indicate otherwise.

The site falls outwith any Settlement Development Area and so Policy 36 of the Highland-wide Local Development Plan applies. Policy 36 supports development proposals which are not significantly detrimental in terms of their siting and design, sympathy to existing patterns of development, compatibility with landscape character, contribution to the existing mix of development types and which can be adequately serviced without undue public expense or incongruous development in a rural area.

Development proposals should also meet the Design for Sustainability requirements of Policy 28 and Policy 29 repeats this emphasis on good design in terms of compatibility with the local settlement pattern. Policy 61 further emphasises the need for developments to respect the landscape character of their surroundings.

Policy 49 requires that coastal development proposals should not have an unacceptable impact on the natural, built or cultural heritage and amenity value of the area.

Policy 50 reiterates the above in respect of Aquaculture development and states that the Council supports the sustainable development of fin-fish and shellfish farming subject to there being no significant adverse effect, directly, indirectly or cumulatively on the natural, built and cultural heritage and the area.

The site is also located within a Special Landscape Area and will need to be judged against Policy 57.1 of the Highland-wide Local Development Plan. This states that developments will be supported where they can be shown not to have an unacceptable impact upon the identified protected amenity and heritage resource.

The site is located within the candidate Inner Hebrides and the Minches cSAC which has been selected for the harbour porpoise. Policies 58, 59 and 60 require applicants to identify through survey any protected species and important habitats that may be present on or near their proposal and suggest mitigation where appropriate.

Policy 63 states that the Council will support proposals for development that do not compromise the objectives of the Water Framework Directive (2000/60/EC), aimed at the protection and improvement of Scotland's water environment.

For the reasons laid out below, the proposal is considered to comply with these policy requirements and to be acceptable in principle.

#### 8.4 **Material Considerations**

**Environmental Impact Assessment:** This application is accompanied by an Environmental Statement (ES) in accordance with the Town and Country (Environmental Impact Assessment) (Scotland) Regulations 2011. The ES covers all the expected environmental effects associated with the proposed development and addresses them and any proposed mitigation within separate topic chapters/annexes. Many of these chapters relate to matters falling within the regulatory control of other bodies and so little weight can be given to them as part of any planning decision;

- Benthic (seabed) impacts due to feed and faeces falling to the sea floor - these are covered by the CAR license regime and the allowable zone of effects (AZE) calculations regulated by SEPA with ecological advice provided by SNH. Any impact on seabed protected species are a material planning consideration but are part of the CAR assessment first and foremost.
- Water column impacts from nutrient enrichment and use of medicinal chemicals are also part of the SEPA's CAR license regime.
- Navigational safety is regulated by Marine Scotland with advice from the Northern Lighthouse Board.
- The health, handling and medicinal treatment of the farmed fish, the control of predators and the physical quality of nets and moorings are all matters regulated by Marine Scotland. However, there is some important crossover with local planning authority regulation to the extent that these considerations and measures have an impact upon protected species in the wider environment including, in this case, harbour porpoise and wild salmonids (salmon and sea trout). These matters are assessed separately below.

**Visual and Landscape Impact:** The application has been accompanied by a number of visualisations to provide guidance about the final appearance of the cages from a number of agreed viewpoints and in the context of the existing neighbouring fish farm. SNH have provided consultation comments in respect of visual impact. The Community Council have identified the effect of the farm on the landscape as one of their reasons for objection.

The viewpoints were agreed at the scoping stage and form part of one of the chapters of the Environmental Statement (ES) accompanying this EIA development. In general they have been chosen to illustrate visual impact upon four particular receptor locations;

1. Users of the core path
2. Residents of the Torvaig as the nearest settlement
3. Walkers at the summit of Tianavaig
4. Those viewing the farms from the sea

The critical consideration in assessing visual and landscape impact in this location is its inclusion within the Trotternish and Tianavaig SLA. The stretch of coast between Portree and Staffin is specifically identified in the SLA appraisal as one enjoying a high degree of tranquillity and isolation. The introduction of man-made buildings and installations is one of the factors acknowledged as having a potentially detrimental impact on this qualifying feature and Policies 47, 50 and 57 place such considerations within the development plan.

As identified by the Community Council and illustrated by visualisation 1, the visual impact of the existing farm from the core path is already quite substantial as it sits within the foreground of north-easterly views across the Sound to Raasay. The addition of the second fish farm in close proximity to the first only increases this effect. Moreover, as demonstrated by visualisations 1 and 2, the proposal sits in a different orientation to the existing and so reads almost as being at right angles to it which tends to maximise the combined effect of the two.

However, it must be recognised that the existing farm has already compromised the isolated tranquillity of the coast at this point and the further detriment created by the proposal has to be assessed in that context. Equally, in terms of the overall SLA, the negative impact remains confined to that part of the coast closest to Portree where, arguably it is least isolated and perhaps of lower value. Furthermore, although as the community council points out the core path is a relatively well used one, the actual number of receptors involved would suggest that only limited weight can be given to this consideration.

Similar SLA concerns relate to the views down on to the existing and proposed farms from the elevated settlement road end track at Torvaig (visualisation 3). From this outlook the farms will be a prominent feature within the bay and may draw the eye to the detriment of the unspoilt beauty of their overall setting. However, as above, the marginal increased impact over the existing situation must also be considered. Furthermore, from this raised location, the overall scale of the landscape scene available to the viewer tends to diminish the impact of the farms in the foreground. Even more so than the core path, the number of receptors at this point is very low.

The summit of Tianavaig (visualisation 6) is a relatively popular goal for walkers due to its proximity to Portree and the high quality 360° views available. Within this vista the farms are considered to be surprisingly noticeable given the distances involved and this is probably a reflection on the isolated, natural qualities of the SLA coastline extensively in view from this altitude. However, as pointed out in the SNH consultation, given the 360° nature of this viewpoint, the relative impact of the

farms on the overall scene and the receptor's experience is very small. Coupled to the comparatively small numbers of people making it to the top of the mountain, this factor suggests that limited weight can be given to the impact.

From the sea (visualisations 7 and 8), looking back to the farms against the dark intertidal zone on the rocks behind, the visual prominence of these manmade structures appears greatly diminished. Some concern has been raised by consultees about the use of somewhat higher and more substantial top-net support structures for the proposed farm, but even these do not seem to amount to any substantial or detrimental visual consequence.

Overall then, the visual impact of the proposed farm in its own right and cumulatively with the existing farm is considered acceptable with only limited impact on a relatively small number of receptors.

**Impact upon Harbour Porpoise:** the ES recognises the existence of the recently designated candidate SAC for Harbour Porpoise and that it covers the waters into which this fish farm is to be located (in fact, all the waters surrounding Skye). It also recognises that the proposed farm could have an impact upon the protected species through the use of acoustic deterrent devices (ADDs). These are underwater loudspeakers capable of producing high sound pressures that are designed to scare away seals from the vicinity of the fish farm. They are currently deployed at the neighbouring farm and the same equipment is proposed for this installation.

Unfortunately, given the efficiency with which sound travels through water and the frequencies used, such devices can also disturb other aquatic mammals such as the harbour porpoise. The ES concludes that this should not be a problem because the species has co-existed with fish farms for many years.

However, SNH consider that this is an inadequate response to the new cSAC designation in which the individual and cumulative impact of ADDs on the behaviour and movements of Harbour Porpoise within this protected habitat must now be given much greater scrutiny. There is a danger of habitat exclusion due to underwater noise and disturbance and this runs counter to the fundamental aims of this designation of international importance.

SNH consider that the use of ADDs could have a significant effect on the species and so the Highland Council, as the competent authority, is required to carry out an appropriate assessment – attached at the end of this report. Furthermore, SNH object to this application unless any approval includes a condition controlling the operating characteristics of acceptable devices and how they are used. They also require a log to be maintained of the ADD use and that this log be the subject of annual assessment informing a review of the way in which the devices are used thereafter.

The SAC designation requires that a reassessment of all ADD use within its boundaries needs to be carried out and this process has been commenced between SNH and the aquaculture industry. It is because the outcome of this analysis will not be forthcoming for some time that SNH requires on-going monitoring and review to be built into their conditional requirement. It is considered that a suitable condition can and should be used and is included in this recommendation. With it in place, the impact on the cSAC is considered acceptable.



**Impact on Wild Salmonids:** the subject of the potential or actual impact of fish farms on the health and mortality of wild salmon and sea trout is the subject of much current discussion between Marine Scotland, planning authorities and the fish farming industry. The key points of the dialogue are;

- wild salmonids enjoy various levels of ecological protection and this is reflected in national policy and the Council's development plan,
- in part this protection is a response to the long term national decline of the species (typically reflected in the catch data for the Varragill river submitted by the proprietors of its fishing rights in response to this application),
- it has been suggested that a contributory factor in this decline is the infestation of wild salmonids by sea lice originating from fish farms,
- sea lice arrive in fish farms from wild fish but can then breed very fast in the high density confines of the net cages,
  
- Marine Scotland's official view is that;
  - scientific evidence from Norway and Ireland indicates a detrimental effect of sea lice on sea trout and salmon populations,
  - Marine Scotland has yet to complete similar research in Scottish waters but information from the west coast of Scotland suggests lice from fish farming can cause a risk to local salmon and sea trout,
  - salmon aquaculture results in elevated numbers of sea lice in open water and is likely to have an adverse effect on populations of wild salmonids in some circumstances, but the impact on overall mortality is not known,
  - The siting of a farm and control of sea lice numbers on the farm are critical factors in risk assessment for wild salmonids,
  - the greater the number of lice on the farm the greater the risk to wild salmon and sea trout,
  - escapes of farmed salmon must also be avoided,
  - the Fish Health Inspectorate (FHI) have an enforcement regime in place if numbers of lice exceed 8 per fish three times in a production cycle, but that this may not prevent the release of substantial numbers of lice from aquaculture installations.
  
- Local planning authority officers are concerned, given the above, that when granting planning permission for fish farms they must ensure that there is a control mechanism within the planning permission to ensure sea lice numbers remain low throughout the lifetime of the permission. Otherwise they are worried that the permission will be at odds with the planning authority's development plan policies and biodiversity duty – Nature Conservation (Scotland) Act 2004 – rendering the decision unsafe and vulnerable to challenge.
  
- Over the last two or three years, authorities such as Highland and Argyll and Bute have issued permissions with conditions requiring the approval of Environmental Management Plans including Sea Lice Management Plans and Escape Management Plans to satisfy (as far as possible) the above concern.

All of the above seems particularly pertinent to this Portree site given the evidence of declining wild fish stocks in the Varragill and the position of this proposal (and the current neighbouring farm) close to the mouth of the loch and the route for wild salmonids to and from the Varragill and the open sea. It is also noted that the previous production cycle at the neighbouring farm was harvested out early at a time when sea lice numbers had risen to about 4 per fish.

The fact that at least 110,000 salmon and trout fry have been released into the river since 2004 with no sustained improvement in catch numbers suggests that these wild fish are facing some demanding environmental, health and predation challenges. Consequently, it is important to ensure that the current proposal does not add to the threats being faced by the species.

As Marine Scotland point out in their consultation response the applicant is aware of the potential impacts of sea lice on wild salmonids and has included a sea lice management plan with the proposal (amended during the course of the application). The plan details a range of sea lice control measures including good husbandry practices that will cover both this and the neighbouring site in synchronised activity;

- fallow periods between production cycles
- both farms being stocked at the same time
- regular sea lice counts that exceed the industry standard
- synchronised sea lice treatments to stay below the industry standard (0.5 female lice per fish from February to June, 1.0 female lice per fish from July to January)
- a full range of chemical in-feed and bath treatments alongside the use of cleaner fish and other non-chemical sea lice treatments – mechanical, freshwater and warm water

SEPA have confirmed that the full range of chemotherapeutants requested by the applicant has been confirmed by the issue of a CAR license.

Marine Scotland have stated that these measures are deemed satisfactory as far as can reasonably be foreseen.

However, the authority must also give consideration to a couple of recent fish farm appeal decisions in the Highland area which also addressed this issue. Decisions granting approval for farms near the mouth of Loch Pooltiel in north-west Skye and in Loch Torridon on the mainland both included conditions requiring the submission and approval of an environmental management plan. These consisted of a sea lice management plan and an escape management plan and stipulated the form these should take.

However, these stipulations also included a requirement to carry out wild fish monitoring and an obligation to provide the planning authority with summary data on sea lice levels and notification of any losses or escapes.

The reporter justified the wild fish monitoring requirement on the basis that the protection of wild fish was the ultimate purpose of the EMP and to fail to even attempt to monitor its impact would mean that the EMP was achieving nothing more than the existing FHI regime. This could not therefore be regarded as discharging the planning authority biodiversity duty. Furthermore, the condition

could not be seen to meet the enforceability requirements of Circular 4/1998 unless the local authority were provided with the sea lice count and escapes data to base their on-going assessment of the farm sea lice control performance upon.

It is considered that the approach taken by the reporter in these appeals is relevant to this application. It would allow a recommendation of approval in the knowledge that the authority would remain sufficiently informed at any time during the lifetime of the permission to take action if the operations of the farm were considered to be causing material harm to wild salmonids. A condition modelled upon those in the reporter's decision notices for these two appeals is recommended.

**Benefits of the proposal:** Marine Scotland has carried out an "Assessment of the benefits to Scotland of Aquaculture". This highlights not only the benefits to more remote economies but the wider benefits to the Scottish and UK economy taking account of processing and retailing. It references the not insignificant benefits of increasing marine finfish production sustainably to 210,000 tonnes by 2020 and the direct industry and supply chain value and employment potential this could generate. In addition, paragraph 249 of Scottish Planning Policy highlights that Aquaculture makes a significant contribution to the Scottish economy, particularly for coastal and island communities.

In this context, the applicants have stated that the proposal will create a minimum of 3 - 4 full time equivalent posts at the site. In addition, they contend that the proposed site will help support a variety of local businesses, such as local shops and filling station/fuel depots for routine supplies, local hauliers for deliveries not possible by boat, and local tradesmen and suppliers. Local contractors will be used where required for special projects (such as mooring works and survey works), as well as dive teams on a regular basis.

**Other Matters:** In terms of obstruction to public navigation rights (including cruise liners), The Northern Lighthouse Board has recommended its standard marking and lighting arrangements for the fish farm. Circular 1/2015 outlines the relationship between the statutory land use planning system and marine planning and licensing. In view of this it is considered that the competent body to deal with rights to navigation is Marine Scotland who would assess this as part of the fish farm company's application for a Marine License.

In terms of noise impacts, the application site is located approximately 500m to the south-east of a formal public footpath and the nearest residential dwellings is located approximately 1500m to the west and in an elevated position above the site. The Planning Authority are not aware of any formal noise complaints against the applicants existing fish farm adjacent to this site.

However, the applicants have stated that the feed barge which serves the existing and proposed fish farm sites will be upgraded, and the generator room will be in a sound insulated room, below deck. Furthermore, the applicants have stated that the site working hours will be restricted to 8am to 5pm with the exception of occasional out-of-hours working for grading, harvesting and treatment purposes. Daily boat operations will also be restricted to 8am to 5pm with the same exceptions. There are no plans to increase the number of boats in use at the site, with this new development. On this basis the Council's Environmental Health Team have offered no objection to the development.

The application proposes the installation of 3 x 1000W underwater lights per cage, in order to ensure that these lights do not have a detrimental impact upon amenity it is recommended that a condition controlling the direction of the lighting is attached to the consent.

#### 8.5 **Other Considerations – not material**

The benefits or otherwise of containment production methods for aquaculture are not material to this application which must be determined on its merits as submitted.

#### 8.6 **Matters to be secured by Section 75 Agreement**

None

### 9. **CONCLUSION**

9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

### 10. **RECOMMENDATION**

**Action required before decision issued** N

**Subject to the above,** it is recommended the application be **Approved** subject to the following conditions and reasons / notes to applicant:

1. No deployment or use of any acoustic deterrent device (ADD) shall take place until an ADD Deployment and Usage Plan has been submitted to and approved in writing by the planning authority. This plan shall include the following information;
  - full technical details of the sound output of the devices to be used including source level and their operating frequency(s),
  - how many of these devices are to be deployed and in what locations,
  - confirmation that they will only be triggered in the presence of predators – manually or by sensor – and that this triggering will only result in a single finite operation of the device, details of which shall be submitted, with no continuous or auto-intermittent operation possible,
  - confirmation that a log will be kept recording the exact dates when the devices were operated, how often they were operated on that date, for what duration and what the cue for their manual or auto-sensor operation was,
  - details of any predation events by seals and any predation measures, including ADD deployment, in use at that time should be logged,
  - details of the person or persons responsible for maintaining the log,
  - an undertaking that a regular meeting (at least annually) will be held with the Planning Authority and SNH to review the log and the ADD Deployment and Usage Plan and adopt a revised Plan if deemed necessary by the Planning Authority.

No deployment or use of any ADD on the site shall take place unless it is in strict accordance with the provisions of the ADD Deployment and Usage Plan as may be approved.

**Reason** : In recognition of the legal responsibilities of both the applicant and the planning authority in respect of the Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC) selected for its harbour purpose.

2. All surface equipment, with the exception of navigational markers and safety equipment shall be finished in a dark matt neutral colour unless alternative finishes are agreed in advance in writing with the Planning Authority. In particular, the tap nets and netting along walkways shall be matt grey. Pipes between the automated feed barge and the cages shall be neatly bundled to minimise clutter and routed below water where it is practical to do so.

**Reason** : to minimise the visual impact of the installation and to help safeguard the integrity of the Trotternish and Tianavaig Special Landscape Area.

3. All lighting above the water surface and not required for safe navigation purposes shall be directed downwards by shielding. It should be extinguished when not required for the purpose for which it has been installed. If lighting is required for security purposes, infra-red lights and cameras should be used.

**Reason** : to minimise the visual impact of the installation; to ensure that lights left on in the daytime do not draw the eye towards the site and at night do not present unnecessary sources of light pollution

4. 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 site operator shall carry out or make suitable arrangements for the carrying 'out of all measures necessary for lighting, buoying, raising, repairing, moving or destroying, as appropriate any associated obstruction or danger.

**Reason** : in the interests of amenity and navigational safety

5. At least three months prior to cessation of use of the site for fish farming, a scheme for the decommissioning and removal of all equipment shall be submitted to and agreed in writing with the Planning Authority. Upon cessation the approved scheme shall be implemented

**Reason** : to ensure that decommissioning of the site takes place in an orderly manner and to ensure proper storage and disposal of redundant equipment in the interest of amenity and navigational safety.

6. Mitigation measures submitted as part of the Environmental Statement shall be fully implemented

**Reason** : To ensure environmental impacts are satisfactorily mitigated

6. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP), or similar document, will be submitted to and approved in writing by the Planning Authority and should include adequate details to address how compliance can be assessed. This should also detail triggers/thresholds and associated actions in order to secure that any risk to local wild fish populations is minimised. Upon commencement the development and ongoing operation of the site must be carried out in accordance with the EMP as approved.

The EMP shall be prepared as a single, stand alone document, which shall include the following:

**(1). Sea Lice Management in relation to impact on wild fish**

- a) A method statement for the regular monitoring of local wild fish populations based on available information and/or best practice approaches to sampling;
- b) details of site specific operational practices that will be carried out following the stocking of the site in order to manage sea lice and minimise the risks to the local wild fish population;
- c) details of site specific operational practices that will be carried out in order to manage the incidence of sea lice being shed to the wider environment through routine farming operations such as mort removal, harvesting, grading, sea lice bath treatments and well boat operations;
- d) details of the specification and methodology of a programme for the monitoring, recording, and auditing of sea lice numbers on the farmed fish;
- e) details of the person or persons responsible for all monitoring activities;
- f) an undertaking to provide site specific summary trends from the above monitoring to the Planning Authority on a specified, regular basis;
- g) details of the form in which such summary data will be provided;
- h) details of how and where raw data obtained from such monitoring will be retained by whom and for how long, and in what form;
- i) an undertaking to provide such raw data to the Planning Authority on request and to meet with the planning authority at agreed intervals to discuss the data and monitoring results;
- j) details of the site specific trigger levels for treatment with sea lice medicines. This shall include a specific threshold at which it will be considered necessary to treat on-farm lice during sensitive periods for wild fish;
- k) details of the site specific criteria that need to be met in order for the treatment to be considered successful;
- l) details of who will be notified in the event that treatment is not successful;
- m) details of what action will be taken during a production cycle in the event that a specified number of sea lice treatments are not successful;
- n) details of what action will be taken during the next and subsequent production cycles in the event that sea lice treatment is not successful.

## **(2). Escape Management to minimise interaction with wild fish**

- a) details of how escapes will be managed during each production cycle;
- b) details of the counting technology or counting method used for calculating stocking and harvest numbers;
- c) details of how unexplained losses or escapes of farmed salmon will be notified to the Planning Authority;
- d) details of an escape prevention plan. This shall include:
  - net strength testing;
  - details of net mesh size;
  - net traceability;
  - system robustness;
  - predator management; and
  - record-keeping methodologies for reporting of risk events. Risk events may include but are not limited to holes, infrastructure issues, handling errors and follow-up of escape events; and
- e) details of worker training including frequency of such training and the provision of induction training on escape prevention and counting technologies.

## **(3). Procedure in event of a breach or potential breach.**

- a) A statement of responsibility to "stop the job/activity" if a breach or potential breach of the mitigation / procedures set out in the EMP or legislation occurs. This should include a notification procedure with associated provision for the halt of activities in consultation with the relevant regulatory and consultation authorities in the event that monitoring demonstrates a significant and consequent impact on wild fish populations as a result, direct or otherwise of such a breach.

## **(4). Requirement for update and review**

- a) The development and operation of the site, shall be carried out in accordance with the approved EMP unless changes to the operation of the site dictate that the EMP requires amendment. In such an eventuality, a revised EMP will require to be submitted to, and approved in writing by the Planning Authority beforehand. In addition, a revised EMP shall be submitted to and approved in writing by the Planning Authority every 5 years, as a minimum, following the start date, to ensure it remains up to date and in line with good practice.

**Reason** : To ensure that good practice is followed to mitigate the potential impacts of sea lice loading in the marine environment in general and on wild salmonids in particular; in accordance with the Planning Authority's biodiversity duty.

## **REASON FOR DECISION**

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

## **TIME LIMITS**

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

## **FOOTNOTE TO APPLICANT**

### **Initiation and Completion Notices**

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

### **Accordance with Approved Plans and Conditions**

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action



## **Environmental Impact Assessment**

In accordance with Regulation 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, environmental information, in the form of an Environmental Statement, has been taken into consideration in the determination of this application and the granting of planning permission.

Signature: Dafydd Jones

Designation: Area Planning Manager North Area

Author: Alison Harvey

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 – Location Plan (Figure 1) received 25.07.2016

Plan 2 – Amended Site Layout Plan (Figure 2) received 28.10.2016

Plan 3 – Amended Site Layout Plan (Figure 3) received 28.10.2016

Plan 3 – Site Layout Plan (Figure 4) received 25.07.2016

## Appendix – Letters of Representation

Name	Address	Date Received	For/Against
Dr James Merryweather	The Whins, Auchtertyre, By Kyle Of Lochalsh IV40 8EG	06.10.2016, 31.10.2116 18.12.2016	Against
Sherry Palmer	65 ½ Maple Street, Richester NH 03867 USA	05.10.2016	Against
Roger Cottis	Tawny Croft Wildlife Consultants, Isleornsay Sleat, Isle Of Skye, , IV43 8QS	06.10.2016 29.12.2016	Against
Catriona Leslie	Redcliff, Portree, Isle Of Skye, IV51 9DH	07.10.2016	Against
M R H Leslie	Redcliff, Portree, Isle Of Skye, IV51 9DH	07.10.2016	Against
Mr Neil Cameron	Portree Angling Association	07.10.2016	Against
Mr J Mahon	15 York Drive, Portree IV51 9EB	08.10.2016	Against
Mr Ross Kirkwood	4 Penifiler, Portree IV51 9NF	08.10.2016	Against
Harriet Forrest	Arduvillin, Viewfield Road, Portree	09.10.2016	Against
Niall McKillop	Ford Cottage, Badabrie, Banavie, Fort William PH33 7LX	09.10.2016 03.01.2016	Against
Rob Forrest	Forrest Ecological	09.10.2016	Against
Skye and Lochalsh Environment Forum	The Old Police Station, Isleornsay, Isle of Skye, IV43 8QR	10.10.2016	Against
Mr Ewen Maclean	Dun Gerashader, 8 Torvaig, Portree IV51 9HU	22.11.2016	For
Mr Frank Byrne	16 Telford Gardens, Dingwall, IV15 9UR	24.11.2016	For
Fusion Marine Ltd	Marine Resource Centre, Barcaldine, By Oban Argyll PA37 1SE	28.11.2016	For
Ben Wilson	Inverlussa Marine Services, By Craignure, Isle of Mull Argyll PA65 6BD	13.12.2016	For
Mr Finlay Oman	WandJ Knox Ltd, Mill Road, Kilbirnie KA25 7DZ	13.12.2016	For
Mr Stewart Graham	Gael Force Marine, 136 Anderson Street, Inverness IV3 8DH	17.12.2016	For
Ms Caitlin Maclean	Dun Gerashader, 8 Torvaig, Portree IV51 9HU	28.12.2016	For

## **Porpoise cSAC**

**New Atlantic salmon fish farm comprising 10 x 38m diameter cages in one group (of 5 x 2) within a 80m grid layout  
Outer Loch Portree/Sound of Raasay, Isle of Skye  
16/03352/FUL**

### **CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES**

The status of the **Inner Hebrides and the Minches candidate Special Area of Conservation** under the EC Directive 92/43/EEC, the 'Habitats Directive' means that the Conservation (Natural Habitats, etc.) Regulations 1994 (as amended), apply, as Scottish Planning Policy 2014 (para 210) requires candidate SACs to have the same level of protection as designated ones.

This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is that it is likely to have a significant effect on that site, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the area has been designated. The need for Appropriate Assessment extends to plans or projects out with the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- Determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- Determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- Make an Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case and there are not alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required. The proposed fish farm and its incorporation of acoustic deterrent devices has the potential to have a likely significant effect on the qualifying interests. The Council is therefore required to undertake an Appropriate Assessment of the implications of the proposal for the Inner Hebrides and the Minches candidate SAC in view of the site's conservation objectives.

### **APPROPRIATE ASSESSMENT**

While the responsibility to carry out the Appropriate Assessment rests with the Council, advice contained within Circular 6/1995 is that the assessment can be based on the information submitted from other agencies. In this case, the Appropriate Assessment is informed by information supplied by SNH.

## Appraisal

In its response to the Council SNH has advised that in their view this proposal will not adversely affect the integrity of the site when proposed mitigating conditions are applied. The council has undertaken an appraisal assisted by the information supplied.

## Decision

On the basis of this appraisal, it can be concluded that the proposal will not adversely affect the integrity of Inner Hebrides and the Minches proposed SAC.

## HIGHLAND COUNCIL APPRAISAL OF THE PROPOSAL

- The proposal is not directly connected with or necessary to site management for conservation;
- The proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; therefore;
- An Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives is provided below.

## Interests of European Importance – the Inner Hebrides and the Minches proposed SAC

The qualifying interest for which the site is proposed to be designated is porpoise. The cSAC is the largest protected area in Europe for harbour porpoise and covers over 13,800 km<sup>2</sup> and supports over 5000 individuals. The SAC Selection Assessment Document on the SNH website<sup>1</sup> describes the pSAC as having the following attributes:

### 6. Site summary

The Inner Hebrides and the Minches site is located within the West Scotland harbour porpoise MU and is an area with high predicted and observed densities of harbour porpoise. The area included within the site covers important summer habitat, where the density of animals has been shown to be consistently above average by both Heinänen and Skov (2015) and the work from Booth *et al.* (2013). Additionally, work by Embling *et al.* (2010) and Marubini *et al.* (2009) also indicate that locations within this proposed site support high densities of harbour porpoise in summer and thus could be suitable as a protected area for the species. No modelling work was undertaken for the winter season for the West Scotland management unit because there were insufficient data available. Although there are more data from summer months, harbour porpoise are present throughout the year (Paxton *et al.* 2016), and thus the designation applies year round.

The Inner Hebrides and the Minches site comprises an area of 13801.99km<sup>2</sup>. The site's northern boundary crosses the North Minch between the Point of Stoer and Tolsta Head. A simple boundary follows the coastline of the Outer Hebrides to Rubha na h-Ordaig on South Uist. From there it crosses the Sea of the Hebrides to the northern tip of Coll, and then runs from Port a' Mhùrain on the south west of Coll, down to Rubha Bholsa on the north coast of Islay. It has a southern boundary between the Rhuba na Tràille at the southern end of Jura and the mainland coast near Ballochroy. From Ballochroy it follows the mainland coastline back to the Point of Stoer including the Sound of Mull and Kyle Rhea. It encompasses the islands of Skye, Mull, Lismore, the island group within the Firth of Lorn and Colonsay.

The Advice to Support Management document on the SNH Website<sup>ii</sup> notes:

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### **Aquaculture - finfish**

In assessing likely impact, our focus has been on the equipment on site, likely vessel routes, and the use of Acoustic Deterrent Devices (ADDs) which together represent the main interactions between aquaculture developments and harbour porpoise.

There are numerous finfish farms within or immediately adjacent to the pSAC, mainly close to the shore. Map 2 shows the distribution of aquaculture developments within or close to the boundary of the pSAC.

Aquaculture farm equipment includes pens, nets, moorings and can include floating buildings. We consider that there is a low risk of entanglement for harbour porpoise from aquaculture infrastructure.

Finfish farms often use ADDs as part of their anti-predator measures, however, these may result in disturbance/habitat exclusion of harbour porpoise. The evidence of impacts on cetaceans from ADDs currently in use is varied and is dependent on many variables (e.g. noise characteristics of device, how the device is used, the topography, animal behaviour and importance of the area/habitat where the ADD is being used). We are aware there are ongoing trials and research relating to new ADDs for which noise emissions do not overlap with the most sensitive range of harbour porpoise hearing. Further research is required but these new devices may in the future provide a suitable alternative seal defence mechanism which is more compatible with the conservation objectives of the site.

The conservation objectives for the Inner Hebrides and the Minches candidate SAC are yet to be determined but are being considered in a proposed Conservation Strategy<sup>iii</sup>. SNH have advised:

In our view, this proposal is likely to have a significant effect on harbour porpoise within Inner Hebrides and the Minches cSAC. Consequently, The Highland Council is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest. To help you do this, we advise that in our view on the basis of the information provided, and if the proposal is undertaken strictly in accordance with the following changes/mitigation then the proposal will not adversely affect the integrity of the site:

- If ADDs are used which are within the hearing range of harbour porpoise they must be devices which are only triggered in the presence of predators. They should not sound continuously, or be set to intermittent unless agreed in writing by the Highland Council.
- For each device deployed, a detailed record should be kept by the operator of the cue for deployment, dates when the devices are operating, how often they sound and for what duration. Information should be provided of the noise profile of the devices when they are sounding.
- The use of ADDs should be subject to regular review by the Highland Council, in consultation with SNH, which should initially be on an annual basis. The Highland Council should have the power to amend/restrict the types of devices used and how they are used.

Further to this, discussions with SNH have advised they are content that an appropriate condition that reflects the above advice will satisfy the assessment of impacts.

Qualifying Species:

- Porpoise

### **Highland Council's appraisal of the effect of the proposal on species integrity**

The development may directly cause negative impacts due to the individual and cumulative impacts of ADDs if used on this and the adjacent fish farm. However, scientific advice provided indicates that so long as a condition is imposed on the planning application requiring that the ADDs to be used in a limited manner to minimise the individual and cumulative effects, no adverse effect on the integrity of the candidate SAC will result.

### **Conclusion to scientific appraisal**

The proposal is unlikely to have a significant effect of the integrity of the qualifying feature of the Inner Hebrides and the Minches candidate SAC.

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<sup>i</sup> <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/2016-harbour-porpoise-consultation/>

<sup>ii</sup> <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/2016-harbour-porpoise-consultation/>

<sup>iii</sup> <http://www.gov.scot/Topics/marine/marine-environment/mpanetwork/harbourporpoisesacs/conservestrat>