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Mr M McLoughlin
Highland Council
Sent By E-mail

Our ref: PPA-270-2217
Planning Authority ref:19/01413/FUL

26 October 2020

Dear Mr McLoughlin

**PLANNING PERMISSION APPEAL: NORTH AIRD ARDHESLAIG LOCH
SHIELDAIG IV54 8XH**

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

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I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Liz Kerr

LIZ KERR
Case Officer
Planning and Environmental Appeals Division





Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2217
- Site address: North Aird, Ardheslaig, Loch Shieldaig,
- Appeal by The Scottish Salmon Company against the decision by Highland Council
- Application for planning permission 19/01413/FUL dated 25 March 2019 refused by notice dated 31 July 2019
- The development proposed: Marine Fish farm – Atlantic salmon: new site consisting of 4 x 100 metre circumference circular cages
- Application drawings - listed in schedule 3
- Date of site visit by Reporter: 23 January 2020

Date of appeal decision: 26 October 2020

Decision

I allow the appeal and grant planning permission subject to the five conditions at the end of the decision notice. Attention is drawn to the five advisory notes at the end of the notice.

Environmental impact assessment

The proposed development is described as above, and at Chapter 3 of the EIA report. It is EIA development. The determination of this appeal is therefore subject to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 EIA regulations”).

I am required to examine the environmental information, reach a reasoned conclusion on the significant environmental effects of the proposed development and integrate that conclusion into this decision notice. In that respect I have taken the following into account:

- the EIA report and addendum containing appendices submitted on 22 March 2019;
- consultation responses from Northern Lighthouse Board, Scottish Water, Scottish Environment Protection Agency, Transport Scotland, Historic Environment Scotland, Wester Ross Area Salmon Fisheries Board, Scottish Natural Heritage, Marine Scotland, Shieldaig Community Council; and
- representations from members of the public.

I am required by the 2017 EIA regulations to include information in this decision notice in regard to opportunities for the public to participate in the decision-making procedure. I set that information out in Schedule 4 below. My conclusions on the significant environmental effects of the proposal are set out at paragraphs 21 - 86 below.



It should be noted that Scottish Natural Heritage changed its name to NatureScot on 24 August 2020. As all the references to the organisation in this notice refer to the period when it was Scottish Natural Heritage, and it was largely complete when the change occurred, for consistency I have used its original name.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The appeal site lies within the waters of Loch Shieldaig close to its western shore off the south – eastern end of the Aird peninsula. Around this point Loch Shieldaig becomes Loch Torridon which runs north-west towards the Minch. Some two kilometres east of the site Upper Loch Torridon extends to the east through a relatively narrow inlet.
3. The appeal site lies within the Wester Ross National Scenic Area. At this point the landscape is dramatic, dominated by the mountain masses of Beinn Alligin and Beinn Damh on the north and south sides of Upper Loch Torridon respectively. The land around Loch Shieldaig and Loch Torridon rises to around 500 metres above mean sea level through a series of foothills. The area's coastline in general is rugged with rocky shores and many small beaches and peninsulas. The Aird peninsula rises to 86 metres, with its coastline falling steeply to the sea.
4. The proposed development comprises the installation and operation of a salmon farm consisting of four 100 metre circumference fish pens. This would effectively form an extension of four pens to the existing Aird fish farm. This is located immediately south of the appeal site and comprises ten 100 metre circumference pens.
5. The existing Aird fish farm is laid out in a two by five configuration, although the most northerly pair of pens are separated from the remaining eight by some 60 metres. The four proposed pens would be positioned immediately to the north of these two. This would result in a combined development with the appearance of a single farm consisting of a two by eight element to the south and a two by six element to the north. A boat like feed barge would be anchored between the two. The maximum biomass for the proposed development would be 650 tonnes, bringing the total for the Aird site to 2,400 tonnes.
6. Having regard to the provisions of the development plan, the Environmental Impact Assessment and other submissions before me and my site inspection, the main issues in this appeal are: (i) the acceptability of the landscape and visual impacts, including on the Wester Ross National Scenic Area and the Flowerdale-Shieldaig-Torridon and Applecross Wild Land Areas; (ii) the acceptability of the impacts on the marine ecology of the area, including wild fish and migratory species; (iii) the potential impacts on the Inner Hebrides and Minches and on the River Kerry Special Areas of Conservation; and (iv) the acceptability of other relevant impacts.

The development plan

7. The relevant development plan comprises the Highland-wide Local Development Plan 2012 and the West Highlands and Islands Local Development Plan 2019. In its reasons for refusal the council says the proposal fails to meet the expectations of Highland-wide policies: 49 – Coastal development, 50 – Aquaculture, 57 – Natural built and cultural heritage, and 58 – protected species. I have considered these carefully and consider them directly relevant in this case. Policy 61 – Landscape, quoted in the report of handling is also relevant. The council considers that no specific policies of the West Highlands and Islands Local Development Plan apply and I concur with this judgement.

8. In brief policy 49 requires nearshore water development to comply with the other policies of the development plan in achieving sustainable, well planning coastal development.

9. Policy 50 states that the council will support the sustainable development of finfish and shellfish farming subject to there being no significant adverse effect, directly, indirectly or cumulatively on the natural, built and cultural heritage and existing activity.

10. Policy 57 identifies natural, built and cultural features of international or national importance. For internationally important features it says developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to an appropriate assessment. Where the planning authority is unable to ascertain that a proposal will not adversely affect the integrity of a site, it will only allow development if there is no alternative solution and there are imperative reasons of overriding public interest, including those of a social or economic nature. For nationally important features it says that the planning authority will allow developments that can be shown not to compromise the natural environment, amenity and heritage resources;

11. Policy 58 supports the policy 57 presumption against proposals which are likely to have an adverse effect, individually and/or cumulatively, on European protected species.

12. Policy 61 requires proposals to be designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed. This will include consideration of the appropriate scale, form, pattern and construction materials, as well as the potential cumulative effect of developments where this may be an issue.

Consultation responses

13. Marine Scotland Science had no objection but made the following points:
- current data suggests that farms in the region have periodic difficulties controlling lice under current management practices to meet with CoGP standards;
 - proposed monitoring strategy fails to take account of the work and datasets of Marine Scotland's Loch Shiel field station;
 - data shows correlation between high lice levels on wild fish and second year of production of the local farms and suggests "... *sea lice produced by the local farms has a significant and potentially substantial impact on the local sea trout population in the River Shiel. Therefore increasing biomass in the area, with no reduction*

in sea lice numbers per fish, will likely impact on the local sea trout population...”;
and

- the varied CAR licence to allow this proposal now limits Emamectin benzoate to 622 grams. Not clear this is enough to treat maximum biomass up to five times. Clarification on implications of this for sea lice treatment required.

14. The Scottish Environment Protection Agency had no objection and noted that a CAR licence for the increased biomass has already been issued, through which benthic and water column health would be controlled adaptively.

15. Scottish Natural Heritage had no objection but made the following points:

- likely significant effect on the qualifying interests (harbour porpoise) of the Inner Hebrides and the Minches SAC through the use of Acoustic Deterrent Devices (ADD) (appropriate assessment required);
- advises that the proposal will not adversely affect the integrity of the site provided adherence to the submitted ADD deployment plan and equipment specification;
- details should be secured by condition with a clause to allow adaptive management over time;
- likely significant effect on the freshwater pearl mussel qualifying interest of the River Kerry SAC from escaped farmed fish – does not believe sea lice connectivity exists; (appropriate assessment required);
- the escapes contingency plan should be secured by condition;
- reduction to four cages (from six as scoping stage) suggests that there would be no adverse effect on the National Scenic Area; and
- does not believe that any impacts on Priority Marine Features would result in any significant impacts upon their national status.

16. Shildaig Community Council on grounds that:

- benthic and water column impact analyses underplay impacts;
- increased ADD usage will have a negative impact on the Minch SAC and other cetaceans;
- farm is close to known migratory salmon routes and MS has evidence of sea-lice connectivity between Loch Torridon farms and the local salmonid population;
- increased visual impact on the Wester Ross National Scenic area will be unacceptable; and
- economic and employment claims are exaggerated.

17. Wester Ross Area Salmon Fishery Board (the Fisheries Board) objection on grounds that:

- The proposal is contrary to the requirements of Policy 50 of the Highland-wide Local Development Plan because it would result in a significant adverse effect on wild fish populations;
- Any biomass increase in the Loch Torridon system would result in this adverse impact as evidenced by most recent Reporter decision at nearby Sgeir Dughall in which consent was conditional on following another site at Camas an Eilean (250 tonnes biomass) - suggesting that a maximum had been reached. This application proposes 650 tonnes biomass;

- The farms in the Loch Torridon system have had a poor record of maintaining sea lice infestation at below Scottish Salmon Producers Organisation Code of Good Practice levels over recent years. Most recent figures for spring 2019 indicate that the actual number of sea lice on farms was the worst since 2015. No evidence of improvement as suggested by (the then) applicant. Emamectin Benzoate will not be able to be relied on to such a great extent in the future as SEPA tightens controls on its use;
- Planktonic sea lice monitoring carried out by Marine Scotland over the last two decades at its Shieldaig field station (5 kilometres from the Aird site) shows a correlation between raised planktonic sea lice levels in the loch and the second year of production for farms in the area;
- This data also shows reduced numbers of Sea Trout present during those second years;
- Marine Scotland Science has concluded that fish farms are a much larger contributor to the number of sea lice in the Loch Torridon system than the wild fish population;
- Some evidence of an impact in the neighbouring Gairloch to the north;
- The Rivers Torridon and Balgy are both spawning habitats for salmon and the migratory route for these fish passes close to the farm. MSS have a tracking project but results have not been published yet;
- Sea lice emissions in Torridon may be contributing to raised levels in coastal waters that provide the migratory route for salmon up the west coast of Scotland
- The Fisheries Board is not convinced the Environmental Management Plan (EMP) can control these negative impacts to an acceptable level; and
- The sea lice infestation graphs referred to are annotated in 'proportional' amounts – i.e. the 0.75 figure indicates 75% not 0.75% as suggested by applicant; and
- There is no evidence of improved sea lice control at the Aird site – April 2019 data shows the lice per fish figure to have risen to 1.26.

18. Historic Environment Scotland, the Northern Lighthouse Board, Scottish Water and Transport Scotland had no objections.

Public participation

19. The original application was advertised as an EIA and unknown neighbour development in the Ross-shire Journal on 12 April 2018. There were 10 responses from eight households and a petition containing 69 signatories. Eight late responses were received from seven households.

20. The council's report of handling lists material considerations raised by the responses:

- a) proposal will have an increased negative impact upon the Wester Ross National Scenic Area;
- b) submitted visualisations underplay the full visual impact of the extended farm;
- c) service vessels also have a negative visual impact;
- d) existing feed barge is in breach of previous planning condition requiring repainting in muted colours – it should be repainted grey;
- e) visual impact could harm tourist industry which is locally important;

- f) local community derives no benefit from the existing farms and the proposal will not create any new jobs in the local community;
- g) proposal will reduce water quality for competitive swimming;
- h) proposal will further damage the environment including local wild fish populations;
- i) farm is close to a migratory salmon route;
- j) Marine Scotland research station data shows correlation between fish farming activity and sea trout lice levels. This appears to breach North Atlantic Salmon Conservation Organization guidance;
- k) increased ADDs will increase impact upon the harbour porpoise Special Area of Conservation;
- l) generator noise from the existing feed barge is already a nuisance and more soundproofing should be installed;
- m) question the reliability of the benthic and water column modelling methods. Benthic impacts increased due to the slope of the seabed;
- n) impacts on Priority Marine Features understated;
- o) question the degree of contact and coordination with Mowi as the other operator in the loch system;
- p) existing farm is a navigational obstruction and a hazard to creel fishing from underwater obstructions and trailing lines; and
- q) high levels of escapes have occurred from this farm in the past.

Landscape and visual impacts

21. Section 263A (2) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires special attention to be paid to safeguarding or enhancing the character or appearance of a National Scenic Area.

22. Chapter 14 of the EIA provides a seascape and landscape visual assessment. This was undertaken in accordance with, or informed by, standard guidelines prepared by the Landscape Institute, Scottish Natural Heritage and the Highland Council. These are listed at paragraph 14.3.3 of the EIA report. The report sets out the methodology followed. This includes the use of study areas, surveys and site visits and identification of a zone of theoretical visibility.

23. Baseline studies identify the seascape and landscape context. This include the local context and setting and the neighbouring site. Visualisations are provided from 12 viewpoints.

24. The site lies within the south-western edge of the Wester Ross National Scenic Area. Special qualities of the area include the scenic splendour, spectacular and magnificent mountains, the setting of human settlement within a vast natural backdrop, the superb coast and coastal views and a landscape of many layers with visual continuity of coastal, moorland and mountain.

25. The Applecross Wild Land Area lies to the south-east to north-west of the appeal site. At its closest point it is approximately 1.6 kilometres south of the site. The area is uninhabited but it contributes significantly to the backdrop of small and dispersed harbour and crofting settlements just outside. These include Kenmore, Ardheslaig and Shildaig around the north coast.

26. The Flowerdale-Shieldaig-Torridon Wild Land Area lies approximately four kilometres to the north of the appeal site at its closest point. In its response to the original screening and scoping process Scottish Natural Heritage advised that due to the very limited visibility of the proposed extension across the area a more detailed assessment of effects on the area is not required. No further assessment was therefore carried out.

27. The proposed development lies within the Fjord Landscape Character Type, as set out in Scottish Natural Heritage's Ross and Cromarty Landscape Character Assessment 1999. Other Landscape Character Types that may be affected are Rocky Moorland, Cnocan, Rugged Mountain Massif and Harbour Settlement.

28. The village of Shieldaig is the closest settlement with views to the appeal site at a distance of 3.3 kilometres. The majority of the village is level with the top of the shoreline and most properties look towards the loch and the appeal site. A large number of views are limited by Shieldaig Island as demonstrated by the zone of theoretical visibility (Figures 8-10 in Annex 3). Three other residential properties are identified with likely visibility of the site, at distances between 1.75 and 2.4 kilometres. The main part of the village is designated as a conservation area.

29. The report also identifies five core paths from which views of the site may be possible, together with two recreational routes. Viewpoints 1 and 2 (Annex 3) show representative views at high and low level from local roads. In total 12 viewpoints were selected based on an initial desk assessment following the Scottish Natural Heritage scoping response, and selected to be representative of the type of receptor likely to be affected by the proposed development. These were used to assist the appraisal of the effects on landscape and visual resources. Receptors include local residents and road users and recreational users on land and water.

30. The general conclusions are set out in section 14.5 of the EIA report, with detailed conclusions and descriptions set out in tables in Annex 1. The report predicts that there would be no significant effects on the national landscape designations or the local landscape character types, or on the visual impacts on local receptors and viewpoints.

31. In reaching these conclusions the report uses a defined and methodical approach that is well established. It is based on a combination of visual receptor sensitivity and magnitude of change set out in table 14.1 on page 77. This shows the impacts being classified as major, major/moderate, moderate, moderate/minor, minor and minor/negligible.

32. The report notes that due to the reversible nature of aquaculture development there are no permanent changes to seascape and visual receptors.

33. It finds that with regard to the landscape impact on the National Scenic Area and the Applecross Wild Land Area the overall effects would be moderate/minor. For the Flowerdale Wild Land Area they would be minor.

34. For the Rocky Moorland, Cnocan, Fjord and Harbour settlement landscape character types the effects would be minor. For the rugged mountain massif they would be minor/negligible.

35. For the settlement of Shieldaig and the three residential receptors the visual effects would be moderate/minor. For the core paths, other footpaths, recreational routes and roads the effects would also be moderate/minor. For the Shieldaig conservation area they would be minor. Effects for the viewpoints would also be moderate/minor other than viewpoint 5, a public right of way within the Applecross Wild Land Area where there would be no effects.

36. None of these effects are considered in the report to be significant. Ultimately this is a matter of judgment and the conclusions are not accepted by some of the public responses or the Shieldaig Community Council. I note that Scottish Natural Heritage considered there would not be a significant impact on the National Scenic Area.

37. In reaching its conclusion the report notes the following embedded mitigation in the proposed development as part of the iterative process throughout the EIA, based on the following principles:

- the number of pens proposed was reduced from six to four to ensure it is proportionate to the neighbouring site and receiving landscape;
- the proposed pens are on the same alignment as the neighbouring site and set out as a uniform grid;
- the proposed pens are orientated along the coastline in a compact and regular form;
- the proposed pens are low in profile, circular and black to blend into the water and against the backdrop of the coastline;
- the associated infrastructure of feed augurs and buoys would have a minimal impact due to their size and location within the water; and
- the proposed development would be served from the existing shore base at Kenmore without any increase in size.

38. The final conclusions are set out in section 14.8 of the report. It considers the proposed development to have been designed in such a way as to ensure the potential landscape, seascape and visual effects are minimised, in line with Scottish Natural Heritage guidance and in keeping with the character of the surrounding landscape.

39. I have considered the evidence on landscape and visual effects in the EIA report very carefully. I have also taken into account differing views from the community council and members of the public that the landscape impact would be unacceptable. The council notes that the report's conclusions would be influenced by the proposed development being an extension to the existing ten fish pens so that only marginal change is involved.

40. I had all these points and the report's conclusions in mind during my site inspection when as well as visiting the site on the water I drove round the surrounding area and examined it from local viewpoints. The scale of the landscape is vast and open, with the surrounding hills and mountains dominating the scene. Against this the existing fish pens are seen fleetingly from the local roads and are largely subsumed within the wider landscape. From what I saw and the evidence before me I do not find any justification for not accepting the conclusions of the EIA report with regard to landscape and visual effects.

The character and appearance of the National Scenic Area would therefore be safeguarded.

Marine ecology impacts

41. Chapter 10 of the EIA deals with the interaction with wild salmonids. It acknowledges at 10.3 that the proposed development could potentially increase the risk of disease, sea lice infestation and escapees impacting on the local wild salmonid populations. 10.3.1 in particular deals with the impact of sea lice on wild salmonids and 10.3.2 the impact of escapees on wild salmonids.

42. These two issues form the main basis for objections to the proposal, which come particularly from the Wester Ross Area Salmon Fishery Board, the National Trust for Scotland, Shieldaig Community Council and local businesses and private individuals. Scottish Natural Heritage and Marine Scotland Science do not object, as is their normal practice when matters of national importance are not considered to be raised, but both bodies offer helpful commentaries that give some support to the cases made by the main objecting bodies.

43. The assessment acknowledges that salmon aquaculture has the potential to elevate numbers of sea lice in open water and as a consequence increase the infestation potential on populations of wild salmonids, having an adverse effect on their populations. It states that declines in catches of both salmon and sea trout on the Scottish west coast may at least in part be linked to impacts from aquaculture. Studies show a reduction in catches and counts of salmon on the west coast correlated with increased production of farmed salmon.

44. The assessment considers that juvenile salmonids, including post-smolts, leaving spawning rivers in Upper Loch Torridon and passing through Loch Shieldaig may be vulnerable to sea lice infestation associated with the proposed development. It adds however that salmon are known to depart rapidly from home rivers and are therefore likely to pass through Loch Shieldaig into Outer Loch Torridon relatively quickly. It notes the proposed development would be located 235 metres from the shoreline over depths of 20 metres to 50 metres. It adds that as post-smolt salmonids typically migrate in shallow waters close to the shore between two metres to six metres depth they would be outwith the immediate proximity of the proposed development where they would be at greatest risk.

45. In drawing to a conclusion the assessment notes that exposure to sea lice is not just spatially limited to proximity to farms but temporarily limited to migratory periods when salmonids are in sea water environments as the lice cannot survive in fresh water. It adds that other variables such as currents and the effects of tidal flow are likely to influence the accumulation of sea lice, with areas of stronger current such as those in Loch Shieldaig less likely to support sea lice aggregations than more sheltered waters. The question of current strength is disputed by objectors as the loch has restricted water movement with narrows to the east and west.

46. The assessment refers to sea lice control measures at the neighbouring site that have recorded significant improvements in sea lice control in recent generations. It says this demonstrates sea lice can be effectively controlled at this location within Loch

Shieldaig. As the the environmental management plan contains the same actions as at the neighbouring site this embedded mitigation would ensure that these high standards are achieved at the proposed development. With this mitigation the overall significance of effect is considered to be minor and not significant within the context of the environment impact assessment regulations.

47. With regard to escapes the assessment acknowledges a potential risk to wild salmonid populations though interbreeding. It says that the environmental management plan actions the same effective measures as at the neighbouring site and this embedded mitigation would ensure these high standards are achieved at the proposed site. The additional risk from escapes is considered to be low and no significant impact on wild salmonids is predicted.

48. Overall the environmental impact assessment report predicts that there would be no significant effects on the marine ecology.

49. As noted above this is disputed by objectors but from the evidence in their submissions I judge there to be a lack of confidence in the appellant with regard to fulfilling correctly the mitigation set out in its own environmental management plans. This is endorsed in the council's report of handling but is not a reason for dismissing the appeal.

50. The appellant places emphasis on its proposal to close its existing site at Kenmore, taking out of production 694 tonnes of biomass, if the 650 tonnes at Aird is approved and implemented. Although this would result in an overall small decrease in biomass there would be a greater biomass in the relatively closed inner loch close to the migratory routes of salmon to the sea, so that this proposal would not in itself address all the concerns raised by consultees and other objectors. The council's report of handling effectively endorses this, saying that this proposal would still result in a situation in which a greater biomass will be positioned within a relatively enclosed inner loch and close to the migratory salmon route to the sea, so, in itself, it doesn't address all the concerns raised by the consultees and objectors.

51. The report considered that in the circumstances of an overall reduction in biomass in the wider loch system, this residual concern could be overcome through the imposition of an environmental management plan including wild fish and sea lice monitoring and adaptive management commitments. It adds that these have been a requirement of several recent planning approvals in the Highland area and in Argyll and Bute including those decided on at appeal by DPEA, and that Marine Scotland Science has now indicated that it will be making this form of adaptive management a requirement for all fish farm applications.

52. The report of handling says ideally, such a plan should achieve the following:

- a) a description of the methods, techniques and equipment (chemicals, fresh water treatments, cleaner fish, net design, good husbandry practice etc.) to be used to maintain sea lice infestation numbers at the lowest possible levels throughout each production run;
- b) a description of how lice levels will be monitored and reported;
- c) a methodology of how rising sea lice levels will be addressed in the form of a positive feedback loop of interventions and monitoring; and
- d) a commitment to reduce biomass if these interventions prove unable to bring sea lice numbers down to an acceptable level within a short period of time.

53. The above represents normal practice on a fish farm. However, the plan requires a link to be made with wild fish health and numbers:

- e) a programme of wild fish health and numbers monitoring specific to the site which identifies wild salmonid habitats and populations most likely to be impacted by sea lice emissions from the farm. This may include planktonic sea lice monitoring to inform the wild salmonid populations most at risk; and
- f) a commitment at the end of each production run to assess, alongside the planning authority and other statutory bodies, the wild fish monitoring results and, if any causal correlations are identified, agree and implement adjustments to the next production cycle (a feedback to (a) above) to address any harm to wild fish populations being caused by sea lice emissions from the farm.

54. The report of handling notes the environmental management plan submitted with the original application and contained in the appeal submissions. The report suggests a number of improvements that should be made to the plan and proposes a condition requiring the submission of an amended plan containing a number of adjustments, including regular meetings with the fisheries board, Marine Scotland Science and the council. On this basis the council's officers recommended the then application be approved. This was not accepted by the committee, with the reason for refusal highlighting the potential negative impact on protected and rare species including wild salmonids and sea trout.

55. The appellant's planning permission for its site at Sgeir Dughall on the north side of Loch Torridon includes a much more comprehensive condition with regard to the environmental management plan than that proposed by the council. It includes procedures for sea lice management, escape and breach, and implementation, update and review. To try and address the situation at North Aird I made a further information request seeking the principal parties' views on the extent to which such a comprehensive condition would provide for appropriate mitigation and confidence in management to address the concerns that have been expressed despite the proposal to close the Kenmore site and make a small reduction on the biomass in the Torridon loch system.

56. The appellant noted the comprehensive coverage of the condition and that it has proven to be effective at the Sgeir Dughall site. It confirmed that it would be content to accept the condition as part of planning permission for the proposed development.

57. Marine Scotland Science noted that since the Sgeir Dughall permission was granted minimum criteria have been developed and environmental management plans should now be delivered as a condition for marine aquaculture developments where there is potential for wild and farmed fish interaction. It made a number of detailed comments regarding monitoring requirements.

58. The fisheries board made a number of detailed suggestions about environmental management plans and their ability, or not, to control the site's activities. It suggests that the wording of the Sgeir Dughall condition would not set the terms for the environmental management plan and that the reporter should determine the substance of these as opposed to setting the framework.

59. In response the appellant suggested a number of changes to the Sgeir Dughall condition to take into account the comments of parties. One of these added that the approval of the environmental management plan by the planning authority should be carried out in consultation with Marine Scotland Science and the fisheries board. It would not normally be necessary for a condition to dictate to a planning authority what consultations should be carried out in the context of approving documentation submitted in response to a condition. In this case however it should provide confidence to the board that it will have an opportunity to influence the plan and that its concerns will be taken fully into account. It would also be inappropriate for the reporter to dictate the substance of the terms of the plan as circumstances could change over time and once an appeal is determined it is then a matter between the planning authority and a developer as to exactly how conditions are implemented.

60. Taking all the above into account I consider the proposed condition, along with others proposed by the council, to provide for mitigation that would offset the concerns about the impact on wild salmonids and other species, especially of sea lice.

61. On this basis I accept the conclusion of the environmental impact assessment that, subject to mitigation, the impact on wild salmonids would not be significant.

Special Areas of Conservation

62. Scottish Natural Heritage has identified that the proposal is likely to have a significant effect on the freshwater pearl mussel qualifying interest of the River Kerry Special Area of Conservation. Also on the harbour porpoise qualifying interest of the Inner Hebrides and the Minches Special Area of Conservation. Under the EC Directive 92/43/EEC, the 'Habitats Directive', this means that the Conservation (Natural Habitats, etc.) Regulations 1994 (as amended) apply.

63. This means that where the conclusion reached by me 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 those sites, I must undertake an appropriate assessment of the implications for the conservation interests for which the areas have been designated. The need for appropriate assessment extends to plans or projects outwith the boundary of the site, in this case the proposed development, in order to determine their implications for the interests protected within the sites.

64. As competent authority, through my determination of the appeal, I have 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 sites either individually or in combination with other plans or projects; and, if so, then
- make an appropriate assessment of the implications of the proposed development for the sites in view of that site's conservation objectives.

65. As competent authority in the case of the appeal I can only agree to the proposal after having ascertained that it will not have an adverse effect on the integrity of the sites. 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.

66. It is evident that the proposed development is not connected with or necessary for the site management of either Special Area of Conservation and further consideration is required. The proposed development has the potential to have a significant effect on the qualifying interests, both alone and in combination with other nearby fish farms due to impacts from sea lice on wild salmonids and/or genetic introgression from fish escapes from the farm(s).

67. While the responsibility to carry out the appropriate assessments rests with me, 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 assessments are informed by information supplied by Scottish Natural Heritage and the appellant, the latter through chapter 12 of the EIA report.

68. The council has carried out appropriate assessments for both special areas of conservation and these are set out in the report of handling to the North Planning Applications Committee.

69. In the case of the River Kerry special area of conservation the main points of the assessment are:

- the host species for the freshwater pearl mussel in the River Kerry is salmon;
- their northerly migration route takes them away from any sea lice associated with the proposal;
- introgression with escaped fish from the proposal could have an adverse impact on site integrity by reducing the quality and altering the habit of the resultant salmon; and
- the escapes contingency plan to be secured by condition as part of the environmental management plan is considered sufficient to avoid an adverse impact on site integrity.

70. With regard to introgression the assessment notes that problems could impact the host wild salmonids if there were escaped farmed fish. It says escapes are a realistic risk and there have been escapes from the Aird farm in the past, but the likely effects are unknown. The long-term consequences of introgression are expected to lead to changes in life-history traits, reduced population productivity and decreased resilience to future challenges. However, current evidence would suggest that, so long as the escapes contingency plan embedded in the submitted environmental management plan is adhered to, secured by planning condition, these risks are low and could not be considered likely to result in an adverse effect on site integrity.

71. On the basis of this appraisal, it is concluded that the proposal would not have an adverse effect on the integrity of River Kerry Special Area of Conservation.

72. In the case of the Inner Hebrides and Minches special area of conservation the main points of the assessment are:

- the edge of the SAC lies at the boundary between Loch Shieldaig and Loch Torridon some 1700 metres from the proposal;

- noise from the proposed acoustic deterrent devices at the site could disrupt the normal patterns of behaviour and movement of porpoise within the special area of conservation and this could amount to an adverse effect on site integrity;
- the submitted acoustic deterrent devices deployment plan, so long as its details are secured by condition, is considered to be sufficient to avoid an adverse effect on site integrity: and
- the condition would need to include monitoring and review procedures to ensure this conclusion remains valid for the lifetime of the permission.

73. On the basis of this appraisal, it is concluded that the proposal would not have an adverse effect on the integrity of the Inner Hebrides and the Minches Special Area of Conservation.

74. I have examined both these assessments and adopt them for my own purposes in terms of my responsibilities under the regulations. I therefore find that the proposed development would not have an adverse impact on site integrity subject to the mitigation proposed secured by condition.

Other relevant impacts

75. The EIA report assesses a wide range of other impacts: benthic habitats; water column impacts; interactions with predators; and navigation, anchorage, commercial fisheries, and other non-recreational maritime uses. The council has not founded its refusal on any of these impacts and I note in this regard that there are no outstanding concerns on the part of key agencies, subject to the imposition of appropriate conditions.

76. Benthic habitats impacts: these are addressed in chapter 7 and appendices I and J. The extent of benthic impacts associated with the proposed development is limited to 1.1 square kilometres. Benthic habitats recorded were dominated by rocks with patches of sand and gravel in between. This is considered to have low ecological and conservation value. Therefore this habitat and associated benthic species recorded, other than Northern featherstar (a deep water crinoid) (*Leptometra celtica*), were scoped out of further assessment.

77. The substrate on which Northern featherstar were observed was predominantly rock and sand to which they were attached, in a depth of around 50 metres. Deposition is predicted to be greater under pens and in shallower water and the effects of sedimentation, smothering and increased organic enrichment are considered to be low in magnitude and very localised. The impact significance is considered to be negligible and therefore not significant in the context of the EIA regulations.

78. Water column impacts: these are considered in chapter 8 and appendices L and M. A hydrographic survey had been carried out in 2008 following the Scottish Environment Protection Agency guidelines. Recorded data were indicative of a moderately flushed site typical of a semi-enclosed location and suitable for the proposed development.

79. Calculations demonstrate there would be a minor increase in the level of nutrients released and potential for enrichment is minimised. Detailed figures are set out in the report. No likely significant effects are predicted. Embedded mitigation is as stipulated in

the Scottish Environment Protection Agency CAR licence and will ensure environmental standards are adhered to. This would involve a site specific programme where seabed samples are collected and analysed for indicators of nutrient enrichment. The feed barge at the neighbouring site would be used, improving monitoring of feeding response and minimisation of waste. Established guidance and regimes would be followed. Residual effects are predicted to be limited and not significant in terms of the EIA regulations.

80. Interactions with predators impacts: these are dealt with in chapter 9. Studies at Scottish marine fish farms have concluded that 12 primary species that engage in predatory interaction with stock in fish farms are: grey seal, harbour seal, shag, grey heron, cormorant, gull species, otter, American mink, gannet, fulmar and guillemot. Predatory interactions with harbour and grey seal were the most common. Wildlife logs at the neighbouring site recorded nine of the above species, excluding gulls. Seal species were common and widespread.

81. Nine seal haul out sites were noted within 50 kilometres from the site, the radius within which seals will forage. The proposed development is at risk from a relatively large and widespread resident seal population. Seal predation has the potential to lead to mass escape events, which have potential to impact wild salmonid populations. No seal licences have been necessary for the dispatch of 'rogue' seals at the neighbouring site suggesting non-lethal predation prevention measures, as well as effective husbandry, are successful in reducing seal predation of stock and thus the effect of the fish farm on seal populations.

82. The most prevalent method of seal depredation at the neighbouring site is the use of acoustic deterrent devices and these would also be used at the proposed development. In a worst case scenario impacts would only involve small numbers of individual rogue seals over a large area. The impact significance is considered to be minor and not significant in the context of the EIA regulations.

83. With regard to birds no records of net entanglement have been recorded at the neighbouring site suggesting that effective husbandry has been very successful at reducing impact on predatory birds. These measures would be used at the proposed site as detailed in the predator control plan and no perceptible effects on bird populations is predicted. The impact significance is considered not significant in the context of the EIA regulations. The potential for a cumulative impact with the neighbouring site is similarly considered to be not significant within that context.

84. Navigation, anchorage, commercial fisheries, and other non-recreational maritime uses impacts: these are dealt with in chapter 13. Moorings would be secured with a rope and chain matrix. Installation of the moorings would result in a temporary increase in marine traffic. The Northern Lighthouse Board's recommendations on site markings will be followed. There would be no obstruction of access to safe anchorage sites and the site is outwith any Ministry of Defence designated areas. Additional markings are intended to be maintained to mark the path to Ob na h-Acarseid immediately west of the appeal site, although it appears from my site inspection that the former pier here no longer exists in useable condition. Beyond maintenance of required navigational markings and lighting no monitoring or mitigation is proposed.

85. Exclusion of commercial fishing activities will be mitigated by maintaining minimum appropriate length of mooring lines. Following installation, the majority of the area taken up by mooring lines will still be accessible for creel fishing with full exclusion only required during maintenance of mooring lines or boat operations. No ongoing monitoring is proposed.

86. A marine licence would be acquired for the proposed development and relevant bodied would be consulted as standard.

87. Given the overall size of Loch Torridon and the limited scale of the proposed development the effects on navigation, anchorage, commercial fisheries and other non-recreational maritime uses are predicted by the report to be not significant under the EIA regulations.

88. Following my consideration of the environmental information, I have identified no additional significant effects. I conclude that, subject to mitigation controlled by means of the conditions attached to this notice, there would be no unacceptable residual impacts in regard to those matters. I am satisfied that my reasoned conclusions on the significant effects of the proposed development are up to date.

Compliance with the development plan

89. Based on my reasoning above, whilst the proposal has been found to be acceptable with regard to the the landscape and visual impacts, including on the Wester Ross National Scenic Area and the Flowerdale-Shieldaig-Torridon and Applecross Wild Land Areas; the potential impacts on the Inner Hebrides and Minches and on the River Kerry Special Areas of Conservation; and other relevant impacts, scientific evidence suggests that sustainable capacity for fish farming within the Torridon loch system in respect of sea lice pressure on wild fish populations has already been reached. I consider however that the appellant's offer to cease production at the Kenmore site, reducing overall biomass in the lochs, and the adaptive management details contained in the submitted environmental management plan are considered to be sufficient to allow the proposal to proceed. Both matters can be controlled by the recommended planning conditions with their embedded mitigation and monitoring.

90. I consider the proposal to be consistent with the policies of the development plan relating to: landscape, including cumulative impact; coastal development, aquaculture, cultural heritage, and protected species. No other relevant impacts have been drawn to my attention which could lead me to conclude that other detailed policies of the development plan would not be complied with.

91. I find the proposal overall to be consistent with the development plan.

Other material considerations

92. The national planning framework states that aquaculture makes a significant contribution to the Scottish economy, particularly for coastal and island communities. Planning can help facilitate sustainable aquaculture whilst protecting and maintaining the

ecosystem upon which it depends. Planning can play a role in supporting the sectoral growth of marine finfish including farmed Atlantic salmon.

93. Scottish Planning Policy states at paragraph 250 that the planning system should play a supporting role in the sustainable growth of the finfish sector to ensure that the aquaculture industry is diverse, competitive and economically viable.

94. Points raised by consultees and representation from the public are outlined at paragraphs 13 – 20 above. Most of these have been dealt with above. I do not consider water quality in relation to competitive swimming or noise from the feed barge generator to have impacts that would be significant. The colour of the feed barge is dealt with under conditions below,

95. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission.

Planning conditions

96. The council has submitted on a without prejudice basis a schedule of five conditions which should be imposed in the event of planning permission being granted. The appellant was happy to accept these.

97. I have dealt with condition 1 and replaced it with the modified one discussed in paragraphs 55-60 above. The other four concern details of the operation of the proposed farm. I am satisfied that they meet the tests for conditions set out in circular 4/1998 regarding the use of conditions in planning permissions. Overall the conditions include necessary mitigation and monitoring to ensure relevant environmental standards are met and I have adopted these.

98. Questions have been raised about the colour of the existing Aird feed barge which will be used to supply also the proposed development. This was to be repainted as a condition of the permission for that development. A number of representations have suggested that it has been painted the wrong colour and that it should be repainted to comply with the condition. It has been suggested that a condition should be imposed on this permission to ensure this is done.

99. To help resolve this I consulted the council and appellant by means of a further information request. Whilst the council was happy to draft a potential condition the appellant was concerned that this would lead to two extant conditions on different permissions covering the same issue. It also considered that the matter could be enforced if necessary on the first Aird condition.

100. I accept that a second condition, even if legal, could lead to confusion and the appellant has stated that it is willing to repaint the barge, although this would have to wait for the next fallow period as it is a major undertaking. I am not therefore imposing a further condition in this regard.

101. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Trevor A Croft

Reporter

Schedule 1: Conditions

1. No fish shall be stocked or farmed on the site until an Environmental Management Plan (EMP) has been submitted to and approved in writing by the Planning Authority (in consultation with Marine Scotland Science and the Wester Ross Area Salmon Fishery Board). The EMP shall be submitted at least one month prior to the intended first stocking date of the site, the date of which shall be notified to the Planning Authority. The EMP shall be prepared as a single, stand-alone document, which shall include the following:

(1) Sea Lice Management Plan shall include:

(a) details of site-specific operational practices that will be carried out following the stocking of the site in order to manage sea lice;

(b) 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;

(c) identification of likely area(s) of sea lice dispersal from the site;

(d) details of the specification and methodology for the monitoring, recording, and auditing of sea lice numbers on the farmed fish and the environment. This shall include:

- details of the qualifications and job title of the competent person(s) responsible for such monitoring activities;

- provision of site-specific summary trends from such monitoring to the Planning Authority on request;

- details of the form in which such summary data will be provided;

- details of how and where raw data obtained from sea lice monitoring will be retained, by whom, for how long, and in what form; and

- an undertaking to provide this 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;

(e) a method statement for the regular monitoring of local wild fish populations based on available information and/or best practice approaches to sampling;

(f) details how and what monitoring data will be collected to assess potential interaction with wild fish;

(g) details of site-specific sea lice thresholds, the breach of which shall require the implementation of specified mitigation actions, including treatment with sea lice medicines. Details shall include the specific sea lice threshold at which it will be considered necessary to treat on-farm lice during sensitive periods for wild fish;

(h) details of the site-specific criteria which need to be met for mitigation action / sea lice treatment to be considered successful;

(i) details of who will be notified in the event that mitigation action / sea lice treatment is not successful;

- (j) details of the specified mitigation actions / sea lice treatments referred to in (g). The specified mitigation actions shall include provision for biomass reduction in the event that monitoring demonstrates that prior specified mitigation actions have not addressed a breach of the relevant sea lice threshold; and
- (k) details of what action will be taken during the next and subsequent production cycles in the event that mitigation actions / sea lice treatment are not successful.

(2) An Escape Management Plan to include:

- (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 on escape prevention and counting technologies.

(3) Requirement for implementation, update and review

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 or good practice 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 (in consultation with Marine Scotland Science and the Wester Ross Area Salmon Fishery Board) before implementation of the proposed change.

Notwithstanding, a revised EMP shall be submitted to and approved in writing by the Planning Authority (in consultation with Marine Scotland Science and the Wester Ross Area Salmon Fishery Board) as a minimum every four years following the date of first stocking of the site, to ensure the EMP 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; this in accordance with the planning authority's biodiversity duty and to ensure the development does not have an adverse impact on local wild fish populations.

2. No positioning of any cages, or any operation of the fish farm hereby approved, shall take place, other than when the farmed fish biomass tonnage at the "Kenmore" farm site equals zero.

Reason: to define the permission in accordance with the amended details on which the planning and ecological impact assessment of the application was made.

3. No operation of the fish farm hereby approved shall take place other than when the biomass in the four cages hereby approved equals 650 tonnes or less and the total biomass within the overall 14 cage Aird site equals 2400 tonnes or less.

Reason: to define the permission in accordance with the amended details on which the planning and ecological impact assessment of the application was made.

4. No development shall take place until full details of the acoustic attenuation equipment and fittings to be installed on the feed barge has been submitted to and approved in writing by the planning authority. Thereafter, the feed barge shall not be operated other than with the approved attenuation scheme fully installed.

Reason: to protect residential amenity.

5. No operation of the fish farm hereby approved shall take place other than in strict accordance with the provisions and requirements of the approved ADD Deployment and Usage Plan. For the avoidance of doubt this approved plan stipulates;

- The use of 14 x Ace Aquatech US3 units featuring the low frequency transducer (RT1) and operating in the 1-2KHz frequency range
- Data logging of deployment cues, operational dates, sound frequency and duration, Seal activity, Seal mortalities and Cetacean sightings
- a commitment to meet with the planning authority and SNH to review the above data in the context of the conservation objectives of the Inner Hebrides and the Minches SAC and agree any changes to the Plan necessary.

A review meeting shall take place at least once every production cycle, ideally between the end of the last and the beginning of the next production period. No further ADD usage shall take place until any changes agreed at the review have been approved in writing by the planning authority and fully implemented.

Reason: In the interests of upholding and maintaining the conservation objectives of the Inner Hebrides and the Minches Special Area of Conservation.

Schedule 2: Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of 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. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to

confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

4. Right to challenge this decision: This decision is final, subject to the right of any person aggrieved by this decision to question its validity by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

5. Notification of this decision by the planning authority: The planning authority is required (a) to inform the public and bodies consulted in respect of the EIA report of this decision by publishing a notice on the application website or newspaper circulating the in locality of the proposed development or by other reasonable means and (b) to make a copy of the decision available for public inspection in an office of the planning authority where its planning register may be inspected and on the application website.

Schedule 3: Relevant application drawings

000001 Location Plan
Plan 2 - 000002 Location Plan as Proposed
Plan 3 - 000003 Site Layout Plan
Plan 4 - 000004 Site Layout Plan
Plan 5 - 000005 Site Layout plan with Co-ordinates
Plan 6 - 3069-LAN-006 Cage Details
Plan 7 - 3096-LAN-007 Cage Elevations

Schedule 4: Opportunities for public participation in decision-making

Opportunities the public had to take part in decision-making procedures on the application before I was appointed to this appeal, and the responses to the procedures, are set out in paragraphs 19 and 20 above.

Those who made representations upon the application have been treated as interested parties in the appeal. They have had the opportunity to make representations on matters that they raised, by written response to the appeal.