



Appeal Decision Notice – EIA Development

Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2275
- Site address: Loch Hourn, Arnisdale, PH41
- Appeal by MOWI Scotland Limited against the decision by the Highland Council
- Application for planning permission 21/05582/FUL dated 29 November 2021 refused by notice dated 29 June 2022
- The development proposed: modification to equipment and biomass. Reduction in number of pens from 12 x 120m circumference pens (and 1 x 100m circumference pen) to 8 x 160m circumference pens. Proposed biomass increase and relocation of existing feed barge
- Application drawings: ‘Equipment Plans and Elevations’ contained in EIA report appendix 5 and ‘Site Charts and Coordinates’ contained in EIA report appendix 1 (received by the council on 02 December 2021)
- Date of site visit by Reporter: 08 November 2022

Date of appeal decision: 20 December 2022

Decision

I allow the appeal and grant planning permission subject to the 11 conditions listed at the end of the decision notice. Attention is drawn to the four advisory notes at the end of the notice.

Environmental impact assessment

1. The proposed development is described as above and relates to an existing Atlantic salmon farm. Sections 6 to 8 of the EIA report provide a detailed description of the proposal. 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”).

2. I am required to examine the environmental information, reach a reasoned conclusion on any 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 appendices dated 29 November 2021;
- a letter dated 25 April 2022 amending the application to propose a maximum biomass of 2750 tonnes (the original proposal being for 3100 tonnes);
- waste solids deposition modelling report addendum (April 2022);
- confidential freshwater pearl mussel (FWPM) survey report (May 2022) and survey follow-up (September 2022);

- consultation responses from SEPA; NatureScot; Marine Scotland Science; Historic Environment Scotland; and Skye and Lochalsh Rivers Trust; and
- representations from members of the public and the 'Friends of Loch Hourn' group received during both the application and appeal processes.

3. 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 3 of this decision notice. The EIA report has not identified any significant effects. My own conclusions on the environmental effects of the proposal are set out in my reasoning below.

Reasoning

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The adopted development plan in this case is principally comprised of the Highland-wide Local Development Plan 2012 (the LDP) and the West Highlands and Islands Local Development Plan 2019. There are no policies contained in the latter document that would be of relevance to the determination of this appeal. Therefore all subsequent references to the LDP relate solely to the 2012 document.

5. The council's reasons for refusal cite LDP policies 50, 57 and 58. Policy 50 (Aquaculture) provides support to finfish developments, subject to there being no significant adverse effect (directly, indirectly, or cumulatively) upon wide-ranging interests including natural, built and cultural heritage, as well as upon existing activity. Where a site is suitable in principle, the policy goes on to require (amongst other matters) appropriate operational and site restoration arrangements, and good design of cages and other infrastructure. The policy notes that there is a national presumption against further finfish farms on the north and east coasts.

6. Policy 57 (Natural, built and cultural heritage) applies to all development proposals and provides assessment criteria for where features of local/regional, national and international importance respectively may be affected.

7. Policy 58 (Protected species) requires survey work and, where necessary, a mitigation plan to avoid or minimise impacts on protected species. It outlines the limited circumstances where adverse effects upon protected species may be permitted.

8. Given the age of the LDP, the provisions of paragraph 33 of Scottish Planning Policy (2014) (SPP) are of relevance. This states that where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development should be treated as a significant material consideration.

9. SPP also contains national policy specifically in relation to aquaculture proposals. Paragraphs 249 and 250 acknowledge the need to balance aquaculture interests against environmental considerations. SPP provides overarching support for the sustainable growth of the finfish sector but presumes against development of this type on the north and east coasts in order to safeguard migratory fish species. Paragraph 253 also requires that: "the planning system should not duplicate other control regimes such as controlled activities regulation [CAR] licences from SEPA or fish health, sea lice and containment regulation by Marine Scotland". The CAR licence is the principal means by which biomass limits are set, as well as quantities of sea lice medicines which are permitted to be used. There is some inevitable overlap in the scope of the CAR licence and planning regimes, but

the planning system is required to take broader account of the overall effects of development, and this is captured by planning policy both nationally and locally.

10. Paragraph 203 of SPP outlines the precautionary principle which applies in cases where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain, but where there is sound evidence indicating that significant irreversible damage could occur.

11. Overarching support for aquaculture, subject to necessary environmental safeguards, is also embedded in the National Marine Plan (2015) and Scotland's Third National Planning Framework (NPF3), and these together with SPP provide a consistent strategic policy position for Scotland. This consistency also now extends to the revised draft National Planning Framework 4 (NPF4) which was laid before Parliament on 08 November 2022. NPF4 should in my view now be afforded some weight, as whilst it has not been adopted, it does represent the settled view of Scottish Ministers.

12. As with any plan, NPF4 must be read as a whole, but the specific provisions of policy 32 in relation to aquaculture are nevertheless pertinent. The policy intent is broadly comparable to current adopted policy. Policy 32 explicitly places some reliance on the provisions of the National Marine Plan rather than it representing a potential change in strategic policy on open water fish farming. In this area of Scotland, it continues to provide support for the industry in principle, subject to the operational impacts of development being acceptable, and where certain specific impacts have been assessed and mitigated; matters which have been assessed in the environmental information before me.

13. Whilst noting the council's contention that the proposal would be contrary to aspects of NPF4 policy 32, that principally follows on from the basis of its refusal rather than from any particular change in policy requirements or emphasis being introduced by NPF4. I am satisfied that the policies contained in the revised draft NPF4 would not alter the main matters in this case, nor would it materially alter how those matters should be assessed.

14. Having regard to the provisions of the development plan, together with other relevant policy, the council's reasons for refusal and matters raised in submissions, the main issues in this appeal are (i) the effect of increased biomass on wild salmonids; (ii) the proposal's impact on priority marine features; and (iii) impacts on the freshwater pearl mussel population. I deal with each of these matters in turn.

Effect of increased biomass on wild salmonids

15. Section 13 of the EIA report (together with supporting appendices) considers the potential impacts on wild salmonids from the proposed increase in biomass. The assessment was based on the original proposal to increase biomass by 600 tonnes, to 3100 tonnes in total. I consider that as the proposed biomass increase has since been reduced to 250 tonnes, the EIA report findings in this regard should very much represent a worst-case scenario in terms of likely effects on the wild salmonid population, if its assessment is robust.

16. The potential impacts of the development on wild salmonid populations relate to the potential for transfer of lice and disease, and genetic mixing or competition in the event of farmed salmon escaping. The EIA report (including appendix 16) provides a particular focus on the issue of sea lice management. In representations, objections to the proposal are also largely focused on the impact that sea lice, originating from farmed fish, could have upon the wild salmonid population. These objections have been framed in a broader

context that there has been an ongoing decline in wild salmonid numbers, although this is not entirely apparent from Marine Scotland Science catch data in this area (shown in figure 22 of the EIA report), which shows that catches have historically fluctuated quite significantly.

17. Regardless of the exact situation, and recognising that reliance on catch numbers as a measure of population size has limitations, there appears to be no dispute that an increase in farmed fish biomass at least has the potential to increase the numbers of sea lice in surrounding waters, which in turn could be detrimental to wild salmonid health and population numbers. Consequently, the proposal is accompanied by a detailed sea lice management strategy, the purpose of which is to show that biomass can be increased at the fish farm without this giving rise to an increase in sea lice.

18. There have been criticisms of the EIA report in representations, which challenge its impartiality and validity. I am satisfied that the assessment provided by the EIA has been undertaken by suitably qualified experts. The content and approach have also been guided by the EIA scoping stage, and has been produced in accordance with the scoping responses received from relevant consultees. Given the highly technical nature of some of the evidence being presented, I must place some degree of reliance on the responses of statutory consultees and their own expertise, in order to conclude whether the approach adopted by the EIA report, and its resultant findings, can be relied upon. In this regard, it is significant to note that no consultees have objected to the proposed development, nor have they raised any concerns or criticisms over the baseline, assessment or findings of the EIA report. I am satisfied that its findings can be relied upon on this basis.

19. The EIA report does however acknowledge that there are some unavoidable uncertainties to assessing the significance of impact on salmonids, given the lack of reliable information on the routes used by salmonids and the transmission range of sea lice. These uncertainties are intended to be managed and addressed principally through the implementation of an environmental management plan (EMP).

20. The applicant has drawn my attention to the fact that EMPs have been found to be an appropriate means by which environmental safeguards can be secured in other locations; appeal decisions for fish farm developments at Sconser and Loch Shieldaig have been submitted where conditions requiring an EMP formed part of the granting of planning permission.

21. Whilst I understand that there may be a future intention to move away from EMPs (with SEPA taking a lead on developing a new assessment approach and controls in relation to sea lice), as it stands I am satisfied that EMPs provide the most effective means of monitoring and managing the effects of fish farm development upon the local environment (including but not limited to matters relating to sea lice numbers and transmission) in which it would be situated. However, I also recognise that the efficacy of any EMP may potentially only be equal to the extent to which its commitments to monitoring and adaptive management can be enforced; its enforceability is noted as a concern in representations.

22. The appellant has asserted that EMPs "...are enforceable through well designed and appropriate planning conditions". The council has provided a suggested condition relating to the EMP, to be imposed in the event of planning permission being granted. However, that condition would simply broaden the scope of the EMP, rather than securing its broader implementation. It would not, for instance, require specific management adaptations that may be necessary to mitigate adverse environmental effects, should these arise.

23. I find that it would be essential for adherence to an agreed EMP to be required by a condition of any consent, given the extent to which reliance is being placed on its effectiveness by the appellant and consultees, and given the findings of the EIA report are also based on the assumed scope and implementation of the EMP. I note that the submitted EMP was originally prepared in order to satisfy a condition of planning permission for alterations to a fish farm in Loch Duich. The condition used in that case (as set out in the EMP) is also the same as that used in the two appeal decisions referred to by the appellant. These are more comprehensive than the condition suggested by the council in this appeal, and these could therefore logically form the basis of a more robust condition in this case, in the interests of consistency and enforceability both at the appeal site and across the overall management area.

24. The EIA report, having taken account of the suite of proposed management and mitigation arrangements being proposed, concludes that the likelihood and magnitude of any impacts upon the wild salmonid population would be negligible relative to the existing baseline, and the overall significance of effects would be minor. These conclusions were reached on the basis of a 600-tonne increase in biomass rather than a 250 tonne increase as now proposed, and larger pens would result in a lower stocking density than is currently permitted even with an increase in biomass. The appellant has also outlined how fewer, larger pens enable medicines and treatments to be more rapidly administered. Taking all of the above into account, and subject to the EMP being implemented in full, I agree with the EIA report's findings in regard to effects on wild salmonids.

25. The council's first reason for refusal relates to wild salmonid impacts, and refers to the response of Marine Scotland Science and the specific remark that the development has the potential to increase the risks to wild salmonids. The appellant has not asserted otherwise, and this observation is consistent with the findings of the EIA report. Marine Scotland Science does not appear to have been criticising or raising concerns over the proposal in this regard however, with the comment appearing to me to be intended to frame its more detailed observations on the proposed management and mitigation arrangements which are necessary to ensure that these effects are not realised to a harmful extent. Neither Marine Scotland Science, nor any other consultee, has suggested that the risk to the wild salmonid population from this proposal is significant, individually or cumulatively. These responses were also made to the original, larger proposed biomass increase, which would present a greater risk than the more modest increase now proposed.

26. LDP policy 50 requires there to be no 'significant' adverse effects from finfish developments, rather than no adverse effects at all. The weight of evidence before me indicates that there is no reason to anticipate that any significant adverse effects upon wild salmonids would occur as a result of this individual proposal, or cumulatively, subject to the imposition of conditions relating to management and mitigation requirements. Furthermore, the EMP would require management adaptations to be implemented in the event that adverse impacts on wild salmonids were found to be resulting from the development.

27. All told and in conclusion, I do not find the weight of available evidence supports a contention that the development would have, or be likely to have, a significant adverse effect on wild salmonids. On this basis it follows that the development would accord with the relevant provisions of LDP policy 50. The precautionary principle does not outweigh this finding, as contended in representations. Whilst the EIA report recognises that there are uncertainties in the effects on wild salmonids, these uncertainties would be managed as far as is reasonably practicable. In any event, there is nothing before me to suggest that

there would be a likelihood that significant irreversible damage to wild salmonid populations would result from the development.

Impacts on freshwater pearl mussel population

28. I have already concluded that the evidence before me supports a finding that significant adverse effects upon wild salmonids would not occur. Despite this, a closely related matter is whether even low magnitude effects on wild salmonid population health could have an indirect but significant effect on local freshwater pearl mussel populations. Freshwater pearl mussels require the presence of healthy juvenile salmonid populations to complete their lifecycle.

29. The EIA report notes that there is not a Special Area of Conservation (SAC), where the freshwater pearl mussel is a qualifying feature, within a 35 km buffer of the proposed development. However, in its consultation response, NatureScot noted that a river which is hydrologically connected to Loch Hourn was understood to support a freshwater pearl mussel population (and this has subsequently been confirmed by survey work). This had been brought to the attention of NatureScot by the Friends of Loch Hourn group.

30. LDP policy 58 requires a survey to be carried out where there is good reason to believe that a protected species may be present. As a survey has been undertaken, this aspect of the policy has been satisfied. The survey has confirmed the presence of freshwater pearl mussels, but recommended further surveys of juvenile salmonids and freshwater pearl mussel population numbers. A follow-up letter from the company that undertook the survey has clarified that one of the two general locations where freshwater pearl mussels were found (and where they were most prevalent) would not be accessible by migratory salmonids from Loch Hourn, and therefore must instead be reliant on brown trout within the river in question.

31. NatureScot has reviewed the survey findings and has identified what it considers to be deficiencies with its methodology, giving rise to the possibility that a more significant population may be present than estimated by the survey. However, that has expressly not altered its position of no objection outlined in NatureScot's original consultation response, which intimated that it was content to rely on updates to the environmental management plan which accompanies the proposal, in order to take account of further necessary assessment work of this freshwater pearl mussel population. The acceptability of the proposal was not therefore reliant on the findings of further fieldwork, in NatureScot's opinion.

32. Policy 58 presumes against development that would be likely to have an adverse effect on European protected species, which includes freshwater pearl mussels. For there to be a 'likelihood' of an adverse effect, there would need to be evidence that the development would be expected to materially reduce the number of wild juvenile migratory salmonids in Loch Hourn. The evidence before me does not support the contention that this is a likely effect of the development, for reasons already outlined. Furthermore, given the location where freshwater pearl mussels were found to be in greatest abundance (survey limitations notwithstanding) is not accessible to salmonids in Loch Hourn, no effects upon this freshwater pearl mussel population would be possible in any event.

33. The environmental management plan would require a flexible and adaptive approach to the management of the fish farm, responding to the findings of ongoing monitoring of a variety of environmental indicators. In the event of consent being granted, the council has suggested that a condition should be imposed to require the environmental management

plan to take account of NatureScot's feedback on the first survey's methodology. That would ensure that the significance of the population would be better understood and monitored, but whatever the outcome of further survey work, that would not alter the likelihood of the population being adversely affected by the development. Even so, the environmental management plan could require changes to the management of the fish farm if monitoring showed that it was responsible for any adverse impacts on freshwater pearl mussel populations. Whilst this would be reactive and therefore acting as 'damage limitation', it does provide an extra safeguard. Critically, there is no reason to anticipate that this safeguard would be required in practice.

34. Drawing all of the above together, and even if there may be some residual risks which cannot be entirely eliminated, I do not consider that an adverse effect upon freshwater pearl mussels could be considered to be a likely outcome of the proposal. I am therefore satisfied that the proposal would accord with the relevant provisions of LDP policy 58 in relation to this particular protected species.

Impact on priority marine features

35. The proposed development's effects on the benthic environment are assessed in section 10 of the EIA report. This has identified the presence of a number of habitats and species which are priority marine features in Loch Hourn, and the EIA report considers the effects on these specifically as part of its wider assessment of the benthic environment. The conclusion of the EIA report is that the development would have no significant effects on any of the priority marine features present in Loch Hourn (native oyster; burrowed mud; tall sea pen; fireworks anemone; and northern feather star). This view is shared by NatureScot, which has provided comments on each of the above priority marine features and concluded in each case that the development would not lead to a significant impact on these species and habitats, and their national status.

36. The CAR licencing regime is of particular relevance to the matter of priority marine features. This is because pen configuration and biomass limits are both specified by SEPA, directly influencing the pattern and quantity of solids waste build-up. It also controls the quantities and types of chemicals that are permitted to be used at the site. Waste deposition and chemical usage are the two main ways in which the priority marine features could be adversely affected by the development. The primary focus of the CAR licence in this context is to set adequate safeguards for the marine environment and the habitats and species it supports. The fact that a CAR licence is now in place for the proposed development is a significant material consideration as it represents a formal acceptance by SEPA that, in its opinion, the local environment has the capacity to accommodate the proposal's discharges without this giving rise to unacceptable effects.

37. The council found the proposal to be contrary to LDP policy 57 on the basis that, in its view, the revised pen configuration and increased biomass could have "some negative impact" on priority marine features. The EIA report recognises that effects rated between 'minor' and 'minor to moderate' (which are 'not significant' in EIA terms) are predicted to result, and in this regard I find the council's conclusion to be justified.

38. The principal question however is whether these adverse effects would be of a level that would result in conflict with the development plan. The policy threshold set by policy 57 for features of national importance (which includes priority marine features) is to permit development which would not 'compromise' the resource. The policy does not directly elaborate on how this should be assessed or interpreted, but it goes on to require that

where significant adverse effects would arise, these must be outweighed by social or economic benefits of national importance.

39. I interpret this to imply that where significant adverse effects would not arise, there is not a need for there to be overriding justification for allowing the development in the face of some localised, more minor adverse effects. On the face of the policy wording, it would also not be logical to find that the national importance of priority marine features would be compromised by the development, when the effect upon its status has been assessed as not being significant. Conversely, if the status of a nationally important priority marine feature would be compromised, I would expect that to be identified as a significant effect by the EIA report.

40. The assessment of NatureScot supports the finding of the EIA report that no significant effects on priority marine features would result in this case, and consequently it follows that the development could go ahead without compromising features of national importance. Whilst the council may be correct to assert that the development could have some negative effects on priority marine features, for the reasons I have outlined above, the policy threshold relates to the significance of those effects. On this basis I agree with the findings of the EIA report and find that the development would comply with the relevant requirements of LDP policy 57.

Other relevant matters

41. In addition to the potential effects on the habitats and species already considered above, there are a number of Special Protection Areas (SPAs) which are of European importance for breeding gannet and from where the appeal site would be within foraging range.

42. NatureScot has indicated that the proposal is likely to have a significant effect on breeding gannet interests at Sule Skerry and Sule Stack; St Kilda; North Rona and Sula Sgeir; Ailsa Craig; and Forth Islands, all of which are SPAs. This is because the use of pole-mounted top nets to protect the pens could result in gannet becoming entangled or trapped.

43. The habitats regulations require an appropriate assessment to be undertaken by the 'competent authority' (which is the decision-maker), in order to establish whether adverse effects on the integrity of a European site would result, and if necessary, whether mitigation can be added to avoid any adverse effects. Accordingly, I have carried out an appropriate assessment as set out in schedule 4 of this decision notice. My findings there are consistent with the advice of NatureScot, to which I attach significant weight, and the council's appropriate assessment attached to its report of handling. My appropriate assessment concludes that subject to conditions relating to mesh size and monitoring, the development would not have any adverse effects on the integrity of the SPAs in question.

44. The fish farm is also adjacent to the Inner Hebrides and the Minches Special Area of Conservation (SAC) which is of European importance for harbour porpoise. The EIA report, in section 13, concludes that there would not be any significant effects on harbour porpoise. This view is shared by NatureScot, and I have no reason to reach a different conclusion.

45. A landscape and visual statement accompanies the proposal, provided as appendix 19 of the EIA report. The site falls within the Knoydart National Scenic Area, which is of national importance for its mountain and coastal scenery. On the date of my site inspection it was apparent that, as has been outlined in submissions, changes to the pen

configuration have already taken place under permitted development rights and in line with the prior approval given by the council. There are now seven 160m diameter pens in-situ, which have replaced the original configuration.

46. I consider that the landscape and visual effects principally arise from the presence of a fish farm in this location (which is already established), rather than the precise pen configuration being utilised. These effects are relatively localised, and the proposed pen configuration would not have any significant effects on the landscape; it would be no more prominent and its visual influence would be largely unaltered. I would simply note therefore that relative to the original 13 pen layout, the proposed eight-pen configuration's simpler and uncluttered appearance would arguably be preferable given the landscape's expansive scale.

47. The fish farm is also located adjacent to the Kinlochhourn-Knoydart-Morar Wild Land Area. Wild land areas are not landscape designations, but there are inextricable links between 'wildness' and man-made influences in the landscape. However, I would still reach a similar conclusion for wild land as for landscape and visual effects; the overriding influence is from the presence of the existing fish farm, and I am satisfied that this proposal would not materially alter the effects on the wild land area for this reason.

48. As already explained, marine fish farming in this part of Scotland benefits from in-principle support across both national and local planning policy, which is also reflected in the National Marine Plan. This support stems from a recognition that aquaculture is important for the national economy, and the intention is for the industry to be able to grow to ensure the industry is diverse, competitive and economically viable. Given this development would provide operational efficiencies whilst simultaneously increasing the productivity of the fish farm, the focus of the proposal aligns closely with the overarching premise of policy. Representations supporting the proposal have focused on the socio-economic importance of the industry.

49. Within some of the representations objecting to the development, the policy position has been criticised, in terms of both the in-principle support it gives to finfish farming, and the way in which environmental effects are taken into account. It is not within the scope of this appeal to question adopted or emerging policy; the very purpose of policy is to inform development management decision-making, and this directly informs the overall planning balance, which must take account of opposing views and sometimes irreconcilably different interests.

50. It is also not for this appeal to consider objections which relate to matters that are attributable to the established fish farm operation. I am required to assess this proposal in the context that the principle of a fish farm in this location is well established. That operation is already permitted to hold 2500 tonnes of biomass, so this proposal represents a relatively modest expansion. It is the effect of that expansion which must be considered, rather than anything wider. There is no substantive evidence before me to demonstrate, or suggest, that this proposal would lead to a material increase in litter, noise, odour, light pollution or traffic, as asserted in some representations. The EIA report has assessed some of these matters, insofar as these are potentially relevant to the proposal, and in the absence of evidence to the contrary this provides a compelling basis to conclude that there would not be any significant effects in relation to any of these matters. Tourism and recreational uses (on land and water) relate closely to the area's landscape quality. Having regard to my earlier conclusions on this matter, and the established influence of the fish farm, I find no reason for why this development would be detrimental to the experience of visitors or recreational users.

51. I note the concern raised that this proposal may be intended to be an incremental step as part of larger growth plans for the site, but I must consider only the proposal that is before me. Further changes or expansion plans would also need to obtain planning permission and a CAR licence as applicable, meaning any further development would be subject to further scrutiny.

Overall conclusions

52. In my foregoing assessment I have had regard to the findings of the EIA report, and I have taken the other environmental information which is before me into account, including consultation responses and representations. For the reasons I have outlined, I agree with the conclusions of the EIA report, and I am satisfied that no significant effects would be likely to result from this development, subject to the proposal taking place in accordance with a range of conditions which are mainly focused on environmental management and monitoring requirements. I am also satisfied that my reasoned conclusions are up to date, given that the EIA report was completed relatively recently (November 2021), and as the majority of the other environmental information in relation to the proposal was prepared subsequent to this.

53. The presumption in favour of development that would contribute to sustainable development is engaged as a significant material consideration in this case. The sustainability of finfish farming (or rather, its unsustainability) forms the underlying premise of many of the objections to this proposal. However, I find no basis to conclude that finfish farming is inherently unsustainable. Adopted and emerging national policy recognises the economic importance of the industry, whilst acknowledging that this must be balanced against environmental considerations. In this case, it is highly relevant that no significant environmental effects are anticipated by the EIA report. In the context of in-principle policy support for the development, I conclude that this proposal does therefore represent a sustainable form of development, subject to the conditions attached to this notice.

54. The attached conditions provide for necessary monitoring measures to be undertaken. As already noted, I have expanded the condition suggested by the council relating to adherence to the environmental management plan in the interests of consistency and enforceability. This also addresses the need for monitoring of freshwater pearl mussel populations. Another condition would require the monitoring and reporting of any instances of gannets being trapped or entangled by nets on the site. There is no evidence to suggest that any other monitoring measures are required.

55. I have also included a condition to stipulate the duration of the planning permission, which is required by the Town and Country Planning (Scotland) Act 1997 (as amended).

56. Despite the LDP being relatively dated, the development plan still has primacy in decision-making. I find that the development would comply with the relevant provisions of LDP policies 50, 57 and 58. As these are the most salient policies to the main matters in this case, I conclude that the proposal would accord overall with the relevant provisions of the development plan. There are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Christopher Warren
Reporter

Schedule 1: Conditions

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of grant of this permission.

Reason: Section 58 of the Town and Country Planning (Scotland) Act 1997 requires a condition to be attached to permission limiting its duration. Three years is the default period set by law and there is no material reason indicating that a different period should be set.

2. Prior to the commencement of development and notwithstanding the information submitted with this application, an Environmental Management Plan (EMP) shall be submitted to and approved in writing by the planning authority. The EMP shall take account of the findings and conclusions of the freshwater pearl mussel survey detailed in the confidential annex to the NatureScot consultation received on 16 March 2022 and shall be informed by NatureScot's recommendations in respect of those survey findings. The EMP shall include adequate details to address how compliance can be assessed. This shall also detail triggers/thresholds and associated actions in order to secure that any risk to local wild fish and freshwater pearl mussel 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, standalone document, which shall include the following:

(i). 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.

(ii). 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.

(iii). 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.

(iv). 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.

3. The development hereby approved shall not be operated other than with a top net ceiling mesh size of 100mm or less.

Reason: In the interests of protecting Gannet from entanglement.

4. No commencement of the development hereby approved shall take place until wildlife entanglement/entrapment record keeping and notification plan has been submitted to and approved in writing by the planning authority. The submitted plan should include a standardised proforma and a commitment to submit regular (typically six-monthly) returns to the planning authority, copied to NatureScot. In addition, the plan should commit to immediate notification by operators to both the planning authority and NatureScot in event of any significant entrapment or entanglement of gannets (e.g. involving three or more birds of any named species on any one day and/or a total of ten or more birds in the space of any seven day period and/or or repeat incidents involving one or more birds on four or more consecutive days).

The plan should also detail adaptive management options (such as changing net mesh sizes and/or top-net design) in the event that NatureScot identify a possible adverse effect on the site integrity of any gannet SPA.

Reason: In the interests of protecting Gannet from entanglement.

5. The development hereby approved shall not be operated other than with a biomass of 2750 tonnes or less.

Reason: To define the permission in respect of its amended parameters.

6. No Acoustic Deterrent Devices shall be installed or operated at the farm.

Reason: In the interests of protecting harbour porpoise from disturbance.

7. The surface equipment shall be coloured to match the existing farm equipment unless agreed in writing by the planning authority.

Reason: In the interests of minimising visual impact within the NSA.

8. The fish farm hereby approved shall not be constructed or operated other than in strict accordance with the mitigation measures contained within the EIA report.

Reason: To minimise any impacts on the receiving environment.

9. All lighting above the water surface and not required for safe navigation purposes shall be directed downwards by shielding. It shall 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 shall be used.

Reason: To ensure the landscape and visual impact of the development upon the NSA is minimised.

10. 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, the whole or any part of the equipment so as to remove the obstruction or danger to navigation.

Reason: In the interests of amenity and navigational safety.

11. 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 within the timescales outlined in the scheme.

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

Schedule 2: Advisory notes

1. **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)).
2. **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)).
3. **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.
4. **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: Opportunities for public participation in decision-making

There is the following evidence before me of opportunities the public had to take part in decision-making procedures on the application before I was appointed to this appeal:

- an advertisement of the application in the Edinburgh Gazette has been provided. It advertised the opportunity for the public to make representations upon the proposal for the development and the accompanying EIA report;
- the planning authority received 255 public representations in respect of the application. The main points raised in those representations are considered in the decision notice;
- those who made representations upon the application have been treated as interested parties in the appeal. They were informed of this appeal by a notice issued by the council on 04 October 2022. They have had the opportunity to make representations on matters that they raised, by written response to the appeal.

Schedule 4: Appropriate Assessment

Where a plan or project is considered to have a likely significant effect on the qualifying interest(s) of a European site an appropriate assessment is required. NatureScot has advised that the proposal is likely to have a significant effect on the qualifying interest of breeding gannet at Sule Skerry and Sule Stack; St Kilda; North Rona and Sula Sgeir; Ailsa Craig; and Forth Islands, all of which are Special Protection Areas (SPAs).

Potential impacts on gannets

In its consultation response NatureScot has outlined the nature of potential impacts as follows:

“Breeding gannets have a mean foraging range of 120.4km (± 50.0 km) and a mean maximum foraging range of 315.2km (± 194.2 km). Consequently, there is potential connectivity between gannets from SPAs and all marine waters across Scotland suitable for finfish aquaculture. Hence there is potential for Likely Significant Effect (LSE) arising from incidental entanglement or entrapment of gannets at finfish farms deploying pole-mounted top nets”.

Appraisal

NatureScot’s own appraisal is that “...the adoption of ceiling mesh dimensions of 100mm or less is considered, on both theoretical grounds and in light of the currently available empirical evidence, to pose minimal risk of damaging interactions with gannets. In addition, all SPA gannet populations in Scotland are in favourable condition and the overall gannet population is increasing and expanding its range”.

NatureScot has also intimated that the mean foraging range of gannet would not include the fish farm’s location in Loch Hourn from the identified SPAs.

Whilst it is of relevance to note that the location of the proposed development is not understood to be a core foraging area for gannet, that could not in itself be relied upon in order to reach the conclusion that there would be no likely significant effects. Regardless of the precise numbers of gannet foraging in this area, the risk of entanglement and/or entrapment would still endure.

Mitigation to remove or reduce impacts of the proposal can be considered as part of this assessment. Given that NatureScot has confirmed that the mesh size of netting is critical in regard to the risk of entanglement and entrapment of gannet, the use of an appropriate mesh size is a straightforward means of mitigating this risk.

Notwithstanding the above, as evidence of the implications of top nets for marine birds is currently limited, monitoring at the site would be important so that in the event of further mitigation being required, this requirement would be triggered.

Conclusions

Subject to the use of an appropriate top net mesh size, which can be stipulated through the imposition of a planning condition, the proposed development would be highly unlikely to adversely affect the integrity of a European site given this mitigation would minimise, if not eliminate, instances of entanglement and entrapment of gannet.

By also securing monitoring requirements by planning condition and the potential for further mitigation measures if deemed to be necessary, this would provide a further safeguard should the effects of the development on gannet be greater than can reasonably be anticipated based on current evidence. This would be an appropriate requirement given the limitations in evidence noted above.

With mitigation in place as outlined, there is no basis to conclude that the conservation objectives of the SPAs could be undermined by the proposal.