



**22**

# PLANNING FOR FISH FARMING





SCOTTISH EXECUTIVE  
Development Department

# **Scottish Planning Policy**

## **SPP 22**

# **Planning for Fish Farming**

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## PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Scottish Executive policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development management.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location-specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

The National Planning Framework sets out the strategy for Scotland's long-term spatial development. It has the same status as SPPs and provides a national context for development plans and planning decisions and the ongoing programmes of the Scottish Executive, public agencies and local government.

**Important Note:** In the interests of brevity and conciseness, Scottish Planning Policies do not repeat policy across thematic boundaries. Each SPP takes account of the general policy in SPP1 and highlights the other SPPs where links to other related policy will be found. The whole series of SPPs should be taken as an integral policy suite and read together.

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## **SUMMARY**

This SPP aims to;

- provide guidance on the particular factors to be taken into account when considering proposals for new freshwater or marine fish farms, or modifications to existing operations; and
- establish the national planning context for the preparation by planning authorities of development plans for guiding the location of future fish farms.

Scottish Ministers recognise the importance of fish farming to the Scottish economy, particularly in rural areas. *A Strategic Framework for Scottish Aquaculture* sets out Ministers' vision of a sustainable, diverse, competitive and economically viable aquaculture industry and commits the Scottish Executive to prepare this Scottish Planning Policy (SPP) to support the new statutory provisions extending planning controls to marine fish farming.

The introduction of a system of statutory planning controls for marine fish farming complements existing provision covering freshwater farms. The controls cover the marine waters (including those previously covered by the Zetland and Orkney County Council Acts) defined in the Water Environment and Water Services (Scotland) Act 2003 as coastal and transitional waters and extended to territorial waters by the Planning etc (Scotland) Act 2006. Both finfish and shellfish farming are now subject to the new controls.

This SPP takes account of the Scottish Executive's commitment to sustainable development and other relevant Executive policies and provides policy guidance on both marine and freshwater fish farming developments. It draws on the existing locational guidance and an advice note published by the Scottish Executive in January 2003 and sets out the planning policy framework that planning authorities should take into account when preparing their development plans and in determining planning applications for fish farms.

This SPP indicates that planning authorities should use the development plan process to support and encourage the continued growth of fish farming. Planning policies should not be used to restrict development where environmental and other impacts can be addressed satisfactorily. In all instances, plans should provide clarity on what should be met to enable development to take place in a satisfactory manner. Plans should, however, afford protection to areas designated for their national or international heritage value, and those areas where further development would result in unacceptable significant impacts.

Planning authorities should revise their development plans to take account of the guidance in this SPP. In the meantime, they should continue to determine applications that come before them in terms of existing policies and framework plans taking into account this guidance.

STOP

## INTRODUCTION

1. Following the extension of planning controls to marine fish farming, this Scottish Planning Policy (SPP) sets out the Scottish Executive's national planning policy for marine and freshwater fish farming. It provides guidance on how planning authorities should plan for fish farming development and respond to development proposals for fish farming. It also sets out the issues the Scottish Ministers will take into account when considering both freshwater and marine fish farming policies in development plans and planning applications which come before them on appeal or call-in. This SPP should be read in conjunction with Circular 1/2007 *Planning Controls for Marine Fish Farming*.
2. The SPP indicates how the planning system can seek to accommodate fish farming developments whilst safeguarding the environment and other uses. Planning controls now cover fish farming developments within territorial waters out to 12 nautical miles. This new power brought in under the Water Environment and Waters Services (Scotland) Act 2003 and the Planning etc (Scotland) Act 2006 replaces past consent and works licence procedures relating to marine fish farming which were previously overseen by the Crown Estate and Shetland and Orkney Islands Councils respectively.
3. The policy intention is to ensure consistency with the land based planning system as far as possible, recognising that marine spatial planning is an evolving subject area, and to transfer the locational development of this industry from a predominantly non-statutory regime into the planning system. Provisions in this SPP are specific to fish farming. Other activities in marine areas remain outwith the planning system and are subject to other regulatory controls.
4. This SPP aims to provide guidance on relevant issues that should be taken into account by planning authorities when determining fish farming proposals. It seeks to ensure that they take a strategic long term approach to planning for fish farming and explains how developers, planners and other interests should work towards achieving this.



## POLICY CONTEXT

### FISH FARMING AND THE ECONOMY

5. The fish farming industry makes an important contribution to Scotland's rural economy providing significant numbers of jobs, many of these in remote locations where alternative employment opportunities are scarce. Scottish Ministers wish to promote a sustainable fish farming industry and direct new and modified development to suitable locations.
6. The Scottish fish farming industry has three main components:
  - **Marine finfish farms**, predominantly salmon but increasingly other species;
  - **Shellfish farms**, producing a range of marine mollusc species; and
  - **Freshwater farms**, producing trout or salmon smolts for on-growing in seawater.
7. Marine finfish farming takes place in the inshore waters of the west coast and the Western and Northern Isles, where the most favourable operational conditions for marine aquaculture are to be found. Marine fish farms are usually made up of a number of net pens arranged around a framework of walkways and flotation collars and moored to the seabed.
8. Concentrating on species such as mussels, oysters and scallops, shellfish farming shows a wider distribution to marine fish farms. Mussels are generally grown on weighted ropes suspended from buoyed lines or rafts. Scallops can be ongrown in nets suspended from lines or rafts or on the seabed with the area concerned designated by buoys. Oysters may be cultivated either on trestles placed below the low water mark or in net bags suspended from ropes.
9. Production from freshwater fish farming is dominated by rainbow trout produced either for the table trade or re-stocking sports fisheries; and salmon smolts for transfer to marine production sites. Usually these are farmed using ponds, raceways or tanks although smolt production can be in cages established in some of the larger freshwater lochs.
10. The fish farming industry has experienced several periods of business consolidation resulting in fewer but larger operators. For both finfish and shellfish, farms have tended to become larger year on year, reflecting increasing maturity and efficiencies within the sector. Bearing in mind the concept of overall carrying capacity for both fin and shell fish farms in Scotland, it is anticipated that the industry will be increasingly typified by larger but fewer farms. The aim is to promote sustainable development in the most suitable locations.

## POLICY BACKGROUND

11. Scottish Ministers support for fish farming is set out in *A Strategic Framework for Scottish Aquaculture*. It puts forward a vision for growing the fish farming industry, delivering a quality product to consumers at home and abroad, and social and economic benefits to communities, particularly in rural and remote areas. It includes a commitment to produce guidance. Scottish Ministers are also committed to the development of *A Strategic Framework for Scottish Freshwater Fisheries*. This framework will set out the vision for and provide the necessary actions, agreed with stakeholders, to deliver a sustainable freshwater fisheries sector. It will be particularly relevant with respect to the interrelationships between the marine and freshwater finfish industry and the freshwater fisheries sector.
12. Scotland's *Sustainable Development Strategy* sets out the national and international context that drives the Scottish Executive's sustainable development agenda. In addition, the Planning etc (Scotland) Act 2006 introduces a new duty that requires that functions relating to development planning should be exercisable with the objective of contributing to sustainable development. Scottish Ministers are committed to promoting the sustainable development of fish farming.
13. *A Partnership for a Better Scotland* confirms that the top priority of the Scottish Executive is to grow Scotland's economy. It sets out how this priority should be delivered through sustainable economic development. Scottish Ministers believe that a thriving fish farming industry in Scotland has the potential to develop new indigenous industries, particularly in rural area; to provide significant export opportunities and to enhance Scotland's economy. The planning system has a key role in supporting Scotland's economic competitiveness and employment market. The scope for developments to contribute to national and local economic development priorities should be a material consideration when considering policies and decisions.
14. *Seas the Opportunity* set out Scottish Ministers' strategy for the long terms sustainability of Scotland's coasts and seas. Further consideration is being given to potential legislation and structures for a marine and coastal strategy. This SPP does not preclude marine fish farming from being taken into consideration as the work on such a strategy is taken forward.
15. Scottish Ministers expect the planning system to play an important role in supporting the delivery of development that is sustainable. Planning authorities can draw on existing national guidance and advice. *SPP 1: The Planning System*, for example, sets out the purpose of the planning system and puts it in the context of the wider objectives of the Scottish Executive identifying the five priorities of sustainable development: economic competitiveness; social justice; environmental quality; design; and integrated transport. Policies in other SPPs, for example *SPP 15: Rural Development* and in NPPGs, such as *NPPG 13: Coastal Planning* and *NPPG 14: Natural Heritage* emphasise the importance of



promoting and guiding new development to suitable locations. The contribution that fish farming makes to the rural economy is acknowledged as is the need to balance economic and environmental factors. Policy guidance in these and other SPPs/NPPGs is therefore relevant to fish farming developments and should be taken into account by planning authorities in preparing their development plans and in considering applications for planning permission as well as by developers and others with an interest in the industry.

16. Planning authorities have been contributing to the development of the fish farming industry. Pending transfer of responsibility for the authorisation of marine fish farming from the Crown Estate to local authorities, the Scottish Executive introduced a non-statutory interim scheme from December 1998 enhancing the role of planning authorities in the authorisation of marine fish farming developments. Within Orkney and Shetland, licences were issued by the respective Councils under the Zetland and Orkney County Council Acts. Locational guidance and an advice note were issued by the Scottish Executive, most recently revised in January 2003, to establish a national context for guiding the location of future marine fish farms and to indicate the factors to be taken into account when considering Crown Estate consultations on development consents for fish farms. The offshore elements of fish farming have, however, previously lain outwith the statutory planning system that regulates development on land.
17. The Water Environment and Water Services (Scotland) Act 2003 provided the definition of development for marine fish farming and the necessary enabling and other provisions to bring marine fish farming into the planning system. Some of these provisions were amended by the Planning etc (Scotland) Act 2006 and further provisions were included to enable a workable and robust system to be introduced. The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 which came into force on 1 April 2007, brings marine fish farming into the planning system. This Order also designates the marine planning zones and the planning authorities (including the Loch Lomond and The Trossachs National Park Authority) which are to be the planning authorities for the purposes of marine fish farming within a particular marine planning zone. It should be noted that marine planning zones and the relevant planning authorities which have responsibility for marine fish farming purposes within these zones have only been designated up to 3 nautical miles. Ministers will consult on the boundaries between the 3 and 12 nautical mile limit in due course.
18. Other forms of development in the marine environment remain outwith the planning system. Different statutory control regimes apply to developments such as offshore renewable energy and telecommunications developments. It is not the intention for the planning system to duplicate other control regimes relating to fish farming such as the controlled activities regulation licences from the Scottish Environmental Protection Agency (SEPA) or fish health, sea lice, and containment regulations by the Fisheries Research Service (FRS).

19. This SPP draws on, and incorporates, the earlier SEERAD guidance and advice - the *Locational Guidance for the Authorisation of Marine Fish Farms in Scottish Waters* and *Marine Fish Farming and the Environment*.
20. No specific planning guidance has previously been prepared for freshwater fish farming. While the main focus of this SPP is on marine farms coming into the planning system for the first time, the guidance is applicable to freshwater as well as marine fish farming given that broadly similar issues such as siting and impact arise. When available, A Strategic Framework for Scottish Freshwater Fisheries should be taken into account by planning authorities.

### **ROLE OF PLANNING**

21. Within the Scottish Executive's vision of a sustainable, diverse, competitive and economically viable fish farming industry, the planning system's role is to enable and help to create opportunities for development in sustainable locations, by seeking to reconcile the needs of the fish farming industry, communities and sectors it helps to support, with concerns for the environment and those interests that may be affected by development. By providing a context for development, the planning system can assist with promoting fish farming development by engaging with communities and safeguarding environmental interests.

## **POLICY GUIDELINES – GENERAL PRINCIPLES**

22. In setting out Scottish planning policy on fish farming, this SPP focuses on three general principles:
  - Recognising the needs of local communities and other users.
  - Safeguarding and enhancing the environment
  - Promoting the sustainable development of fish farming.

### **RECOGNISING THE NEEDS OF LOCAL COMMUNITIES AND OTHER USERS**

23. It is essential that planning authorities have an inclusive approach to planning for development and that communities have a say in decisions that affect them. As indicated in *A Strategic Framework for Scottish Aquaculture*, community acceptance and understanding of the fish farming industry is vital. The introduction of statutory planning controls for marine fish farms will ensure that proposals are subject to an effective, transparent and democratically accountable system of regulation at the local level in line with current planning procedures for freshwater fish farms.



### **Working with Communities**

24. Fish farming has become an established and intrinsic part of some coastal communities. They bring economic activity to an area but can sometimes be regarded as an unwelcome environmental intrusion and nuisance, particularly by those living closest to it or by those who share the same environment. To foster inclusion, it is crucial that communities and other interests have access to information and opportunities to participate fully in decisions that affect them. Developers should work closely with planning authorities, communities and other interests, particularly at the pre-application stage. Further advice can be found in *Planning Advice Note (PAN 81): Community Engagement*.
25. Planning authorities should recognise that the community of interest in the marine environment goes wider than those who live near a fish farm and may include other marine users such as commercial inshore fishermen, sailors and yachtsmen, anglers and other recreational users. Benefits in terms of direct employment or indirectly in terms of support for local services should be taken into account. Fish farms may also involve seasonal use and raise inter-authority cross-boundary issues. Planning authorities should consult with neighbouring authorities where appropriate to ensure that development plan provision for fish farming in adjoining areas is compatible. While marine zones have been designated, loch-wide or river basin management approaches, for example, should be promoted by planning authorities.
26. Planning authorities should promote opportunities for wider engagement with interest groups on development planning and managing development through existing arrangements such as marine management areas and coastal partnerships or the establishment of other informal community liaison groups, fisheries advisory groups or panels to deal with inter-sectoral issues. Liaison arrangements will need to be well publicised, their function and activities communicated to the wider community and for them to be given the opportunity to contribute.

### **Fishing and Navigation**

27. There is potential for conflict between fish farming and other local fishing interests, including commercial inshore fishing, sea, river and angling. The effects of fish farming development on traditional fishing grounds, salmon netting stations and angling interests, should be fully considered. Consideration should also be given to impacts on fisheries orders such as Regulating and Several Orders granted by Scottish Ministers. Grantees should be consulted. Advice on fishing interests can be obtained from SEERAD, the Scottish Fisheries Protection Agency (SFPA), the Scottish Fishermen's Federation, the Association of Salmon Fishery Boards (ASFB), the Rivers and Fisheries Trust of Scotland (RAFTS), local District Salmon Fisheries Boards (DSFB), Fisheries Trusts at local level and local fishermen's organisations. The Salmon Net Fishing Association of Scotland can provide advice in relation to salmon net fishing stations.

28. It is essential to ensure that fish farm development does not constitute a hazard to navigation. Care must also be taken to safeguard established anchorages and harbours. Fish farms, like other developments in marine areas, require consent under the Coast Protection Act 1949 prior to development.

### **Recreation and Tourism**

29. Recreation and tourism make important contributions to the economies of many rural areas in Scotland. They provide employment and contribute to the support of local services. Both activities largely depend on the quality of the environment.
30. Coastal areas and inland lochs are used by a wide and growing range of water-based recreational activities including sailing, canoeing, windsurfing, water-skiing, swimming, sub-aqua diving, surfing, recreational fishing and the general enjoyment of the coast. Water quality, safety and access all contribute to that enjoyment of the environment. While water quality is a matter for SEPA to regulate, due attention must be given to public safety considerations. Care should be taken to avoid impeding access to the foreshore for recreational purposes while recognising operational needs when considering fish farming proposals.
31. Scotland's environment attracts tourists. It is important that inherent qualities of scenic beauty and natural heritage interest are maintained and enhanced and that these are not adversely affected by fish farming. Fish farms can often be fitted into their environment to avoid or minimise visual intrusion. Both recreation and tourism are therefore appropriate material considerations in considering applications for new or modifications to existing fish farming developments.

### **SAFEGUARDING AND ENHANCING THE ENVIRONMENT**

32. The natural and built environments are important resources for Scotland where change has to be managed with great care. The planning system plays an important role in ensuring that this is achieved by avoiding or resolving conflicts in a way that affords appropriate protection for the natural and historic environment without unreasonably restricting the potential for fish farming development.

### **Land Based Facilities**

33. Land based facilities in support of fish farms are already the subject of planning control. In areas recognised for their landscape value, planning authorities should ensure that new development is located and designed in a sensitive and unobtrusive manner. *NPPG 13 Coastal Planning* provides for the classification of the coast into 3 categories; developed, undeveloped and isolated. Planning authorities are encouraged to distinguish between these coastal areas and bring forward development plan policies which provide for fish farming. Fish farms can often be located some distance from land based facilities. Where possible, supporting land based facilities should be considered in a single application for a fish farm proposal or simultaneously. There may also be opportunities to promote the shared use of onshore facilities, including jetties, piers and ancillary facilities. Onshore impacts such as traffic generation should be considered.



### Natural Heritage

34. Natural heritage covers landscape, nature conservation and biodiversity interests within marine and landward areas. Scotland's natural heritage is important, both for its intrinsic environmental value and because of the opportunities for social and economic development derived from it. Within the wider framework of encouraging economic growth and sustainable development, the Scottish Executive is committed to safeguarding and, where possible, enhancing Scotland's natural heritage. Planning authorities should take into account the need to ensure that sustainable development is achieved in suitable locations and inappropriate development is avoided.
35. *NPPG 14: Natural Heritage* gives guidance on how national legislation and policy, including European obligations, for the conservation and enhancement of Scotland's natural heritage should be reflected in planning policy and sets out the approach to assessing development proposals in relation to protecting sites of international, national and local importance
36. The Nature Conservation (Scotland) Act 2004 places a duty on every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions. Scotland's Sustainable Development Strategy sets out a vision for Scotland in which biodiversity loss has been halted, natural resources are managed sustainably and the environment is protected effectively, on the basis of evidence and using the best scientific knowledge in the field. Delivery of this is achieved in part through a range of natural heritage designations which are located in both the marine and landward areas.
37. Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) are designated under the EC Birds and Habitats Directives respectively and together form a network of protected sites across the EU known as "Natura 2000". Particular procedures must be applied when planning authorities consider any proposals that might affect such sites. Any proposed development which is likely to have a significant effect on the interests for which a Natura site is designated must be subject to an appropriate assessment. If this assessment cannot demonstrate that the proposal will not adversely affect the integrity of the site it should only proceed in very exceptional circumstances. It should also be recognised that significant effects on Natura sites may arise from development proposals located outside protected sites and any such proposals must be treated in the same way.
38. In addition to the legal obligation to ensure the adequate protection of designated sites, European Member States are required to ensure the protection of the various species listed in the Birds and Habitats Directives within the wider environment. Careful consideration of the potential impact of proposed developments on these conservation interests should be given by planning authorities. Scottish Executive Guidance on the Habitats and Birds Directives ([www.scotland.gov.uk/library3/nature/habd-00.asp](http://www.scotland.gov.uk/library3/nature/habd-00.asp)) is an important reference for these requirements as is *NPPG 14: Natural Heritage*. In practical terms, the prospects for further substantial new developments may be limited within or in the vicinity of SPAs and SACs although there may be potential for modifications of existing operations or expansion of existing sites, particularly where proposals will result in an overall reduction in environmental impact.

39. Other designated areas should be acknowledged. Sites of Special Scientific Interest (SSSIs) are defined in the Nature Conservation (Scotland) Act 2004 (which amended the Wildlife and Countryside Act 1981) as areas of land or water which are of special interest by reason of their flora, fauna, geological or geomorphological features. Planning authorities are required to consult SNH when determining an application for a development which might affect a SSSI. Authorities should bear in mind that such sites can be affected by developments some distance away. Due regard must also be paid by planning authorities to landscape designations such as National Scenic Areas. Further information on the features described above can be found on the SNH website [www.snh.org.uk/](http://www.snh.org.uk/).
40. Planning authorities should ensure that the protection and enhancement of the natural heritage is adequately provided for in development plan policies and reflected in decisions on planning applications or individual proposals. While the protection of the natural heritage may impose constraints on fish farming, with careful planning, the potential for conflict can be reduced. The precautionary principle may be invoked in situations where an insufficiency of scientific evidence does not provide for a decision that a development will not cause significant irreversible damage to natural heritage interests.

#### **Visual Impact and Design Quality**

41. The Scottish landscape is a valuable resource. Planning authorities should ensure that development is located and designed in a sensitive and unobtrusive manner, particularly in areas recognised for their landscape value. Planning authorities should acknowledge the potential benefits of fish farming to the local economy while recognising that new or expanded fish farms may be inappropriate in some areas. In areas where the tourism industry is based on high quality scenery and an unspoilt environment, such as National Scenic Areas, planning authorities should take into account the capacity of the landscape to accommodate fish farming. The number of fish farms, their location in relation to each other and the surrounding land mass as well as the design and colour of cages, buoys and other equipment are factors to be taken into account. Consideration should be given to mitigation strategies to reduce visual impact.
42. Development plans should provide the policy framework within which the fish farming industry can develop in a sustainable manner. Local communities should be encouraged to contribute to development plan policies and consultation on development proposals on fish farming. These policies should guide developers towards appropriate locations and good quality design. Design criteria should be applied reasonably and consistently in development management and reflect the approved policy framework.

#### **Cumulative Impact**

43. Planning authorities should take into account the cumulative effect of new or modified developments on the environment and their landscape or visual impact. Concentrations of development, the number, and the relationship to each other may give rise to disproportionate and adverse impacts. Planning authorities should seek to avoid such circumstances by setting out policies and criteria against which development proposals will be assessed. The relationship

between cages and landward assets should be considered on a case by case basis. Much depends on the capacity of areas to accommodate development. This can be considered on a loch-wide or voe basis and brought forward in area management agreements or local fish farming framework plans. Where adverse cumulative impacts are considered significant and cannot be resolved planning permission should be withheld. Further advice on cumulative impact can be found in *Marine Aquaculture and the Landscape: The siting and design of marine aquaculture developments in the landscape*, prepared by SNH, the Crown Estate and Scottish Quality Salmon. [www.snh.org.uk/publications/on-line/heritagemanagement/aquaculture/](http://www.snh.org.uk/publications/on-line/heritagemanagement/aquaculture/).

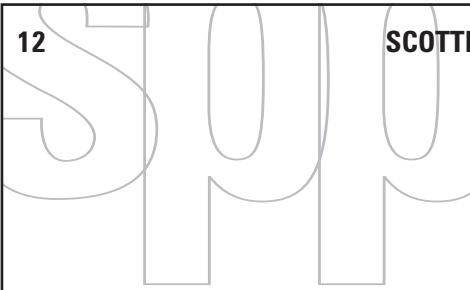
44. In considering cumulative impact, planning authorities should ensure that they take into account information from the Crown Estate on both existing leases for development that may have not yet been developed and also lease applications that may be under consideration.
45. Given many of the issues such as visual and cumulative impacts are similar, the policy principles underpinning site selection for marine fish farms should be broadly the same for those in freshwater lochs.

#### **Historic Environment**

46. *NPPG 5: Archaeology and Planning* and *NPPG 18: Planning and the Historic Environment* set out the Scottish Ministers' continuing commitment to the protection and positive management of the historic environment.
47. In the marine environment, planning authorities will also need to take into account additional aspects of the historic environment when preparing development plans and determining planning applications. These interests are covered by the following:
  - under the Ancient Monuments and Archaeological Areas Act 1979, Historic Scotland administers the statutory duties of the Scottish Ministers for the scheduling and protection of monuments under this Act including the consent procedures. These duties extend to the limit of territorial waters (the 12-nautical mile limit) and include powers to schedule monuments on the bed of territorial seas.
  - under the Protection of Military Remains Act 1986, administered by the Ministry of Defence, provision is made for the protection of military remains of any nationality in UK waters and includes vessels and aircraft lost at sea.
  - under the Protection of Wrecks Act 1973, administered by Historic Scotland, wreck sites of particular historic, artistic or archaeological importance can be protected within Scotland's territorial waters.
48. Planning authorities should ensure that proposed fish farming development will not adversely affect the integrity and setting of historic environment sites. Where appropriate, this may be a material consideration in determining planning applications. Historic Scotland's operational policy paper *HP6 Conserving the Underwater Heritage* is available from [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk) and the *Code of Practice for Seabed Development* from [www.jnapc.org.uk/index.htm](http://www.jnapc.org.uk/index.htm)

**Other Regulatory Controls and Codes of Practices**

49. In addition to the statutory planning system, there are a number of other regulatory controls covering fish farming which planning should be aware of, each with their own specific purpose and procedure. These include:
- the requirement for a licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 from SEPA. This replaces the requirement for a discharge consent previously obtained under section 34 of the Control of Pollution Act 1974
  - consent for navigation and anchorages from the Scottish Executive Enterprise, Transport and Lifelong Learning Department under section 34 of the Coast Protection Act 1949 (CPA)
  - a licence under Part II of the Food and Environment Protection Act 1985 (FEPA).
  - all fish farm businesses are required to register with SEERAD for disease control under the Disease of Fish Legislation
  - all fish farm businesses are required to notify SEERAD of any suspected fish escape, or circumstances which give rise to a significant risk of an escape under The Registration of Fish Farming and Shellfish Farming Business Order 1985
  - a seabed lease is required from the Crown Estate
  - ongoing regulatory controls under the Aquaculture and Fisheries (Scotland) Act 2007, enforced by FRS, cover sea lice management and containment measures.
50. As noted in SPP 1, the planning system should not be used to secure objectives that are more properly achieved under other legislation including those listed above. Planning controls sit alongside and do not duplicate other control regimes. The Crown Estate's rights and interests as regulators of the seabed remain unaffected by the introduction of statutory planning controls. The grant of planning permission does not remove the need to seek other statutory consents nor does it imply that these consents will be forthcoming. Planning authorities are, however, encouraged to engage with other regulators, improve the understanding of each others' requirements and assist with applicants' knowledge of these.
51. As part of *A Strategic Framework for Scottish Aquaculture*, good practice guidance has been produced by fish farming stakeholders. Voluntary Codes of Good Practice (CoGP) address a range of issues outwith planning interests such as fish farm cage and equipment design, security, management and operational practices and provide the basis for certification of standards and practices put forward in support of planning applications for fish farms.



## PROMOTING THE SUSTAINABLE DEVELOPMENT OF FISH FARMING

52. Scottish Ministers expect planning authorities to make positive provision for fish farming developments by:
- maximising environmental, economic and social benefits
  - guiding sustainable development to suitable locations
  - recognising the importance of fully engaging with local communities and other stakeholders at all stages of the planning process
53. In preparing development plans, planning authorities should identify those areas which are sensitive to new or modified fish farming development or are potentially suitable for such development.
- **sensitive areas** are areas that are unlikely to be appropriate for fish farm development or further fish farm development. There is a presumption against development within these areas because they are of specific environmental, scenic or ecological importance or because these areas lie within controlled areas or that fish farming development would conflict with other uses or potential uses which are considered more appropriate and beneficial.
  - **potential development areas** comprise areas within which fish farm development may be appropriate subject to detailed locational and environmental consideration.
54. Planning authorities should be proactive in identifying areas which have the potential to accommodate fish farming developments and areas that do not. Sensitive areas, for example, should take into account such issues as carrying capacity, natural heritage interests, potential conflict with other users and other regulatory controlled areas. Sensitive areas are unlikely to be suitable for fish farm development unless concerns can be adequately resolved or it is clear that the reason that the area is sensitive will not be adversely affected. The statutory development plan should clearly indicate these areas so as to reassure stakeholders and dissuade industry from unnecessary speculative project work.
55. Other than in sensitive areas, fish farming should be encouraged subject to satisfactory consideration being given to material planning considerations. Such developments must still satisfy EIA requirements and ensure that other regulatory consents are in place or likely to be granted.
56. Both sensitive and potential development areas should not be regarded as rigid demarcations. There may be areas within each where, depending on strong supporting information, development can or cannot be justified or considered acceptable. There will be constraints and opportunities at each level from regional, loch specific to local area and these will need to be balanced in promoting sustainable development in suitable locations. It should also be recognised that although an area may be considered suitable for development, for example on water quality grounds, planning authorities must consider applications on a case by case basis and may make a decision against approving

the development on local planning grounds such as visual impact or conflict with other users. Identification, therefore, of an area as potentially suitable or sensitive to development does not in itself lead to a development being permitted or rejected but will assist planning authorities in directing development to potentially suitable areas, protecting more sensitive areas and reconciling development pressures.

57. In preparing development plans and determining planning applications, planning authorities should take into account the following established policy provisions:

**a) Presumption Against Further Development on the North and East Coasts**

58. The Scottish Ministers introduced a presumption against further aquaculture development on the north and east coasts in 1999 as a precautionary measure to safeguard migratory fish species. The extent of the north coast is defined as that area of the coast to the east of Cape Wrath. Having regard to the precautionary approach, the presumption against development of marine finfish farming developments on the north and east coasts will continue to apply until possible effects of new species development on wild salmonid populations can be more fully assessed or new and appropriate technologies are developed to reassure maintenance of no impact on wild salmonids and other fish species.

**b) Fisheries Research Service's Categorisation of Coastal Waters.**

59. Locational guidance for finfish farming is produced by Fisheries Research Service's (FRS) based on the existing levels of nutrient loading and associated benthic impact from finfish developments. FRS identifies three categories of coastal water bodies as follows:

**Category 1:** where the development of new or the expansion of existing marine fish farms will only be acceptable in exceptional circumstances.

**Category 2:** where new development or expansion of existing sites would not result in the area being re-categorised as Category 1.

**Category 3:** where there appear to be better prospects of satisfying nutrient loading and benthic impact requirements, although the detailed circumstances will always need to be examined carefully.

60. The procedures used by the FRS to categorise areas are detailed on the FRS website: [www.marlab.ac.uk/](http://www.marlab.ac.uk/). Categories are reviewed on a quarterly basis, independently of this SPP. Categorisation of marine areas requires to be updated as better predictive techniques and models become available and our knowledge of environmental considerations and migratory systems improves.

**c) Regulatory Areas**

61. Due to the marginal effect of shellfish farming on nutrient loading, the categories in b) above do not apply to shellfish farming. However, Shellfish Waters have been designated in which proposed shellfish farming is promoted. Planning authorities should consider these together with other regulatory areas, for example, those covered by Several and Regulating Orders, in an assessment of sensitive and potential development areas.

**d) Areas of Natural Heritage Interest**

62. Planning authorities must take account of natural heritage designations in any assessment of the development potential for fish farming. They must be cognisant of their obligations with regard to these designations and reflect them in both development planning and development management.

**e) Historic Environment Interests**

63. The impact of fish farming development on the integrity and setting of historic environment interests is an important consideration to which planning authorities must have regard in development plans. Development proposals should be assessed on a case by case basis for their potential impact on the historic environment.

**f) Military Training and Testing Areas**

64. Fish farming is one of a number of activities excluded under bylaws from the Ministry of Defence (MOD) on controlled areas that are used by the UK, NATO and Allied nations for training purposes. The most significant of these areas include the Dockyard Ports of the Gareloch, Loch Long, Loch Goil and Rosyth. Similar prohibitions also exist at the British Underwater Test and Evaluation Centre (BUTEC) and the Rona Noise Range. There are also MOD Danger areas and Exercise areas used for firing from shore, ship and aircraft. Mine laying and mine hunting operations around military facilities on the west coast and the presence of submarine exercise areas militate against the provision of fish farm moorings in some areas. Details of these areas are normally indicated on large scale Admiralty Charts or MOD Practice and Exercise Area (PEXA) charts. MOD also has statutory safeguarding zones surrounding military facilities on land which extend over estuaries and marine areas. Further information can be found at [www.defence-estates.mod.uk](http://www.defence-estates.mod.uk).

## IMPLEMENTATION

### DEVELOPMENT PLANNING

65. The reforms to the planning system, introduced by the Planning etc (Scotland) Act 2006, reinforce the primacy of development plans and introduce a requirement to review plans regularly so that they provide an up to date vision for development in an area. Fish farming policies should be reviewed in that context. Local plans (and in future, local development plans) should identify sensitive and potential development areas.
66. Development planning provides the opportunity for planning authorities to set out the locational policy framework for fish farming within the context of an overall strategy to meet the social, economic and environmental needs of an area. Policies and proposals for fish farming, should be set out in development plans so that impacts on and links to the wider area can be properly assessed. In updating development plans, planning authorities should take into account the guidance set out in this SPP.
67. Developments plans should include policies which:
  - support the Scottish Ministers' commitment to the growth of a fish farming industry that is sustainable, diverse, competitive and economically viable;
  - provide a clear development management framework for fish farming and
  - recognise the locational constraints and opportunities identified in this guidance through the identification of potential development areas and sensitive areas.
68. Development plan preparation should embrace a wide range of views including those representing economic, environmental and community interests. Planning authorities should work with the fish farming industry and the Crown Estate as well as local and environmental interests in the preparation of their development plan. Planning authorities should, in conjunction with related strategies and relevant stakeholders, assess how to meet the requirements for new or modifications to existing fish farming development and to identify appropriate areas to site such fish farms having regard to this guidance and other policies of the development plan. In doing so, planning authorities should encourage public involvement and promote links with community planning. Identification in the development plan ensures that there is an opportunity at an early stage for effective engagement by developers and stakeholders including local communities. Development plan policies should provide for fish farming to make a contribution to local and national economic activity and that they do not have a significant negative impact on the interests and amenity of local communities as well as wider natural heritage, water environment or other economic sectors important to the local economy.



### **Fish Farming Framework Plans**

69. Non-statutory fish farming framework plans, setting out the planning authority's approach in greater detail to fish farming development in specific areas, have historically been prepared to further guide development and assist with decision making. They can provide supplementary planning guidance on fish farming and can support development plan policies on fish farming. They may also provide interim policy guidance until appropriate policies have been adopted in the relevant development plan. As supplementary planning guidance, framework plans are material considerations in determining applications and appeals, as set out in *SPP1; The Planning System*.
70. Planning authorities should ensure that fish farming framework plans take into account:
- development plan context;
  - description of the area, including hydrography;
  - existing and potential development and scale of fish farming;
  - area characteristics including flushing, pollution, separation, capacity, landscape / visual / nature conservation impact, infrastructure, other users, socio-economic interests;
  - opportunities and constraints to further development;
  - area policies including relocation potential and
  - development in accordance with the industry's Codes of Good Practice.

### **Boundaries**

71. Planning authorities are encouraged to work jointly and reach agreement with neighbouring authorities to ensure that provision for fish farming in adjoining areas is compatible. Loch-wide and river basin management approaches are also encouraged particularly in areas where planning authorities share a boundary within a loch system. Examples of this could be in areas such as Loch Linnhe and Loch Long.

## DEVELOPMENT MANAGEMENT

72. Development management decisions should be made in accordance with the development plan unless material considerations indicate otherwise. This applies to all new development, and modifications to existing facilities and changes of use.
73. The assessment of individual applications should ensure that:
- the location is appropriate and in accordance with the development plan;
  - the scale, nature, siting and design is acceptable and sustainable at the local level and
  - there is no unacceptable impact on the environment or other users.
74. Prospective developers should discuss their proposals with the planning authority and statutory agencies before submitting formal applications. This should include discussions with the Crown Estate in relation to the availability of appropriate lease sites. Developers are also encouraged to undertake pre-application consultation with the local community. This will help them to identify potential constraints and opportunities at an early stage.
75. It is important that a transparent and consistent approach to decision making is adopted to allow individuals, communities, environmental and development interests to be clear about what will be allowed, what standards will be sought in terms of siting or design and what information will be required in support of an application. Applications should be supported by sufficient information to enable the planning authority and their consultees to assess the likely effects. The information sought by a planning authority from a developer should be tailored to the scale of the proposal and the sensitivity of the location and should generally be less onerous for smaller projects than that required for other larger proposals. Consultees should provide clear, concise and prompt advice on which planning authorities can rely.
76. Applications should contain the following information:
- extent of site;
  - type, number and physical scale of structures;
  - disposition of structures across the lease area;
  - on-shore facilities;
  - ancillary equipment (feed barges, etc);
  - lighting and noise impact;
  - restoration in the event of cessation of operations;
  - Environmental Assessment (if required) and
  - transport impact assessment (if required).



77. In seeking to reconcile the opportunities for local employment and other economic benefits arising from fish farming with other interests, including environmental and conservation considerations, certain factors are particularly relevant when assessing individual proposals for fish farms. They should be addressed, where appropriate, in an Environmental Impact Assessment or in supporting information where a formal EIA is not required and conditions attached, as necessary, to planning applications. The factors may include:
- landscape and visual impact;
  - siting and design;
  - effect on natural heritage and the historic environment;
  - impact on wild recreational fisheries;
  - effect on fishing and navigation;
  - access and infrastructure requirements;
  - methods of operation (lighting impacts, associated noise etc).;
  - cumulative impact and
  - socio and economic benefits.

### **Planning Conditions**

78. Planning permission may be subject to planning conditions. Circular 4/1998 provides information on the use of planning conditions in planning permissions and on model planning conditions. The planning authority should seek to minimise the number of planning conditions needed but ensure that they cover siting, design, visual impact, operational practices such as lighting and noise, restoration, aftercare and monitoring. Conditions must meet the applicability tests set out in the Circular.

### **Monitoring and Enforcement**

79. Effective monitoring and, if required, enforcement of planning conditions is necessary to ensure that development is carried out in accordance with planning permission. Failure to do so will undermine the credibility of the planning system. Planning authorities should ensure that effective management is in place to monitor the conditions attached to planning permissions. Care should be taken, however, to ensure that monitoring relates to planning issues, and not to regulatory matters covered by others.
80. Scottish Ministers attach significance to effective enforcement and a wide range of powers is available; their use being at the discretion of planning authorities. Mitigating potential environmental impacts may rely in some places on enforcement of conditions. Enforcement powers available to planning authorities are summarised in *SPP1; The Planning System* and explained in *PAN 54 Planning Enforcement* and Circular 4/1999.

**Environmental Impact Assessment**

81. Environmental Impact Assessment (EIA) is an integral part of the process of determining applications. The EC Directive on Environmental Assessment (85/337/EC), as amended, seeks to ensure that where a development is likely to have significant effects on the environment, the potential effects are systematically addressed in a formal environmental statement. Not all applications require a formal EIA. Sufficient environmental information, however, needs to be submitted in support of an application.
82. Marine and freshwater fish farming have previously been subject to different EIA regulations but this has been resolved with the transposition, as appropriate, of the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 into the Environmental Impact Assessment (Scotland) Regulations 1999, as amended. Fish farming, excluding shellfish farming, falls within Schedule 2 development and must therefore be subject to EIA whenever it is likely to have a significant effect on the environment. This includes changes or extensions to existing developments that may have a significant adverse effect on the environment even where the original development was not subject to EIA. Applicants are encouraged to seek a screening opinion from the planning authority at an early stage in developing proposals for new sites or significant expansions to existing sites. The introduction of EIA for marine fish farms into the statutory planning system will not lead to any changes in the consideration of EIA for freshwater fish farms.
83. *Environmental Assessment Guidance Manual for Marine Salmon Farmers*, published by the Crown Estate in conjunction with the industry, provides advice about how to prepare environmental statements and is also applicable to development of proposals for species other than salmon. Copies are available on request from the Crown Estate. The Scottish Aquaculture Research Forum (SARF) has been commissioned by COSLA to provide further guidance on EIA for fish farm developments.



## CONCLUSION

84. The Scottish Executive has set out a vision for a sustainable, diverse, competitive and economically viable fish farming industry. Not all of these issues can be addressed through the planning system. However, planning has an important role to play in achieving an appropriate balance between the interests of people, businesses and organisations proposing fish farming developments, and those of individuals, communities and other users whose quality of life will be most affected by such developments. This SPP sets out guidance on the factors which planning authorities should take into account when preparing development plans and assessing development proposals for fish farming.

## ENQUIRIES

85. Enquiries about the content of this SPP should be addressed to Steve Dowell, Scottish Executive, Planning Division, Area 2-H,, Victoria Quay, Edinburgh, EH6 6QQ (tel 0131 244 3108) or by e-mail to [steve.dowell@scotland.gsi.gov.uk](mailto:steve.dowell@scotland.gsi.gov.uk). Further copies can be obtained by telephoning 0131 244 7543. This SPP and other SPPs, PANs and a list of circulars can be viewed on the Scottish Executive's website at [www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning).

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