



**Shetland
Islands Council**

SUPPLEMENTARY GUIDANCE – AQUACULTURE

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SHETLAND ISLANDS COUNCIL SUPPLEMENTARY GUIDANCE: AQUACULTURE

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PART I: POLICY FRAMEWORK AND LEGISLATION

1. Introduction

- 1.1 The marine fish farming industry in Shetland has two major components: finfish farms and those involved in the cultivation of shellfish and the industry is a major component of the Shetland economy. Salmon production is the largest element by far and there are a small number of hatcheries producing salmon smolts including two with freshwater loch cage developments.. Sea trout, cod and halibut have been farmed in recent years whilst the hatchery production of lumpsuckers, as a biological control for sea lice, is being established. In respect of shellfish cultivation, mussels are the main species with a small number of sites previously developed for scallops and oysters.
- 1.2 The purpose of this document is to provide guidance to all involved in the process of considering proposals for new or amended "fish farming" developments under the scope of the Town and Country Planning (Scotland) Act 1997 (as amended). In general terms, that means development and/or the placing of "equipment" in freshwater, the sea, on the seabed or on the foreshore below Mean High Water Springs (MHWS) and out to the limits of territorial waters (12nm) for the purposes of breeding, rearing or keeping of fish or shellfish (which includes any kind of sea urchin, crustacean or mollusc).
- 1.3 Shetland Islands Council (The Council) will apply this policy to all planning applications for fish farming developments for which the Council has authority to issue planning permission in terms of the 1997 Act determined on, or after, the date it is approved by Shetland Islands Council. Applications will be determined in line with the Council's Scheme of Delegation as it applies to the Planning Service.
- 1.4 This policy has been drawn up in recognition of the Council's commitment to sustainable development of which the key aims are to:
- Encourage sustainable development that maintains and improves life chances for local people.
 - Involve local communities in the decision making process.
 - Protect and enhance Shetland's environment.
- At all times the Council will endeavour to balance these aims to ensure its policies and decisions are equally promoted.
- 1.5 In cases where granting permission for a development poses significant risks of damage to the environment, the Council will apply the precautionary principle to limit those risks, even where scientific or technical knowledge is inconclusive.
- 1.6 The Council has certain powers and duties in respect of environmental protection, as do other statutory bodies and agencies (see section 3, Regulatory Framework). In respect of fish farming developments, there may be circumstances where it would be more appropriate for another body to exercise its powers to achieve a particular objective rather than for the Council to seek to secure that objective through the imposition of conditions attached to planning permissions. However, this does not

prohibit the Council from attaching conditions to planning permissions that may have the effect of securing other objectives as well.

- 1.7 Shetland Islands Council is involved in a number of areas in the arena of marine spatial planning. Principal amongst these are the Shetland Islands' Marine Spatial Plan, the Local Development Plan and Regional Marine Plans required under the Marine (Scotland) Act 2010. The purpose behind these plans is a need to optimise, in a balanced manner, the variety of activities that occur in Shetland's marine coastal environment to both safeguard its assets and allow appropriate sustainable development. As such this policy is an integral component of these Plans and prospective developers are strongly recommended to consult these Plans prior to submission of an application.
- 1.8 This document comprises background information or general advice to prospective developers and informs the statements contained within the Supplementary Guidance for Aquaculture.

2. Regulatory Framework

- 2.1 Planning applications are required for all freshwater and marine fish farm developments under the Town and Country Planning (Scotland) Act 1997, as amended. Applications will be considered in terms of this Supplementary Guidance; the Council's Local Development Plan; Scottish Planning Policy; Scotland's National Marine Plan; Shetland Islands' Marine Spatial Plan and Marine Scotland's Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters.
- 2.2 As of 01 June 2012 aquaculture developments are afforded certain Permitted Development (PD) rights through the Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012. PD applies to certain alterations to cages, barges, top nets, placing of temporary equipment, adding an additional long line and changes to finfish species being farmed. Prior Notification to the planning authority is required (except for change of species) and it has 28 days from receipt of this to issue a determination as to whether its prior approval is required to exercise a PDR. If this does not happen the operator becomes entitled to make the change. Where the planning authority determines its approval is required it has 2 months in which to determine the case. The applicant has a right of appeal to Scottish Ministers if prior approval is refused, granted with conditions or not determined within 2 months.
- 2.3 Applications for planning permission for finfish farming require to be considered in the light of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.
- 2.4 Equipment sited below Mean Low Water Springs (MLWS) will generally require a seabed lease from The Crown Estate in discharge of its functions under the Crown Estate Act 1961. The Council recommends that developers contact The Crown Estate at the earliest possible stage to ensure that their interest is registered, through a lease option agreement, and conflicts with other developments can be avoided.

- 2.5 Fish farms will require an authorisation from the Scottish Environment Protection Agency (SEPA) under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 in respect of chemical treatments and discharges from the site.
- 2.6 All marine fish farm developments are required to apply for a marine licence under Part 4 of the Marine (Scotland) Act 2010. A marine licence is required in respect of placement of works in the sea, navigation matters and use of well boats at finfish sites. It replaces the consents previously granted under the Food and Environment Protection Act 1985 and section 34 of the Coast Protection Act 1949.
- 2.7 All Aquaculture Production Businesses require to be authorised under the Aquatic Animal Health (Scotland) Regulations 2009 in relation to animal health requirements and the control of certain diseases in aquatic animals. This function is undertaken by the Fish Health Inspectorate at the Marine Scotland Marine Laboratory on behalf of Scottish Ministers. The same body is also responsible for ensuring the integrity of sites in regard to containment and equipment standards, escape incidents and sea lice issues under the Aquaculture and Fisheries (Scotland) Act 2013.
- 2.8 The Council additionally has a statutory duty to meet the requirements of the following legislation:
- The Habitats Directive – conservation of habitats and species; designation of Special Areas of Conservation
 - The Birds Directive – conservation of wild birds; designation of Special Protection Areas
 - The Water Framework Directive - ensures that all inland and coastal waters within river basin districts achieve good ecological status by 2027
 - Wildlife and Countryside Act 1981 – protection of birds, animals and plants; invasive non-native species; designation of Sites of Special Scientific Interest; nature reserves; rights of way
 - Water Environment and Water Services (Scotland) Act 2003 – protection of the water environment including river basin management planning, controlled activities regulations, provision of water and sewerage services
 - Nature Conservation (Scotland) Act 2004 – duty to further the conservation of biodiversity; SSSIs; preparation of the Scottish Marine Wildlife Watching Code
 - Marine (Scotland) Act 2010 – Marine Protected Areas; marine planning – National and Regional Marine Plans; conservation of seals including haul out designation
 - Wildlife and Natural Environment (Scotland) Act 2011 – provides additional powers and amendments to the 1981 Wildlife Act
 - Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2013 – identifies specific coastal areas as shellfish water protected areas
 - Climate Change (Scotland) Act 2008 – contributes towards greenhouse gas reduction targets

A list of the areas to which the above legislation pertains can be found at Annex 1.

3 Policy Application

General Considerations

- 3.1 The Council will take account of the views of all interested parties, including competent and relevant bodies and local communities, in its determination of planning applications.
- 3.2 Planning applications will be determined with due regard to relevant national and local polices and guidance in place at the time of the application.
- 3.3 It shall be a condition of all planning permissions that developers must comply with all relevant statutory planning controls currently in force or which come into force during the period in which their planning permission remains valid. A failure to comply with any relevant statutory control or a breach of any condition which is brought to the Council's attention will be investigated and may, if circumstances warrant it, result in the Council taking appropriate enforcement action.
- 3.4 In respect of all planning permissions approved pursuant to this policy, if any site ceases to operational (for the purposes granted, i.e. fish farming) for a continuous period exceeding 3 years all equipment, including anchors and moorings, must be removed from the site as conditioned by the Planning Authority.
- 3.5 Appropriate lights, buoys or beacons that comply with the International Association of Lighthouse Authorities' guidelines must mark any installations close to navigation channels, or which may otherwise be a danger to navigation. Such markings will be specified in the planning permission following consultation between the Council's Ports and Harbours Operations and the Northern Lighthouse Board and must be present at all times when equipment is on site.
- 3.6 Where, following a Habitats Regulations Appraisal, an Appropriate Assessment is deemed necessary and subsequently indicates that the development will have an adverse effect on the integrity of any Natura 2000 site, the Council will be minded to refuse the application as required by the 1994 Regulations. Additionally the Council will take account of Articles 12, 13 and 16 of the Habitats Directive in respect of European Protected Species when considering planning applications. Similarly, under the Marine (Scotland) Act 2010 applications may require assessment against the conservation objectives of a Marine Protected Area and where these cannot be met the Council will be minded to refuse the application.
- 3.7 All applications for new or extended aquaculture developments must be submitted with a cage and mooring specification that is suitable for the proposed development.
- 3.8 All aquaculture proposals must demonstrate that anti-predator measures, permitted through the granting of planning permission, deter or prevent predation through use of methods which are non-lethal and do not cause any significant harm. For the avoidance of doubt the use of monofilament nets for such purposes is not permitted.

Separation Distances

- 3.9 The Council's policy on separation distance between aquaculture developments was originally devised for the purposes of pollution control and minimisation of the risk of disease transfer and took particular account of the hydrographic and topographic characteristics of Shetland's coastal area. In these respects the policy has generally been successful. Whilst the Council will seek to achieve specified minimum separation distances between aquaculture developments, it recognises that it may be necessary and appropriate to consider increased separation distances in certain instances to facilitate sustainable development and environmental improvements.
- 3.10 Variations to separation distances may be supported where a Farm Management Agreement (FMA) or an Area Management Agreement (AMA) has been drawn up by site operators as required by the Aquaculture and Fisheries Act 2013. Where any such Agreement involves site relocation, amalgamation or revocation, the Council may be minded to refuse planning applications for new aquaculture developments in the space so created in acknowledgement of the need for increased separation distances to promote sustainable use of the coastal zone, improved biosecurity and environmental benefit. It is strongly recommended that any FMA or AMA involves both finfish and shellfish interests, and all other stakeholders in the area under consideration although the 2013 Act is only binding on fin fish developments.
- 3.11 Whilst the Council may be minded to refuse planning applications for new aquaculture developments in those areas created by site relocation, amalgamation or revocation, it may be possible for existing developers to seek variations to existing sites, including expansion of sites, provided separation distances promoted by such action are not adversely compromised. Applications of this type will be subject to the normal consultation process.
- 3.12 For the avoidance of doubt, the separation distances within this policy will apply to any intake or outfall pipes associated with any land based facility involved in the breeding, rearing or keeping of any freshwater fish species or marine species of fish and shellfish, and any freshwater or marine based aquaculture development unless subject to appropriate treatment.

Finfish

- 3.13 The Council will assess applications for finfish farms on the basis of the information supplied with the application including, where appropriate, an ES. Comments and representations received as a result of consultation and publicity of the application will also be taken into account.
- 3.14 All finfish farming proposals (new and amended sites) will be considered in light of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. This means that the Council will determine whether the development will be likely to have significant effects on the environment and, as a consequence of the Baker ruling, any modifications will have to be considered in respect to the whole site and its potential impacts. The Council will also have regard to the indicative criteria set out in the Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters - Policy Guidance Note (Scottish Executive, 1999). In addition the

comments of the 'statutory consultees' under the 2011 EIA Regulations will be taken into account in determining the need for Environmental Assessment.

- 3.15 Prospective applicants are urged to consult staff of the Coastal Zone Management Service as early as possible when formulating their proposals so that an informal view can be given as to whether Environmental Impact Assessment (EIA) will be necessary in respect of a particular development. Under the auspices of Delivering Planning Reform for Aquaculture developers are expected to use the screening/scoping templates when seeking a formal opinion from the Council as to whether an EIA is required. The 2011 EIA Regulations specify that certain information must be included in Environmental Statements prepared in terms of those Regulations. Prospective developers should note that the statutory 4-month period for determination of planning applications where EIA is required excludes the period up to the submission of the Environmental Statement and that the pre-application screening/scoping templates stage is a maximum of 8 weeks.
- 3.16 Whilst a valid planning application may be made without seeking any such informal or formal opinions, developers should be aware that early consultation with the Coastal Zone Management Service and other competent bodies, as set out in Annex 2, regarding their proposals may speed determination of their application. In any case, planning applications received by the Coastal Zone Management Service, where a screening opinion has not previously been sought, will be treated as a request for a screening opinion.
- 3.17 Planning permission will only be granted for sites whose production, either in isolation or in conjunction with adjoining sites, will not have significant adverse effects on the environment of the site under application or the adjacent marine environment, insofar as current scientific method is able to determine.
- 3.18 For the avoidance of doubt, any change that would result in significant effects or impacts on the environment requires an application for a variation to the site and may also require the carrying out of an EIA.
- 3.19 Where a planning application is made to vary a site, which may include relocation, amalgamation or revocation, as part of a Farm Management Agreement (FMA), it will be necessary to consider these applications in light of the EIA Regulations. However the Environmental Statement in support of such applications may only be required to cover the specific issues relating to the proposed variation.

Shellfish

- 3.20 Prospective applicants are urged to consult the Coastal Zone Management Service and other competent bodies as listed in Annex 2 as early as possible when formulating their proposals. Whilst a valid planning application may be made without seeking officers' informal opinion, developers should be aware that involving such staff in early discussions about their proposals may speed determination of their application.
- 3.21 The Council will assess applications for shellfish farms on the basis of the information supplied with the application. Comments and representations received as a result of consultation and publicity of the application will also be taken into account.

- 3.22 Where space has been created through site relocation, amalgamation or revocation as part of a FMA or an Area Management Agreement (AMA), prospective applicants should be aware that the Council may be minded not to approve planning applications for new aquaculture developments in these areas. However it may be feasible to permit existing shellfish developments in such areas to relocate or increase their surface works area, as part of an AMA or FMA, provided minimum separation distances are maintained. Applications will be subject to the normal consultation process.
- 3.23 As the shellfish sector has grown a number of concerns have been raised regarding the issue of biological carrying capacity and the ability of the coastal zone to support increasing production. Prospective applicants should be aware that all shellfish applications will be assessed against a simple carrying capacity model and where the model indicates that carrying capacity is nearing attainment or has been exceeded the Council may not grant planning permission for new developments or expansions to existing operations in such areas.
- 3.24 Prospective applicants should give preferential consideration to siting new shellfish developments in Shellfish Water Protected Areas as this will assist in ensuring the quality of the water in which the shellfish are grown. Where this is not possible developers should take account of other stakeholders in the area that may affect the quality of water, and in doing so the Council will be mindful that the affected area may have a future designation of those waters under the Water Environment (Shellfish Waters Protected Areas: Designation) (Scotland) Order 2013.

4. Interpretation

- 4.1 The following meanings will be applied in the interpretation of this Supplementary Guidance:
- "EIA" means Environmental Impact Assessment, as defined in the 2011 EIA Regulations ;
 - "environmental information" has the meaning given in the 2011 EIA Regulations ;
 - "Environmental Statement" has the meaning given in the 2011 EIA Regulations ;
 - "equipment" includes any tank, cage or other structure, or long-line, for use in fish farming;
 - "fish farming" means the breeding, rearing or keeping of fish or shellfish (which includes any kind of sea urchin, crustacean or mollusc) but excluding seaweed species;
 - "scoping opinion" has the meaning given in the 2011 EIA Regulations ;
 - "screening opinion" has the meaning given in the 2011 EIA Regulations ;
 - "statutory consultees" means those organisations defined by either or both of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 and the EIA (Scotland) Regulations 2011 as is appropriate;
 - "Sullom Voe Harbour Area" is defined in the Sullom Voe Harbour Revision Order 1980;
 - " the 12 mile limit" means the limit consisting of a line every point of which is at a distance of 12 miles on the seaward side from the nearest point of the baseline from which the breadth of the territorial sea of the United Kingdom adjacent to Scotland is measured; and "miles" means international nautical miles of 1,852 metres;

PART II: POLICIES

1. GENERAL POLICIES

- G1 In determining applications for planning permission, the Council will take account of, *inter alia*, the following factors to ensure sustainable development that is consistent with Council policies and objectives:
- The need to ensure that safe navigation is maintained.
 - Potential effects, including cumulative, on the environment, natural heritage interests and the historic environment.
 - The implications for fishing interests.
 - Existing marine developments, including other fish farms, in the locality.
 - The implications for recreational and other interests and users of the marine or freshwater resource.
 - The availability of any necessary infrastructure and potential impact on existing infrastructure, where relevant
 - The economic and/or social benefits of the development.
- G2 For the avoidance of doubt, the Council may be minded to grant applications to vary existing farms closer than the relevant separation distance required by policy where the original permission was granted under previous policy and provided the proposed variation does not result in any increase to the existing consented planning boundary area or increased environmental impact.
- G3 For the avoidance of doubt, where an application is being determined any subsequent application made that is closer than the minimum separation distances required by Policies F1 or S1, as appropriate, will not be considered until the first application has been determined.
- G4 Over time, the Council has adopted policies in coastal areas of Shetland where there is a general presumption against aquaculture development. Such policies are as follows:
- (a) Fish farming will not as a matter of policy be permitted anywhere within the Sullom Voe Harbour Area (as defined in the Sullom Voe Harbour Revision Order 1980) for as long as its primary purpose is to accommodate vessels engaged in the carriage of hydrocarbons or other dangerous substances;
 - (b) No aquaculture developments will be permitted in Whiteness Voe north of a line between Usta Ness and Grutwick or the upper part of Weisdale Voe between the Taing of Haggersta and Vedri Geo for environmental and visual reasons;
 - (c) No further new aquaculture developments will be permitted in Busta Voe north of a line drawn between Hevden Ness, Mainland and Green Taing, Muckle Roe as a matter of policy, and variations to existing sites north of this line should not result in either an increase in site size, a change in site location or an increase in environmental or visual impact for recreational and environmental reasons.

- G5 Where both the intake and outfall water supplies associated with either shore based finfish rearing facilities or shellfish washing and/or depuration facilities are subject to appropriate treatment, the Council may be minded to waive the minimum separation distances required by Policies F1 and S1.

2. FINFISH DEVELOPMENTS

- F1 Planning permission will not be granted for finfish developments situated within 1,000m (measured as the water flows) of the extents of any other approved finfish farm or any water intakes/outfalls associated with shore based finfish rearing facilities, or within 500m (measured as the water flows) of the extent of any approved shellfish farm or any water intakes/outfalls associated with shore based shellfish washing and/or depuration facilities.
- F2 Where developers within an area seek to address issues of sustainability, biosecurity and environmental benefit through site relocation, amalgamation or revocation, the Council may be minded to seek greater separation distances than the minimum stated within this policy. To preserve these increased separation distance the Council may in addition be minded to refuse new applications for aquaculture developments in those areas created by site relocation, amalgamation or revocation. Industry should seek to achieve agreement with all licensees through either a Farm Management Agreement or Area Management Agreement.

3. SHELLFISH DEVELOPMENTS

- S1 Planning permission will not be granted for shellfish developments situated within 500m (measured as the water flows) of the extents of any other approved aquaculture developments, or any water intakes/outfalls associated with shore based fin fish developments or shellfish washing and/or depuration facilities.
- S2 Whilst the Council may be minded not to approve applications for new aquaculture developments in those areas created through site relocation, amalgamation or revocation for the purposes of sustainability, biosecurity and environmental benefit, relocation of, or variations to, existing shellfish developments may be permitted provided they do not reduce the minimum separation distances allowed by Policy S1.
- S3 The Council will assess applications for shellfish developments within a particular body of water with respect to its biological carrying capacity (i.e the total shellfish biomass that can be sustained within a water body). Where it appears any proposed new development or variation to an existing farm may result in the estimated carrying capacity being significantly exceeded, the Council may be minded to refuse such applications.

Relevant designations

Special Areas of Conservation

East Mires and Lumbister;

Fair Isle;

Hascosay;

Keen of Hamar;

Mousa;

North Fetlar;

Papa Stour;

Ronas Hill – North Roe;

The Vadills;

Tingon;

Sullom Voe;

Yell Sound Coast;

Pobie Bank Reef candidate SAC.

Special Protection Areas

Fair Isle;

Fetlar;

Foula;

Hermaness, Saxa Vord and Valla Field;

Lochs of Spiggie and Brow;

Mousa;

Noss;

Otterswick and Graveland;

Papa Stour;

Ramna Stacks and Gruney;

Ronas Hill – North Roe and Tingon;

Sumburgh Head.

Marine Protected Areas (Nature Conservation)

Fetlar to Haroldswick

Mousa to Boddam

Marine Protected Areas (Historic)

Out Skerries

Marine Protected Areas (Research and Demonstration)

Fair Isle

Marine Consultation Areas

Brindister Voe and The Vadills;

The Houb, Fugla Ness;

Swinister Voe and the Houb of Fora Ness;

Whiteness Voe.

Sites of Special Scientific Interest, though not listed here, may be relevant in respect of individual applications.

Shetland National Scenic Area.

Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters.

Shellfish Water Protected Areas

Bodies consulted on planning applications

Community Council within which the application lies;

The Crown Estate;

Royal Society for the Protection of Birds (RSPB);

Scottish Environment Protection Agency (SEPA);

Marine Scotland

Scottish Natural Heritage (SNH);

Shetland Islands Council:

 Development Management

 Environmental Health;

 Ports and Harbours Operations;

Shetland Fishermen's Association (SFA).

Shetland Shellfish Management Organisation (SSMO)

Northern Lighthouse Board (NLB)

Shetland Amenity Trust (archaeology/biological records)

Historic Environment Scotland

Scottish Water

Other bodies may be consulted on specific matters, if appropriate.