

Permitted Development Rights for Fish Farms: Response To Consultation

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The Scottish Government
St Andrew's House
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EH1 3DG

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CONSULTATION ON EXTENSION OF PERMITTED DEVELOPMENT RIGHTS AND CHANGES OF USE TO FINFISH AND SHELLFISH DEVELOPMENTS

SCOTTISH GOVERNMENT RESPONSE

Introduction

1. In March 2011 the Scottish Government consulted on a number of proposals for the relaxation of planning control of freshwater and marine fish farms, including shellfish farms. It proposed to confer certain permitted development rights and entitlement to change of use on the operators of such developments. The consultation closed on 17 June 2011; the consultation paper can be found at www.scotland.gov.uk/Publications/2011/03/14164543/0.
2. This report summarises stakeholders' reaction to each of the proposals and the Government's response.

The proposals

3. The consultation document posed the following twelve specific questions:

Q 1: Do you support fish farmers being granted a PDR to replace or change their cage type and sizes and what increase in biomass should be allowed?

Q 2: Do you agree that a PDR should be available to allow farmers to add extra cages with no increase in biomass?

Q 3: Do you support fish farmers being granted a PDR to change their feed barges and to move elsewhere within the consented area?

Q 4: Do you agree that fish farmers should be able to change the size, colour, design and location of a feed barge subject to prior notification/prior approval?

Q 5: Do you support fish farmers being granted a PDR to change their top netting and top netting support structures?

Q 6: Do you agree that farmers should be able to change the size, colour and design of top nets and their support structures subject to prior notification/prior approval?

Q 7: Do you support fish farmers being granted a PDR to install a temporary harvesting cage?

Q 8: Do you support finfish farmers being granted a PDR to install a temporary production cage?

Q 9: Do you support fish farmers being granted a PDR to install other temporary equipment?

Q 10: Do you support fish farmers being granted a PDR to switch production within the same species and between species?

Q 11: Do you support a change of use from finfish farming to shellfish farming and back to finfish farming?

Q 12: Do you support a PDR to install, or change the size and number of longlines on a mussel farm?

Nature and extent of response

4. A total of 35 responses were received.
5. The names of the individuals and organisations that responded, and who have agreed to be named, can be found at **Annex A**. All the consultation responses, where permission was given to publish them, can be found at www.scotland.gov.uk/Publications/2011/06/29111813/0.
6. The breakdown of responses to each question, where respondents expressed an opinion, and our response, is discussed below.

Presumptions about the exercise of a PDR

7. In considering the responses we have concluded that exercise of the PDRs should be subject to a common set of assumptions, as noted below.

The planning boundary

8. Several PDRs provide for the expansion of the farm up to certain limits. It will be a presumption of the PDRs regime that exercising a PDR does not affect the planning boundary and that all equipment changes must be accommodated within the planning boundary. That is, any equipment deployed outwith the planning boundary, purportedly in exercise of a PDR, will constitute a breach of planning control.
9. For the most part a farm's planning boundary will have been clearly established by the approved coordinates or stamped plans of a planning consent. However, some farms whose consents were granted through the Government's audits and reviews process have their position referenced by means of the centre point of the site. Until such time as the operators of those farms establish a formal planning boundary with the planning authority these sites will not be able to benefit from any PDR where planning boundary is a consideration.

Prior notification and approval

10. We have considered whether and to what extent exercise of each PDR should be the subject of simple notification to the planning authority (to enable it to keep its planning register up to date), formal prior notification and approval (to allow it to apply mitigating conditions), or not subject to any notification. In reaching our conclusion we had regard to the facts that planning control over aquaculture is still in its infancy, that PDRs for the alteration of fish farm sites is a new concept and that most fish farms are located in scenic areas of the country.
11. Our conclusion is that exercise of all equipment related PDRs should be subject to formal prior notification and approval to allow for consideration of detailed matters such as design and layout. Environmental screening following prior notification will

also provide additional safeguards against any potential environmental or visual impacts.

12. There will be opportunity in the future to review the operation of the regime in light of experience and to consider whether to relax the prior notification requirement for what will then be existing PDRs (and also whether there is scope to introduce additional PDRs).

Fees

13. The existing prior notification fee (currently £61) will apply to the prior notification of fish farm PDRs.

Conditions

14. The PDRs will be exercisable subject to a suite of standard or PDR-specific conditions. The conditions will rank equally with a condition of express planning consent and the operator subject to enforcement action if they are breached.

Environmental screening

15. Most development associated with finfish farms is Schedule 2 development under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations. Currently the legislation on permitted development is such that PDRs are not granted for Schedule 2 development unless the planning authority has adopted a screening opinion to the effect that EIA is not required. Scottish Government Circular 3/2011 (paragraphs 71-75 refer) explains the relationship between PDRs, prior approvals, and EIA.
16. For schedule 2 development, EIA screening may be undertaken either on receipt of a screening request from the developer, or on receipt of an application for prior approval. PDRs for fish farms will be subject to the same arrangements. There are similar restrictions on permitted development rights in connection with development likely to have a significant effect on a Natura Site, in which case specific approval for the development must be sought from the planning authority. The Scottish Government's Circular of June 2000 "The Habitats and Birds Directives" gives further information.

Consideration of the response

17. We recommend that the following 8 PDRs are introduced:

- Changing the size and type of fish pens provided no increase in biomass;
- Replacing or repositioning a feed barge (covering 2 separate consultation PDRs);
- Replacing top nets and support structures (again, covering 2 separate PDRs);
- Deploying temporary equipment (excluding fish pens);
- Switching species from salmon to either trout or halibut and from trout to salmon;
- Adding longlines on a mussel farm.

18. We recommend that four of the twelve PDRs on which we consulted should not be introduced. As set out in paragraph 16, the current legislation on permitted development is such that PDRs are not granted for Schedule 2 development unless the planning authority has adopted a screening opinion to the effect that EIA is not required. In the case of the four PDRs we recommend are not introduced, we think

it is likely that the development would need to be considered as an EIA development and assessed, through the planning process, to determine whether there would be adverse environmental effects (notably arising from potential impacts of additional sea lice burdens).

19. The PDRs that we recommend are not introduced relate to:

- Changing the size and type of fish pens with a corresponding increase in biomass;
- Deploying temporary production or harvesting pens;
- Changing production from finfish to shellfish and back;
- Switching production between species (other than from salmon to trout or halibut and from trout to salmon).

20. Changes of this type can still be proposed by an operator but the environmental impacts require to be assessed and the proposal has to be considered through the planning process.

PDR 1 - CHANGING THE SIZE, NUMBER AND TYPE OF FINFISH CAGES WITH A COMMENSURATE INCREASE IN BIOMASS

21. **We recommend that PDR 1 is not introduced.**

22. FOR PDR 1 the response was-

	agree	agree with caveats	disagree
Academic/scientific		1	
Commercial fisheries		1	2
Conservation interests			2
Finfish producers	6		
Govt agencies / regulators		2	1
Individuals	4		3
Other business/ industry	2	2	
Planning authorities		2	2
Public bodies			
Shellfish producers			
Recreational fisheries interests			3
Total:	12	7	13

23. In their response, industry interests were most supportive, contending that biomass impacts could be controlled under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) and suggesting that the mooted increase of 5% / 500m² was too restrictive.

24. However, a number of respondents either disagreed with the proposed PDR or agreed but noted particular concerns, including:

- that it was important to obtain a consent under CAR first;
- issues that could not be dealt with by CAR, such as the potential impact of increased sea lice numbers;

- the cumulative impact of this PDR with proposals 7 and 8 (deployment of temporary harvesting and production cages); and
 - whether a biomass increase constitutes 'development' in a planning context.
25. Those in favour of this PDR cited the protections afforded by CAR as a means of ensuring environmental impacts were considered. SEPA itself emphasised that its exercise should be subject to a statutory obligation to obtain prior CAR consent to higher biomass.
26. Those against the introduction of this PDR, point out that CAR addresses benthic and water column impacts only; the potentially higher sea lice count arising from greater fish numbers and the consequent higher potential for transmission to wild fish and other nearby fish farms are not dealt with under CAR and could require an EIA.
27. Respondents also identified a lack of control as regards the monitoring of a biomass-related PDR. Planning authorities in particular explain that biomass is not 'development' and that they are unable to monitor and enforce biomass limits through the planning system.

Conclusion

28. We propose that this PDR should not be introduced as it may have impacts which require proper consideration through the planning application process.
29. Increased biomass may impact both on wild and farmed fish. In addition, impacts on important species and habitats (outwith Natura sites) could also trigger the requirement for an EIA.
30. In addition, planning authorities do not have the resources to monitor production levels and stocking densities and, in practice, they would find it difficult to take enforcement action against non-compliance with the PDR.

PDR 2 - CHANGING THE SIZE, NUMBER AND TYPE OF FINFISH CAGES WITH NO BIOMASS INCREASE

31. We recommend that PDR 2 be introduced with prior notification.

32. For PDR 2 the response was-

	agree	agree with caveats	disagree
Academic/scientific	1		
Commercial fisheries		1	2
Conservation interests		1	1
Finfish producers	6		
Govt agencies / regulators		2	1
Individuals	4	1	2
Other business/ industry	4		
Planning authorities		3	1
Public bodies		1	
Shellfish producers			
Recreational fisheries interests		2	1
Total:	15	11	8

33. The aquaculture sector welcomed this PDR without criticism. The majority of non-aquaculture stakeholders were also supportive, albeit with qualifications about environmental (primarily visual/amenity) impact or the consequential impacts on other marine users.

34. Concerns from Planning Authorities centred on the fact that they will not easily be able to tell whether or not there has also been an increase in biomass at the site, as well as visual impacts. In particular, they contradicted the consultation document's contention that there would be no discernible visual or landscape impacts arising from a change; bigger cages need larger cage groups with more space between the cages as well as taller top net support structures. In combination, it was argued that the site would therefore become spatially and dimensionally more prominent. Other concerns included unsightliness resulting from non-uniform configurations and the potential cumulative impact if exercised with other equipment-related PDRs.

35. There were diverging views from Planning Authorities as to whether the PDR should be allowed to be used repeatedly up to the 10% / 1000m² expansion threshold, or whether it should be allowed to be used once only. With the safeguards provided by prior notification, and given our suggestion that the 10% / 1000m² limit should be based on the original size (prior to PDR first being used), we consider that it could be exercised more than once up to that limit.

36. Other responses suggested limiting exercise of the PDR to once annually, were concerned about navigational safety, denial of access to traditional fishing grounds and potential for abuse through unlawfully increasing biomass. By making this

PDR subject to prior notification, we consider that any concerns regarding navigational safety can be addressed before cage layout is altered.

37. With regard to commercial fishing we acknowledge that fish farms are different from terrestrial development in that a fish farm site can support parallel activity by two or more unconnected parties within the planning boundary, for example, by the practitioners of caged production, net fishing and static gear fishing. However, we do not consider that the impact on third party activity within the planning boundary should be an issue when exercising PDRs; paragraph 109 of *Scottish Planning Policy* advises planning authorities of the potential for conflict between different commercial and recreational fishery interests, so the impact will already have been taken into account as part of the original consent process. Other than that, any third party activity within the lease area (planning boundary) has to be a private arrangement between the parties.

Conclusion

38. This should be subject to a limit of 10% / 1,000m² expansion threshold from the original size (i.e. size before the exercise of the first PDR).
39. This PDR will be beneficial to the industry as it will provide the opportunity for a significant improvement to husbandry practice by lowering stocking density which may reduce stress and improve the physiological performance of farmed fish.
40. An increase in cage size, while keeping the same biomass of fish is likely to result in a reduction of the intensity of seabed deposition and as a result, is likely to be beneficial to the benthic environment. However, it is important to note that this may not always be the case and there is the possibility that the increase in cage number may result in the deposition area increasing over sensitive receptors or change the impacts predicted by the model. If it is considered that there may be negative impacts on the benthic environment from such a change, the Planning Authority may carry out EIA screening and PDR may not be approved.

PDR 3 - REPLACEMENT AND RELOCATION OF A FEED BARGE AND PDR 4 – REPLACEMENT OF A FEED BARGE

41. We recommend that PDRs 3 and 4 be introduced.

42. For PDR 3 the response was:

	agree	agree with caveats	disagree
Academic/scientific	1		
Commercial fisheries	2		
Conservation interests	1		
Finfish producers	5	1	
Govt agencies / regulators	2	1	
Individuals	4		2
Other business/ industry	4		
Planning authorities		4	
Public bodies		1	
Shellfish producers			
Recreational fisheries interests	2	1	
Total:	21	8	2

For PDR 4 the response was:

	agree	agree with caveats	disagree
Academic/scientific	1		
Commercial fisheries			2
Conservation interests	1		
Finfish producers	6		
Govt agencies / regulators	1	1	
Individuals	5	1	
Other business/ industry	4		
Planning authorities	1	3	
Public bodies			
Shellfish producers			
Recreational fisheries interests	3		
Total:	22	5	2

43. The vast majority of respondents were supportive of these proposed PDRs. However, the proposal to permit the relocation of a barge gave rise to concerns about navigational safety and visual impact.

44. Commercial fisheries interests warned that moving a feed barge away from its 'expected' position could disrupt established fishing patterns and disorientate the

crew of fishing boats at times of poor visibility; they argued it should therefore be subject to the planning process. The Northern Lighthouse Board sought assurance that a relocated barge would not interfere with navigation aids and that the barge itself would be marked.

45. Planning authorities do not oppose the PDRs as such but are concerned that moving a barge may lead to its becoming more visually intrusive and suggested that the PDR should be subject to prior notification. They also commented (a point also made by individuals) that moving a barge, or new equipment on a replacement barge, could have knock-on consequences for elsewhere on the site or that the PDR would allow the operators to introduce new technology.

Conclusion

46. These PDRs will provide flexibility to fish farm operators to enable them to make relatively minor equipment changes without having to undertake a full planning application. This will save costs to both operators and Planning Authorities.
47. By making these PDRs subject to prior notification, we consider that any visual concerns will be addressed before a new feed barge is deployed or an existing barge relocated. Subjecting relocation of an existing barge to prior notification means also that changes of position will be a matter of record and available to other marine users.

PDR 5 - REPLACEMENT OF FEED BARGE AND/OR MOVE WITHIN PLANNING BOUNDARY AND PDR 6 - REPLACE TOP NETTING AND SUPPORT INFRASTRUCTURE

- 48. We recommend that PDRs 5 and 6 be introduced and that the top net support height limit is 2.5m rather than the 1.5m consulted on.**

For PDR 5 the response was:

	agree	agree with caveats	disagree
Academic/scientific	1		
Commercial fisheries	1		1
Conservation interests		2	
Finfish producers	5		
Govt agencies / regulators	2		
Individuals	5		1
Other business/ industry	4		
Planning authorities	4		1
Public bodies			
Shellfish producers			
Recreational fisheries interests	2	1	
Total:	24	3	3

For PDR 6 the response was:

	agree	agree with caveats	disagree
Academic/scientific	1		
Commercial fisheries	1		1
Conservation interests	1		
Finfish producers	6		
Govt agencies / regulators	1	1	
Individuals	6		
Other business/ industry	4		
Planning authorities	3	1	1
Public bodies			
Shellfish producers			
Recreational fisheries interests	3		
Total:	26	2	2

49. Most respondents regard these PDRs as fairly innocuous or even beneficial, on the basis that containment will be improved. However, one fish farmer declared that a height of 1.5m was too restrictive and that 2.5m would allow for more effective net tensioning and reduce the risk of leaping fish becoming entangled. Another considered that prescribing a height limit is unnecessary since the Planning Authority would determine whether any particular height was unacceptable on receipt of the notification. Industry also suggested that the PDR should be exercisable 7 days after prior notification to facilitate operational flexibility.

50. An individual respondent disagreed on the basis of the potential for aggravated visual intrusion at sites in close proximity to settlements, citing local experience.

Conclusion

51. Like PDRs 3 and 4, these PDRs will provide flexibility to fish farm operators to enable them to make relatively minor equipment changes without having to undertake a full planning application. This would save costs to both operators and Planning Authorities.

52. We consider that as the PDR would be exercised by prior notification, the Planning Authority will be able to intervene with mitigating measures if they have any concerns.

53. We also consider that the oversight afforded by the prior notification process is sufficient to allow support structures taller than 1.5m to be installed as a PDR without risk of damaging either the quality of the landscape in remote locations or the visual amenity of nearby settlements.

PDR 7 AND 8 - INSTALLATION OF A TEMPORARY HARVESTING CAGE AND PDR 8 - INSTALLATION OF A TEMPORARY PRODUCTION CAGE

54. We recommend that PDRs 7 and 8 are not introduced.

55. For PDR 7 the response was:

	agree	agree with caveats	disagree
Academic/scientific			1
Commercial fisheries			3
Conservation interests		1	
Finfish producers	6		
Govt agencies / regulators		3	
Individuals	4		2
Other business/ industry	4		
Planning authorities		3	1
Public bodies			
Shellfish producers			
Recreational fisheries interests	1		1
Total:	15	7	8

For PDR 8 the response was:

	agree	agree with caveats	disagree
Academic/scientific			1
Commercial fisheries			3
Conservation interests			2
Finfish producers	6		
Govt agencies / regulators		2	1
Individuals	3	1	2
Other business/ industry	4		
Planning authorities		2	2
Public bodies	1		2
Shellfish producers			
Recreational fisheries interests			3
Total:	14	5	16

56. Respondents main concerns related to the difficulty of monitoring the PDRs and the consequent potential for abuse. In addition, it was argued that since production is a planned activity, any equipment needed for particular stages (and including the contingency of unexpectedly high survival rates) should have been applied for at

the outset. It was also suggested that proposed PDR 2 (extra cages) could be exercised in times of unexpectedly high production instead of a dedicated PDR and there was concern expressed about the cumulative impact with other equipment-related PDRs. There was a suggestion that operators should also notify the Planning Authority of the removal of temporary equipment.

Conclusion

57. Our consideration of PDR 8 is similar to that for PDR 1.

58. We propose that this PDR should not be introduced as it may have impacts which require proper consideration through the planning application process.

59. Increased biomass may impact both on wild and farmed fish. In addition, impacts on important species and habitats (outwith Natura sites) could also trigger the requirement for an EIA.

60. Additionally, as for PDR 1, planning authorities do not have the resources to monitor production levels and stocking densities and, in practice, they would find it difficult to take enforcement action against non-compliance with the PDR.

61. For PDR 7, it was proposed that no feeding or treating should take place, thereby the issues described above relating to increased biomass should not apply. However, we understand that harvesting is currently normally carried out by wellboat. We do not therefore consider that this PDR would be of significant benefit to the industry. We also accept that it would be difficult for Planning Authorities to enforce conditions relating to feeding and treatments in a harvesting cage and to monitor unauthorised increases in biomass.

62. In addition, "temporary" equipment may pose a biosecurity risk if moved between sites.

PDR 9 - INSTALLATION OF OTHER TEMPORARY EQUIPMENT

63. We recommend that PDR 9 be introduced.

64. For PDR 9 the response was-

	agree	agree with caveats	disagree
Academic/scientific			1
Commercial fisheries			2
Conservation interests	1		
Finfish producers	6		
Govt agencies / regulators		3	
Individuals	3		3
Other business/ industry	4		
Planning authorities	1	3	
Public bodies			
Shellfish producers			
Recreational fisheries interests	2		
Total:	17	6	6

65. Respondents expressed reservations related to the following:

- the difficulty of monitoring the PDR and consequent scope for abuse or complacency about removing it;
- that the definition of temporary equipment was too broad;
- the denial of access to fishing grounds;
- interference with existing farm navigation aids; and
- ineffective control over enhanced visual and noise impacts.

66. Planning Authorities asked for the PDR to be exercisable by prior notification and to be subject to conditions aimed at mitigating visual impact and noise nuisance. Additionally, SNH suggested that notification of removal of temporary equipment should be incorporated into the PDR.

Conclusion

67. While not specified in this PDR, this temporary equipment is, in practice, likely to be a work raft or fish grading equipment (itself mounted on a raft or barge). We consider that it would be impractical to be definitive since we may inadvertently deny operators the legitimate deployment of other minor equipment or exclude new types of equipment that may become available in the future.

68. We consider that subjecting the exercise of the PDR to prior notification will give Planning Authorities the potential to consider and mitigate any impacts and prevent abuse, irrespective of whether equipment is defined by the Order or not. We also

accept that exercise of the PDR should be subject to pre-conditions aimed at mitigating visual and noise impacts.

PDR 10 - CHANGING PRODUCTION BETWEEN SPECIFIC SPECIES

69. We recommend that PDR 10 be introduced but only for the following species:

- Atlantic salmon to halibut
- Atlantic salmon to rainbow trout (and the reverse)
- Atlantic salmon to sea trout (and the reverse)

70. The response for PDR 10 was-

	agree	agree with caveats	disagree
Academic/scientific		1	
Commercial fisheries	1		1
Conservation interests		1	1
Finfish producers	6		
Govt agencies / regulators	1	1	1
Individuals	3	2	1
Other business/ industry	2	2	
Planning authorities		2	2
Public bodies			
Shellfish producers			
Recreational fisheries interests		1	2
Total:	13	10	8

71. There were a number of differing views from respondents on this issue including that:

- a PDR takes no account of the different environmental impacts arising from each type of production;
- different species require their own infrastructures, meaning that changes could have visual or noise impacts;
- the SSI should stipulate permitted change of species since the generic term 'whitefish' includes some species of salmonids; and
- it is environmental regulators who ought to be authorising such changes since a change of species being farmed is not development in a proper planning sense (and if it does constitute 'development' then changes should be by consent, not PDR, or at least made subject to prior notification).

72. In addition, some recreational fisheries and conservation interests were worried about changes from white fish to salmonid production, even though that is not part of the proposal.

Conclusion

73. This PDR proposed the switching of specific species, for example, salmon to trout - which are both salmonids - as well as salmon to halibut. There was concern from some respondents in switching from trout to Atlantic salmon due to different susceptibility to sea lice (*Lepeophtheirus salmonis*). Research suggests that sea lice have a sliding scale of host specificity, for sea trout followed by Atlantic salmon, followed by rainbow trout. We consider that, in practice, overall management of aquaculture production facilities and their geographical position, will likely have a greater influence on the outcome of a *L. salmonis* infection rather than the host specificity which has been demonstrated in experimental circumstances.

74. If there is an impetus in future to farm a new species which evidence suggests that changing to would be environmentally benign or positive, then the case for PDR for such a change could be considered at that point.

75. It is possible that there may be implications for Farm Management Areas, the farming of single year class and synchronous fallowing through the exercise of this PDR. However, we consider that this is primarily an industry responsibility and other (e.g. sea lice) management control arrangements apply.

PDR 11 - CHANGE OF PRODUCTION FROM FINFISH TO SHELLFISH

76. We recommend that PDR 11 is not introduced.

77. For PDR 11 the response was-

	agree	agree with caveats	disagree
Academic/scientific	1		
Commercial fisheries			2
Conservation interests			2
Finfish producers	5	1	
Govt agencies / regulators		1	2
Individuals	4		2
Other business/ industry	4		
Planning authorities		1	3
Public bodies			
Shellfish producers			1
Recreational fisheries interests		1	2
Total:	14	4	14

78. It is noteworthy that this PDR is opposed by Planning Authorities and by two of the three of the Government's advisors and regulators. Scottish Aquaculture Research Forum (SARF) project Potential for Permitted Development Rights and Use Classes for Finfish and Shellfish Developments (SARF040b) made recommendations on what might constitute acceptable PDRs for aquaculture. Responses to this project were generally opposed to this PDR. It was also suggested that a landscape and seascape study should be carried out for the change from finfish to shellfish sites.

79. Finfish producers supported the PDR but the sole shellfish producer to respond is opposed. He suggested that there as yet undetermined impacts that need to be investigated before unevaluated access to the sector should be permitted. In this respect he cited recent experience whereby spat settlement, growth rates and yields have all been poor, for no apparent reason.

80. Most non-producers – including Planning Authorities and regulators – also opposed this PDR. Several indicated that they would accept a PDR if it were a single switch from finfish to shellfish and exercised by prior notification, or if the site had received planning consent for both uses, in which case a PDR would not be required. Wild fish interests also noted that shellfish sites which had never previously been farmed for salmonids should be excluded from the PDR.

81. Other reasons for opposing the PDR are that sites deemed unsuitable for salmon farming by the operator should be relinquished to allow others the chance to develop that site or nearby sites; repeated changes in production infrastructure would pose a hazard to commercial fishing boats; that changing to shellfish production may lead to a water being designated as shellfish growing waters by

default, with consequent higher costs to dischargers and that a PDR will deny community input to the impact of the change on it.

Conclusion

82. The requirement for good quality water for high quality shellfish production will result in a total Scottish Water investment from 2002 to 2015 of approximately £63m in relation to shellfish waters. Further detail on this issue is set out in the Scottish Government Consultation: Delivering Scotland's River Basin Management Plans: An Integrated Approach to the Protection of Shellfish Growing Waters.
83. If finfish sites were to change to shellfish sites through utilisation of this PDR in certain areas, there would be potentially significant financial consequences for Scottish Water to treat waste water to a higher standard prior to discharge. We consider that Scottish Water and others discharging into a watercourse ought to be afforded a say over marine developments likely to have an effect on their business and that a PDR is therefore not appropriate.
84. At a recent meeting with the Minister for Environment, the Scottish Salmon Producers' Organisation (SSPO) noted there were benefits to operators to convert finfish sites to shellfish sites (and vice versa) and that there was likely to be increased appetite for this in the future. We are aware that some sites have already been consented through the planning system to operate in this way. We consider that the planning system continues to be the appropriate mechanism for considering such changes.

PDR 12 - ADDING TO, AND CHANGING THE NUMBER AND TYPE OF, LONGLINES ON A MUSSEL FARM

85. We recommend that PDR 12 be introduced but that the increase in farm size is limited to the lesser of 500m² or 10% of the original development.
86. For PDR 12 the response was-

	agree	agree with caveats	disagree
Academic/scientific		1	
Commercial fisheries	1		2
Conservation interests		1	
Finfish producers	6		
Govt agencies / regulators	1	1	1
Individuals	4	1	1
Other business/ industry	4		
Planning authorities	4		
Public bodies		1	
Shellfish producers	1		
Recreational fisheries interests			2
Total:	21	5	6

87. Most respondents were content with the proposal. Reservations expressed were that any increase in production ought to be consented, that a PDR denies community input to consideration of the alteration that the PDR allows, that there could be repeated exercise of the PDR without cumulative marine and visual impacts being addressed, that it would deny access to commercial fisheries and that the scale of the increase (the greater of 500m² or 10% of the original development) would lead to the disproportionate expansion of small sites.

Conclusion

88. We agree with some respondents' comments that allowing a small farm to increase its size by 500m² could be disproportionate, but consider that issue can be addressed by limiting the increase to the lesser of the 500m²/10% limit proposed. Given our suggestion that the 500m²/10% cap should be based on the original size (prior to PDR first being used), we consider that it could be exercised more than once up to that limit.

89. Although this PDR constitutes an increase in biomass which has thus far been presumed against by PDR, we accept that shellfish farming by its very nature has negligible environmental impact and therefore doesn't raise the same concerns as those related to finfish farming.

Other Issues

90. Although the consultation document sought views on twelve specific proposals it was evident when considering the response in the round that they could not be considered in isolation. The following concerns were raised.

ENVIRONMENTAL SCREENING

91. Planning authorities and SNH reported the potential for conflict between unrestricted exercise of equipment PDRs and the need for EIA screening. As explained in paragraph 17, for schedule 2 development, EIA screening may be undertaken either on receipt of a screening request from the developer, or on receipt of an application for prior approval. PDRs for fish farms will be subject to the same arrangements.

92. There is particular concern about the cumulative impact of PDRs that can be exercised on more than one occasion. Of the PDRs which are to be introduced, those where the PDR can be exercised on multiple occasions where a cumulative impact may be of concern, are limited to an overall increase which relates to the original consent.

RESOURCE DEMANDS ON PLANNING AUTHORITIES AND REGULATORS

93. A common element of planning authorities' responses was concern about the level of unpaid work involved in monitoring and enforcing PDR changes. This was particularly evident as regards the proposals to add or change cages which the proposals allow for different purposes. They have suggested that in order to fulfil their role effectively, and to prevent abuse, they need to be given formal prior notification (which incurs payment of a fee) of equipment changes.

94. SEPA reiterated similar concerns in relation to the logging and tracking of PDRs, but particularly those in respect of which it has no interest (eg, changes to top netting or the relocation of a feed barge). Unlike planning authorities however, it receives no income from the prior notification process. To avoid overload of irrelevant work it suggests being excluded from certain categories of PDR, this is being addressed by guidance.

95. Fish producers acknowledged that prior notification was unavoidable but took the view that it should operate only as regards matters that are significant in planning terms, such as siting or design.

96. As discussed earlier, we accept the arguments made that equipment PDRs ought to be amalgamated for simplicity. However, planning authorities will still need to know the purpose behind a particular change if they are to be able to monitor it. We acknowledge this concern; it is one of the reasons for concluding that all equipment changes at any finfish site should be subject to the prior notification process.

97. We also acknowledge Regulators' concerns and will consider in SG guidance how they may be disassociated from the prior notification process.

POTENTIAL FOR OVERDEVELOPMENT

98. A further concern of planning authorities is that the proposed 15,000m² cap under which a PDR may be exercised is too high. Having now concluded that PDRs 1, 7 and 8 should not be introduced the effective expansion of a site will be limited to the fractional rounding up permitted by PDR 2 or PDR 12.

SITES IN SENSITIVE AREAS

100. Planning authorities (and SNH) also expressed a general concern about equipment changes at sites in designated sensitive areas. They advised that terrestrial PDRs for development in sensitive locations are subject to restrictions and exceptions to prevent detriment to that location and sought similar protections for PDRs at fish farms. All equipment PDRs will be subject to prior notification. This will allow the planning authority to address any visual impacts. As explained in paragraph 16 above, PDR will not apply to development which is EIA development. Additionally, in cases where a Habitats Regulations Appraisal is required, specific approval for the development will need to be sought under those Regulations.

CONDITIONAL EXERCISE OF THE PDR

101. The consultation document is silent on subjecting PDRs to planning conditions. Planning authorities, a water company and the navigation regulator warned against the exercise of a PDR leading to a lessening of existing protections or causing potential obstruction or hazard. They suggested exercise of a PDR should therefore be subject to pre-determined planning conditions covering such matters as navigational safety, keeping water discharge areas clear, mitigating against increased visual impact etc.

We agree with these views and will discuss appropriate conditions with planning authorities.

DIFFERENTIATING BETWEEN PLANNING AUTHORITY AND SCOTTISH GOVERNMENT "AUDIT AND REVIEW" PLANNING PERMISSIONS

102. A planning authority and one member of the public argued that pre-2007 sites granted permission through the Scottish Government's audit and reviews should not enjoy PDR on the basis that the consideration processes is not as intense as that for new development. The argument made is that in many cases changes have been made to original configurations with only minimal planning authority input and that allowing such sites to expand further under PD rights is inappropriate.
103. Before a pre-2007 site can obtain planning permission it must undergo screening that includes consultation with the planning authority. It is Marine Scotland's practice to incorporate any conditions sought by the planning authority in this respect. We are therefore satisfied that the planning permission for a pre-2007 site is given thorough consideration.

**CONSULTATION ON EXTENSION OF PERMITTED DEVELOPMENT RIGHTS AND
CHANGES OF USE TO FINFISH AND SHELLFISH DEVELOPMENTS**

LIST OF RESPONDENTS

Argyll and Bute Council
Association of Salmon Fishery Boards
Baillie, Ralph
British Trout Assoc
Clyde Fishermen's Association
Comhairle nan Eilean Siar and Local Authority Aquaculture Group
Cowan, Ian
Findus Group
Highland Council
Hjaltland Seafarms
Intervet/Schering Plough Animal Health
Macrae Edinburgh Ltd
Marine Harvest
North & West District Salmon Fishery Board
Northern Lighthouse Board
Orkney Fisheries Association
Rankie, Alexander & Mary
Salmon & Trout Association
Scottish Environment LINK
Scottish Environment Protection Agency
Scottish Natural Heritage
Scottish Salmon Producers' Organisation
Scottish Sea Farms
Scottish Water
Seafood Shetland
Shetland Islands Council
Small Isles and Mull Inshore Fisheries Group
The Scottish Salmon Company
UK Environmental Law Association
West Sutherland Fisheries Trust
Youngs Seafood
plus 4 individuals, names withheld



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