

Independent review of Scottish aquaculture consenting

Scottish Government response

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Scottish Government
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1. BACKGROUND

1.1 The Independent Review of Scottish Aquaculture Consenting (ICR) was commissioned by Marine Scotland and The Crown Estate following concerns expressed over the aquaculture consenting regime in Scotland.

1.2 The project endeavoured to understand the inefficiencies, duplication or unnecessary complexities across the consenting regimes and whether the overall system fits the requirements and operation of those involved; namely the industry, planning authorities and other regulators.

1.3 The ICR was undertaken by Poseidon Aquatic Resource Management in association with Ironside Farrar and was published in July 2016 (see <http://www.gov.scot/Publications/2016/07/9269>).

1.4 In order to understand the consenting process and gain an insight into its complexities, the contractors undertook a desk-based review as well as extensive consultation with the finfish and shellfish industry, regulators, consenting bodies and statutory consultees. We were encouraged by the level of stakeholder engagement to the consultative phase of the ICR and grateful to those who provided their views.

1.5 Scottish Ministers welcome the report and would like to thank Poseidon and Ironside Farrar for undertaking the Review; members of the steering group for providing guidance and advice; and the Capacity Working Group (CWG) (set up as a working group of the then Ministerial Group on Sustainable Aquaculture) for providing further guidance and their views of the final report to Ministers.

1.6 The ICR makes a number of recommendations for improvement which fall into two main categories: eight quick wins and five longer-term options. This document reports the view of the CWG to those recommendations and Scottish Ministers' consideration of these.

1.7 This response reflects Scottish Government support of the sustainable growth of the aquaculture industry with due regard to the wider environment and aspirations for high performing planning and licensing systems. It also recognises the broader project work being undertaken by the Scottish Government across a range of areas which has the potential to influence the aquaculture consenting process.

1.8 We are working with SEPA through our joint Better Environmental Regulation (BER) Programme to provide more effective and efficient protection of the environment, a reduction in the regulatory burden on business and to allow regulators to take opportunities to improve the environment.

1.9 We are also undertaking broader work exploring the future of the Scottish planning system as a whole. A consultation paper, expected around the turn of the year, will aim to address the recommendations of the Planning Review, focusing on six key themes. The intention is to ensure the planning system in Scotland realises its full potential and works for a range of interests and stakeholders.

1.10 Ministers will make future decisions on longer-term alternative approaches for the aquaculture consenting process in the round and aligned with improvements being undertaken across government.

2. OUR RESPONSE TO THE 8 QUICK WINS

2.1 The ICR identified eight “quick wins” which it noted could be implemented relatively easily and on a short (within 1 year) timescale:

- QW1) Strengthen the pre-application process;
- QW2) Introduce consistent format for site co-ordinates, site name and summary information;
- QW3) Update of Working Arrangements document;
- QW4) Integrate wellboat Marine Licence into the CAR Licence;
- QW5) Update Scotland’s Aquaculture portal;
- QW6) Support provision of electronic application forms;
- QW7) Update EIA template;
- QW8) Hold a Landscape and Visual Impact Assessment workshop between SNH, local authorities and industry.

2.2 We agree that there are opportunities to improve the current consenting system and support the objective of all eight quick wins, in accord with the CWG.

2.3 We note that implementation of the quick wins should improve the current consenting process, but that some of the alternative consenting options call for a new consenting system. Delivery of all quick wins will be prioritised to improve the current system, in advance of any long-term structural changes.

2.4 Recognising the need to ensure these recommendations are implemented swiftly to maintain momentum and improve the consenting process for all concerned, work has already commenced on all of the quick wins.

2.5 With the exception of the integration of the wellboat Marine Licence into the CAR Licence (QW4) (which requires amendments to Secondary Legislation and will be reflected in the delivery timetable), the other quick win recommendations can be implemented quickly, though in some cases the delivery mechanism (to that suggested in the ICR) may differ.

2.6 For example, we consider the most appropriate location for relevant regulation, guidance and advice (QW5) to be Marine Scotland’s webpages (not Scotland’s Aquaculture webpages) and have already taken forward amendments to these pages.

2.7 Implementation of the Quick Wins is being taken forward in conjunction with the CWG. In most cases, responsibility for delivery sits with Marine Scotland, however, other bodies, notably the Scottish Salmon Producers’ Organisation (SSPO), The Crown Estate (TCE) and Scottish Natural Heritage (SNH) are taking forward individual recommendations.

3. OUR RESPONSE TO THE 5 LONGER-TERM OPTIONS

3.1 The ICR identified five alternative approaches for the consenting process with associated recommendations:

- CO1) Consolidate Marine Licensing (for Moorings and Equipment) into Planning Permission
- CO2) Aquaculture Act: Remove aquaculture from the Town and Country Planning Act and introduce a specific Aquaculture Act
- CO3) Align the CAR and Planning Permission consents
- CO4) One-stop shop
- CO5) Removal of wild fish interactions from Planning Permission

3.2 We note that whilst some of these recommendations could be taken forward in tandem, some are alternative approaches and are at odds with other recommendations and the proposed quick wins.

3.3 Members of the CWG have undertaken initial discussions on these options and their view, as well as our intention for taking forward these recommendations and our agreed priorities, is set out below. Ministers will consider improvements on a wider basis and in line with work across government to ensure high performing planning and licensing systems (as set out in paragraphs 1.7-1.10).

CO1) Consolidate Marine Licensing into Planning Permission

3.4 The ICR recommends that controls for the navigational safety aspects of fish farm moorings and equipment are transferred from Marine Licencing to Planning Permission (it is recognised that should other longer-term options be progressed, this recommendation may no longer be valid).

3.5 We agree to consider this recommendation, in line with both the ICR and the views of the CWG. We have initiated discussions on potential delivery options; this has identified that amendments to legislation may be required. Any timescale for delivery will therefore be reflective of this.

CO2) Aquaculture Act: Remove aquaculture from the Town and Country Planning Act and introduce a specific Aquaculture Act

3.6 The ICR concludes that the development of a specific Aquaculture Act should not be a priority in the short term due to the potential for achieving similar outcomes through alternative options/recommendations.

3.7 We agree with this conclusion but, in agreement with the CWG, consider there is merit in some further discussion. Further consideration is given to the issues relating to an Aquaculture Act under CO4: One-stop shop.

Consideration of definition of development:

3.8 Other options to achieve similar outcomes have been considered by the CWG. The Group concur with the ICR recommendation that the 1997 Act should be amended to clarify that removal and replacement of equipment as part of normal fish farming operations should not be considered development.

3.9 We agree with the principle of clarifying those operations which should not be considered development and propose it is discussed in more detail prior to undertaking any formal public consultation.

3.10 We consider that changes to Scottish Government guidance could improve matters in the short term. We therefore propose to take forward work early in 2017 to amend two documents that have been identified as a priority:

- The [Working Arrangements](#) document (which sets out the respective roles and responsibilities of each of the statutory consultees in relation to fish farm planning applications), and
- [Planning Circular 1 2007: Planning Controls for Marine Fish Farming](#).

3.11 We also intend to undertake consultation on amendments to Permitted Development legislation early in 2017. This, alongside improvements to guidance, should further clarify and provide greater certainty to industry and Planning Authorities, in advance of amendments to primary legislation.

CO3) Align the CAR and planning permission consents (finfish aquaculture only)

3.12 The CWG noted that the option to apply for both consents simultaneously already exists, although it is not generally used. They concluded that further alignment would add an additional layer of bureaucracy to the consenting system without a corresponding reduction in regulatory burden and therefore proposed that this issue was not considered further.

3.13 Following the CWG recommendation we do not intend to consider this option further at this time.

CO4) One-stop shop

3.14 The ICR concludes that the development of a one-stop shop should not be a priority in the short term due to the potential for achieving improvements through the consolidation of marine licencing into planning, and through the alignment of CAR and planning permission (CO3).

3.15 Members of the CWG reviewed the one-stop shop option and concluded that it would add an additional layer of bureaucracy to the consenting system without a corresponding reduction in regulatory burden; doing little to resolve existing duplication or uncertainty. Aligning the timescale and processes of CAR and planning permission had already been discounted (as outlined above in 3.12) for

similar reasons. We agree with this conclusion and propose that no further consideration is given to this model.

Consideration of single consent:

3.16 As noted in paragraph 3.7, the CWG debated the benefits and issues relating to a single consent (as opposed to referring to this as an Aquaculture Act as per CO2) at the same time, and in contrast to, a one-stop shop (CO4).

3.17 All members concluded that improvements to the existing system (through both the quick wins and CO1 and CO5) should be made in the first instance.

3.18 Industry members of the CWG noted their desire for further discussion about an alternative consenting system for aquaculture, with consideration given to a marine locational consenting system outwith the terrestrial planning system. They noted a possible option might be the retention of a separate CAR licence (for discharges from the farm) as the operation of these two separate consents were considered to provide the most efficient and effective system and would enable future proofing of the consenting process.

3.19 We acknowledge the frustrations caused by the current consenting regime but consider that the proposed improvements to the existing system should have significant benefits. We will undertake further consideration as opportunities allow (and in the round with other planning and licencing improvements being made through the Programme for Government), ensuring that all those with an interest are fully involved in any future discussions.

3.20 We recognise the importance of local decision making and are mindful that any discussion of future options should consider how this is preserved as well as how sufficient resources and expertise are retained.

CO5) Improve consideration of farmed and wild fish interactions

3.21 The short to medium term recommendations in the ICR focus on improving knowledge and advice to inform consenting decisions. The CWG agreed that the consideration of wild fish interactions were the biggest concern raised through the ICR.

3.22 CWG members feel that there is a lack of clarity in the advice provided on this subject and further work is required to address this issue. They propose working with Local Authorities to improve Environmental Management Plans (EMPs) and holding a workshop, bringing in expertise of others, to determine how to improve the advice provided to Planning Authorities on this issue.

3.23 The medium to long term recommendation on this issue in the ICR is for wild fish interactions to be removed from planning permission and to be regulated by Marine Scotland. The CWG expressed concerns that the ICR recommendation will not address the underlying issue of uncertainty in decision making.

3.24 We agree that further work is required to address this issue. Marine Scotland is already looking at how to improve its advice to Planning Authorities and will work with stakeholders to address concerns. In 2015, Marine Scotland commissioned a ten-year programme of research to meet the current gap in scientific understanding on the impact of sea lice from aquaculture on wild salmon in Scotland.

4. NEXT STEPS

4.1 We have set out our view of the ICR recommendations and how these might be progressed.

4.2 In the short-term the emphasis will focus on delivery of the quick-wins as well as work to move the moorings and equipment aspects of Marine Licencing into the Planning Permission process.

4.3 In order to improve the current consenting system, we will update guidance and consult on changes to permitted development legislation. We will also work to improve advice on wild fish issues.

4.4 Any proposed future changes to primary legislation will undergo full public consultation.

4.5 We have stated our willingness to consider alternative consenting options for the future alongside other work being taken forward across government. We recognise that different views exist among stakeholders and we will ensure that these different perspectives are listened to and considered before any options are progressed. The aquaculture Industry Leadership Group will be able to consider these issues but we are also mindful to listen to those in local authorities and other regulators who have considerable expertise and experience as well as the views of other marine users, before undertaking any formal consultation.



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EH1 3DG

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