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**Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2013 (SSI 2013/277)**

Thank you for your letter of 4 November, concerning the transparency of the Audit and Review process for farms which have existed since before 1 April 2007.

Public consultation is not a requirement under the Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007 (the 2007 Regulations) as part of the Audit and Review process. However, any existing farm has to be assessed against the Environmental Impact Assessment (Scotland) Regulations 1999 (as amended) and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), followed by consultation as set out in these regulations.

If statutory consultees (such as local authorities) consider that the farm under review is likely to have a significant environmental effect, the fish farm operator will be asked to prepare an environmental statement. That statement will be published for public consultation and the views of any members of the public who respond will be fully considered by Ministers in reaching a decision on whether to grant planning permission.

**Background**

Before 1 April 2007, marine fish and shellfish farms obtained consent to operate from the Crown Estate, through a non-statutory scheme of development consent. In Shetland and Orkney, consent was granted by works licences issued by the local authority.

The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 gave Planning Authorities full planning responsibility for all aquaculture developments in marine waters from 1 April 2007. Farms which were established before that date and which have not subsequently been granted planning permission may continue operating up until either (1) the expiry date of their existing consent or works licence or (2) 31 March 2014, whichever is the later. Operators which do not obtain permission to operate by the later of these dates will be operating unlawfully.

If the farm was established before 1 April 2007 and has not subsequently been modified in such a way as to require planning permission from the local authority, the operator can apply through the Audit and Review process for permission to operate. These applications for permission to operate are considered either for Audit or for Review.

## **Audit**

The Audit process applies if the whole farm has previously been screened under the EIA Regulations and has a Negative Screening Opinion, or has been the subject of a published Environmental Statement. The majority of these farms will have been consented after 1999 and others may have been modified after 1999 and have had a whole-farm screening when they were modified.

Marine Scotland checks the application, that:

- the farm's current configuration is the same as that consented by the Negative Screening Opinion or Environmental Statement; and
- the farm has undergone an Appropriate Assessment (if required) and that assessment has indicated that the farm will not adversely affect the integrity of the Natura site.

Planning Authorities have the opportunity to advise Marine Scotland of any issues of concern and whether mitigating planning conditions should be imposed if permission to operate is granted.

Following consideration of the application, permission to operate will be granted or refused. Permission, if granted, may be subject to conditions.

In addition, a number of Audit farms were granted permission to operate by the Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011.

## **Review**

Reviews are carried out on finfish farms which were operating before 1 April 2007 and which have not previously had their environmental impact assessed.

Under regulation 4 of The Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007 Marine Scotland is required to consult with the Planning Authority, SNH and SEPA. In addition, during the Review process Marine Scotland also consults with the Historic Scotland, the local District Salmon Fishery Board (DSFB) and Marine Scotland Science (MSS). The Ministry of Defence is consulted if the farm is close to a military installation or to military remains.

As part of the consultation, the consultees are asked what assessment of the environmental impacts of the fish farm operation should be undertaken. In response to issues raised by consultees, Marine Scotland may ask the operator to provide additional information about the farm and its operation in order to make an assessment of its environmental impact. Marine Scotland examines this additional information (in consultation with the relevant consultees) and the operator may be required to advertise the assessment for public comment.

As with Audit applications, Planning Authorities have the opportunity to advise Marine Scotland of any issues of concern and whether mitigating planning conditions should be imposed if permission to operate is granted.

Following consideration of the application, permission to operate is granted or refused. Permission, if granted, may be subject to conditions.

If a farm granted permission to operate under the Audit and Review process has been, or is, modified after 1 April 2007, then that is considered development and requires an application to the Planning Authority for planning permission.

Since 1 April 2007, all new aquaculture development applications (as well as modifications to existing ones) are made to the Planning Authority and farms are granted permanent planning permission, as opposed to previous arrangements where Crown Estate consent lasted only for the duration of the lease.

I hope this is helpful.



**DEREK MACKAY**