INTERIM SCHEME FOR THE AUTHORISATION OF MARINE FISH FARMS IN SCOTTISH WATERS

PROCEDURE GUIDANCE NOTE

Revised version issued by The Scottish Executive Rural Affairs Department in association with the Crown Estate Commission and the Convention of Scottish Local Authorities

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*Annex A : Flow chart of interim procedures*

*Annex B : Role of the Scottish Executive Inquiry Reporters Unit (SEIRU)*
interim procedures for the authorisation of
marine fish farms

Scope

1. This Guidance Note outlines the new procedures that are to apply to applications for marine fish farming, both for finfish and shellfish, in Scottish waters with the exception of those waters for which Orkney and Shetland Island Councils currently issue works licences and where those arrangements will continue to apply. It replaces the Crown Estate’s 1989 Advice Note ‘Marine Fish Farming in Scotland, Guidelines on Siting Procedures and Principles’. The procedures have been designed for all applications for marine fish farms. They are intended to be applied consistently but in the particular case of applications for marine finfish farms, the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (SI 1999 No 367) have effect and must be observed.

Background

2. In November 1997, Lord Sewel, Minister for Agriculture, Environment and Fisheries at The Scottish Office (now The Scottish Executive), announcing the Government’s response to the Scottish Salmon Strategy Task Force Report, indicated that the authorisation currently exercised by the Crown Estate Commissioners (CEC), should be transferred to Scottish local authorities. This decision was reflected in the consultation paper ‘Marine Fish Farming - Review of Planning Arrangements’ issued in December 1997. The responses to this consultation paper endorsed the Government’s proposals.

3. The transfer of responsibility to local authorities will require primary legislation. Pending new legislation, the Government decided to introduce an interim non-statutory scheme. The interim procedures are set out in this Guidance Note and have been drawn up in conjunction with the CEC after discussion with COSLA. In order to assist the consideration of proposals, in October 1999 The Scottish Executive issued policy guidance and advice on marine fish farming (Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters: Policy Guidance Note and Advice Note: Marine Fish Farming and the Environment).

Interim Arrangements

4. Local authorities are currently invited by the CEC to comment on marine aquaculture developments proposed in their area. Authorities are statutory consultees under the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 and they exercise planning responsibilities for related landward developments under the Town and Country Planning (Scotland) Act 1997. Authorities, therefore, already have a considerable involvement and interest in aquaculture developments, on and offshore, but they will wish to satisfy themselves that any action taken by themselves under these new arrangements is within their statutory powers.

5. The interim procedures do not disturb the statutory role of the CEC either as landlord or as a relevant authority under the Environmental Impact Assessment Regulations, again there will be an exception in respect of Orkney and Shetland Island Councils, both of which are now designated relevant authority in respect of proposed developments within waters for which they issue works licences. The intention of the interim procedures is, in anticipation of the future role of local authorities once legislation is in place, for local authorities to be more fully involved in the consultative process before the CEC reaches a decision on specific lease applications.
Adjustments of the local authority role will be achieved by ensuring that responses from the public to advertisements of the proposal and the comments from the statutory consultees, i.e. The Scottish Executive Rural Affairs Department (SERAD), the Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH) are available to the local authority before they reach a view on applications.

6. Consents for leases issued under these procedures do not affect the need to obtain other authorisations under existing statutory procedures.

**What Developments will be Affected**

7. The interim procedures will cover all new lease applications and will apply to applications for modifications in the following circumstances:

   - any proposal which increases the number of cages, longlines, rafts, trestles or other cultivation equipment, the size of these, or the overall size of farm, but only in respect of the modification itself.
   
   - any proposal for a change of use i.e. change in species farmed which will require a change to site infrastructure and equipment specification represents a completely new development and should be treated as a new lease application.

**Pre-application Stage**

8. Before an application is submitted to the CEC, applicants are advised to discuss their proposed development with the CEC and statutory consultees (including the local authority) to establish the main issues likely to arise and the need and scope of any Environmental Impact Assessment (EIA) that may be required.

9. When determining the requirement for an EIA the fundamental test to be applied in each case is whether a proposal may give rise to significant environmental effects which merit detailed appraisal. An operator, when commissioning an Environmental Statement (ES), should take account of the guidance given in the CEC publication “Environmental Assessment Guidance Manual for Marine Salmon Farmers” published in 1998 as well as the advice contained in the documents “Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters - Policy Guidance Note” and “Advice Note Marine Fish Farming and the Environment” issued by SERAD in October 1999.

10. If the operator wishes to proceed they should make a formal application to the CEC as detailed below, accompanied where necessary by an ES.

**Application Stage**

11. The various stages for submission of an application for a lease are summarised in the flow chart at Annex A. The following paragraphs explain each of the stages in sequence.

12. The application should be submitted to the CEC on the form supplied by them and be accompanied by -

   (i) a location chart or map at 1:10,000 scale using the latest edition published, clearly showing the application area and relationship with identifiable coastal features.
(ii) a clear statement, with accompanying scale drawings (plans, elevations and sections) of the type, dimensions, colour and number of pens, cages, rafts, longlines, trestles or other cultivation equipment that will be installed when the site has reached the maximum level of development proposed. Separate, scaled drawings should show the profile, grouping and dimensions of the proposed equipment relative to the water surface.

(iii) a plan showing the layout of equipment within the site along with associated moorings and any proposals for rotation within the leased area or with other sites.

(iv) details, including plans, of ancillary equipment e.g. feed barges, boat moorings, above or under cages lighting (including number and specifications) irrespective of whether the intended location is within the application area.

(v) the water depth below chart datum, shown on a 1:500 site plan, known by the applicant to exist at:

   (a) each corner of the installed equipment;
   (b) each extremity of the area to be occupied by mooring; and
   (c) the position of least depth within the area occupied by the moorings.

(vi) a description of the main physical characteristics of the site, including water movement, seabed type and features which may restrict flushing rate. A finfish site application should include a 15-day hydrographic survey and a benthic survey to SEPA and SNH requirements respectively.

(vii) a plan indicating the onshore service point together with a note of any associated onshore development for which planning permission will be required. It should clearly state the number, type and approximate dimensions of the installations concerned (e.g. shorebase, storage buildings, access road, slipway, jetty, crane, netwashing station, etc.).

(viii) a description of anti-predator measures proposed.

(ix) an ES, where the CEC has determined that EIA is required (see paragraphs 8-10 above); and

(x) sufficient copies of the application and associated documents for circulation to the statutory consultees etc.

13. The CEC will acknowledge receipt of complete applications within 7 days. Where an application is not accompanied by an Environmental Statement (ES), the CEC will advise the applicant, where appropriate, if they consider an ES may be required. In such cases the CEC must notify the applicant of their opinion within 6 weeks.

**Publicity for Applications**

14. Within 7 working days of acknowledging receipt of a completed application the CEC will (at the applicant's expense) advertise the proposed development. However, in cases where EIA is required it is the responsibility of the applicant to advertise the availability of the supporting ES. In either case publications must include at least 1 newspaper circulating within the locality of the proposed development.
Consultation on Applications

15. The CEC will ensure, within 7 days of issuing acknowledgement of a complete application, that they write to the relevant statutory consultees (including the local authority), enclosing all data relevant to the application together with a list of those being consulted. Consultees have not less than 21 days from the date of posting to submit their comments on the proposal to the relevant local authority and copied to CEC (not less than 28 days where the application is accompanied by an ES). In particular, consultees should comment on where, if necessary, amendments to the proposal are required in order to facilitate a favourable view.

Formulation of the Local Authority View

16. The local authority will prepare its view on the proposed development, having regard to responses to the advertisement, the views of statutory consultees and, in so far as they may be relevant to the neighbouring coastal zone, the provisions of the development plan, national planning policy guidance and any other material considerations.

17. Where the local authority consider it appropriate, they may initiate discussions with the applicant, statutory consultees (as described in paragraph 5) and objectors to see if matters of concern can be resolved.

18. The local authority should aim to submit its view to the CEC within 3 months of the date on which the CEC posted the proposal to the statutory consultees (4 months for cases involving an EIA) - or such longer period as may be agreed by the CEC / local authority and the applicant.

Where there are no expressions of concern from statutory consultees and the local authority is satisfied that the proposal can proceed

19. The local authority will send an unqualified favourable view to the CEC (copied to the statutory consultees). The CEC will then decide whether to issue a lease and inform the applicant of the decision. The CEC will inform the local authority and statutory consultees of the decision at the same time as they inform the applicant. In addition, when an application has been accompanied by an ES, the CEC must publish its decision in the local press and make the decision, along with the documents relating to it, available for public inspection. The CEC's decision shall be final.

Where one or more of the statutory consultees raise expressions of concern but the local authority is satisfied that the proposal can proceed

20. The local authority shall send a qualified favourable view to the CEC (copied to all statutory consultees) indicating that there are unresolved objections from one or more statutory consultees, stating the issues that may require to be addressed should the applicant wish to proceed with the application. Local authorities will wish to bear in mind that while navigational matters are dealt with under the Coast Protection Act 1949 the grant of a lease in the knowledge that navigational consent is at best unlikely would be undesirable. Therefore objections from the Coastguard Agency/Northern Lighthouse Board may lead to the local authority issuing a qualified favourable view on grounds of navigational safety. In such circumstances the CEC will
confirm with the concerned statutory consultee or Coastguard/Northern Lighthouse Board that they would wish to maintain their objection.

21. Where the statutory consultee(s) or Coastguard/Northern Lighthouse Board maintains their objection, the CEC will inform the applicant of the nature of the objection and ascertain if the applicant wishes to proceed to further examination of the application. If the applicant does not wish for the application to be further examined, the CEC will decide whether or not to issue a lease. The CEC's decision shall be final.

22. Where the applicant wishes the application to be examined further, the CEC will refer the case to SEIRU (Scottish Executive Inquiry Reporters Unit) together with a statement of the issues to be addressed by the appointed Reporter. Applications may be further examined on the basis of written representations or, where either the applicant or objector requests it, a hearing or inquiry will be held. In the latter event, those expressing concern will be invited to participate and other parties may do so at the discretion of the Reporter. It is anticipated that the method generally adopted will be by written representation. The Reporter will prepare a report and recommendation for the CEC.

23. The CEC will consider that report and recommendation and decide whether or not to issue a lease. The CEC will inform the applicant, local authority, statutory consultees and, if appropriate, the Coastguard/Northern Lighthouse Board of their decision. In addition, when an application has been accompanied by an ES, the CEC must publish its decision in the local press and make the decision, along with the documents relating to it, available for public inspection. The CEC's decision shall be final.

Where the local authority considers that the application should be refused (irrespective of favourable responses from all statutory consultees)

24. The local authority shall issue an unfavourable view to the CEC specifying the reasons, which should include any unresolved objection from other statutory consultee(s), (copied to the statutory consultee(s). The CEC shall inform the applicant of the unfavourable view and of the scope for further examination of the application. If, within 6 months, the applicant does not request a further examination, the CEC will consider whether to issue a lease and inform the applicant, local authority and statutory consultees of their decision.

25. If the applicant indicates to the CEC that he wishes the application to be examined further, the CEC will refer the application to SEIRU. Having regard to paragraph 22 above on the mode of process, a Reporter will consider the application and prepare a report and recommendation for the CEC.

26. The CEC will consider the report and recommendation and decide whether or not to issue a lease. The CEC will inform the applicant, the local authority and statutory consultees of the decision. In addition, when an application has been accompanied by an ES, the CEC must publish its decision in the local press and make the decision, along with the documents relating to it, available for public inspection. The CEC's decision shall be final.

implementation and monitoring

27. These interim non-statutory procedures apply to all applications received by CEC on or after 1 December 1998.
28. The operation of this procedure and associated guidance and advice will be monitored by The Scottish Executive, the CEC and COSLA and will inform consideration of the necessary legislation to transfer formally responsibility to local authorities in due course.

**note**

29. Enquiries about the content of this guidance note should be addressed to The Scottish Executive Rural Affairs Department, Pentland House, 47 Robbs Loan, Edinburgh EH14 1TY (Tel: 0131 244 6223).
Annex A

FLOW CHART OF INTERIM PROCEDURES FOR MARINE FISH FARMING

Application submitted to CEC [Para 12]

CEC advertises in local press or, where EIA prepared, applicant advertises in local press [Para 14]

CEC sends details of proposals to Statutory Consultees [Para 15]

Local discussions where LA considers necessary [Para 17]

Local Authority considers proposal, representations & statutory views [Para 16]

Discussions with statutory objector(s) where necessary [Para 17]

LA formulates view and forwards to CEC [Para 18]

Unqualified favourable view [Para 19]

Unfavourable view irrespective of favourable responses from all statutory consultees) [Para 24]

Qualified favourable view ie LA minded to approve but at least one statutory consultee has maintained objection [Para 20]

CEC DETERMINES APPLICATION [Para 19]

CEC informs applicant of scope for further examination [Para 24]

CEC checks with statutory objector. If objection maintained, CEC informs applicant to ascertain if he wishes the case to be further examined [Para 21]

Applicant decides to ask for further examination [Para 25]

CEC DETERMINES APPLICATION [Para 21]

CEC refers case to SEIRU [Para 22]

CEC refers case to SEIRU who report and recommend to CEC [Para 25]

SEIRU reports and recommend to CEC [Para 22]

CEC DETERMINES APPLICATION [Para 26]

CEC DETERMINES APPLICATION [Para 23]

Procedure Guidance Note: Marine Fish Farming
Annex B

The Role of SEIRU

1. While it is not possible to provide a formal appeal process without statutory provisions for that purpose, the aim will be for further examination of applications which have not received an unqualified favourable view to proceed as follows:

(a) for cases to be considered on the basis of written submissions, by analogy to The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 and Circular 7/1990, and,

(b) for cases to be considered by hearing, or public local inquiry, by analogy to The Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998 and Circular 17/1998.

2. Where a case is referred to SEIRU, the unit will -

(i) Establish whether the case is to be further examined by written submissions or public inquiry/hearing.

(ii) Appoint a Reporter;

(iii) Write to parties informing them of the form and details of the further examination and;

(iv) after the further examination, the Reporter will send a report which contains a recommendation to CEC for its determination.

3. After consideration of the Reporter's recommendation CEC shall issue a favourable/unfavourable decision letter to the applicant (copied to all statutory consultees).

4. The CEC will make the SEIRU report and recommendation available to the statutory consultees and the local authority who would make it available for public inspection.