Item: 4.1

Planning Committee: 6 July 2022.

Create Salmon Farming Site with Feed Barge (Replacement of Existing Equipment) at Toyness, Orphir, Scapa Flow.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

A planning application with an Environmental Impact Assessment (EIA) Report is submitted for the replacement, enlargement and repositioning of an Atlantic salmon fish farming site, approximately 130 metres southwest of the existing Toyness Fish Farm, off the east coast of Orphir and lying in the western edge of Scapa Flow. The proposal includes removal of the presently consented equipment at Toyness. The proposed fish farm would comprise 12 cages with a 120 metre circumference, configured in two groups of 2 x 6 formation, held in an 80 metre grid with an overall surface area of 14,065 square metres and a mooring area of 430,000 square metres, and a 420 tonne feed barge. A biomass of 2,500 tonnes is proposed. Two letters of objection have been received from non-statutory consultation bodies and two letters of objection have been received from members of the public who live close to the site. The recommendation on this application has been guided by the conclusions of the EIA Report (EIAR) and the proposal has been assessed against all relevant policies of the Orkney Local Development Plan 2017 and other relevant material planning considerations. On balance the objections are not considered to be of sufficient weight to merit refusal. Where unacceptable impacts have been identified, adequate mitigation has been provided. Accordingly, the application is recommended for approval.

Application Number	21/410/MAR.
Application Type	Marine Fish Farm.
Proposal	Create salmon farming site comprising of 12 x 120 metre circumference circular cages arranged in a 2 x 6 formation in an 80 metre mooring grid, with pole mounted top nets, underwater lighting, and 420 tonne capacity semi-automated feed barge (replacement of existing equipment)
Site	Toyness, Orphir, Scapa Flow, Orkney.
Applicant	Scottish Sea Farms.

1.2.

All application documents (including plans, consultation responses and representations) are available for members to view at the following website address:

https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm (then enter the application number given above).

2. Consultations

2.1. Statutory Consultation Bodies

2.1.1.

Statutory consultation bodies are as follows:

- Historic Environment Scotland.
- Marine Scotland (on behalf of Scottish Ministers).
- Scottish Water.
- Scottish Environment Protection Agency.
- NatureScot, formerly Scottish Natural Heritage (SNH).

2.1.2.

No objections have been received from any statutory consultation body. It is considered that matters included in consultation responses from statutory consultation bodies can be adequately addressed by mitigation and planning conditions.

2.2. Other Consultation Bodies

Consultation responses were provided by other non-statutory consultation bodies. The non-statutory consultees, RSPB Scotland and Orkney Trout Fishing Association, both objected to the proposal. Objections from non-statutory consultation bodies are addressed in detail in section 3 below.

3. Representations

3.1.

Objections have been received from two non-statutory consultation bodies:

- Orkney Trout Fishing Association.
- RSPB Scotland.

3.1.1.

The Orkney Trout Fishing Association (OTFA) objection is ‘due to the potential impact of this development on Orkney’s wild sea trout population’. OTFA has provided data from the Scottish Government over the last nine months on sea lice counts for Scapa Flow salmon farms, including the existing Bring Head site, showing

sea lice numbers which are often above industry target threshold. OTFA indicates that the sea lice count numbers across fish farms in Scapa Flow have been rising recently which, they state, has a cumulative impact on the wild sea trout population in Scapa Flow. Points raised include significant concern in relation to sea trout, and the potential for negative impacts in relation to the environment, and health of the local sea trout populations, together with the current situation at this site regarding parasites and disease. OTFA highlight existing problems and lack of local policy to protect the environment and wild fish. OTFA see the value and management of an appropriate adaptive Environmental Management Plan (EMP) for the site; however, that does not adequately address its concerns. Therefore, OTFA maintains its objection, and continues that should the application be approved, an adaptive EMP should be provided that relates specifically to impacts on wild salmonids from the fish farm and not other pressures.

3.1.2.

The consultation response received from RSPB Scotland objects to the proposed development on a range of matters including the adequacy of measures to mitigate the predicted likely significant effect on avian species such as Northern Gannets from entanglement/entrapment in particular reference to pole mounted top nets both from the Scapa Flow Special Protection Area (SPA) and other SPAs with connectivity to the site. The site is within both the Scapa Flow and Hoy SPAs; RSPB Scotland therefore highlight the Council's requirements to be satisfied beyond reasonable scientific doubt that the integrity of a European site is not being adversely affected. In addition, further concerns exist due to the impacts on habitat individually and cumulatively with other fish farms within the Scapa Flow SPA. Whilst RSPB maintains its objection, it recommends that if the application be approved, the monitoring and adaptive management scheme should be in place with key criteria including ensuring action is taken in the event of entrapment/entanglement issues occurring.

3.2.

3.2.1.

Two objections have been received from:

- Iain Talbot, Creel Cottage, Orphir, KW17 2RD
- Kathleen Dinsdale, Norn's Cottage, Orphir, KW17 2RD

3.2.2.

The objections are based on:

- Impacts on residential amenity from noise from the equipment on the feed barge, vessels visiting the site and the staff playing music, etc.
- Impacts on a special protection area including birds, ducks and divers along with impacts on wildlife (seals and otters).
- Significant negative visual impact from the much larger repositioned site including the use on cages with higher top nets than on present site. Impacting on residential property, coastal footpath, coast, seascape and wider landscape.

- Design and layout of fish farm will dominate the adjacent coast and coastal landscape due to the inappropriate siting and size.
- Environmental impacts of industry on the seabed locally along with wider environmental issues associated with fish feed etc.

4. Relevant Planning and Site History

Reference.	Proposal.	Location.	Decision.	Date.
21/175/MARSS	Screening and scoping request to create a salmon fish farm (replacement of existing equipment).	Toyness Fish Farm, Orphir, Scapa Flow	EIA required.	26.07.2021
16/495/MARPN	Replace Barge	Toyness, Scapa Flow.	No Objections	11.11.2021
13/175/MARAUD	Audit by Scottish Government of marine finfish farm on site at Toyness (consent by Crown Estates - prior to 2007)	Toyness, Scapa Flow.	Observations made.	27.05.2013
09/020/MAR	Install feed barge and 4 underwater lights in each existing cage	Toyness, Scapa Flow	Grant Subject to Conditions	15.05.2009
03/579/MAR	Renewal of works licence	Toyness, Scapa Flow		

5. Relevant Planning Policy and Guidance

5.1.

The full text of the Orkney Local Development Plan 2017 (OLDP 2017) and supplementary guidance can be read on the Council website at:

https://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm

The policies listed below are relevant to this application.

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development.
  - Policy 2 – Design.

- Policy 4 – Business, Industry and Employment.
- Policy 8 – Historic Environment and Cultural Heritage.
- Policy 9 – Natural Heritage and Landscape.
- Policy 12 – Coastal Development.
- Policy 14 – Transport, Travel and Road Network Infrastructure.

- Supplementary Guidance Natural Environment (2017):
  - Policy 9A – Natural Heritage Designations: Internationally Designated Sites.
  - Policy 9B – Protected Species.
  - Policy 9C – Wider Biodiversity and Geodiversity.
  - Policy 9D – The Water Environment.

- Supplementary Guidance Aquaculture (2017):
  - DC1 Landscape, coast, siting and design.
  - DC2 Natural heritage designations, protected species and the wider biodiversity.
  - DC3 Predator control and interaction with other species.
  - DC4 Wild salmonid fish populations.
  - DC5 Water quality and benthic impacts.
  - DC6 Historic environment.
  - DC7 Social and economic impacts.
  - DC8 Other marine users.
  - DC9 Construction and Operational Impacts.
  - DC10 Decommissioning and Reinstatement.

5.2. Scotland's National Marine Plan (2015)

5.2.1.

The National Marine Plan states: "Aquaculture contributes to sustainable economic growth in rural and coastal communities, especially in the Highlands and Islands. Many communities depend on the employment and revenue it provides and, as a growing industry, it has potential to contribute to future community cohesion by providing quality jobs in rural areas and helping to maintain community infrastructures such as schools, ferries and other services subject to the continued management of risk".

5.2.2.

The National Marine Plan contains 14 Policies related specifically to Aquaculture:

- AQUACULTURE 1: Marine planners and decision makers should seek to identify appropriate locations for future aquaculture development and use, including the

potential use of development planning briefs as appropriate. System carrying capacity (at the scale of a water body or loch system) should be a key consideration.

- AQUACULTURE 2: Marine and terrestrial development plans should jointly identify areas which are potentially suitable and sensitive areas which are unlikely to be appropriate for such development, reflecting Scottish Planning Policy and any Scottish Government guidance on the issue. There is a continuing presumption against further marine finfish farm developments on the north and east coasts to safeguard migratory fish species.
- AQUACULTURE 3: In relation to nutrient enhancement and benthic impacts, as set out under Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters, fish farm development is likely to be acceptable in Category 3 areas, subject to other criteria being satisfied. A degree of precaution should be applied to consideration of further fish farming development in Category 2 areas and there will be a presumption against further fish farm development in Category 1 areas.
- AQUACULTURE 4: There is a presumption that further sustainable expansion of shellfish farms should be located in designated shellfish waters these have sufficient capacity to support such development.
- AQUACULTURE 5: Aquaculture developments should avoid and/or mitigate adverse impacts upon the seascape, landscape and visual amenity of an area, following SNH guidance on the siting and design of aquaculture.
- AQUACULTURE 6: New aquaculture sites should not bridge Disease Management Areas although boundaries may be revised by Marine Scotland to take account of any changes in fish farm location, subject to the continued management of risk.
- AQUACULTURE 7: Operators and regulators should continue to utilise a risk based approach to the location of fish farms and potential impacts on wild fish.
- AQUACULTURE 8: Guidance on harassment at designated seal haul out sites should be taken into account and seal conservation areas should also be taken into account in site selection and operation. Seal licences will only be granted where other management options are precluded or have proven unsuccessful in deterrence.
- AQUACULTURE 9: Consenting and licensing authorities should be satisfied that appropriate emergency response plans are in place.
- AQUACULTURE 10: Operators should carry out pre-application discussion and consultation, and engage with local communities and others who may be affected, to identify and, where possible, address any concerns in advance of submitting an application.
- AQUACULTURE 11: Aquaculture equipment, including but not limited to installations, facilities, moorings, pens and nets must be fit for purpose for the site conditions, subject to future climate change. Any statutory technical standard must be adhered to. Equipment and activities should be optimised in order to reduce greenhouse gas emissions.
- AQUACULTURE 12: Applications which promote the use of sustainable biological controls for sea lice (such as farmed wrasse) will be encouraged.

- AQUACULTURE 13: Proposals that contribute to the diversification of farmed species will be supported, subject to other objectives and policies being satisfied.
- AQUACULTURE 14: The Scottish Government, aquaculture companies and Local Authorities should work together to maximise benefit to communities from aquaculture development.

5.2.3.

The National Marine Policy also contains seven policies related specifically to shipping, Ports, Harbours and Ferries.

5.3. Scottish Planning Policy (2014)

5.3.1. Supporting Aquaculture: Policy Principles

The planning system should:

- Play a supporting role in the sustainable growth of the finfish and shellfish sectors to ensure that the aquaculture industry is diverse, competitive and economically viable.
- Guide development to coastal locations that best suit industry needs with due regard to the marine environment.
- Maintain a presumption against further marine finfish farm developments on the north and east coasts to safeguard migratory fish species.

5.3.2. Development Management

Applications should be supported, where necessary, by sufficient information to demonstrate:

- Operational arrangements (including noise, light, access, waste and odour) are satisfactory and sufficient mitigation plans are in place.
- The siting and design of cages, lines and associated facilities are appropriate for the location.

This should be done through the provision of information on the extent of the site; the type, number and physical scale of structures; the distribution of the structures across the planning area; on-shore facilities; and ancillary equipment.

Any land-based facilities required for the proposal should, where possible, be considered at the same time. The planning system should not duplicate other control regimes such as controlled activities regulation (CARS) licences from SEPA or fish health, sea lice and containment regulation by Marine Scotland.

5.4. Other Relevant Policy and Guidance

- Circular 6/1995 ‘European Protected Species, Development Sites and the Planning.
- The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

- The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.
- Circular 1/2007 ‘Planning Controls for Marine Fish Farming’ ‘Marine Fish Farming and the Environment’ (SEERAD 2003).
- Planning Advice Note (PAN) 51- ‘Planning, Environmental Protection and Regulation’.
- Scottish Executive – ‘Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters’ (2003 and updated June 2009 and December 2012).
- ‘A Fresh Start – the Renewed Strategic Framework for Scottish Aquaculture’ (2009).
- ‘Guidance on Landscape/Seascape Capacity for Aquaculture’ (SNH 2008).
- ‘Siting and Design of Marine Aquaculture Developments in the Landscape’ (SNH 2011).
- Orkney Harbours Masterplan.
- NPF3 highlights the Scottish Governments support the sustainable growth of the aquaculture sector and the significant contribution it makes to the Scottish economy, particularly for coastal and island communities.
- Pilot Pentland Firth and Orkney Waters Marine Spatial Plan (2016).

5.5. Other Matters

- UK Technical Advisory Group (UK TAG) consideration of recommendations on new environmental standards for Emamectin Benzoate.
- SEPA Fish Farm Survey Report – ‘Evaluation of a New Seabed Monitoring Approach to Investigate the Impacts of Marine Cage Fish Farms’.
- Rural Economy and Connectivity (REC) Committee conclusions and recommendations arising from the Committee’s inquiry into the current state of the salmon farming industry in Scotland.
- Scotland’s 10 Year Farmed Fish Health-Marine Scotland Science - Scottish Government (2018.)

6. Legal Aspects

6.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise…to be made in accordance with that plan…”

6.2.

Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lord’s judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there

are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted."

6.3.

Annex A continues as follows:

- The House of Lord's judgement also set out the following approach to deciding an application:
    - Identify any provisions of the development plan which are relevant to the decision.
    - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
    - Consider whether or not the proposal accords with the development plan.
    - Identify and consider relevant material considerations for and against the proposal.
    - Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
    - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
    - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
    - Scottish Government policy and UK Government policy on reserved matters.
    - The National Planning Framework.
    - Policy in the Scottish Planning Policy and Designing Streets.
    - Scottish Government planning advice and circulars.
    - EU policy.
    - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance.

- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act.
- Community plans.
- The environmental impact of the proposal.
- The design of the proposed development and its relationship to its surroundings.
- Access, provision of infrastructure and planning history of the site.
- Views of statutory and other consultees.
- Legitimate public concern or support expressed on relevant planning matters.

- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

6.4.

Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

6.5.

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

7. Environmental Impact Assessment

7.1.

The current proposal was assessed against The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

7.2.

The proposal falls within the definition of 'Schedule 2 development' of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, in that the proposed development exceeds the criteria (a) for Aquaculture, in that the proposed development is ‘designed to hold a biomass of 100 tonnes or greater’.

7.3.

Having assessed the characteristics and location of the development and the characteristics of the potential impact as set out in Schedule 3 to the 2017 Regulations, the Council adopted a Screening/Scoping Opinion reference 21/175/MARSS on 26 July 2021 stating that, in its opinion, the proposed development is considered likely to have a significant impact on the receiving environment and that submission of an Environmental Impact Assessment Report (EIAR) was required.

7.4.

Accordingly, this application is accompanied by an EIAR in accordance with the 2017 Regulations. The EIAR addresses all expected environmental effects associated with the proposed development and any proposed mitigation. The EIAR includes information on the alternative sites, locations and layouts considered.

7.5.

The EIAR includes the undernoted matters, which fall within the regulatory control of other bodies, therefore limited weight can be given to those matters as part of any planning decision.

- Benthic (seabed) impacts due to feed and faeces falling to the sea floor are covered by the CAR licensing regime and with ecological advice provided by NatureScot. Any impacts on seabed protected species are a material planning consideration but are part of the CAR assessment first and foremost. Biomass and quantities of sea-lice therapeutants will be considered as part of the CAR application process.
- Water column impacts from nutrient enrichment and use of medicinal chemicals are also part of SEPA’s CAR licensing regime.
- The health, handling and medicinal treatment of the farmed fish, control of predators and physical quality of nets and moorings are all matters regulated by Marine Scotland.
- Depositions from fish farms, to enable monitoring of benthic impacts is covered by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended).
- Registration, authorisation and elements of operational regulation is undertaken by / required from Marine Scotland under The Aquatic Animal Health (Scotland) Regulations 2009 and the Marine Scotland Act 2010, covering fish health standards and containment, including power to monitor for sea lice infestation.

7.6.

However, there is some important crossover with local planning authority regulation to the extent that, where these matters and associated measures have an impact upon protected species in the wider environment, the matters are assessed below.

7.7.

The EIAR submitted was subject to peer review by an independent and suitably qualified environmental consultant on behalf of the planning authority, and it was found to comply with the requirements of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

8. Habitats Regulations and Natural Heritage

8.1.

As competent authority, the Council must consider whether any plan or project would have a ‘likely significant effect’ on a Natura site before it can be consented, and if so carry out an Appropriate Assessment. That process is known as Habitats Regulations Appraisal (HRA). In considering likely significant effects alone or in combination, Revised Circular 6/1995 advises that HRA can be based on the information submitted in support of the application and informed by the appraisal on the appropriate nature conservation body, in this case NatureScot.

8.2.

The development is situated within the Scapa Flow Special Protection Area (SPA). Scapa Flow SPA is classified for its aggregations of breeding Red-throated diver and aggregations of non-breeding wintering waterfowl, including Black-throated diver, Eider, Goldeneye, Great northern diver, long-tailed duck, Red-breasted merganser, Shag and Slavonian grebe.

8.3.

It should be noted that the Scapa Flow SPA at the time of the application and the EIAR was a proposed SPA (pSPA); on 16 February 2022, the designation was confirmed as an SPA. However, the Scottish Government has a policy of protecting proposed SPAs as if they were classified. Consequently, the Scapa Flow SPA has been considered throughout the planning process as if it was already classified.

8.4.

Advice from NatureScot is that the proposal is likely to have a significant effect on wintering waterfowl and breeding Red-throated divers and that the Council, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s).

8.5.

The Council, as competent authority, is required to carry out an Appropriate Assessment in view of the site’s conservation objectives for its qualifying interest(s).

Following the advice from NatureScot, the Council has carried out this assessment. In consideration of the Habitats Regulations Appraisal, it is concluded that, were the development ('the project') undertaken in accordance with the proposed details, mitigation as proposed and appropriate planning conditions, the impacts arising from the operation of the development as proposed, and in combination, will not have a significant impact upon qualifying interests, and will not adversely affect the integrity of the SPAs. The Council's HRA is attached as Appendix 1 to this report.

9. Assessment

9.1. Proposal

9.1.1.

The application site is located to the west coast of Scapa Flow off the coast of Orphir. The proposal is to enlarge, replace and relocate the existing Toyness fish farm, as indicated in the Location Plan attached as Appendix 2 to this report. The centre of the proposed farm is 130 metres further south west than the centre of the existing farm; this means that there will be a significant overlap, with the new site largely encompassing the majority of the existing site. The existing farm has been operating since 2000 originally under a works licence and then as part of the Audit and Review process; the Scottish Government granted permanent planning permission for 10 x 80m circumference cages. The feed barge was consented subsequently in 2009. Should the application be approved, the existing fish farm infrastructure would be permanently removed. The proposal is to relocate and enlarge the fish farm by installing 12 x 120m circumference cages, arranged in a 2x6 format in an 80 metre mooring grid off the coast of Orphir within Scapa Flow. A 420 tonne feed barge is also proposed off the centre of the cage group on the north (shoreward) side. The total surface area of the expanded site would be 14,065 square metres, with the wider area including moorings measuring 430,000 square metres. The proposed cages would be black low profile using non reflective material and would be 40 metres larger in circumference (12.7 metres increase in diameter) than the existing cages on the site. In addition, there would be a change to the type of top nets; pole-mounted top nets are proposed on the proposed site.

9.1.2.

The proposed maximum biomass of Atlantic salmon for the site is 2,500 tonnes, compared to the existing site maximum of 1,343 tonnes, with a production biomass of 3,750 tonnes per cycle, and a stocking density of less than 15 kilogrammes per cubic metre. The production plan is 24 months with a fallow period of 42 days within the 24-month cycle.

9.1.3.

No onshore facilities are proposed, as it is proposed to continue current arrangements to service the site by boat daily from Houton. A well boat is used to harvest and transport live fish for processing; the company's processing facilities are at Scalloway in Shetland. Well boats may also be used for fresh water or medical bath treatments or for other veterinary treatment.

9.1.4.

The site would operate 08:00 to 17:00 daily, including weekends, with two vessels operating at the site comprising of a workboat and small speed boat, with occasional travel to and from Stromness. Staff are cited as typically making one return journey to the site each day. Occasional out of hours working may be necessary at harvesting, fish movements or other unforeseen events. Smolts would be delivered directly to the site using a well boat from the hatchery. Through the harvest period the well boat may be in use several times a week at the site. Well boats may also be used to undertake freshwater or medicinal bath treatments or other veterinary treatments as required. A site maintenance vessel would be used for decommissioning and installation activities. At harvest, the fish are transported alive within the tanks of the well boat to Scalloway, Shetland, where they are pumped ashore and processed. These matters are further detailed within the proposed vessel management plan for the site and within the supporting EIAR.

9.1.5.

The applicant has provided a non-technical summary forming part of the EIAR which sets out the basis for the development, and the assessment of relocation/alternative sites and a range of scenarios for the size, configuration and types of cages of the proposed fish farm.

9.2. Interaction with predators

9.2.1.

Scapa Flow is a Special Protection Area (SPA), identified as an important area for marine birds including a number of wintering and breeding populations. Several avian species from SPAs further afield may also use this area of Scapa Flow.

9.2.2.

The EIAR and additional information identifies the impacts and risks to natural heritage interests. The applicant has assessed that there are no significantly adverse impacts resulting from the proposed development in consideration of the following:

- Disturbance along vessel transit route.
- Direct displacement from cage area.
- Entanglement.
- Loss of, or damage to, supporting habitats.

9.2.3.

Mitigation has been provided within the EIA Report including:

- Toyness Predator Exclusion Plan (Avian, Seal and other marine mammals) - Adaptive management Approach (entanglement - pole mounted top nets, tensioned nets; monitoring).
- Good husbandry practices.
- Vessel management plan (VMP).

9.2.4.

It is assessed within the EIAR that the mitigation measures would minimise the risk of bird attack, entanglement, disturbance and displacement. Management measures would be in place to minimise risk of predation by diving birds, seals and other marine mammals. This includes well maintained tensioning of nets, regular monitoring and inspection of cages and nets both by underwater cameras and by divers, efficient husbandry and frequent removal of mortalities and anti-predator nets.

9.2.5.

The applicant has indicated that the use of Acoustic Deterrent Devices (ADDs) are not used on the existing site and would not be planned to be used on this site.

9.2.6.

The proposal includes the proposed use of pole mounted top nets along with a proposal adaptive EMP to provide mitigation measures to minimise the risk of potential entanglement/entrapment. These include:

- Maintaining daily records of wildlife entanglement/entrapment using a standardised proforma provided by NatureScot and submitting six-monthly returns to the Council, copied to NatureScot.
- Immediate notification to both the Council and NatureScot in the event of any significant entrapment or entanglement of gannets. Significant entrapment is defined as involving three or more birds of any named species on any one day and/or a total of ten or more birds in the space of any seven day period and/or repeat incidents involving one or more birds on four or more consecutive days.
- Adaptive management approaches to be agreed between the Council and Scottish Sea Farms, in consultation with NatureScot. Such measures may include:
    - If bird entanglements occur then consider appropriate alterations to the top net design including changes in mesh size, net colour and marking the top nets to make them more visible to birds.
    - If bird entanglement continues despite alterations, top net design could be changed to the traditional ‘hamster wheel’ system.

9.2.7.

RSPB Scotland has objected on the uncertainties of potential individual risk and the in-combination risks, particularly in relation to diving marine birds. The European Shag is a qualifying feature of the Scapa Flow SPA and the Northern Gannet from one or more SPAs are the most notable species in respect of this risk. Given this potential impact on a qualifying feature of the SPAs, NatureScot considered within their consultation response the risk of mortality/injury through entanglement/ entrapment associated with pole mounted top nets and are satisfied, with the use of an adaptive EMP, there would be no adverse effect on site integrity of Scapa Flow SPA. Such matters are also raised within the consultation response from RSPB Scotland, who maintain their objection but advise, should the development be consented, a monitoring and adaptive EMP should be agreed prior to installation of

the pole mounted top nets. A monitoring and adaptive EMP can be secured by appropriate condition.

9.2.8.

A Vessel Management Plan has been provided, which covers both the expansion and reposition of Toyness along with the proposal to expand and reposition the existing Bring Head Fish Farm, which is subject to a separate planning application 21/411/MAR. The EIAR sets out the objectives of this Vessel Management Plan which are to:

- Identify the transit routes that Scottish Sea Farms (SSF) will use to service the proposed expanded fish farms.
- Specify mandatory operational procedures for SSF vessels.
- Set out management conditions that minimise interactions with local wildlife (including qualifying species of designated sites).

9.2.9.

The vessel protocol and guidelines set out measures to minimise disturbance to natural heritage interests. These include restricting vessel speeds, using the same routes as existing, monitoring routes and if found to be where aggregations of mammals/birds are observed, vessel routes should be adjusted to avoid disturbance and agreed measures to undertake if a vessel is approached by protected species.

9.2.10.

The developer does not anticipate that the proposed changes to the site will change the route or frequency of operational vessel movement that are presently undertaken to the existing fish farm. The EIA Report indicates that there will be no additional impacts from disturbance from this activity therefore no adverse effect on site integrity of Scapa Flow SPA was identified from the vessel transit route to the proposed site.

9.2.11.

However, there is the potential for additional disturbance to arise due to decommissioning works related to the existing site and construction of the new site. Therefore, there is the potential for impacts on natural heritage interests and potential impacts related to integrity of SPA. It has been assessed by NatureScot that assuming a relatively short overall works duration (three to seven days), the main feature of potential concern would be the breeding Red-throated diver interests of the Scapa Flow SPA. The applicant advises that they will utilise specified vessel transit routes during the decommissioning and installation activities that avoid key areas used by foraging Red-throated diver.

9.2.12.

There are a number of designated seal haul-out sites for both grey and common seals in Scapa Flow, protected under The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014. The nearest designated site to the Toyness fish

farm is located approximately 1.8 kilometres northeast of the proposed expansion area. The applicant advises that apart from the Holm of Houton site where seals should be used to regular boat traffic to and from Houton Pier, vessels will avoid disturbance by maintaining a 500 metre buffer distance from the shoreline of all other designated sea haul-out sites. All staff will follow the vessel protocol and guidelines including 'Scottish Marine Wildlife Watching Code' (SMWWC) to ensure disturbance by operational vessels is avoided and minimised. The low number of vessels operating and low frequency of transits, in combination with vessel protocols in place, would ensure disturbance is minimised.

9.2.13.

NatureScot has no objection to the development in relation to the potential disturbance during the decommissioning of existing site, and construction, operation or decommissioning of expanded site in relation to natural heritage interests, subject to the mitigation proposed by the applicant.

9.2.14.

The development has been fully assessed individually and cumulatively taking account of consultation responses and objections. It is considered that this development would have no unacceptable impact on the natural heritage interests of the area. The proposals would be consistent with the requirements of Policy 9 and relevant Supplementary Guidance criteria relating to nature conservation designations (DC2) and potential effects on protected species (DC2 and DC3).

9.3. Carrying capacity and cumulative benthic and water column impacts

9.3.1.

The site is located within 'uncategorised' waters under Marine Scotland's Locational Guidelines, which indicates better prospects of fish farm developments being acceptable in environmental terms given the open situation, and the depth of water with unconstrained water exchange. SEPA is responsible for controlling water column impacts via its CAR licensing process under the Water Environment (Controlled Activities) Scotland Regulation 2011 (as amended). Under this licence, SEPA has the ability, if there is significant environmental stress from the biomass level on the site, to require the situation to be improved, through mitigation or reduction in biomass. The benthic impacts are assessed, to protect the marine environment, the quantity of wastes released from fish farms must be appropriately matched to the sea's capacity to disperse and assimilate them so that they do not reach levels that would result in adverse effects or harm marine life.

9.3.2.

The proposal is accompanied by modelling and calculations which demonstrate the benthic and water column impacts of the proposed fish farm. Fish farms have an impact on the seabed through the settlement of waste fish feed, faeces and possible chemical residue from licensed treatments collected beneath the cages. NatureScot has acknowledged the content of the seabed survey in respect of Priority Marine Features (PMFs) and advise there are no species of significance.

9.3.3.

Mitigation proposed to reduce effects on the seabed and water column include monitoring fish feeding and terminating this when the fish are sated, site fallowing, equipment used and chemical use strategy.

9.3.4.

SEPA has noted that the baseline survey shows the impacts are limited to within the immediate vicinity of the pen group. Modelling reports indicates that compliance is likely to be maintained by this proposal and complied with SEPA's regulatory requirements. SEPA states that the maximum sustainable biomass and level of chemical usage would be set once the CAR application has passed through SEPA's determination process. As part of the CAR control, SEPA advises the loss of foraging area for protected birds due to a larger area of waste disposal from this proposal is most likely to be minimal. SEPA has confirmed no objection.

9.3.5.

Given the seabed is designated as part of the Scapa Flow SPA, of which the conservation objectives are to maintain the integrity of prey habitats for the qualifying bird species of these designations, any impact or loss of habitats need to be considered. The developer has provided further clarity on the impacts of the development on the benthic habitats indicating that the predicted benthic footprint (21 hectares) and bathymetry of the area (26 to 50 metres) in relation to the available habitat (17,562 hectares) within Scapa Flow SPA are within the bathymetry range (26 to 50 metres) which equates to 0.1% of available habitat. When considering the predicted benthic footprint (21 hectares) in relation to the total available habitat (37,065.5 hectares) within Scapa Flow SPA, it equates to 0.06% of the total available habitat. In this context "total available habitat" is used as a proxy for the "total available prey-supporting habitat" due to the complexities and uncertainties in determining the exact composition of the diet of qualifying interests and abundance of prey species supported within an area. As a relatively small proportion of habitat will be impacted, it was determined that the proposal will not have an adverse effect on site integrity for the relevant conservation objective of Scapa Flow SPA, ie to maintain the habitats and food resources of the qualifying features in favourable condition.

9.3.6.

RSPB has objected to the proposal including on grounds of impacts on supporting habitats (loss or damage) on foraging area for birds individually and in combination with other fish farms within the Scapa Flow SPA. In terms of impacts on habitats, NatureScot agree with the assessed impacts and the developer's conclusion of 'no adverse effects on-site integrity as a result of cumulative and in combination effects due to loss or damage to supporting habitats'.

9.3.7.

Marine Services, SEPA, NatureScot and Marine Scotland Science have no objections in relation to water quality, water column and benthic impacts. Both RSPB and an objector have objected on the potential impacts. It is considered that the

proposal would comply with Development Criterion 5 (Water Quality and Benthic Impacts) of Supplementary Guidance: Aquaculture.

9.4. Navigation

9.4.1.

No issues associated with navigation have been raised. The Northern Lighthouse Board has provided specifications for the lighting requirements at this site and raises no objections provided the site is marked accordingly. Toyness site lies within the Orkney Harbour Authority area. Marine Services has no objection, but highlighted concerns that the vessels servicing this site would use Houton. The capacity of this terminal / pier is very limited, for any larger vessels than already use this facility. The applicant has indicated that a number of the existing vessels will be used to service this site, with one work boat operating at the site and is used daily from Houton pier. Marine Scotland Science advises that from the information provided, all equipment meets UK engineering quality standards and all new equipment meets the design requirements specified by “A Technical Standard for Scottish Finfish Aquaculture”. In addition, the installation would be undertaken by suitably trained and qualified staff and the equipment, cages and moorings are suitable for the location based on the environmental data supplied. Marine Scotland Science advises that, from the information provided, this is deemed satisfactory.

9.4.2.

Development and Marine Planning raised issues of the close proximity of the proposal to the buffer zone for one of the Ship-to-Ship transfer location (STS 1) and the adjacent coastline and a strategically important area for potential future harbour development and which could be subject to new harbour infrastructure in the long term as included in the Harbours Masterplan. The potential impact on marine users is addressed in the EIA Report with no likely significant effects to marine users anticipated as a result of the proposal. The EIAR indicates that the proposal falls outwith the 1,500 metre no-go area of sensitivity associated with Ship-to-Ship berths and the other designated anchor berths.

9.4.3.

Taking account of the information supplied, it is considered that the development would accord with Orkney Local Development Plan 2017 Policy 12 and Supplementary Guidance: Aquaculture, criteria DC7 and DC8.

9.5. Interaction with Wild Salmonids

9.5.1.

The Planning Authority has a duty in the conservation of biodiversity which includes interaction with wild fish. Sea trout are a UK Biodiversity Action Plan (UKBAP) priority marine features and having regard to the division of regulatory responsibilities acknowledged in the National Marine Plan, and as part of its biodiversity duty, the Council in its capacity as Planning Authority must assume responsibility for consideration of the implications of aquaculture development for the conservation of these species. In considering aquaculture development, the Council

has to satisfy itself that there is an effective sea lice strategy in place, which include measures to ensure that necessary steps are taken in the event that sea lice levels prove not to be capable of being controlled in a satisfactory manner using the measures identified at the application stage. Similarly, the Council has to satisfy itself that proposed containment is adequate in order to minimise the risk of escape events. Consultation responses from Development and Marine Planning, Marine Scotland Science, NatureScot and OTFA have all raised matters in relation to wild salmonids, and specifically in relation to sea trout. OTFA has objected to the proposal due to the impacts on wild salmonids.

9.5.2.

Marine Scotland's Fish Health Inspectorate (FHI) has the responsibility for regulating the health of fish on the farm, however, this responsibility does not extend to the consideration of the effects of fish farming upon wild fish. Marine Scotland does nevertheless provide wild fish interaction advice to the Council to inform decision-making. SEPA is the regulatory body responsible for licensing biomass permitted to be held on farms and for the permitted use of chemicals, but the spread of sea lice into the wider environment from within farms is not construed to be 'pollution', and therefore wild fish impacts are not at present considered as part of their licensing process.

9.5.3.

The site lies within farm management area (FMA) (0-3), and Marine Scotland Science has advised that there is no history of sea lice affecting the health of the aquaculture animals at this site or in the FMA (0-3) to the knowledge of the FHI. Indicating that FMA (0-3) covers much of Scapa Flow, there are 11 active sites. Historically this FMA has had low sea lice levels (remained below the Code of Good Practice (CoGP) suggested criteria), however there has been an increase in the number of farms within this area and there has been an increase in sea lice levels in the most recent production cycle. This rise has been raised by OTFA as part of its objection.

9.5.4.

The applicant has provided the current Sea Lice Management Strategy for their sites in the O-3 Scapa Flow Farm Management Area and a site-specific sea lice efficacy statement. Salmon farms in the FMA do not follow a synchronous fallow period nor the same pattern of stocking but are managed on a single year class basis. A risk assessment is required as set out in the CoGP for the non-synchronous production farms within an FMA; the risk assessment was submitted which was satisfactory to MSS. It is noted that the farms within this FMA have been operating with non-synchronous production.

9.5.5.

Marine Scotland Science advises that scientific evidence from Norway and Ireland indicates a detrimental impact on sea trout and salmon populations from sea lice. Salmon fish farm operations can result in elevated numbers of sea lice in open water and as such has the potential to have an adverse effect on populations of wild salmonids in some circumstances. Information presently available from the west

coast of Scotland suggests lice from fish farming may cause a risk to local salmon and sea trout.

9.5.6.

This information can be used to give an idea of the relative risk to salmon and sea trout, and measures to mitigate, and there are a number of factors:

- The siting of the farm and its ability to effectively control sea lice.
- The greater the number of lice on the farm the greater the risk to wild salmon and sea trout.

9.5.7.

While it is highlighted that although it is not possible to accurately predict the future lice levels on a farm, the performance of existing farms within the area could act as a guide for future performance. This development has the potential to increase the risks to wild salmonids. However, it is noted that the developer is aware of the potential impacts on salmon and sea trout and has indicated that they intend to manage the site as part of the local FMA (0-3). They have undertaken to follow the industry CoGP recommended in regard to sea lice control and containment. MSS suggests that strict control of sea lice should be practiced throughout the year, although it should be noted that may not necessarily prevent release of substantial numbers of lice from aquaculture installations.

9.5.8.

MSS has considered the sea lice management strategy which outlines monitoring and reporting procedures: sea lice counts are conducted weekly from each pen and reported weekly to Marine Scotland in line with mandatory requirements. The applicant has confirmed that although not subject to the same mandatory reporting, the same procedures are followed for Caligus species. Interventions are considered when CoGP suggested criteria are reached and a flow chart is provided illustrating this. Interventions that could be used on site are outlined as:

- Use of stocks with improved resistance.
- Physical barriers (lice shields).
- Biological control with cleaner fish.
- Use of functional feeds.
- Physical control and medicinal control.

9.5.9.

With regard to reactive interventions, MSS advises that the applicant has sufficient resources to deploy physical measures across their sites, and own one hydrolicer and two thermolicers and further treatment vessels are available under contract. Should the application to vary the CAR licence be granted, the site will have chemotherapeutants available to conduct treatments with deltamethrin or azamethiphos in four days in full enclosure by use of tarpaulins or well boat. The applicant proposes to target specific pens at risk and therefore whole site treatments may not be conducted, further reducing time taken to treat, and confirms in the

Efficacy Statement that sufficient workboats and equipment for conducting treatments in 120 metre cages are available to the site. Furthermore, in feed treatment with emamectin, benzoate is also currently available at a level of one treatment at maximum biomass. MSS has considered the details of preventative sea lice management measures and are satisfied the application meets their requirements in terms of prevention, control and reduction of parasites on the site.

9.5.10.

In addition to the sea lice management strategy, the applicant has submitted an Environmental Management Plan (EMP). An EMP ensures that appropriate environmental management practices are adhered to during the construction and operation of the development. Marine Scotland has set minimum requirements for the content of these EMPs and advises the planning authority if they consider that a particular EMP meets these requirements. MS expects that as a minimum EMPs should be able to:

- Report on the level of lice released into the environment (ie both farmed fish and adult female lice numbers).
- Identify the likely area(s) of sea lice dispersal from the farm.
- Detail how and what monitoring data will be collected to assess potential interaction with wild fish.
- Detail how this monitoring information will feed back to management practice.

This plan should also include a regular review process to ensure that it remains fit for purpose.

9.5.11.

MSS has confirmed that they are satisfied with the information which includes the EMP submitted in support of this application. The EIA Report advises that SSF are currently in consultation with Cooke Aquaculture Scotland with regards to the potential development of a joint EMP and associated monitoring strategy for Scapa Flow. It is advised that if this is taken forward, it could replace the existing submitted EMP. If agreed with the Council and MMS, a defined reporting and review process would enable an ongoing ‘adaptive management’ approach where appropriate changes to the EMP and associated farm management measures are informed by an agreed programme of farm and wild fish monitoring.

9.5.12.

OTFA has serious concerns with the industry’s ability to control lice numbers within the existing level of production. Sea lice, previously claimed by the industry to be largely absent from Orkney farms, have increased dramatically in abundance. OTFA has backed up this view with the data showing the increased levels of sea lice on farmed salmon on the existing Toyness site and other sites within Scapa Flow in recent months. OTFA highlights that wild sea trout are widespread throughout Orkney and that nine of Orkney’s 22 known spawning population are located around Scapa Flow. OTFA indicates that within Scapa Flow, ‘the unrestricted growth of the industry over the last few years has seen it become one of the most intensely farmed

area in Scotland' and refer to 'the relatively poorly flushed waters of the Flow parasites and disease should get the opportunity to thrive. Whether the industry can regain control in subsequent production cycles remains to be seen'. The risks on the expansion of fish farms in Scapa Flow has previously been raised by OTFA in relation to previous developments. OTFA identifies that there remains a lack of strategic planning when it comes to aquaculture in Orkney. They advise that there is a need for local policy that protects the environment and wild fish by simply separating aquaculture from vulnerable wild sea trout habitat due to the potential negative effect on nearby sea trout populations due to the risk of the spread of sea lice.

9.5.13.

The objection from OTFA is acknowledged, however, current guidance from the Scottish Government is that EMPs should be used in order to manage and monitor the sea lice threat from farmed salmon to wild salmon. In support of this application, the planning authority received expert advice from Marine Scotland Science on the acceptability of proposed EMPs. SEPA has no objections to the development with neither NatureScot nor MSS also not objecting subject to appropriate conditions to secure necessary safeguards. Taking account of the above, it is considered that the proposal would accord with relevant polices of the Local Development Plan and Supplementary Guidance: Aquaculture.

9.5.14.

The Planning Authority must be satisfied that proposed mitigation would establish a robust control mechanism to ensure sea lice numbers remain low throughout the lifetime of the permission, thereby ensuring that any consent would not conflict with relevant planning policies and biodiversity duties as set out in the Nature Conservation (Scotland) Act 2004. The inclusion of an appropriate, adaptive Environmental Management Plan (EMP), along with the other mitigation proposed, provides sufficient assurance that greater understanding of impacts will be established, as a result of monitoring of wild fish interactions, and that action would be taken should trigger levels on sea lice be reached.

9.5.15.

Although the content of the EMP is broadly welcomed, OTFA although maintaining their objection, suggested the scope of the EMP could be widened by the developer. The EIA Report has undertaken further work to establish if a joint EMP with the other company farming within this FMA can be undertaken to further manage the potential interactions with wild salmonids relevant to operation of salmon farms in Scapa Flow. MSS has confirmed that the review process for the EMP as stated by the applicant would ensure that the EMP remains fit for purpose and relevant. Given that the scope of the EMP could be supplemented and broadened, it is considered reasonable to secure by planning condition that further detail within the EMP be secured.

9.5.16. Containment and risk of escapes

The EIA Report indicates that there has not been an escape event at an SSF

farm in Scapa Flow Farm Management Area since the company took over the farms. An Escape Prevention and Recapture Strategy has been submitted in support of this application. Site specific attestations have also been submitted by the applicant which confirm that the equipment will be suitable for the conditions within the area. MSS has confirmed that these issues are acceptable following a request for further clarification on equipment attestations. Taking account of the above, it is considered that the measures for containment and dealing with the risk of escape is acceptable.

9.5.17.

Whilst generally considered in accordance with minimum requirements, the proposed adaptive EMP proves valuable in monitoring and improving knowledge on wild salmonids interaction from farmed salmon and this could be secured by planning condition. The proposed development is therefore considered acceptable in relation to relevant policy considerations and criterion DC4 of Supplementary Guidance: Aquaculture.

9.6. Landscape and Visual Impact

9.6.1.

A Seascape, Landscape and Visual Impact Assessment (SLVIA) accompanied by a number of visualisations was submitted as part of the EIAR which identifies the visual impacts of the development. Landscape/Seascape impact assessment considers potential changes to the character of the landscape which can include both physical alterations to the landscape or coastal edge. The potential seascape/ landscape visual impacts consider the changes associated with the repositioning, reconfiguration and expansion of the present Toyness fish farm; a key to the consideration is therefore the magnitude of change. The changes to the fish farm would result in a larger surface area covered by cages and increase in cage numbers from 10 to 12, together with a change in top nets to ones which are higher than those presently used, and also a larger capacity feed barge.

9.6.2.

‘Orkney landscape capacity study for aquaculture: Scapa Flow and Wide Firth’ (2011), commissioned by SNH, shows the existing and proposed Toyness fish farm located with the Orphir Coastal Character Area. A coastal path runs along this largely undeveloped area of coastline immediate adjacent to the fish farm. The SLVIA identifies that there will be a limited significant adverse effect from the closest residential properties and the path. Although there will be adverse localised impacts from the footpath and the nearby residential properties, it is not considered within the SLVIA to have an overall significant effect. Given the presence of an existing fish farm, it is considered that the incremental change would be relatively small from the majority of the representative viewpoints in the area.

9.6.3.

Objections have been received from the owners of two nearby properties citing the development as being visually intrusive, the overall impact will not integrate into the local seascape and will dominate the local seascape amenity of the area. Concerns and questions are raised by an objector on the findings of the SLVIA.

9.6.4.

Landscape and visual impacts of the proposed fish farm during the hours of darkness must also be assessed. The artificial sources of light include the navigational lighting to be installed on the fish farm for navigational safety. There would also be underwater maturation lights fitted to each cage. These would only be in use during the winter months of December to April when required. The effects of maturation lighting associated with the proposed farm would be localised, given that the submerged artificial lights are mainly confined to the cage structures. Given the experience of maturation lighting on fish farms to date, this matter is not considered to have a significantly adverse effect from a visual perspective.

9.6.5.

There have been adverse visual effects identified on landscape, residential properties and the footpaths, but these are limited in extent. Visually, it is considered that the development would be partly perceived as a repositioning and enlargement of an existing fish farm rather than the introduction of a new fish farm feature in the seascape, although the proposed pole and top net system would be more visible compared to the existing style of low support top nets. In terms of Development Criterion 1 of Supplementary Guidance: Aquaculture, it is considered that the proposal does not individually or cumulatively dominate its setting or become the main feature within Scapa Flow. The magnitude of landscape or visual change that would occur in the context of the landscape/seascape would not warrant refusal. The application is therefore considered to accord with Policies 9 and 12 of OLDP 2017, and Supplementary Guidance: Aquaculture, Criteria DC1 and DC9.

9.7. Socio Economic Impact

9.7.1.

The proposed development is a replacement for the existing Toyness fish farm site and is expected to continue with the same staffing levels on the proposed site; there is indication of indirect employment opportunities in the form of support, processing staff and indirect supply chain benefits being increased.

9.7.2.

Given the extent of change to the area occupied by the development, no significant loss of physical recreation area is considered to result. The proposed development is therefore considered to have limited impacts on the perceived enjoyment or use of the area in relation to recreation and/or amenity. The EIA Report concludes no likely significant effects on recreation or tourism are anticipated.

9.7.3.

With regards to impacts in terms of commercial fishing, the EIA Report identifies that there will be a loss of access to fishing grounds due to the expanded mooring containment area. However, it is anticipated within the EIAR that ‘the activities of a low number of fishing vessels comparable to the port district fleet would only be partially impacted if the proposed sites were to be developed suggesting that the developments are unlikely to have a significant adverse impact on commercial fishery in the district as a whole. Considering the fishing grounds available within the

region, any degree of change and potential economic effects as a result of the proposals are likely to be localised and of a low magnitude'. However, the EIAR concludes that, with mitigation, there would be no likely significant effects anticipated.

9.7.4.

The Scottish Government's National Marine Plan and Scottish Planning Policy together recognise the contribution of the aquaculture sector to the rural economy and seek to support sustainable economic development. The National Marine Plan and Scottish Planning Policy both support the expansion of marine fish farming where it can take place in environmentally sustainable locations, where it does not exceed the carrying capacity of the water body within which it is to be located and where it does not give rise to significant adverse effects upon nature conservation, wild fish, historic environment or other commercial or recreational water users.

9.7.5.

Significant adverse effects to socio-economic and recreational receptors are not anticipated. The EIAR does not identify any significant impacts on commercial fishing or recreation. An objector raises concern regarding the impact on tourism through impacts on the quality of the landscape. In considering the competing socio-economic impacts, the benefits created by the development locally and nationally are considered to outweigh any impact caused by change to the area.

9.8. Noise pollution

9.8.1.

The development would have minimal noise producing operations and practices and these would normally be confined to daily working hours. The proposed site does move the fish farm as a whole slightly closer to residential properties including the distance from the feed barge being reduced. However, the feed barge, which is the closest element, is just over 500 metres from the nearest residential property. The EIAR notes that "the residual risk of impact relating to noise emissions is considered negligible and unlikely to result in any significant effect". No counter view to this conclusion has been asserted by consultation bodies or third parties and no record of noise complaint is noted in relation to the existing site. During construction and activities such as harvesting and fish movements, noise producing activities may occur outwith standard hours; however, these are likely to be very occasional. It is considered that the noise associated with the activities of the fish farm would not be significant.

9.8.2.

With regard to noise, the EIAR notes that as the proposed development involves the relocation and expansion of an existing site, the additional contribution in terms of noise exposure is not expected to be significant as the proposal does not involve any additional noise sources. Main sources of noise at the existing site are from vessel activity and the operation of machinery on the feed barge. Vessel activity associated with the existing operations, and the proposal, include work boat movements for staff transfer and occasional larger vessels (deliveries to and collections from the feed

barge and well boats for stocking, harvest, or treatment). Noise sources on vessels include boat engines, hydraulic power-packs associated machinery, on board pumps on well boats, and other equipment. Effects of noise from vessel activity are however transient and variable in nature and therefore not anticipated to result in nuisance noise.

9.8.3.

The primary fixed source of noise is the operation of machinery on the feed barge. This will include cranes, generators and associated hydraulic systems, all of which sound like diesel engines. Noise on the feed barge will also occur due to feeding operations, with feed blowers on the barge introducing a background noise of a fan, comparable to a large air conditioning unit. The feed passing down pipes will manifest as an audible rattle, the degree of audibility varying with feeding depth. Feed selectors that serve to connect the feed outflow from the barge to the appropriate delivery pipe may introduce an occasional metallic thump (impulse) to the sound from the site. Although there will be a change in feed barge, the primary change will be the feed storage capacity; the barge will use the same potential noise sources, therefore it is advised there is not expected to be any significant change in noise levels compared with the existing operation. In addition, it is advised that the use of newer technology, and with the noise sources being housed in internal or enclosed compartments, will act as acoustic enclosures reducing noise levels.

9.8.4.

The EIA Report advises that the developer is committed to ensuring that every effort is made to keep operations as unobtrusive as possible by the use of noise insulation on relevant equipment and by restricting and adjusting hours of construction and operational activity as far as is practicable to limit the potential for nuisance. Construction activities will be temporary (for a period of up to six weeks) and will be limited to daylight hours. All noise on site normally ceases during the period between 18:00 and 06:00. Generally, noise is intermittent and confined to the working hours of the site and is unlikely to be a nuisance to sensitive receptors along the coast taking into consideration background noise and noise levels from existing operations. The EIA Report concludes no likely significant effects are anticipated.

9.8.5.

Environmental Health indicates within its consultation response that there is a potential of noise disturbance from the development from its operation and from activities associated with this and has recommended conditions be attached to protect the amenity at noise sensitive premises. With the inclusion of the conditions, the proposal is considered acceptable in terms of Policy 1 of OLDP 2017 and Criterion DC9 of Supplementary Guidance: Aquaculture.

9.9. Cultural Heritage and Historic Environment

This matter has been assessed within the EIAR identifying that Scapa Flow is one of the largest natural harbours in the world and is a nationally important historic site and highlighting the WWI and WWII shipwrecks. The nearest wreck is located approximately 700 metres from the site, with the nearest protected wrecks located 1.8 kilometres from the site to the southwest. The fish farm site was reconfigured to

avoid direct contact with the SMS Bremse salvage site, which forms part of the proposed Scapa Flow Historic Marine Protected Area. Although the north east corner of the moorings extent is still directly adjacent to the proposed HMPA buffer, HES is content that with the mitigation identified in the EIA Report there will be no direct impacts on the site of the proposed HMPA or significant impacts on the site or setting of any of the historic environment interests. Therefore, the proposal is considered acceptable in terms of Policy 8 of OLDP 2017, and Criterion DC6 of Supplementary Guidance: Aquaculture.

9.10. Roads and Transportation

9.10.1.

The site is serviced daily from Houton and there is not expected to be any increase in staffing levels on the site due to this proposal. Therefore, no planned changes or increases are anticipated to the daily operational use of pier facilities beyond those required for the operation of the existing site. Harvested fish would be landed at Scalloway, Shetland, to the operator's processing plant.

9.10.2.

Decommissioning of the site will involve some additional impacts on the road network, however this is a one-off process of dismantling the existing pens at Burray boatyard. HGV traffic to and from the boatyard associated with removal of the dismantled components is expected to be approximately ten trips. Roads Services have requested that a condition/dilapidation survey is carried out jointly with the developer and Roads Services to assess the impact on the existing public road infrastructure. The applicant would be responsible for funding this survey and the cost of repairs should any damage to the public road be attributed to this development. A condition to this effect could be added to this proposal if consented. Therefore, the proposal is considered acceptable in terms of Policy 13 of OLDP 2017 and Criterion DC7 of Supplementary Guidance: Aquaculture.

9.11. Waste Management

A combined waste management plan has been provided for both Toyness and Bring Head, as subject to separate application. The plan details wastes arising, collection methodology, waste disposal contractor and the frequency of disposal. The waste management plan has been considered as a component of the submitted EIA Report with no significant comment provided by consultees as to any deficiencies arising, noting that mortalities and moribunds arising are ultimately processed by Pelagia in Shetland.

10. Conclusion and Recommendation

10.1.

The Orkney Local Development Plan 2017 supports finfish development where it can be demonstrated, "with regard to SG and through appropriate mitigation where necessary, that there will not be unacceptable effects, directly, indirectly or cumulatively". Supplementary Guidance: Aquaculture, Spatial Policy 1, sets out the

spatial sensitivities that have potential to be affected by aquaculture developments, as well as the ten development criteria that all aquaculture development will be assessed against. In addition, the National Marine Plan supports sustainable growth of aquaculture, subject to the proposal complying with the relevant policies of the NMP and the 14 Policies which relate specifically to Aquaculture.

10.2.

In relation to the findings and outcomes of the Environment, Climate Change and Land Reform (ECCLR) Committee and Rural Economy and Connectivity Committee report, MSS and SEPA have made recommendations and actions relevant to their statutory remits. The inclusion of an Environmental Management Plan is welcomed in relation to planning function, including the understanding of interaction of this type of development and wild salmonids. NatureScot has provided clear advice on the impacts on natural heritage and concludes that the proposed development is acceptable, subject to the mitigation proposed.

10.3.

SEPA considers matters in relation to the receiving environment through The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR). MSS considers environmental impacts and aquaculture animal health and, in common with NatureScot, and SEPA has not raised any matters that have not been addressed within the submission or are otherwise ordinarily controlled by planning condition, whilst noting the requirement for an agreed and appropriate EMP.

10.4.

The proposed location is considered suitable from an aquaculture perspective. The Council's Habitats Regulations Appraisal and appropriate assessment support the conclusion that the proposal would not have an adverse effect on the integrity of any sites of international or national importance for their habitats or species. The recommendation on this application has been guided by the conclusions of the EIAR and the proposal has been assessed against the policies of the Orkney Local Development Plan 2017 and Supplementary Guidance: Aquaculture, as well as other material considerations and policies within the Local Development Plan.

10.5.

The support of the Orkney Local Development Plan 2017 and National Marine Plan for sustainable growth of aquaculture in principle is a material consideration of significant weight in support of this application. The proposed development is acceptable subject to mitigation and would comply with Policies 1, 2, 4, 8, 9, 12 and 14 of the Orkney Local Development Plan 2017, Supplementary Guidance: Aquaculture and the aims of the National Marine Plan. It is considered that the objections do not carry sufficient weight to justify refusal of the application. Accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 3 to this report.

11. Contact Officer

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12. Appendices

Appendix 1: Habitats Regulations Appraisal.

Appendix 2: Location Plan.

Appendix 3: Planning Conditions.

Appendix 1

Create salmon farming site comprising of 12 x 120 metre circumference circular cages arranged in a 2 x 6 formation in an 80-metre mooring grid, with pole mounted top nets, underwater lighting, and 420 tonne capacity semi-automated feed barge (replacement of existing equipment) at Toyness Fish Farm, Orphir, Scapa Flow, Orkney.

Planning Reference: 21/410/MAR.

Consideration of Proposals affecting European Sites

The proposal also lies within Scapa Flow proposed SPA (SPA). The requirements of The Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") or, for reserved matters, The Conservation of Habitats and Species Regulations 2017 therefore apply.

This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is that it is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated. The need for appropriate assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- Determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- Determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- Make an appropriate assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case, and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required.

Appraisal

Natura interests – Scapa Flow SPA.

The proposal lies within Scapa Flow SPA classified for its aggregations of breeding Red-throated diver and aggregations of non-breeding wintering waterfowl, including Black-throated diver, Eider, Goldeneye, Great northern diver, long-tailed duck, Red-breasted merganser, Shag and Slavonian grebe. In its response to the Council, NatureScot has provided an appraisal of the impact that the proposal is likely to have on the Scapa Flow SPA and other impacted SPA's.

The Conservation Objectives* for Scapa Flow SPA are noted as follows;

1. To ensure that the qualifying features of the Scapa Flow SPA are in favourable condition and make an appropriate contribution to achieving Favourable Conservation Status.
2. To ensure that the integrity of the Scapa Flow SPA is maintained in the context of environmental changes by meeting objectives 2a, 2b and 2c for each qualifying feature:
2a. The populations of qualifying features are viable components of the site.
2b. The distribution of the qualifying features is maintained throughout the site by avoiding significant disturbance of the species.
2c. The supporting habitats and processes relevant to qualifying features and their prey/food resources are maintained.

Qualifying Interest:

- Great northern diver (Gavia immer)
- Red-throated diver (Gavia stellata)
- Black-throated diver (Gavia arctica)
- Slavonian grebe (Podiceps auritus)
- European shag (Gulosus aristotelis)
- Common eider (Somateria mollissima mollissima)
- Long-tailed duck (Clangula hyemalis)
- Red-breasted merganser (Mergus serrator)

The Scapa Flow Special Protection Area (SPA) qualifies under Article 4.1 by regularly supporting a non-breeding population of European importance of the following Annex 1 species: great northern diver Gavia immer (a mean peak annual non-breeding population of 506 birds (20.2% of the GB population) for the years 1998/99-2006/7), black-throated diver Gavia arctica (a mean peak annual nonbreeding population of 57 birds (9.5% of the GB population) for the years 1998/99- 2006/7) and Slavonian grebe Podiceps auritus (a mean peak annual non-breeding population of 135 birds (12.3% of the GB population) for the years 1998/99-2006/7).

The site also qualifies under Article 4.1 by regularly supporting a population of European importance of the following Annex 1 species during the breeding season: red-throated diver Gavia stellata (up to 81 pairs (7.6% of the GB population) in 2006).

The site further qualifies under Article 4.2 by regularly supporting populations of European importance of the following migratory species: common eider Somateria mollissima (a mean peak annual non-breeding population of 1994 birds (3.3% of the GB population) for the years of 1998/99 to 2006/07), long-tailed duck Clangula hyemalis (a mean peak annual non-breeding population of 1,393 birds (12.7% of the GB population) for the years of 1998/99 to 2006/07), common goldeneye Bucephala clangula (a mean peak annual non-breeding population of 219 birds (1.1% of the GB population) for the years 1998/99 to 2006/07), red-breasted merganser Mergus serrator (a mean peak annual non-breeding population of 539 birds (6.4% of the GB population) for the years of 1998/99 to 2006/07), and European shag Phalacrocorax aristotelis (a mean peak annual non-breeding population of 2929 birds (1.5% of the biogeographic population) for the years of 1998/99 to 2006/07).

*The Conservation Objectives for Scapa Flow are currently in draft form. NatureScot has advised that these draft high-level Conservation Objectives should be used for Habitats Regulations Appraisals of plans or projects.

Appropriate Assessment

While the responsibility to carry out the Appropriate Assessment rests with the Council, advice contained within Circular 6/1995 is that the assessment can be based on the information submitted from other agencies. In this case, the Appropriate Assessment is informed by information supplied by NatureScot. It is also acknowledged that the developer has provided dedicated information to inform the HRA process for the application under consideration which is welcomed and has been considered together with all other relevant information as submitted.

In the view of NatureScot the proposal is likely to have a significant effect on the wintering waterfowl and breeding Red-throated diver of the Scapa Flow Special Protection Area (SPA). Consequently, Orkney Islands Council, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest(s).

It should be noted that the Scapa Flow SPA at the time of the application and the EIA Report was a proposed SPA (pSPA) however on the 16th Feb 2022 the designated was confirmed as a SPA. However, the Scottish Government has a policy of protecting proposed SPAs as if they were classified. Consequently, the Scapa Flow SPA has been considered throughout the planning process as if it was classified.

Based on the information provided, if the proposal is undertaken strictly in accordance with the details submitted including the mitigation measures will not adversely affect the integrity of the site.

The proposal is assessed against the conservation objectives of the Scapa Flow pSPA.

Conservation objective;

Avoid significant mortality, injury and disturbance of the qualifying features, so that the distribution of the species and ability to use the site are maintained in the long-term. The following impacts have been considered;

Direct displacement (including cumulative displacement) of waterfowl from the Scapa Flow pSPA;

Any significant, including cumulative, displacement of the qualifying interests of the Scapa Flow pSPA, in particular from favoured foraging areas, would be of potential concern. The proposal, equates to a c.1.3 to 2 times expansion relative to the existing mooring areas, which is substantial at a site level. However, the actual area affected (up to 0.2km2) is small in relation to the overall area of the Scapa Flow pSPA (371km2) (SNH, 2016) and also, the direction of expansion is into deeper waters, of between 20m and over 30m depth.

Breeding Red-throated diver and non-breeding Black-throated diver, Goldeneye, Red-breasted merganser and Slavonian grebe typically forage in shallower waters. Eider and long-tailed duck can feed in deeper waters, but appear to be attracted to finfish farms rather than displaced by them. Great northern divers may also forage at depth, but the wintering population is largely concentrated in the centre of Scapa Flow. In addition, the overall distributions of these species, as indicated by the surveys underpinning site selection (SNH, 2016) and by a subsequent survey in winter 2017/18 (Jackson, 2018), do not indicate the location as of critical importance to maintaining populations of these qualifying interests.

The available evidence therefore suggests that potential displacement, including cumulative displacement, is not a major concern with respect to this proposal.

Mortality/injury through entanglement/entrapment risks associated with pole-mounted top nets;

The proposed adoption of pole-mounted top nets increases potential entanglement or entrapment risk to a range of bird species, most notably: gannets from one or more SPAs and European shags from the Scapa Flow pSPA.

The proposed 100mm mesh size for ceiling nets should theoretically reduce the risk to gannets though the 75mm mesh side panels may still pose entanglement risk to the European shag.

To minimise the potential risk of bird entanglement/entrapment, the following monitoring, reporting and adaptive management measures will be implemented by SSF;

- Maintain daily records of wildlife entanglement/entrapment using a standardised proforma provided by NatureScot and submit six-monthly returns to Orkney Islands Council, copied to NatureScot.
- Immediate notification to both Orkney Islands Council, and NatureScot in the event of any significant entrapment or entanglement of gannets. Significant entrapment is defined as involving three or more birds of any named species on

any one day and/or a total of ten or more birds in the space of any seven day period and/or repeat incidents involving one or more birds on four or more consecutive days; and

- Adaptive management approaches will be agreed between Orkney Islands Council, and Scottish Sea Farms in consultation with NatureScot, such measures may include:
    - Review of entanglement records and if bird entanglements occur then consider appropriate alterations to the top net design including changes in mesh size, net colour and marking the top nets to make them more visible to birds; and
    - If bird entanglement continues despite alterations, top net design could be changed to the traditional 'hamster wheel' system.

Potential disturbance during the decommissioning of existing site, construction and decommissioning of expanded site;

Installation

Vessel movements during mooring installation activities associated with the Toyness expansion site will involve one return trip per day between the site and either Stromness or Houton to transport materials to the site, with mooring installation activities anticipated to be completed within 3 - 7 days. Although these vessel movements would pass through areas of importance to foraging red-throated divers during the breeding season, the vessel transit route would be the same as that used for the existing operational movements for Toyness Fish Farm. The frequency of vessel activity during mooring installation would be similar to the current daily operational vessel movements already experienced at the existing Toyness Fish Farm, with one return trip per day by the site maintenance vessel.

Decommissioning

During decommissioning activities, the site maintenance vessel will adhere to a specified vessel transit route that avoids key areas used by foraging red-throated divers when moving between the site and Burray boatyard.

Any disturbance from vessel traffic during decommissioning and construction activities would be temporary, of short duration and transient with no lasting effects anticipated from this low level of daily vessel movements.

Mitigation

The following mitigation measures will be implemented to minimise disturbance to red-throated divers during the breeding season from vessel activities during decommissioning and construction activities;

- Adherence to a specified vessel transit route during decommissioning activities that avoids key foraging areas for red-throated diver.
- Adherence to a specified vessel transit route during cage installation activities that avoids key foraging areas for red-throated diver.

- All vessels will adhere to the Scottish Marine Wildlife Watching Code (SMWWC) (within practical feasibility) when passing within the vicinity of red-throated divers.

Disturbance from vessels during operation phase of proposal;

The applicant states that there is to be no change from the existing route and therefore no additional impact from this activity.

Conservation objective; to maintain the habitats and food resources of the qualifying features in favourable condition.

Potential risk of loss of or damage to prey-supporting habitats as a consequence of deposit of organic materials or export of chemicals from the farm site associated with the increase in production biomass. The location of the proposed extension to the existing fish farm at Toyness in relation to distributions and foraging depths of the qualifying marine bird features of the Scapa Flow pSPA means that benthic impacts associated with deposition of organic materials or chemicals in the vicinity of the site are unlikely to significantly impact critical benthic foraging habitats.

However, if there were substantial export and deposition of materials from the immediate area there could be potential for cumulative or in-combination impacts at more sensitive locations within the Scapa Flow pSPA. The results from the NewDEPOMOD modelling in the Environmental Report are reported as there will "be a minimal degree of export (25.56 %) with no areas of significant solids deposition expected to occur outwith the Mixing Zone" This indicates that beyond the immediate vicinity of the farm risk of damage to benthic habitats arising from deposition of organic materials from the site is low. Given this, and the fish farm's relative isolation from others operating in Scapa Flow (as illustrated by Figure 7.7 in the ER), we support the applicant's conclusion of "no adverse effects on-site integrity as a result of cumulative and in-combination effects due to loss or damage to supporting habitats" with respect to the proposed extension of the Toyness proposal.

References;

Jackson, D. 2018. Scapa Flow proposed Special Protection Area (pSPA) – inshore wintering waterfowl survey 2017/18. Scottish Natural Heritage Research Report No. 1075.

https://www.nature.scot/snh-research-report-1075-scapa-flow-proposed-special-protection-area-pspa-inshore-wintering

SNH (2016). Scapa Flow Proposed Special Protection Area (pSPA) NO. UK9020321 SPA Site Selection Document: Summary of the scientific case for site selection

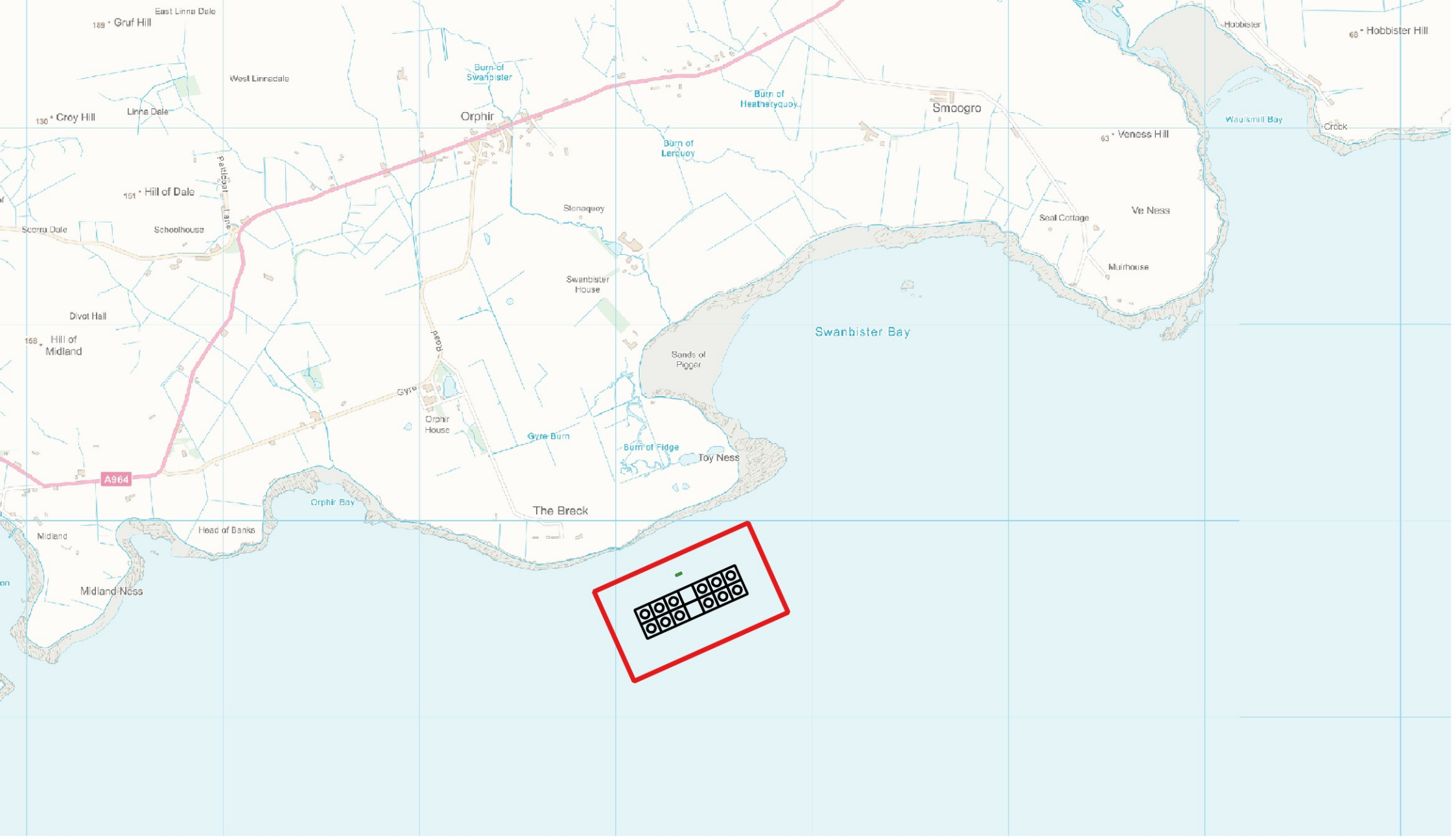
https://www.nature.scot/sites/default/files/2017-12/Marine%20Protected%20Area%20%28Proposed%29%20-%20Site%20selection%20document%20%20-%20Scapa%20Flow.pd

Wider matters including consideration of Priority Marine Features (PMF) and European Protected Species (EPS) have also been considered, noting that no PMFs species of significance identified in the area of the proposal, whilst the potential use of Acoustic Deterrent Devices (ADDs) is noted and may be subject to further

consideration through potential EPS licensing and appropriate planning condition. The licensed shooting of seals is discounted as this is now illegal in relation to the proposed development.

Conclusion

Whilst it is concluded that there are likely significant effects on some features of the Scapa Flow SPA were the development to proceed on the basis of the identified mitigation as detailed in the supporting EIAR and appendices therein coupled with appropriate additional safeguards through the application and adherence to appropriate planning condition(s) it can be concluded that there would be no adverse effect on site integrity.



Toyness, Scapa Flow, Orkney
Location Plan

Key

Cage Grid

Feed Barge

Mooring Extent

Scale 1:25,000 @A4

0 1 2 km

Scottish Sea Farms

Appendix 3.

01. No other development shall commence until an adaptive site specific Environmental Management Plan (EMP) for monitoring and managing the interactions between the operation of the farm and the wild fish environment within Scapa Flow is submitted to, and agreed in writing by, the Planning Authority in consultation with Marine Scotland Science and NatureScot. The EMP shall include the following information but not be limited to:

- Details of the monitoring scheme which shall report on the level of lice released into the environment to include both farmed fish numbers and adult female lice numbers.
- Identification of the likely area(s) of sea lice dispersal from the fish farm.
- Details of how and what monitoring will be collected to assess potential interaction with wild fish.
- Details on how this monitoring information will feed back to management practice.
- Detail of a regular review process to ensure that the EMP remains fit for purpose.
- Details of any changes proposed as a result of any collaboration with other fish farms operated with FMA 03.

Thereafter, the site shall be operated, monitored and managed thereafter in accordance with the duly approved EMP, or any subsequently approved variation thereof.

Reason: In the interests of conservation of wild salmonids.

Note: the applicant will require to obtain necessary permissions for the collection of wild salmonids

02. The adaptive EMP as required by condition 01 shall include a strategy for wildlife entanglement/entrapment management to monitoring and reporting, which shall be subject to the same agreement in writing by the Planning Authority, in consultation with NatureScot. All agreed measures within this strategy shall be implemented no later than the date of installation of the pole mounted top nets. This strategy shall include, but not be limited to the following measures:

- Maintaining daily records of wildlife entanglement/entrapment using a standardised format and submitting six-monthly returns to the Planning Authority copied to NatureScot.
- Immediate notification to both the Planning Authority and NatureScot in the event of any significant entrapment or entanglement incidents (e.g., involving three or more birds of any named species on any one day and/or a total of ten or more birds in the space of any seven-day period and/or or repeat incidents involving one or more birds on four or more consecutive days). Monitoring and reporting of entanglement/entrapment data will help to develop a robust evidence base which can be used to improve understanding of the nature and extent of bird interactions with pole-mounted top nets.
- Details of future adaptive management to account for modifications to equipment to reduce or eliminate wildlife entanglement/entrapment, such as alteration of the

top net design, net type or mesh size and the triggers, thresholds and timescales for actions arising to be achieved together with the data management and recording associated with such actions.

Reason: In the interests of protecting shags, gannets and other aerial diving birds from entanglement in the nets and to limit impacts to the natural environment.

03. No development shall commence until details of cage top nets to be installed at this site, including mesh size and colour, are submitted to, and approved in writing by, the Planning Authority, in consultation with NatureScot. Thereafter, the development shall be carried out in accordance with those agreed details.

Reason: To ensure that birds do not become entangled in such nets and for the avoidance of doubt.

04. At all times when equipment is on site, the following navigational marks shall be provided:

- The site should be marked with 2 lit yellow poles fitted with yellow 'X' topmarks.
- The lights should display a character of flash one yellow every five seconds (Fl Y 5s) with a nominal range of 2 nautical miles and be installed above the 'X' topmark.
- The poles should be positioned at the South and East seaward corners of the cage group.
- Each light should be 1 metre above the site equipment handrails and installed to be clearly seen by vessels approaching from all navigable directions.
- Poles should be ≥75mm diameter, the 'X' topmark should be ≥75cm length by 15cm width.
- The feed barge should exhibit an all-round fixed white light with a nominal range of 2 nautical miles from a point at least 1 metre above any other obstruction.

In addition:

- A weekly check of the site's marking equipment shall be performed and records kept of its physical and working status for audit purposes.
- Outlying anchor points should not be marked with buoys, unless specifically requested by local users, and alternative means to locate anchors should be utilised.
- Loose floating lines around site equipment are strongly discouraged as this can cause serious safety implications for other mariners.
- On completion of the development the UK Hydrographic Office (sdr@ukho.gov.uk) must be notified and supplied with the mooring grid co-ordinates in order that the appropriate chart can be revised accordingly.

Reason: In the interests of navigational safety.

05. All lighting above the water surface and not required for safe navigation or security purposes, should be directed downwards by shielding and be extinguished when not required for the purpose for which it is installed on the site. The maturing lights on site shall only be used between 1 December and 31 March each year, unless otherwise agreed, in writing, with the Planning Authority.

Reason: In the interest of visual amenity.

06. If lighting is required for security purposes on site, only infra-red lights and cameras shall be used, unless otherwise agreed, in writing, in advance of installation by the Planning Authority.

Reason: To avoid unnecessary lighting in the interests of visual amenity and to limit impacts to the natural environment.

07. The finished surface of all equipment above the water surface, including surface floats and buoys associated with the development, but excluding those required to comply with navigational requirements, shall be non-reflective and finished in black or a dark muted grey (except for the feed barge controlled by condition 09), unless otherwise agreed, in writing, by the Planning Authority.

Reason: To minimise the visual impact of the development.

08. All equipment and associated moorings hereby approved shall be wholly contained within the area identified within the Location Plan (OIC-01) attached to and forming part of this decision notice which confirms the mooring containment area, cage grid, site centre and barge. On first installation, the position of the corners of the cage group, corner anchors of the development and the location of the feed barge shall be recorded using Global Positioning System. These positions should be re-measured and recorded regularly, at least once every six months, and immediately following storm events. A record of all positional information must be maintained and made available on request to the Planning Authority.

Reason: To prevent the equipment moving beyond the location approved by this planning permission and to ensure the safety of maritime traffic.

09. Prior to the feed barge being brought onto site, details of the colours the feed barge shall be painted shall be submitted to, and agreed in writing by, the Planning Authority. Thereafter the barge shall be installed and retained throughout the lifetime of the development in accordance with agreed details, unless otherwise agreed, in writing, with the Planning Authority.

Reason: In the interest of visual amenity.

10. Upon the first use of the development hereby approved and thereafter, the maximum stocked biomass of the Toyness fish farm shall not exceed 2,500 tonnes, with a maximum production biomass per cycle not exceeding 3,750 tonnes.

Reason: To ensure that the development is operated in accordance with the parameters as applied for and in the interests of the marine environment, to ensure that no unacceptable burden is placed on existing infrastructure.

11. The development shall be constructed, implemented and managed in accordance with the following documents, all forming part of the Environmental Impact Assessment Report:

- Predator Exclusion Plan.
- Escapes Prevention and Contingency Strategy.

- Containment Plan.
- Emergency Plan for Storms.
- Waste Management Plan Marine Production Toyness/ Bring Head.
- Non-native Species Biosecurity Plan.
- Salmon Husbandry Manual
- Sea Lice Management Strategy – Scapa Flow, Orkney.
- Sea Lice Efficacy Statement.
- Sea Lice Attestation.

The development shall thereafter be operated and maintained in accordance with these documents throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.

For the avoidance of doubt all modifications, amendments or revocations of these Policies and Plans shall be submitted to, and agreed in writing by, the Planning Authority in advance of any such changes occurring on site.

Reason: To safeguard the natural heritage and biodiversity interests in the area and to protect the health of wild fish.

12. If any use of Acoustic Deterrent Devices (ADDs) is proposed at this site, prior consultation shall be carried out with the Planning Authority. This consultation shall include the submission of information regarding the specifics of the ADD system and any mitigation measures to be implemented on site. The Planning Authority, in consultation with NatureScot, will review the information supplied to determine the significance of any issues affecting natural heritage interests which may arise due to the ADD deployment at this site. Written guidance through site protocols and ADD usage shall be agreed, in writing, by the Planning Authority. The use of ADDs shall be carried out only in accordance with approved details.

For the avoidance of doubt this planning condition has no bearing on whether additional licence requirements require to be addressed for the deployment of ADDs, such as European Protected Species licensing, which is considered under separate legislation.

Reason: To protect internationally and nationally important natural heritage interests.

13. Static gill nets should not be deployed at this site, unless otherwise agreed, in writing, by the Planning Authority in conjunction with NatureScot.

Reason: To reduce the chance of entanglement of wildlife.

14. In the event of equipment falling into disrepair or becoming damaged, adrift, stranded, abandoned or sunk in such a manner as to cause an obstruction or danger to navigation, the developer shall carry out, or make suitable arrangements for the carrying out of, all measures necessary for lighting, buoying, raising, repairing, moving or destroying the whole or any part of the equipment, as agreed, in writing, by the Planning Authority.

Reason: To ensure that the development does not cause a danger to other users of the area.

15. Not less than three months prior to cessation of use of the site for fish farming, a scheme for the decommissioning and removal of all equipment shall be submitted to, and agreed in writing by, the Planning Authority. Upon cessation the approved scheme shall be implemented within an agreed timescale.

Reason: To ensure that decommissioning of the site takes place in an orderly manner and to ensure proper storage and disposal of redundant equipment in the interest of amenity and navigational safety.

16. In the event that the fish cages or associated equipment approved by this permission cease to be in operational use for the growing of finfish for a period exceeding three years, those cages and associated equipment shall be wholly removed, and the site restored to the satisfaction of the Planning Authority, within four months of being notified by the Planning Authority.

Reason: To ensure the development is removed, in full, from the site once operational use has ceased ensuring the development will not adversely affect the area.

17. In the event that HGV movements within Burray are required in relation to construction of infrastructure, and/or waste management or decommissioning works relating to redundant infrastructure, a condition / dilapidation survey shall be carried out jointly between the developer / developer's representative and Roads Services, prior to any such HGV movements occurring and again upon completion of the above stated works, on the existing public road infrastructure that will be used to access and egress the Burray Boatyard site. The applicant shall be responsible for funding the condition / dilapidation survey and the cost of any repairs following any damage to the public road which is attributed to this development which may have been caused by vehicles or plant related to the development. Any works identified to be carried out shall be carried out to the satisfaction of the Planning Authority, in conjunction with Roads Services, within three months of completion of works. The developer will also be responsible for maintaining any damage caused to the public road in such a manner that the roads always remain safe for other road users and until permanent repair works are agreed and carried out.

Reason: In the interest of road safety.

18. The "Rating Noise Level" generated by the development and associated operations, including sea going vessels, when measured at any noise sensitive dwelling in accordance with the requirements of 8S4142: 1997 -"Method for rating industrial noise affecting mixed residential and industrial areas", shall not exceed the background noise level by five or more decibels.

It is assumed that the "Rating Noise Level" includes an acoustic feature correction of five decibels.

Reason: In the interest of residential amenity

19. Should any complaints be received in respect of noise levels, the developer shall fully investigate these complaints and, to establish noise levels at any affected property, shall undertake noise monitoring which shall be carried out by a suitably

qualified noise expert or consultant previously agreed in writing by the Planning Authority and which shall be carried out in accordance with 8S4142: 1997 -"Method for rating industrial noise affecting mixed residential and industrial areas".

Reason: In the interest of residential amenity

20. Should any noise monitoring undertaken in accordance with condition 19 above demonstrate that the noise thresholds in condition 18 are being exceeded, the developer shall submit a scheme of mitigating measures to the Planning Authority for written agreement within three months of the breach being identified. The agreed mitigating measures shall be implemented within three months of the written agreement or within any alternative timescale agreed in writing by the Planning Authority and thereafter retained throughout the life of the development unless otherwise agreed in writing by the Planning Authority.

Reason: In the interest of residential amenity

Informatives

01. The Aquatic Animal Health (Scotland) Regulations 2009 requires the authorisation of all Aquaculture Production Businesses (APBs) in relation to animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals. The authorisation procedure is undertaken on behalf of the Scottish Ministers by the Fish Health Inspectorate (FHI) at Marine Scotland Marine Laboratory. To apply for authorisation for an APB or to amend details of an existing APB or any site that an APB is authorised to operate at, you are advised to contact the FHI as follows: Fish Health Inspectorate, Marine Scotland Marine Laboratory, 375 Victoria Road, Aberdeen, AB11 9DB. Tel: 0131 244 3498; Email: ms.fishhealth@gov.scot

02. All marine farms, whether finfish, shellfish or algal, are required to apply for a marine licence under Part 4 of the Marine (Scotland) Act 2010. To apply for a marine licence, or to amend details of an existing marine licence (formally Coast Protection Act 1949 – Section 34 consent), please visit the Scottish Government's website at http://www.gov.scot/Topics/marine/Licensing/marine/Applications where application forms and guidance can be found. Alternatively you can contact the Marine Scotland Licensing Operations Team (MS-LOT) by emailing MS.MarineLicensing@gov.scot or calling 0300 244 5046.

03. It is an offence under Section 56 of the Roads (Scotland) Act 1984 to carry out any excavations within the boundary of the public road without written permission of the Roads Authority. Therefore, one or more separate consents will be required from the Council's Roads Services to carry out any works within the road boundary, prior to any works commencing. These consents may require additional work and/or introduce additional specifications. You are therefore advised to contact Roads Services for further advice as early as possible. Any damage caused to the existing road infrastructure during construction of the development shall be repaired to the satisfaction of the Planning Authority, in conjunction with Roads Services. It is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain beyond the working day, on a public road from any vehicle or development site.