Item: 3.1

Planning Committee: 5 September 2018.

Create Salmon Farming Site including Feed Barge at Lober, St Margaret's Hope.

Report by Executive Director of Development and Infrastructure.

1. Summary

1.1.

This is a planning application subject to Environmental Impact Assessment for a new Atlantic salmon fish farming site in Scapa Flow, off Lober, St Margaret's Hope. The proposed farm would comprise 12 circular cages, each with a 80 metre circumference (25.48 metre diameter, 12 metre depth), arranged in two groups of 6 cages in a 2 x 6 formation, and a 200 tonne feed barge. The mooring containment area would extend to 21.08 hectares with a total surface area of the cages and barge covering 0.63 hectares. The maximum weight of fish held at the site at any time would not exceed 1247.1 tonnes. 16 objections have been received, with one letter of support. The development has been assessed in relation to all relevant policies of the Orkney Local Development Plan 2017 and other relevant material planning considerations. Where unacceptable impacts have been identified, mitigation has been provided.

Application Number	17/305/MAR.
Application Type	Marine Fish Farm.
Proposal	Create a salmon farming site comprising of 12 x 80m circumference cages, arranged 2 x 6 in a 70m grid with the feed barge located at the east end of the cage configuration.
Applicant	Scottish Sea Farms, South Shian, Connel, Argyll.

1.2.

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

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

2. Statutory Consultations

2.1.

Statutory consultation bodies are listed below:

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

2.2.

Agencies were consulted on 8 August 2017 following receipt of the application. During consideration of the application further information was submitted, with the application being subject to reconsultation on 9 May 2018.

2.3.

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.

3. Representations

3.1.

Three objections have been received from non-statutory consultees:

- Orkney Fisheries Association, 4 Ferry Terminal Buildings, Kirkwall Pier, Kirkwall KW15 1HU.
- Orkney Trout Fishing Association, c/o Malcolm Russell, Caolilla, Heddle Road, Finstown, KW17 2EG.
- The Royal Society for the Protection of Birds (Scotland), Orkney Office, 12-14 North End Road, Stromness, KW16 3AG.

3.2.

Orkney Fisheries Association (OFA) objects on the basis of lack of a holistic biological policy for Scapa Flow and "application of precautionary principle in relation to the uncertainty surrounding the licensed aquaculture depositions on non-adult points of the biological development of species comprising the commercial shellfish fishery which are Brown Crab (Cancer pagurus), European Lobster (Homarus gammarus), Velvet Crab (Necora puber), Green Crab (Cancer maenas), buckies (Baccinum undatum), King Scallop (Pectin maximus) and Queen Scallops (Aequipectin opercularis)".

3.3.

Orkney Trout Fishing Association (OTFA) objects owing to the potential negative effects of sea lice spreading from the salmon farm to wild sea trout populations in Scapa Flow, both as an individual site and cumulatively with other existing and planned salmon fish farm sites. OTFA notes the potential doubling of the CAR licensed tonnage from 8,210 tonnes currently, to 16,000 tonnes, were all proposals

currently in the system to be approved, with concern over the disease problems in the salmon farm industry experienced elsewhere, citing Shetland, the west coast and western isles of Scotland as examples. OTFA presents a case that Scapa Flow would be the most intensively farmed body of water in the UK with increased risk of disease and parasite outbreaks. This leads to further concerns as any fish farm in Scapa Flow, as a single disease management area (DMA), has the potential to impact the whole of the area. The current lack of synchronous production cycle within the DMA, as indicated by Marine Scotland as regulator, is not applied currently within Scapa Flow. OTFA concludes that "OIC has a clear responsibility to seriously consider the potential impact that this level of expansion could have on the marine environment of Scapa Flow BEFORE any new salmon farm applications are allowed to progress. The level of development being proposed for the Scapa Flow area (which you could argue is being turned into one huge megafarm) is a knee jerk reaction by the industry to compensate for the problems it is experiencing elsewhere, problems that highlight the unsustainable nature of the salmon farming industry".

3.4.

The Royal Society for the Protection of Birds', Scotland (RSPB Scotland) objected both prior to and following provision of additional information and assessment, including dedicated site survey records. RSPB Scotland has adopted a position, informed from the Scottish Government's Environment, Climate Change and Land Reform (ECCLR) Committee that "there must be no new marine fish farms using current 'open cage' practices, including any increases in farmed fish biomass at existing sites" owing to "current failings in both the regulation of the salmon farming industry and the environmental problems the industry causes". Specific to this application objection is made given the impacts to the Scapa Flow proposed marine Special Protection Area (pSPA): "there is a loss of pSPA supporting habitat and from assessment of just two out of the 12 operating and proposed projects (7 in operation) this amounts to a total loss of 2.6% of total available suitable habitat for one species. The assessment has not presented an equivalent figure for all 12 fin fish farms for each of the relevant species. We are concerned that the in-combination loss of pSPA supporting habitat from fin fish farms likely amounts to an adverse effect on integrity of the site".

3.5.

This application was subject to advertisement on two separate occasions owing to the submission of additional environmental information. 17 representations have been received: 16 objections and one letter of support. It should be noted that, where more than one representation is received from a household, it is defined as one 'valid representation'. Where there are incidences of multiple letters from a single person, and/or separate representation from multiple individuals within a single household, it is defined as one 'valid representation'.

3.6.

16 objections have been received from:

- Mr Tom Dowie, The Howe, Hoxa, St Margaret's Hope.

- Peter Finnigan, Swartiquoy, Hoxa, St Margaret's Hope.
- Ms Martha Fleming, 50/2 Cumberland Street, Edinburgh.
- Dr Niall Logan, Wester Acredyke, Balmore, Glasgow.
- Mrs Victoria Logan-Berg, 19 Steps Street, Stenhousemuir, Larbet.
- Lauren MacKellar, The Gill, Lowertown, St Margaret's Hope.
- Peter Mackellar and family, The Gill, St Margaret's Hope, KW17 2TL.
- Mr Ian Nelson, 9 Vincent Road, Cobham, Surrey.
- Ms Helen Martini, Cools, South Ronaldsay.
- Dr John McInnes, 13 Kersland Drive, Milngavie, Glasgow G62 8DG.
- Mrs Heather Parry, Shore House, St Margaret's Hope.
- Jenny Rambridge, Longhouse, Dam of Hoxa, St Margaret's Hope, KW17 2TW.
- Mr Philip Walker, Parkwell, Kingskettle, Cupar.
- Mr Geoff Ward, 10 Warners Grove, St. Ives.
- Mr Alastair Wilkinson , Lobers, St Margaret's Hope.
- Mrs Wendy Witten, Crows Nest, St Margaret's Hope.

3.7.

1 letter of support has been received from:

- Mr Fred Brown, St Margaret's Cottage, Church Road, St Margaret's Hope.

3.8.

Reasons for objection are as follows:

- Pollution resulting from fish farm activity, including water pollution impacting both human health and natural environment.
- Perception of pollution to the detriment of amenity regarding bathing in vicinity of proposed fish farm.
- Negative impact on tourism, including direct impacts to holiday lets or guesthouses in area.
- Impression of Orkney from the Gill's Bay to St Margaret's Hope ferry.
- No local economic benefit.
- Negative impact on landscape / seascape.
- Environmental damage, specifically the seabed in vicinity of proposed site.
- Impact on wildlife including sea trout, seals, otters and birds.
- Increase in sea lice.
- Visual amenity – noting moderate to major impacts to 10 properties in the vicinity from submitted visualisations.
- Negative impacts to recreational amenity.
- Impacts upon navigation and anchorage.
- Noise.

- Light pollution.
- Introduction of large scale commercial activity into otherwise tranquil and unspoilt area – inappropriate development for the area.
- Negative impacts arising from the fish farming industry: antibiotic resistance in humans; fish health; depletion of food chain through harvesting small fish for food for the farmed salmon.
- Impacts on predators who may be controlled as a result of farming practices.
- Cumulative impacts with other fish farms in Scapa Flow – visual and environmental.
- Poor water flows / movement leading to accumulation of fish waste and bacteria arising from the development to the potential harm of sheltered bays in proximity – Bay of Hoxa and St Margaret's Hope.
- Odour.
- Proliferation of salmon farms in Scapa Flow, exceeding capacity.
- Negative impact to local fisheries both commercial and recreational, notably creel fishing and sports fishing.
- Accuracy of visualisations provided as component of the submitted Seascape, Landscape and Visual Impact Assessment (SLVIA).

3.9.

Reasons for support are as follows:

- Positive impact on local shellfish in vicinity of cage sites.
- Positive socio-economic impacts through employment and opportunity for young local people.

4. Relevant Planning Policy and Guidance

4.1.

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

http://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm
The policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development.
  - Policy 8 - Historic Environment and Cultural Heritage.
  - Policy 9 - Natural Heritage and Landscape.
  - Policy 12 - Coastal Development.
- 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.
  - DC6 Historic Environment.
  - DC7 Social and economic impacts.
  - DC8 Other marine users.
  - DC9 Construction and Operational Impacts.
  - DC10 Decommissioning and Reinstatement.

4.2. Scotland's National Marine Plan (2015)

4.2.1.

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".

4.2.2.

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.

4.2.3.

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

4.3. Scottish Planning Policy (2014)

4.3.1. 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.

4.3.2. 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 licences from SEPA or fish health, sea lice and containment regulation by Marine Scotland.

4.4. 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).
- ‘The Orkney landscape capacity for Aquaculture: Scapa Flow and Wide Firth’ (SNH 2011).
- ‘Siting and Design of Marine Aquaculture Developments in the Landscape’ (SNH 2011).
- 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. Legal Aspects

5.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the3 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…”

5.2.

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.

5.3.

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

6. Environmental Impact Assessment

6.1.

Regulation 60 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 describes transitional provisions whereby

the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 continue to have effect for consideration of the current application.

6.2.

The proposed development is a Schedule 2 Development – Category: 1(d) Intensive fish farming as defined in the 2011 Regulations.

6.3.

Having assessed the characteristics and location of the proposed development and the characteristics of the potential impact as set out in Schedule 3 to the 2011 Regulations, the Council adopted a Screening and Scoping Opinion on 14 September 2016, application reference 16/377/MARSS, stating that, in its opinion, the proposed development is considered likely to have a significant impact on the environment and that submission of an Environmental Statement (ES) was required.

6.4.

Accordingly, this application is accompanied by an ES in accordance with the 2011 Regulations, as confirmed by the transitional provisions set out in the 2017 Regulations. The ES addresses all expected environmental effects associated with the proposed development and any proposed mitigation.

6.5.

The ES includes the matters listed below, 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 license regime and the allowable zone of effects (AZE) calculations regulated by SEPA with ecological advice provided by SNH. Any impacts on seabed protected species are a material planning consideration but are part of the CAR assessment first and foremost.
- Water column impacts from nutrient enrichment and use of medicinal chemicals are also part of the SEPA's CAR licence regime.
- The health, handling and medicinal treatment of the farmed fish, the control of predators and the 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 / 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.

6.6. Habitats Regulations

6.6.1.

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, Revised Circular 6/1995 advises that HRA can be based on the information submitted in support of the application and informed by the appraisal by SNH. In this case SNH has stated that "In our view, this proposal is likely to have a significant effect on Slavonian grebe and Red-breasted merganser of the Scapa Flow pSPA. Consequently, OIC, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest(s)". The Council's HRA and Appropriate Assessment are attached as Appendix 1 to this report, and conclude, based on the information provided, that the proposal will not adversely affect the integrity of the site.

6.6.2.

SNH similarly conclude that, whilst the proposed development is likely to have a significant effect on Slavonian grebe and Red-breasted merganser within the Scapa Flow pSPA, the proposal will not adversely affect the integrity of the site. This conclusion is reached following consideration of the loss of available habitat through direct displacement and disturbance and assessment of cumulative and in-combination displacement and loss of preferred habitat of both of these species. An element of uncertainty is apparent in the consideration of vessel management, particularly through the construction phase, however the restriction of vessel speed to 8 knots during the winter period would provide additional mitigation against disturbance during the temporary construction phase, allowing a conclusion that no adverse effect on site integrity would result.

6.6.3.

In relation to its statutory interests, SNH has made a statement with reference to fish farm capacity in this area of Scapa Flow that, "there may be very limited additional capacity for additional fish farms in east Scapa Flow. We therefore advise that any further proposals will require more rigorous assessment of cumulative impacts on Scapa Flow pSPA".

6.6.4.

Where crossover exists with local planning authority regulation, to the extent that these matters and associated measures could have an impact on protected species in the wider environment, the matters are assessed below.

7. Assessment

7.1. Proposal

7.1.1.

The proposed development involves the creation of a new fish farm site off Lober, St Margaret's Hope, as shown on the location plan attached as Appendix 2 to this report. The mooring containment area lies 48 metres at its closest point to the shoreline by Lober Rock / Corbies Nest (MLWS) to the east of the Dam of Hoxa, South Ronaldsay, in the south of Scapa Flow. The closest point of the surface equipment to any house is Crows Nest, being approximately 275 metres. The proposed fish farm comprises one group of 12 x 80 metre circumference cages, arranged two cages by six. A 200 tonne boat style feed barge would be located at the east end of the cage configuration. The total visible surface area of the cage and barge spread is 0.63 hectares. The cages would be secured in place using 70 x 70 metre square cage grids. All equipment would be situated within the proposed mooring containment area of 21.08 hectares. The application also includes the use of underwater lights, used to slow the maturing process and increase yields, comprising two 1000 watt lights suspended below the surface of each cage. Lighting would typically be used during the months October to May.

7.1.2.

The indicated maximum stocked biomass is 1247.1 tonnes with a maximum production biomass per cycle stated as 1745.94 tonnes and a stocking density of 17 kilogrammes per cubic metre. The production plan is 22 months within 24 months with a fallow period of 6 to 8 weeks between production cycles.

7.1.3.

No additional permanent onshore facilities are required for the operation of the proposed fish farm. The applicant has stated that all requirements shall be met by the existing buildings operated by Scottish Sea Farms in Kirkwall and the quayside infrastructure at St Margaret's Hope to service the site. An appropriate laydown area for construction requires to be identified, which would be subject to separate planning application if applicable. Harvesting would be achieved by well-boat, visiting the site weekly in the last five months of the production cycle.

7.1.4.

The proposed fish farm would be manned by six new full-time members of staff.

7.2. Interaction with predators

7.2.1.

Scapa Flow is a proposed Special Protection Area (pSPA), identified as an important area for marine birds including a number of wintering and breeding populations. These qualifying species include breeding Red-throated diver and aggregations of non-breeding wintering waterfowl, including Black-throated diver, Common eider, Common goldeneye, Great northern diver, Long-tailed duck, Red-breasted

merganser, European shag and Slavonian grebe. Seabird species from the Hoy SPA and SPAs further afield may also use this area.

7.2.2.

The ES and additional information identifies the impacts and risks to the qualifying interests of the Scapa Flow pSPA and those further afield. The developer 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.

Mitigation has been provided within the ES and supporting information including: good operation procedures; nature and design of netting; tensioned nets; monitoring; and a vessel management plan (VMP). It is concluded within the ES that the mitigation measures would minimise the risk of bird attack, entanglement, disturbance and displacement.

7.2.3.

SNH is a statutory consultation body and has a remit to provide advice in respect of impacts on natural heritage. After submission of site-specific winter bird survey data together with clarification of transport routes for the construction phase, to address the original lack of data for consideration of impact to the integrity of the Scapa Flow pSPA, SNH withdrew an objection submitted in relation to the original submission. SNH states that “given the natural inter-annual variation in numbers, age structure and origins of Slavonian grebe and red-breasted merganser wintering in the Scapa Flow pSPA, the impacts of displacement and disturbance associated with the proposed fish farm at Lober would not cause an adverse effect on site integrity (AESI)” in relation to loss of habitat through direct displacement and disturbance. In relation to cumulative and in-combination displacement and loss of preferred habitat SNH agrees with the findings presented by the developer that the “Lober proposal in combination with the existing site at Westerbister would not trigger AESI”. However, given the likely significant effect on Slavonian grebe and Red-breasted merganser within the Scapa Flow pSPA, an appropriate assessment is deemed necessary.

7.2.4.

Wildlife entanglement monitoring and reporting, as specified in the protocol agreed by SNH and the Council in August 2015, should be continued. This would facilitate future adaptive management (e.g. adjustments to cage net tensioning) to ensure adequate safeguard of (inter)nationally important natural heritage interests in the event of unanticipated levels of entanglement. Agreement over cage top nets would be secured with the developer to ensure a satisfactory colour and mesh size to address the risk of bird entanglement. Subject to appropriate net mesh, layout and tensioning, entanglement risk is considered insignificant given experience from other sites.

7.2.5.

RSPB (a non-statutory consultee) maintains its objection and cites in-combination loss of pSPA supporting habitat as a site-specific reason for objection beyond its national position of being in objection to marine fish farms using current 'open cage' practices, with reference made to the findings of the Environment, Climate Change and Land Reform (ECCLR) Committee of the Scottish Government. Whilst this position is noted, SNH is the statutory consultee in relation to natural heritage interests. SNH has no objection and is satisfied that the proposal would not have an adverse effect on site integrity of the Scapa Flow pSPA.

7.2.6.

Common seals, grey seals and otters are present near the proposed development and the wider area of Scapa Flow. Seals are listed in Annex II of the Habitats Directive and protected under that designation. The nearest designated seal haul-out site is at North West Water Sound, located approximately 1.1 kilometres to the north east of the site. All designated seal haul-out sites are protected from intentional or reckless harassment of seals. Ten designed seal haul-out sites are located within Scapa Flow. Entanglement data collected at other active fish farm sites in Scapa Flow indicate that current practice and appropriate anti predator strategies including approved netting systems have been effective in avoiding seal entanglement.

7.2.7.

The applicant has indicated that the use of Acoustic Deterrent Devices (ADDs) would not be deployed at the Lober site. Concerns exist regarding the use of ADDs due to the risk of disturbance and disorientation posed to cetacean species. A European Protected Species licence to disturb would be required from Marine Scotland and a condition would be attached requiring agreement from the Council and SNH for any deployment of ADDs, were such to be considered in the future, on this farm.

7.2.8.

A Vessel Management Plan (VMP) forms part of the ES and sets out objectives and measures to minimise disturbance to natural heritage interests. A component of this is to follow best practice and adherence to the SNH's 'Scottish Marine Wildlife Watching Code', which sets out matters such as speed, minimum approach distances to marine mammals and birds and adherence to prescribed vessel transit routes. SNH has advised that controlling vessel speeds to 8 knots is advisable in the winter months to limit impacts to wintering birds.

7.2.9.

The ES sets out management measures to mitigate predation by seals. These are included within the site-specific Predator Exclusion Plan (PEP) and Veterinary Health Plan, and include 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. A measure of last resort would be to use lethal control on a persistent seal which is not deterred by the primary predator control measures; that would be subject to obtaining the

appropriate licence and observance of both legal requirements and company protocols.

7.2.10.

Advice has been sought from the statutory consultees, in assessing the effect on the qualifying interests of SPA and pSPAs, and, on the basis of the mitigation proposed, it is concluded that the proposed development would not adversely affect the integrity of these designated sites.

7.2.11.

The proposal has been fully assessed individually and cumulatively, taking account of statutory consultation body advice in relation to present designations, policy considerations, relevant supplementary guidance criteria relating to nature conservation designations (DC2), and potential effects on protected species (DC2 and DC3). With the mitigation measures proposed and as can be secured by condition, it is considered that this development would not have an unacceptable impact on the natural heritage interests of the area.

7.3. Carrying capacity and cumulative benthic and water column impacts

7.3.1.

Fish farms have an impact on the seabed through the settlement of fish feed and faeces; however, the details of this deposition are a matter for wider assessment by SEPA in relation to an application for a CAR licence under the Water Environment (Controlled Activities) Scotland Regulations 2011 (as amended). Under the CAR 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 fish farm at this proposed site is subject to CAR licence CAR/L/1157275 issued on 6 April 2018 with a maximum biomass permissible on site of 1247.1 tonnes.

7.3.2.

Modelling and visual surveys of the site were undertaken, the information from which predict that this site would be suitable to hold the proposed maximum stocking biomass of 1247.1 tonnes, which is consistent with the maximum biomass proposed by this development and subject to CAR licence CAR/L/1157275. The CAR licence also controls the discharges of licensed medicines for the site.

7.3.3.

The Equilibrium Concentration Enhancement (ECE) assessment for this site and existing fish farms in the surrounding water body has estimated the input of dissolved inorganic nitrogen, advising that it would be unlikely that this development would result in a downgrade to the status of the water body under the Water Framework Directive. According to the Water Framework Directive water body Scapa Flow (water body 200474) achieved “Good” status in the 2015 classification year.

7.3.4.

Following a remotely operated underwater vehicle (ROV) survey, evidence of the broad habitat type of Kelp and seaweed communities on sublittoral sediment was established. This habitat is classed as a Priority Marine Feature (PMF). It is a habitat type widespread in sheltered areas of Orkney and is susceptible to cover resulting in the loss of species-rich habitat. However, the impact of the development is not considered to be significant beyond the immediate localised impacts and is considered by Development and Marine Planning as being "unlikely to be significant in the wider context of the habitat's distribution and extent in Orkney waters". In addition, a Habitats Regulation Appraisal (HRA) was carried out by SEPA, which concluded "the loss of available foraging seabed, are unlikely to have a significant effect on the potential Special Protection Areas (pSPA)". This appraisal by SEPA is undertaken as part of the CAR application/licence process and considers matters which are controlled through CAR for example deposition of organic waste and chemical residues.

7.3.5.

SEPA advises that it has no objection to this planning application. It should be noted that SEPA controls the maximum biomass for the site and discharges of licensed medicines through CAR. It is recognised that these matters are controlled under separate regulation, however planning conditions relating to these aspects are deemed as appropriate given that increases to biomass can lead to impacts beyond CAR licensing control.

7.3.6.

Neither Marine Scotland Science (MSS) nor SEPA has raised objection to the proposal in respect of the predicted impact upon water quality. SEPA, SNH and MSS have all indicated satisfaction with the information provided in relation to the water column and benthic impacts. This was a matter of concern and reason for objection by a number of the representations against the proposal. It is considered that the proposal would comply with Development Criterion 5 (Water Quality and Benthic Impacts) of the Aquaculture supplementary guidance.

7.3.7.

The Council has undertaken a predictive far-field modelling assessment of existing and proposed fish farms in Scapa Flow, which includes the proposed fish farm at Lober. Potential adverse effects on water quality due to nutrient loading and enrichment have been assessed, including an assessment of cumulative impacts. The modelling assessment is scheduled to be reported to the Development and Infrastructure Committee on 26 September 2018.

7.3.8.

The modelling assessment has taken account of interaction between fish farm developments within Scapa Flow, including cumulative impacts. Whilst it is recognised that this assessment has yet to be formally considered by the Council it is notable that the modelling study undertaken to inform the assessment indicates that "The conservative modelling supporting this report of dissolved nutrient release

from the eight existing and three proposed fish farms in Scapa Flow examined in this study is sufficient to maintain current compliance with High Water Framework Directive (WFD) Coastal Water Dissolved Inorganic Nitrogen (DIN) standards''. The study reported that water quality in Scapa Flow is at very low risk of regulatory non-compliance, even when considering cumulative impacts of dissolved nutrient release from existing and proposed fish farms and wider nutrient inputs into Scapa Flow.

7.3.9.

Direct and cumulative impacts on water quality and the benthic environment are already routinely assessed by SEPA and MSS, and in this case, there are no objections. It is therefore considered that matters raised by several objectors in respect of water quality, pollution and carrying capacity either individually and /or cumulatively has been addressed based on available information.

7.4. Navigation

7.4.1.

The Northern Lighthouse Board has provided specifications for the lighting requirements at this site and raises no objections provided the site is marked accordingly. Marine Scotland is satisfied that the cages and moorings meet the technical standard and are suitable for the conditions at this specific site. The operator of Pentland Ferries has confirmed by letter to the developer that safe navigation for the Gills Bay to St Margaret's Hope route can be achieved, and the St Margaret's Hope Pier Trustees have also confirmed no operational issues arising from the development. Marine Services has cited concerns regarding cumulative impact of fish farms within the designated harbour area of Scapa Flow and resultant reduction of area that can safely be used for navigation and anchoring / mooring, but has not objected. Marine Services states a preference for a study into cumulative effects of fish farms in Scapa Flow before further permissions are given.

7.4.2.

Taking account of the information supplied within the ES and associated appendices it is considered that the development would accord with Orkney Local Development Plan 2017 policy 12, and supplementary guidance 'Aquaculture', criteria DC7 and DC8.

7.5. Interaction with Wild Salmonids

7.5.1.

The Planning Authority has a duty in the conservation of biodiversity, which includes interaction with wild fish. Sea trout is a UK Biodiversity Action Plan (UKBAP) priority species and included within the draft Marine Priority Species.

7.5.2.

The application site is located in the southeast of Scapa Flow. The fish farm site is remote from known sea trout spawning burns, with the applicant noting that the nearest sea trout burn with direct access is at Waulkmill approximately 12.4 kilometres north-west of the site. SNH notes that sea trout frequent the shallower

water of Scapa Flow, with MSS also noting the likelihood of the presence of wild Atlantic salmon. There is a possibility of transfer of sea lice between farmed and wild salmonids and that escapes of farmed fish may also be detrimental to wild fish. SNH and MSS have stated their satisfaction that proposed cage nets and tensioning are appropriate to prevent escapes.

7.5.3.

In respect of interactions with wild fish, MSS highlights scientific evidence from Norway and Ireland indicating a detrimental effect of sea lice on sea trout and salmon populations. Information presently available from the west coast of Scotland suggests lice from fish farming may cause a risk to local salmon and sea trout. Although it appears likely that numbers of sea lice in open water are likely to have an adverse effect on populations of wild salmonids in some circumstances. Mitigation can be achieved by factors such as appropriate siting of the farm and its ability to effectively control sea lice. MSS states that there is no history of sea lice affecting the health of the aquaculture animals within this area, per Farm Management Area 0-3 (FMA 0-3).

7.5.4.

The issue of non-synchronous stocking and fallowing within a single farm management area has been raised as a matter of concern by the Orkney Trout Fishing Association (OTFA). This has been subject to consideration by MSS, with clarification that the industry Code of Good Practice stipulates that a documented risk assessment be prepared where production farms within a defined FMA are not fallowed synchronously on a single year class basis. A documented risk assessment has been provided by the applicant, which has been subject to consideration by MSS who have “deemed that the risks of non-synchronous fallowing have been assessed and there are satisfactory measures in place for the control of parasites” with the recommendation that liaison between producers in the FMA continues, to allow appropriate monitoring and action.

7.5.5.

The applicant is aware of the potential impacts of sea lice on wild salmonids and identifies this within a suite of site specific strategies and operational and management plans in association with the ES. These documents detail a range of sea lice preventative measures and have been subject to review by consultees. Matters covered include:

- Farm Management.
- Lice Counts.
- Treatment Strategy.
- Veterinary Strategy.
- Escapes Prevention Plan.

7.5.6.

These measures are also included within the following documentation all submitted with and forming part of this application:

- Environmental Management Plan (EMP) Sea Lice.
- Statement of the Efficacy of Sea Lice Treatment.
- Method Statement and Risk Assessment for Non-Synchronous Fallowing.
- Veterinary Health Plan.
- Biomass and Treatment Modelling.
- Escapes Prevention and Recapture Strategy.
- Predator Exclusion Plan.
- Marine Biosecurity Plan.
- Farm Management Agreement.

7.5.7.

The OTFA has objected to this application based on the potential effects of salmon lice on wild sea trout stocks, due to the potential impact on the wild sea trout population and the general marine environment of Scapa Flow. Concerns are also raised in relation to cumulative impacts noting that the current CAR licence in Scapa Flow is 8,210 tonnes with the current planning applications in the system, inclusive of this application, if approved, resulting in a near doubling of CAR licensed tonnage to 16,000 tonnes. The statement is made with regards to cumulative increase in tonnage, resulting in Scapa Flow being the 'most intensively farmed body of water in the UK and increase the risk of disease and parasite outbreaks'.

7.5.8.

The applicant has submitted a site-specific Veterinary Health Plan (VHP) and Environmental Management Plan: Sea Lice and the parameters that will determine when sea lice interventions will be undertaken. Marine Scotland's revised sea lice policy, The Regulation of Sea Lice in Scotland (2017), introduced a new enforcement regime through MSS's Fish Health Inspectorate (FHI), which triggers enforcement action. It should be noted that these trigger levels are higher than those required under the industry Code of Good Practice (CoGP). The applicant acknowledges the importance of adherence to strict sea lice control and, within the EMP Sea Lice document, the applicant indicates that it is intended to maintain sea lice numbers at or below the CoGP suggested criteria. MSS notes the applicant's experience in administering bath treatments in developments of this nature and the information provided by the applicant is deemed satisfactory in relation to managing sea lice and chemical treatment thereof. MSS notes that there has been no requirement to administer "chemotheraputant bath treatments for sea lice in the last 8 years in Orkney during which time the area has been operated with multiple year classes".

7.5.9.

Given the above concerns and existing triggers for enforcement action, when considering planning applications for fish farms the planning authority must be satisfied that the mitigation would establish a robust control mechanism within the planning consent to ensure sea lice numbers remain low throughout the lifetime of the permission, thereby ensuring that any consent would not conflict with the planning authority's development plan policies and biodiversity duty as set out in the Nature Conservation (Scotland) Act 2004.

7.5.10.

The advice received and mitigation proposed provide sufficient assurance that measures put in place would be sufficient to ensure that action would be taken should the operations of the farm be considered to be causing material harm to wild salmonids.

7.5.11.

SEPA and SNH have raised no objections to the development and Marine Scotland has stated that it considers the measures to be satisfactory as far as can reasonably be foreseen. It is therefore considered acceptable in relation to relevant policy considerations and criterion DC4 of the supplementary guidance 'Aquaculture'.

7.6. Landscape and Visual Impact

7.6.1.

The ES for the development included a Landscape and Visual Impact Assessment (LVIA) which identifies the level of impacts on key receptors, landscape impacts and ipacts on visual amenity enjoyed from nearby properties and core paths. This was a key element in several representations objecting to the application. As a new fish farm, the proposed development would result in a significant magnitude of visual change between what is presently open water and the nearby coastline. The location of the development is also in proximity to the route of the Gill's Bay to St Margaret's Hope ferry, introducing a new commercial enterprise in-transit to marine users. This is a site that would therefore have an impact both from terrestrial and marine perspectives. Due to the nature of the landscape and the location of the fish farm, the site would often be screened or partially screened from public viewpoints in distant terrestrial views. In a wider context the location of the site is such that the site would usually be seen in relation with other commercial activities that take place within Scapa Flow.

7.6.2.

Of the 6 viewpoints assessed within the LVIA, as would be expected the most immediate and significant impacts occur in closer proximity. Significant and adverse impacts on visual amenity would be likely to occur from the Gill's Bay to St Margaret's Hope ferry, the Dam of Hoxa and from minor roads on the northern end of Hoxa and in the Lowertown area. Visual amenity would be significant adversely affected from 10 properties in north Hoxa, Dam of Hoxa and Lowertown areas. The LVIA notes 9 properties rather than 10; this is due to the situation at the time of undertaking the LVIA, when one of the properties was unoccupied. It is considered that the significance of effects arising have been reasonably stated within the submitted LVIA and that the proposed development will have locally significant adverse effect.

7.6.3.

The feed barge would be the most significant structure above water, as the low-lying and dark colour of the cages would have the backdrop of South Ronaldsay when viewed from several locations. The barge would have the appearance of a boat on the water, measuring 6.9 metres between the top of the wheel house and the

average sea level and 19.8 metres in length. The introduction of a new fish farm site will result in visual change both as a moored static installation and because of activities involved in the operation of the site, including vessel movements and lighting. It is recognised that the magnitude of visual change occurring as a result of the development will be significant and adverse to those properties in close proximity, overlooking the proposed site to seaward.

7.6.4.

The application site is not subject to any landscape designation and, within the terms of the SNH document 'The Orkney Landscape Capacity for Aquaculture', it is stated that the area has capacity for small to medium scale aquaculture development. Typically, the backdrop of the islands and the nature of the harbour area, with frequent vessel movements and human activity in Scapa Flow, combined with natural elements of change from sea-state to weather conditions, results in a constantly changing seascape. It is considered that the magnitude of visual change that would occur is not so significant, in relation to the development alone or cumulatively with other existing development, and in the context of the landscape/seascape of Scapa Flow and the activities that take place within the area, that the impact on visual amenity merits refusal of the application.

7.7. Socio Economic Impact

7.7.1.

Commercial fishing occurs near the Lober site, principally creel fishing, however no direct commercial fishing activity impacts have been raised by consultees. The surface / mooring area of the site should have minimal impact on fishing and diving in the area. The area taken up by development of the fish farm site is small relative to the whole Scapa Flow area, therefore the impact on commercial fishing and diving grounds in terms of displacement, employment and loss of fishing / diving grounds is not considered to be significant.

7.7.2.

OTFA raises concern that aquaculture development is putting pressure on Orkney's wider marine environment and the nature and assessment of aquaculture development impacts which OFTA considers as unsustainable type of development. It is noted that OTFA raises the point about the lack of synchronous production in relation to risk of disease transmission across farm sites which is a concern which has been addressed through submission of a risk assessment which has been subject to consideration of MSS.

7.7.3.

The applicant has stated that the development would result in the recruitment of six full time members of staff.

7.7.4.

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.

7.7.5.

Objectors have cited that the development may negatively impact on tourism within the local area and it is noted that several objections have been received from visitors who have stayed in properties with a potential view of the development, as per submitted LVIA, who consider that such a development will significantly detract from their enjoyment of the area.

7.7.6.

In considering the competing socio-economic impacts, the benefits created by the development would outweigh any impact caused by change to the area, which is considered insignificant.

7.8. Noise and light pollution

7.8.1.

As a new fish farm site, the development would introduce a new commercial activity to the location, including noise and light associated with operational requirements. From experience of other similar fish farm operations in Scapa Flow the development is considered to have minimal impact from noise-producing operations and practices. The developer has submitted a site-specific Vessel Management Plan (VMP). The day-to-day vessel route to and from the site is from St Margaret's Hope pier, a distance of 1.1 nautical miles, with a typical routine stated as one return trip per day with a workboat. Occasional site visits are also likely to occur by RIB. The larger wellboat, 40 metres in length, for harvesting purposes would visit the site typically weekly for the last five months of the 22-month production cycle. Feed deliveries would occur monthly for the first eight months, increasing to twice and possibly three times a month to peak production, serviced from either Stromness or St Margaret's Hope. It is noted that the site is in relatively close proximity to the typical corridor used by vessels entering Scapa Flow from the south, in particular those travelling directly to St Margaret's Hope and most notably the Gill's Bay to St Margaret's Hope ferry route which results in multiple ferry journeys per day passing the site. Activity and vessel movements within Scapa Flow are already an accepted part of the seascape.

7.8.2.

There will be other noise from the fish farm operations; however this will generally be during normal working hours of 08:00 to 17:00. Outwith these times noise would result from the equipment on the feed barge and occasional work that is required to take place during these hours such as harvesting. With regards noise associated with fixed equipment on site, the generator used to power systems is located within the body of the feedbarge within a sound insulated room, therefore the on-board

generator should not be audible beyond the immediate vicinity of the barge. When considered with the mitigation, including the VMP, it is considered that the noise associated with the activities of the fish farm would not have a significant effect on the interests of Scapa Flow pSPA or nearby properties.

7.8.3.

Artificial sources of light include the navigational lighting which will be installed on the fish farm and required for navigational safety, and also when work is being undertaken on the feed barge during hours of darkness. There would also be two underwater maturation lights fitted to each cage. Lighting has been cited by several objectors as of concern. These maturation lights would potentially be on continuously from December to May for smolts in their first year at sea. Experience of maturation lights in use elsewhere is that they appear as a subtle underwater green glow in closer views. Maturation lighting is used to slow down the maturation process and increase yields. 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. Seen in context with the general activities in Scapa Flow and the existing activities on the site, it is considered that the noise and lighting associated with this development will be acceptable and in accordance with criterion DC9 of Supplementary Guidance 'Aquaculture'.

7.9. Historic Environment

Historic Environment Scotland has concluded that the fish farm site would have no significant adverse impacts on the historic environment within its remit. No negative comment has been received from Development and Marine Planning. Objectors have cited amenity impacts on the enjoyment of visiting local land-based sites of interest. Whilst it is accepted that additional commercial activity within Scapa Flow will add to movement, noise and light seaward, these impacts are not considered to be sufficiently detrimental to the setting or enjoyment of such sites, due to the degree of separation to the proposed development. Therefore, the development is considered acceptable in terms of Orkney Local Development Plan 2017 policy, and criterion DC6 of Supplementary Guidance 'Aquaculture'.

8. Conclusion and Recommendation

8.1.

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 10 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.

8.2.

The Planning Authority takes into account the content of any ES submitted with an application but that content can only influence its decision insofar as they are material planning considerations.

8.3.

The ES identifies and assesses the potential areas of interaction between the proposed development and the environment. It is concluded that the details contained in the ES and supporting information cover the issues that could result in a significant effect on the environment in terms of the designations. In consideration of the application and with regard to supporting information and the submitted ES, it is noted that there are no objections from statutory consultees. Matters of concern as initially raised by consultees, including specification and evidence that the cages to be employed are suitable for purpose and additional environmental information in the form of a site-specific bird survey for the winter season, monitoring the qualifying bird features of the Scapa Flow pSPA, have subsequently been provided and considered as satisfactory and would not cause an adverse effect on site integrity.

8.4.

It is recognised that the development would result in significant and adverse impacts on visual amenity to 10 residential properties and several public viewpoints including core paths and minor public roads. It is important to note that the outlook from a private property is normally a private matter, not a public one, and the public at large may be affected differently by the visual and other impacts of the development than those who live close to it. Given the nature of the development, the key permanent visual impact will be because of above-surface structures, which other than the feed barge would typically be low to the water surface. The closest properties to the above-surface elements of the proposed development are approximately 275 metres (Crows Nest) and 291 metres (Kirkareth) distant, and a further two properties at Lober and Mayfield are within 500 metres of the proposed development. Whilst a reason for objection from some properties, the impact on visual amenity is not considered to be so great or overbearing on the main views from any individual house or garden to merit being a reason for refusal of the application.

8.5.

Objections submitted have been considered in conjunction with the assessments undertaken by the statutory consultation bodies. SNH has provided clear advice on the impacts on natural environment and concludes that the proposed development is acceptable, subject to the mitigation proposed. SEPA has considered matters in relation to the receiving environment through The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (As amended) (CAR). MSS has considered environmental impacts and aquaculture animal health and, in common with SNH and SEPA, has not raised any matters that have not been addressed within the submission or are otherwise ordinarily controlled by planning condition.

8.6.

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 relevant policies 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 and accordingly the application is **recommended for approval**, subject to the conditions listed in Appendix 3 to this report.

9. Contact Officer

David Barclay, Senior Planner, extension 2502 Email david.barclay@orkney.gov.uk.

10. Appendices

Appendix 1: Habitats Regulations Appraisal and Appropriate Assessment.

Appendix 2: Location Plan.

Appendix 3: Planning Conditions.

Appendix 1

Regulation 48 of the Conservation (Natural Habitats etc.) Regulations 1994

Appropriate Assessment by Orkney Islands Council

Application reference number: 17/305/MAR.

Type of application: Full.

Create a salmon farming site comprising of 12 x 80m circumference cages, arranged 2 x 6 in a 70m grid with the feed barge located at Lober, St Margarets Hope.

Applicant: Scottish Sea Farms.

Grid Reference: ND 343358 994626.

Relevant Natura site: Scapa Flow proposed Special Protection Area (pSPA).

Habitats Regulations Appraisal

The proposed Scapa Flow SPA (pSPA) classification means that 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 apply. The Scottish Government has a policy of protecting proposed SPAs, therefore Scapa Flow pSPA, as if they were classified, and as set out in Scottish Planning Policy. Consequently, Orkney Islands Council (the Council) is required to consider the effect of the proposed development on the pSPA before it can be consented (commonly known as a Habitats Regulations Appraisal).

Where the Council reaches the conclusion, on a development proposal unconnected with the nature conservation management of a Natura 2000 site, that a development 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.

Conclusion

It is considered this proposal is likely to have a significant effect on the Scapa Flow pSPA, from disturbance along vessel transit route, direct displacement from cage area, entanglement, or loss of or damage to supporting habitats on qualifying species of the pSPA, unless appropriate mitigation is adopted. Appropriate Assessment is therefore required.

Appropriate Assessment

The proposal lies within the Scapa Flow proposed Special Protection Area (pSPA) selected 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.

Qualifying Interest

The Scapa Flow proposed 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.
- black-throated diver.
- Slavonian grebe.

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.

The site further qualifies under Article 4.2 by regularly supporting populations of European importance of the following migratory species:

- common eider.
- long-tailed duck.
- common goldeneye.
- red-breasted merganser.
- European shag.

Site Conservation Objectives

The conservation objectives for the Scapa Flow marine pSPA are:

To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, subject to natural change, thus ensuring that the integrity of the site is maintained in the long-term and it continues to make an appropriate contribution to achieving the aims of the Birds Directive for each of the qualifying species.

Identify Affects

Disturbance along vessel transit route.

Direct displacement from cage area.

Entanglement.

Loss of, or damage to, supporting habitats.

Appraisal

Natura interests – Scapa Flow pSPA

The proposal lies within the Scapa Flow proposed Special Protection Area (pSPA) selected for the following qualifying interest(s): Great northern diver (non-breeding), Red-throated diver (breeding), Black-throated diver (non-breeding), Slavonian grebe (non-breeding), Common eider (non-breeding), Long-tailed duck (non-breeding), Common goldeneye (non-breeding), Red-breasted merganser (non-breeding) and European shag (non-breeding). In its latest response to the Council, SNH has provided an appraisal of the impact that the proposal is likely to have on the Scapa Flow pSPA. The development is likely to have a significant effect on Slavonian grebe and Red-breasted merganser of the Scapa Flow pSPA

In the course of the consideration of information submitted to inform the planning application the applicant was advised to undertake a site-specific bird survey for the winter season, monitoring the qualifying bird features of the Scapa Flow pSPA. This was to assess the effects of both site specific and cumulative impacts on displacement and disturbance. This was undertaken to a satisfactory standard and in accordance with Scottish Natural Heritage (SNH) advice, allowing both the Council and SNH to consider any impacts arising.

The Conservation Objectives for Scapa Flow pSPA are noted as follows:

To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, subject to natural change, thus ensuring that the integrity of the site is maintained in the long-term and it continues to make an appropriate contribution to achieving the aims of the Birds Directive for each of the qualifying species.

This contribution will be achieved through delivering the following objectives for each of the site's qualifying features:

- 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;
- To maintain the habitats and food resources of the qualifying features in favourable condition.

In its response to the Council SNH concludes there is likely significant effect on some features of Scapa Flow pSPA, sufficient information and mitigation have been provided with the application to conclude no adverse effect on site integrity. But advise that there is increasing potential for significant cumulative impacts with respect to developments in areas of the Scapa Flow pSPA used by inshore species with restricted distributions and/or small populations. The impact of the proposals was considered on the following factors:

Disturbance along vessel transit route

The vessel transit routes are sufficiently large that permanent displacement of birds, especially Slavonian grebe, black-throated diver and goldeneye, within them could be likely significant effects. However, adherence to the measures proposed in the vessel management plan along with the limited volume of vessel traffic associated with operation of the proposed site is concluded as having no adverse effects on site integrity. Restricting vessel speeds to 8 knots in the winter months would further reduce potential impacts. No AESI is considered to arise from vessel management.

Direct displacement from cage area

Consideration is given to the loss of available habitat through direct displacement and disturbance at the Lober site to both Slavonian grebe and Red-breasted merganser as the only qualifying features of the Scapa Flow pSPA for which likely significant effects (LSE) have been identified. Based on the submitted data, SNH "consider that the appropriate displacement level should be 0-50%, rather than 0-30% and as a result, potential maximum levels of mortality may have been underestimated. Revised estimates based on 0-50% displacement would suggest potential for loss of up to 1.4 Slavonian grebe and 1.5 Red-breasted merganser."

Consideration is also made of variation in numbers of both Slavonian grebe and Red-breasted merganser, together with other waterfowl species, depends upon origins and breeding success of the populations from which the birds derive which varies from winter to winter, on climatic and weather factors and on impacts of any pressures, such as hunting, along migration routes.

In consideration of the variables of the natural inter-annual variation in numbers, age structure and origins of Slavonian grebe and red-breasted merganser wintering in the Scapa Flow pSPA, the impacts of displacement and disturbance associated with the proposed fish farm at Lober is not considered likely to cause AESI.

Entanglement

The cage nets will be 15mm to start with at smolt stage but then changed to 25mm mesh (as per Appendix B & D). Cage nets for each cage will have extra net tensioning applied with a 5000kg sinker tube used to maintain optimum net tension

and shape (Froyer rings are one design of sinker tube). This prevents the cage netting deforming in the current and restricts predator access. Nets will also be fitted with a 50-80kg centre weight which helps the net shape to form correctly. There is no proposed use of external subsea anti-predator nets.

Cage top nets, to protect against bird predation, the net mesh will be either 50mm or 75mm nets of this type would pose negligible risk of diving bird entanglement, it is therefore concluded that there is no likely significant effect for this impact pathway. The applicant also proposes to monitor and report entanglements using the proformas we developed with OIC to enable adaptive management in event of entanglement incidence.

Loss of, or damage to, supporting habitats

The cumulative and in-combination assessment of displacement and loss of preferred habitat, focussing on Slavonian grebe and red-breasted merganser has assessed locations of existing and proposed sites in relation to general habitat use patterns (with respect to depth) and observed distributions (from the surveys supporting identification of the Scapa Flow pSPA). The findings conclude that the Lober proposal in combination with the existing aquaculture site at Westerbister would not trigger AESI. This is accepted as a valid conclusion.

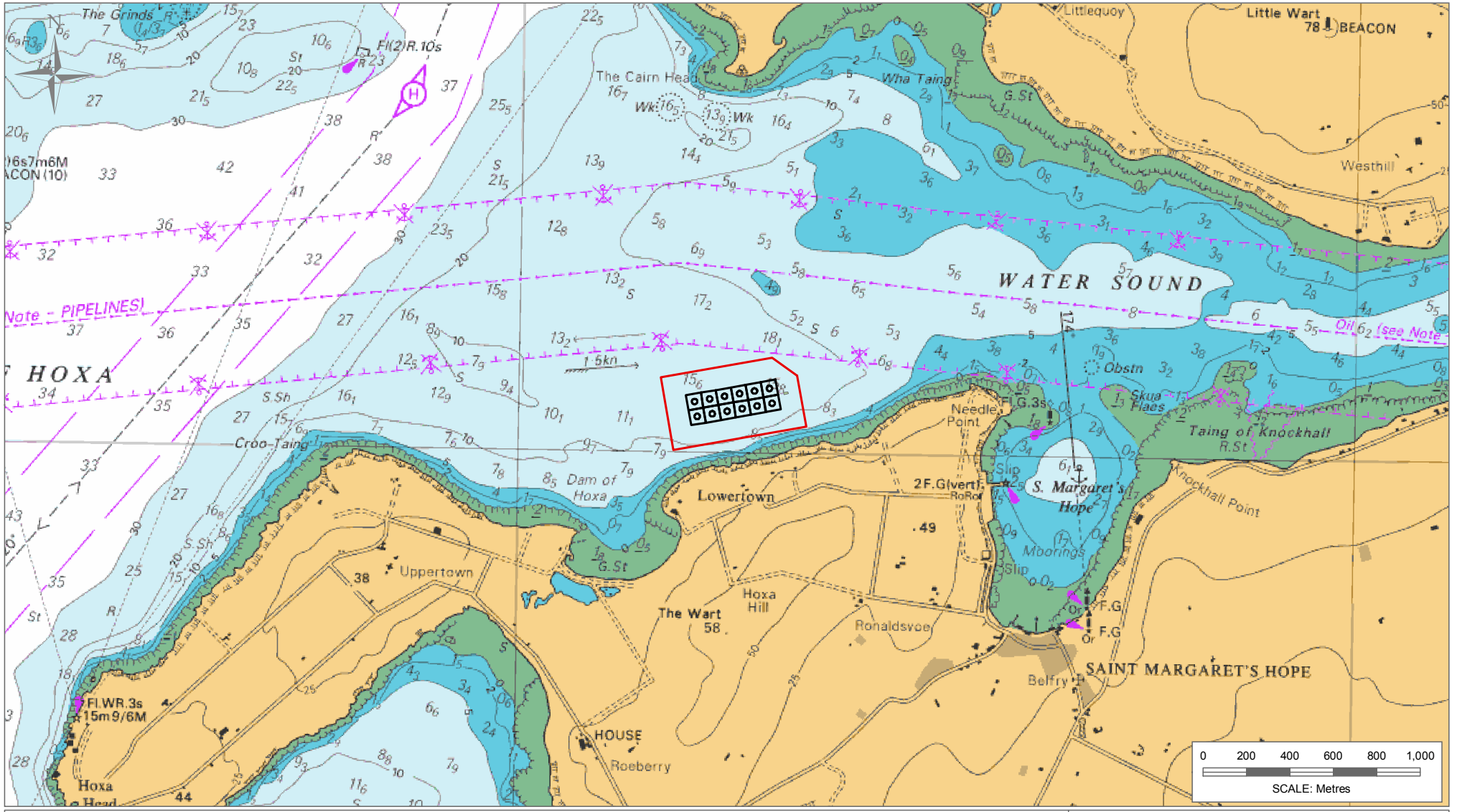
It is of note that SNH have stated that “there may be very limited additional capacity for additional fish farms in east Scapa Flow. We therefore advise that any further proposals will require more rigorous assessment of cumulative impacts on Scapa Flow pSPA.”

A number of points to improve cumulative / in-combination impact assessment arose from the novel nature of cumulative assessment undertaken, as commented upon by SNH. Notwithstanding such comment for improvement to cumulative impact assessment in the future SNH have stated that “sufficient evidence has been provided to determine that this proposal along with existing developments in Scapa Flow will have no adverse effect on site integrity (AESI)”

Conclusion

Having undertaken an appropriate assessment of the development described above Orkney Islands Council as the competent authority for the purposes of Regulation 48 of the Conservation (Natural Habitats etc.) Regulations 1994 adopts the reasoning and conclusions.

In the response from SNH dated 20 June 2018 attached to this notice, it is concluded that the natural heritage interests of international importance on the site will not be adversely affected by the proposal, and sufficient information and mitigation has been provided with the application to conclude no adverse effect on site integrity. Therefore, Orkney Islands Council, as the competent authority for the purposes of Regulation 48 of the Conservation (Natural Habitats etc.) Regulations 1994, concludes that the development as proposed would not adversely affect the integrity of the Scapa Flow pSPA.



Key

- Mooring extent
- Grid cage
- Feed barge (10m x 20m)

Layout

12 x 80m circumference cages in a 70m x 70m grid
Cage grid 140m x 420m
Mooring extend 100m in all directions

SMH (Lober) - Admiralty Chart Extract

Project: P584	Date: 30/05/2017	Author: DS	Checked: SM

Coordinate System: British National Grid
Projection: Transverse Mercator
Datum: OSGB 1936
Scale @ A4: 1:25,000

Appendix 3.

Grant subject to the following conditions:

01. At all times when equipment is on site the following navigational marks and requirements shall be met / provided:

- The site should be marked with 2 lit yellow poles fitted with yellow 'X' topmarks.
- Each light should display a character of flash yellow one every five seconds (Fl Y 5s) with a nominal range of 2 nautical miles, and be installed on the top of the pole above the ‘X’ topmark.
- The poles should be positioned at the most Northerly and Westerly corners of the cage group.
- Each light should be 1 metre above 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.
- 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 to be avoided.
- The UK Hydrographic Office should be notified by Scottish Sea Farms Ltd and all information regarding the site positions forwarded in order that Chart BA2581 can be correctly updated.

Reason: In the interests of navigation and marine safety.

02. The finished surface of all equipment above the water surface, excepting the feed barge as considered by condition 16, including surface floats and buoys associated with the development, but excluding those required to comply with navigational requirements, shall be finished in a dark, matt, neutral colour unless alternative finishes or colours are agreed in advance in writing with the Planning Authority.

Reason: To minimise the visual impact of the development.

03. 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 soon as safely practicable, or as agreed in writing with the Planning Authority.

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

04. 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 unless otherwise agreed in writing 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.

05. At least 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.

06. All equipment and associated moorings approved by this permission shall be wholly contained within the area identified within development description and shall accord with the approved site plan, plan reference OIC-01 with mooring extent corners:

- 58 50.183N 2 59.327W**.**
- 58 50.236N 2 58.796W**.**
- 58 50.193N 2 58.673W**.**
- 58 50.067N 2 58.628W**.**
- 58 50.003N 2 59.260W**.**

On first installation, the position of the corners of the cage group, corner anchors of the development 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.

07. The development shall be constructed, implemented and managed in accordance with the following Policies and Plans:

- St Margaret’s Hope (Lober) Escapes Prevention and Recapture Strategy, Appendix B.
- St Margaret’s Hope (Lober) Environmental Management Plan: Sea Lice, Appendix F.
- St Margaret’s Hope (Lober) Predator Exclusion Plan, Appendix G.
- St Margaret’s Hope (Lober) Marine Biosecurity Plan, Appendix K.

The development shall thereafter be operated and maintained in accordance with these Policies and Plans throughout the lifetime of the development, unless otherwise agreed, in writing, with the Planning Authority. For the avoidance of doubt any and all modifications, amendments and revocations of these Policies and Plans require to be agreed in writing with the Planning Authority in advance of any such changes to the approved details occurring on site.

Reason: In order to safeguard the natural heritage and biodiversity interests in the area.

08. Access to the site shall be undertaken in full accordance with the St Margaret's Hope (Lober) Vessel Management Plan, Appendix E. For the avoidance of doubt there shall be a restriction of travel speed to 8 knots in the period 1 October to 31 March inclusive.

Reason: In order to provide additional safeguards for protected species and to safeguard the natural heritage interests in the area, notably wintering birds.

09. Details of the nature and location of the on-land construction site for the cages and equipment shall be submitted to, and approved in writing by, the Planning Authority prior to work commencing on site. Thereafter, on-land construction shall be carried out in accordance with those agreed details.

Reason: To ensure any on-land work is appropriately controlled in the event that a dedicated planning application is not required for such.

10. No anti-predator or static gill nets shall be deployed at this site, unless otherwise agreed, in writing, with the Planning Authority in conjunction with Scottish Natural Heritage.

Reason: To ensure that qualifying interests do not become entangled in such nets in the interests of protecting the qualifying interests of the Scapa Flow pSPA in order to comply with Habitats Regulations requirements.

11. The detail of cage top nets to be installed at this site, including mesh size and colour, shall be submitted to, and approved in writing by, the Planning Authority in conjunction with Scottish Natural Heritage, prior to work commencing on site. Thereafter the proposal shall be carried out in accordance with those agreed details.

Reason: To ensure that qualifying interests do not become entangled in such nets in the interests of protecting the qualifying interests of the Scapa Flow pSPA in order to comply with Habitats Regulations requirements and for the avoidance of doubt.

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

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

13. All lighting above the water surface and not required for safe navigation 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 May inclusive each year, unless otherwise agreed, in writing, with the Planning Authority.

Reason: In the interest of visual amenity.

14. If use of any Acoustic Deterrent Devices (ADDs) is proposed at this site, prior consultation with the Planning Authority shall be carried out. 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 conjunction with Scottish Natural Heritage, 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.

Reason: To protect internationally and nationally important species.

15. Upon the first use of the development hereby approved and thereafter, the maximum stocked biomass of the Lober site shall not exceed 1247.1 tonnes with a maximum production biomass per cycle not exceeding 1745.94 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.

16. Prior to the feed barge being brought onto site, the barge shall be painted in a colour or combination of colours agreed, in writing, by the Planning Authority. Thereafter the barge shall be retained in the agreed colour throughout the lifetime of the development, unless otherwise agreed, in writing, with the Planning Authority.

Reason: In the interest of visual amenity.

17. Wildlife and entanglement records shall be collected on site in accordance with a recording and reporting procedure. That procedure and the adaptive management measures and mitigation shall be agreed, in writing, with the Planning Authority, in conjunction with Scottish Natural Heritage, prior to the site being brought into use.

Reason: To understand the level of entanglement, and adapt the fish farm if required, to minimise risk to key receptors in the vicinity of this proposed development.

18. The fish farm shall be constructed in accordance with the specific waste management plan, and thereafter operated and maintained in accordance with this plan throughout the lifetime of the development, unless otherwise agreed, in writing, with the Planning Authority.

Reason: To protect internationally and nationally important natural heritage interests and to ensure marine navigational safety.

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. Telephone 01224 295525. 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 01224 295 579.

03. If the site does not hold an up to date Marine Licence from the Scottish Government, Northern Lighthouse Board would encourage Scottish Sea Farms Ltd to rectify this situation. This consent is concerned solely with the safety of navigation and would include the information given above. For further information and application forms please go to the web site link given below. http://www.scotland.gov.uk/Topics/marine/Licensing/marine

04. Loose floating lines around site equipment are strongly discouraged as this can cause serious safety implications for other mariners.

05. The UK Hydrographic Office should be notified by Scottish Sea Farms, and all information regarding the site positions forwarded.