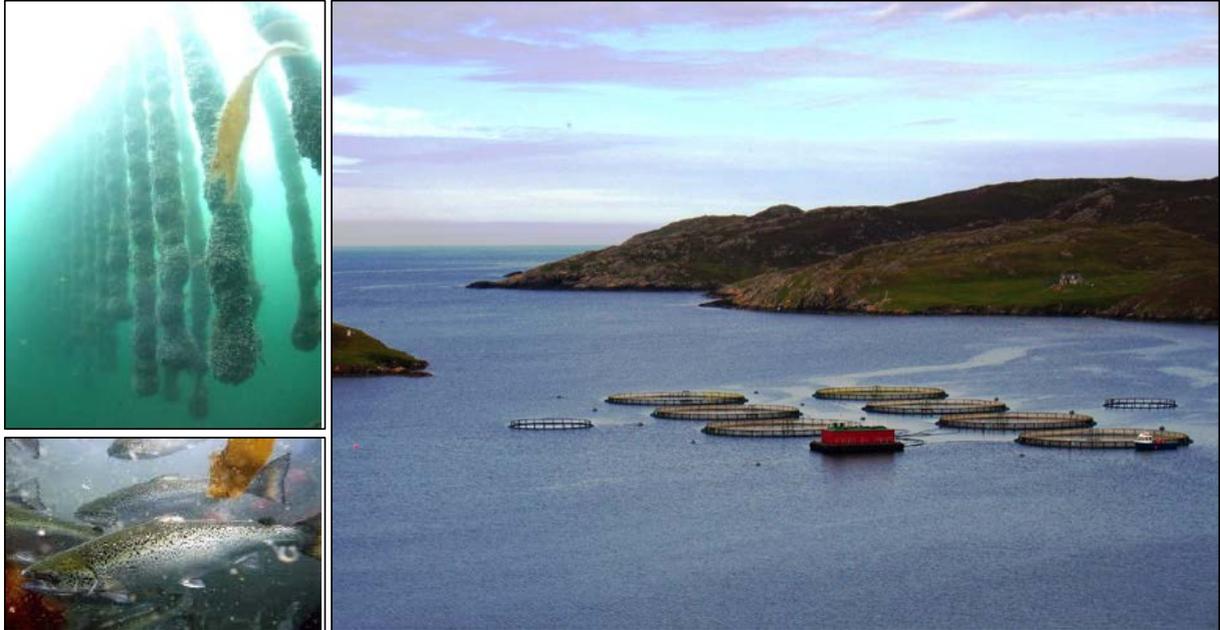


# INDEPENDENT REVIEW OF SCOTTISH AQUACULTURE CONSENTING



**FINAL REPORT**

**12<sup>TH</sup> MARCH 2016**

Prepared by Poseidon Aquatic Resource Management Ltd in association with  
Ironsides Farrar Environmental Consultants



© Crown copyright 2016

**OGL**

This report was jointly commissioned by Marine Scotland and The Crown Estate and is published by The Scottish Government. However, the views expressed within the report may not reflect the opinion of The Scottish Government or Marine Scotland.

Front cover: Mussel ropes (The Crown Estate, 2014); Salmon (The Crown Estate, 2014); Salmon farm (Poseidon, 2012).

Suggested citation:

Nimmo, F, McLaren, K, Miller, J and Cappell, R. 2016. Independent Review of the Consenting Regime for Scottish Aquaculture.

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78652-353-2 (web only)

Published by The Scottish Government, July 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS71452 (07/16)

w w w . g o v . s c o t

## TABLE OF CONTENTS

---

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	INTRODUCTION.....	1
1.2	CONTEXT .....	1
1.3	PROJECT OBJECTIVES AND MILESTONES .....	1
<b>2</b>	<b>METHODOLOGY .....</b>	<b>2</b>
2.1	DESK BASED RESEARCH.....	2
2.2	CONSULTATION .....	2
2.3	CONSULTATION ANALYSIS .....	3
2.4	SCOPE ANALYSIS OF ALTERNATIVE OPTIONS.....	4
2.5	QUICK WINS AND RECOMMENDATIONS .....	5
<b>3</b>	<b>POLICY AND EXISTING INITIATIVES.....</b>	<b>6</b>
3.1	STRATEGY AND POLICY .....	6
3.2	EXISTING INITIATIVES AND PROJECTS.....	11
3.2.1	<i>Scotland's Aquaculture website.....</i>	<i>11</i>
3.2.2	<i>SARF project on Scottish shellfish aquaculture regulations.....</i>	<i>11</i>
3.2.3	<i>Wild salmon research .....</i>	<i>11</i>
3.2.4	<i>Cultivated seaweed.....</i>	<i>12</i>
3.2.5	<i>Aquaculture sensitivity mapping.....</i>	<i>12</i>
3.2.6	<i>Other studies.....</i>	<i>13</i>
<b>4</b>	<b>CURRENT CONSENTING PROCESS .....</b>	<b>14</b>
4.1	OVERVIEW OF THE CURRENT CONSENTING PROCESS.....	14
4.2	REVIEW OF CURRENT CONSENTING REGIMES.....	18
4.2.1	<i>Planning Permission .....</i>	<i>18</i>
4.2.2	<i>Environmental Impact Assessment (EIA).....</i>	<i>21</i>
4.2.3	<i>Controlled Activity Regulations (CAR).....</i>	<i>23</i>
4.2.4	<i>Marine Licence.....</i>	<i>25</i>
4.2.5	<i>Seabed Lease.....</i>	<i>25</i>
4.2.6	<i>Authorisation to operate an Aquaculture Production Business (APB).....</i>	<i>28</i>
4.2.7	<i>Habitats Regulations Appraisal.....</i>	<i>29</i>
4.2.8	<i>Permitted Development Rights.....</i>	<i>31</i>
4.3	CROSS CORRELATIONS BETWEEN CURRENT CONSENTING REGIMES.....	31
4.3.1	<i>Overview of licensing processes.....</i>	<i>31</i>
4.3.2	<i>Overview of consultation requirements across consenting regimes .....</i>	<i>33</i>
4.3.3	<i>Overview of elements considered within each consenting regime.....</i>	<i>36</i>
<b>5</b>	<b>CONSULTATION ANALYSIS.....</b>	<b>39</b>
5.1	REVIEW OF CONSULTATION.....	39
5.1.1	<i>Strengths.....</i>	<i>39</i>
5.2	KEY ISSUES .....	40
5.3	OTHER ISSUES .....	45
5.4	SUGGESTED SOLUTIONS .....	46
<b>6</b>	<b>QUICK WINS AND ALTERNATIVE CONSENTING OPTIONS .....</b>	<b>48</b>
6.1	QUICK WINS.....	48
6.2	ALTERNATIVE CONSENTING OPTIONS.....	50
6.3	SCOPE ANALYSIS OF OPTION 1 .....	53
6.4	SCOPE ANALYSIS OF OPTION 2 .....	56

6.5	SCOPE ANALYSIS OF OPTION 3 .....	58
6.6	SCOPE ANALYSIS OF OPTION 4 .....	62
6.7	SCOPE ANALYSIS OF OPTION 5 .....	65
<b>7</b>	<b>CONCLUSIONS .....</b>	<b>69</b>
	<b>REFERENCES .....</b>	<b>74</b>
<b>APPENDIX 1</b>	<b>LIST OF CONSULTEES .....</b>	<b>75</b>
<b>APPENDIX 2</b>	<b>REVIEW OF OTHER CONSENTING REGIMES.....</b>	<b>78</b>
	OTHER SCOTTISH AND UK CONSENTING REGIMES OR ADMINISTRATIVE PROCESSES.....	78
	OTHER AQUACULTURE CONSENTING REGIMES.....	84
<b>APPENDIX 3</b>	<b>CONSULTATION STRATEGY .....</b>	<b>90</b>
<b>1</b>	<b>INTRODUCTION .....</b>	<b>90</b>
1.1	INTRODUCTION.....	90
1.2	CONTENTS AND STRUCTURE .....	90
1.3	APPROACH TO CONSULTATION .....	90
1.4	TIMING OF CONSULTATION.....	91
<b>2</b>	<b>ONE PAGE PROJECT SUMMARY .....</b>	<b>91</b>
<b>3</b>	<b>LOCAL AUTHORITIES, REGULATORS AND STATUTORY CONSULTEE QUESTIONNAIRE .....</b>	<b>93</b>
<b>4</b>	<b>INDUSTRY QUESTIONNAIRE .....</b>	<b>99</b>
<b>APPENDIX 4</b>	<b>NUMBER OF PLANNING APPLICATIONS.....</b>	<b>103</b>

## **ACRONYMS**

ADD	Acoustic Deterrent Devices
APB	Aquaculture Production Business
APP	Application
APT	Aquaculture Planning Taskforce
CAR	Controlled Activities Regulations
CPA	Coast Protection Act
DPEA	Planning and Environmental Appeals Division
DPRA	Delivering Planning Reform for Aquaculture
DSFB	District Salmon Fishery Boards
EIA	Environmental Impact Assessment
EMFF	European Maritime and Fisheries Fund
EMP	Environmental Management Plans
EPS	European Protected Species
ES	Environmental Statement
FEPA	Food and Environment Protection Act
HRA	Habitats Regulations Appraisal
ISLAD	Improved System for Licensing Aquaculture Development
LOA	Lease Option Agreement
LA	Local Authority
MCA	Maritime and Coastguard Agency
MGA	Ministerial Group on Aquaculture
MGSA	Ministerial Group for Sustainable Aquaculture
ML	Marine Licence
MS-LOT	Licensing Operations Team
MSS	Marine Scotland Science
MSS-FFL	Marine Scotland Science Freshwater Fisheries Laboratory
MSS-FHI	Marine Scotland Science Fish Health Inspectorate
NLB	Northern Lighthouse Board
NMP	National Marine Plan
NPF	National Planning Framework
PAC	Pre-application consultation
PAD	Pre-application discussions
PDR	Permitted Development Rights
PP	Planning Permission
SAC	Special Area of Conservation
SARF	Scottish Aquaculture Research Forum
SBL	Seabed Lease
SCOPE	Situation; Core competencies; Obstacles; Prospects and Expectations
SEPA	Scottish Environment Protection Agency
SNH	Scottish Natural Heritage
SPP	Scottish Planning Policy

# 1 INTRODUCTION

---

## 1.1 INTRODUCTION

This document presents the Final Report for the project: *Independent review of the consenting regime for Scottish aquaculture*. The project was commissioned jointly by Marine Scotland and The Crown Estate and has been undertaken by Poseidon Aquatic Resource Management Ltd in collaboration with Ironside Farrar Ltd.

## 1.2 CONTEXT

As Scotland's most valuable food export, the Scottish Government recognises aquaculture as being an increasingly important industry for Scotland, generating local employment, income and export revenue in rural and coastal communities of the north and west of Scotland. Scottish seafood is recognised around the world as being of the highest quality.

The Scottish Government is supportive of the sustainable growth of aquaculture as set out in Scotland's National Marine Plan, and supports the aim of Scotland's aquaculture industry to achieve sustainable growth targets, with due regard to the marine environment, by 2020 (Scottish Government, 2015). The targets are to increase:

- Marine finfish production sustainably to 210,000 tonnes (in 2013, it was 165,256 tonnes - 163,234 salmon, 1,964 marine rainbow trout, 56 halibut and 2 sea trout); and
- Shellfish production (especially mussels) to 13,000 tonnes (in 2013, it was 6,757 tonnes).

The aquaculture consenting process has been amended and added to as the industry has developed. This project aims to understand whether there are inefficiencies, duplication or unnecessary complexities across the current consenting regimes; and whether the overall system fits the requirements and operation of the industry.

## 1.3 PROJECT OBJECTIVES AND MILESTONES

The objectives of the project are as follows:

- a. To examine the whole aquaculture consenting process, its interactions and implementation including clear identification of the range of legislative obligations that apply to aquaculture businesses and the development of a 'base-map' of the current process;
- b. To identify and consider duplication, obstacles and unnecessary complexities in the current process and any evidence to indicate whether these appear rooted in the legislation itself or in the manner of its implementation;
- c. To determine and understand the concerns of the key stakeholders in the consenting process, including the aquaculture industry, regulating authorities and statutory consultees (Appendix 1 provides a list of consultees);
- d. To examine the scope for improvements to the consenting system; and
- e. To provide recommendations to resolve the identified issues or recommend alternative approaches to existing consenting systems.

## 2 METHODOLOGY

---

### 2.1 DESK BASED RESEARCH

A desk based review of literature and web based resources was undertaken to inform the report including:

- Section 3: Policy and existing initiatives within the Scottish aquaculture sector;
- Section 4: The current consenting process for Scottish aquaculture including all consenting regimes for finfish, shellfish and cultivated seaweed; and
- Appendix 2: Review of other UK and Scottish consenting regimes and other worldwide aquaculture regimes.

### 2.2 CONSULTATION

Extensive consultation was undertaken with finfish and shellfish industry, regulators, consenting bodies and statutory consultees in order to gain insight of the complexities within the current consenting process and to understand the strengths, issues, frustrations of the consenting process and areas for potential improvement.

In total 55 individuals across 37 authorities, organisations and companies were interviewed including:

- 16 aquaculture developers, (7 salmon, 3 sea trout, 4 mussel and 2 oyster<sup>1</sup>);
- 5 aquaculture organisations/associations (2 finfish, 2 shellfish and 1 seafood);
- 10 regulating/consenting authorities, representing all of those involved throughout the consenting regime including Local Authorities (LAs), the Crown Estate, Scottish Environment Protection Agency (SEPA), Marine Scotland Licencing Operations Team (MS-LOT) and Marine Scotland Science Fish Health Inspectorate (MSS-FHI);
- 6 statutory consultees including Scottish Natural Heritage (SNH), Marine Scotland Science (MSS), District Salmon Fishery Boards (DSFBs), Northern Lighthouse Board (NLB), Maritime and Coastguard Agency (MCA) and Marine Scotland Planning and Policy); and
- 1 public body (Highlands and Island Enterprise)

This is summarised in Table 2.1 and a full list of individuals consulted is provided in Appendix 1.

The consultation strategy that supported this consultation process is presented in Appendix 3, including two distinct questionnaires for:

- Local Authorities, other regulators, consenting bodies and statutory consultees; and
- Aquaculture developers and industry organisations/ associations.

Consultation was undertaken using a combination of face-to-face meetings, video-conference, telephone and email. In some cases consultees provided written responses within the questionnaire template or as a stand-alone document. When using this approach, consultees generally collaborated with their colleagues; and this was generally preceded or followed up by a meeting with project consultants allowing opportunity to clarify and discuss points arising.

---

<sup>1</sup> Including one company that is currently exploring integrated multi-trophic aquaculture.

**Table 2.1: Number of companies/authorities/organisations and individuals interviewed**

Type of consultee	Companies/authorities/organisations	Individuals
Industry - finfish	12	20
Industry - shellfish	8	7 <sup>2</sup>
Local Authority	6	10
Regulator / Consenting body	4	8
Statutory consultee / Consultee	7	10
<b>Total</b>	<b>37</b>	<b>55</b>

### 2.3 CONSULTATION ANALYSIS

The questionnaires were designed to be non-leading and unbiased, containing non-structured questions i.e. open-ended with no prescribed list of answer choices. The questions were developed to gain information from every stage of the consenting process and provide ample opportunity for respondents to raise issues, strengths, observations and potential solutions.

As a result comments on the same theme were raised by different respondents at different places within the questionnaire. To prevent repetition, analysis on a question-by-question basis was therefore avoided. Instead, each comment, issue, positive statement, potential solution and reference to current/upcoming actions was logged into an excel database with the following headings:

- Company/authority/organisation;
- Name of individual(s) consulted;
- Consultee type:
  - Industry – finfish;
  - Industry – shellfish;
  - Local Authority;
  - Regulator / Consenting body; or
  - Statutory consultee / Consultee;
- Comment: free text based on consultation interviews and written submissions;
- Type:
  - Strength;
  - Issue;
  - Suggested solution;
  - Upcoming action; and
- Theme: based on a list of themes developed when reviewing responses

The consultation database compiled a total of 647 comments which were analysed by theme and type of consultee, and presented in Section 5.1.

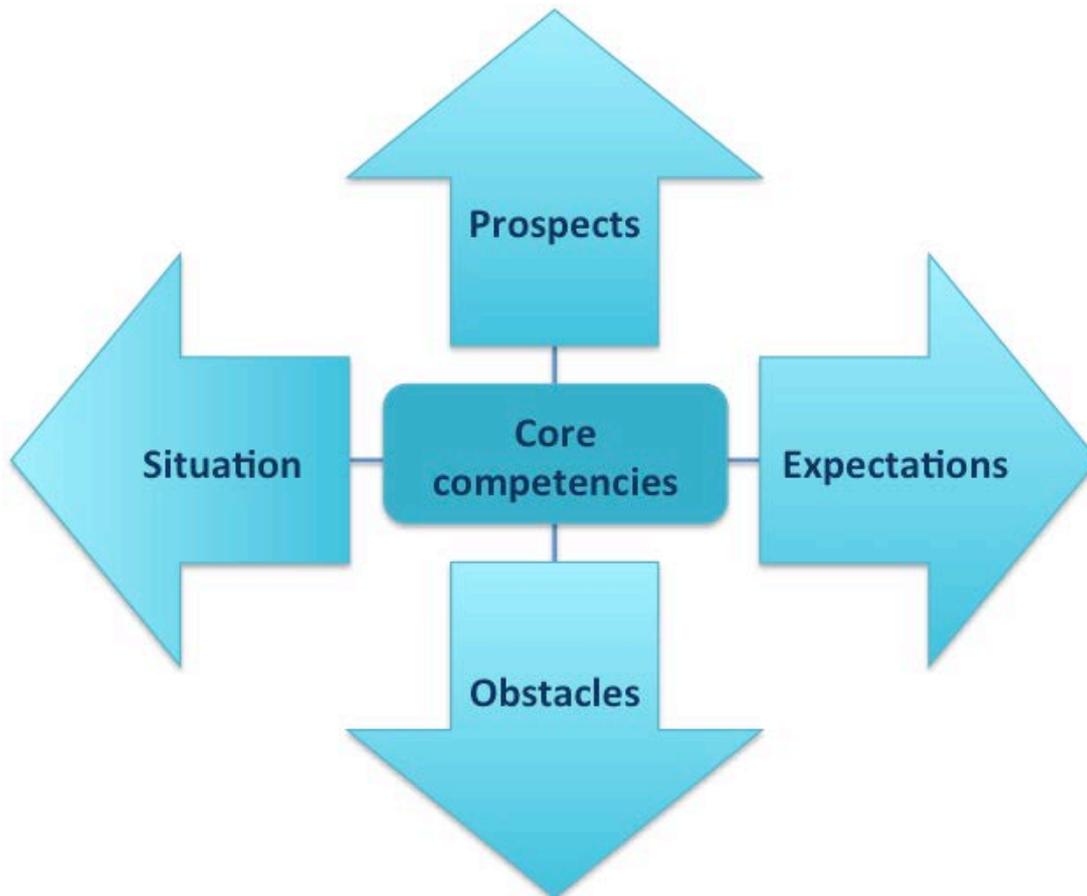
---

<sup>2</sup> Noting that one individual represented both an aquaculture developer and an aquaculture organization.

## 2.4 SCOPE ANALYSIS OF ALTERNATIVE OPTIONS

Based on the review of the Scottish consenting process, other UK and aquaculture consenting procedures (Appendix 2) and the consultation undertaken as part of this research, a series of alternative consenting options have been proposed in Section 6.

These options have been assessed using a SCOPE analysis (Situation; Core competencies; Obstacles; Prospects and Expectations, Figure 2.1) to explore the potential opportunities and inform resulting recommendations.



**Figure 2.1: SCOPE analysis**

SCOPE is a multidimensional planning tool that retains many similarities to SWOT analysis (Strengths; Weaknesses; Opportunities and Threats), but provides a basis to present additional information and reflections pertinent to the planning process. SCOPE allows past, present and future conditions, internal and external factors and advantages and disadvantages to be taken into consideration as part of a wider process of analysis. The SCOPE categories are inter-linked and relevant to each other, and summarized as follows:

- ➔ Situation: the issues or themes within the current consenting process that the alternative option could address.
- ➔ Core competencies: strengths, core skills and abilities within the current consenting process that could be drawn upon to support the alternative option.

- ➡ Obstacles: potential issues and threats of the alternative option.
- ➡ Prospects: possibilities, chances and opportunities that could be delivered by the alternative option.
- ➡ Expectations: the anticipated future-view delivered by the alternative option.

## **2.5 QUICK WINS AND RECOMMENDATIONS**

Informed by the consultation process and the mapping of consenting regimes, a series of quick win are identified within Section 6. These could be implemented on a short timescale, with little associated effort/resources.

As a result of the SCOPE analysis of alternative consenting options, further recommendations are also provided in Section 6.

### 3 POLICY AND EXISTING INITIATIVES

---

The following section provides a brief overview of policy, strategy and existing initiatives relevant to Scottish aquaculture to provide context and identify developments and on-going actions relevant to the aquaculture consenting process.

#### 3.1 STRATEGY AND POLICY

The planning system in Scotland comprises a highly complex set of legislation, guidance and advice that cascades from the Scottish Government down to the statutory planning authorities. At the Scottish Government level, the **National Planning Framework 3** (NPF 3, June 2014) sets out the statutory strategy for Scotland's long-term spatial development. It recognises the importance of aquaculture to coastal economies and as one of 30 actions within its Action Programme pledges to "support the sustainable growth of the aquaculture sector". The NPF 3 also recognises the industry targets set out for 2020 (as detailed in Section 1.2 of this report).

The NPF 3 is supported by **Scottish Planning Policy** (SPP, June 2014) that sets out the Government's policy on nationally important land use planning matters and Circulars, which set out the Government's policy on implementing legislation. In terms of supporting aquaculture the SPP sets out the following 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.

**Circulars** relevant to aquaculture include:

- Planning Controls for Marine Fish Farming (Circular 1/2007)
- The Relationship Between the Statutory Land Use Planning System and Marine Planning and Licencing (Circular 1/2015)
- Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2014
- Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

Scotland's **National Marine Plan** (NMP) was adopted in March 2015, meeting obligations required under the Marine (Scotland) Act 2010 (for inshore waters, out to 12 nautical miles) and the UK Marine and Coastal Access Act 2009 (for offshore waters, 12 to 200 nautical miles). The NMP sets out objectives<sup>3</sup> and marine planning

---

<sup>3</sup> These objectives mainly focus on the promotion of sustainable economic growth of the sector. Not all of the objectives listed can necessarily be achieved directly through the marine planning system, but they are considered important context for planning and decision-making. As with the content of the NMP overall, these are subject to the strategic objectives of the NMP as well as the General Policies set out in Chapter 4.

policies for aquaculture, which can be read in full [here](#); those of particular relevance to this project are:

- Objectives
- With due regard to the marine environment and carrying capacity, support for the industry's target to grow.
  - A proportionate and transparent regulatory framework within which the industry can achieve these targets.
- Policies
- Development plans should identify areas which are potentially suitable and sensitive areas which are unlikely to be suitable for aquaculture development.
  - Operators and regulators should continue to utilise a risk based approach to the location of fish farms and potential impacts on wild fish.
  - Consenting and licensing authorities should be satisfied that there are appropriate emergency response plans in place.
  - 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.
  - Regional marine plans should consider the potential for sustainable growth of aquaculture in their region.

The NMP also addresses Wild Salmon and Diadromous Fish and in terms of marine planning policies: WILD FISH 1 states: '*The impact of development and use of the marine environment on diadromous fish species should be considered in marine planning and decision making processes. Where evidence of impacts on salmon and other diadromous species is inconclusive, mitigation should be adopted where possible and information on impacts on diadromous species from monitoring of developments should be used to inform subsequent marine decision making.*'

This extract from Scotland's NMP introduces the issue of wild salmon and diadromous fish into the issues to be considered in decision-making.

The **Scottish Marine Regions** Order 2015 came into force in May 2015 and sets out the boundaries for 11 marine regions<sup>4</sup>, out to 12 nautical miles. Marine Planning Partnerships will develop Regional Marine Plans for each of these regions. Work is progressing to establish Marine Planning Partnerships in the Clyde and Shetland Islands marine regions, with others to follow in phases in due course. Regional marine planning functions will be delegated to the Partnerships by Scottish Ministers; however, this will not include licensing or consenting powers.

The UK's **Operational Programme** (approved by the Commission in December 2015) for the European Maritime and Fisheries Fund (EMFF) require DEFRA to produce a multi-annual plan for the sustainable development of aquaculture. This includes the same Scottish targets for production growth and recognises the problem of consenting within the wider regulatory burden faced by the sector. It proposes to address this through improved spatial planning and improved competitiveness, innovation and public perception of the industry. However the very practical issue of

---

<sup>4</sup> The 11 Scottish Marine Regions are: Argyll, Clyde, Forth & Tay, Moray Firth, North Coast, North East, Outer Hebrides, Orkney Islands, Shetland Isles, Solway and West Highlands.

the consenting regime is not directly addressed under the multi-annual plan. It is for Scotland to address its specific institutional and legislative barriers to aquaculture development.

**'A Fresh Start** - The renewed Strategic Framework for Scottish Aquaculture' was launched in May 2009 and replaces A Strategic Framework for Scottish Aquaculture (2003). A Fresh Start is formed around six themes, one of which is focused on an improved system for licensing aquaculture developments in Scotland; the findings of this theme are presented in Table 3.1.

A Ministerial Group on Aquaculture (MGA) was established in 2009 to oversee implementation of A Fresh Start, through six working groups. The MGA has since been replaced by the Ministerial Group for Sustainable Aquaculture (MGSA), which was established in 2013 to continue the work of the MGA and to support Scotland's aquaculture industry to achieve the 2020 growth targets. This includes the following working groups:

- Capacity Working Group: considers capacity, barriers to sustainable growth, streamlining regulation & consenting and the development of an interactive map of infrastructure. The Capacity Working Group is considered an advisory group to this project.
- Containment Working Group: published A Technical Standard for Scottish Finfish Aquaculture (STS) in June 2015 for fish farm equipment and staff training recommendations.
- Wellboats Working Group: considers standards for wellboats - tracking position, valve status & sea lice filtration.
- Interactions Working Group: considers interactions between wild and farmed fish, with initial focus on improving dialogue at local level, between farmed & wild fish interests.
- Farmed Fish Health & Welfare Working Group: considered standards for the use of cleaner fish and for mortality reporting and disposal.
- Shellfish Working Group: provides a forum to discuss and resolve issues raised by the shellfish industry, including regulatory bottlenecks; their programme of work is available [here](#).

Two historical working groups are also of note:

- Aquaculture Planning Taskforce (APT), which was responsible for monitoring overall delivery of Delivering Planning Reform for Aquaculture and completed its work in 2011.
- Improved System for Licensing Aquaculture Development (ISLAD) Working Group, which was tasked with ensuring that opportunities exist for expansion of the industry in the right places, with streamlined and proportionate regulations and procedures to ensure faster decisions and to minimise adverse impacts on other users of the marine and freshwater environment. ISLAD completed its work in 2011.

ISLAD and APT oversaw the implementation of the actions in **Delivering Planning Reform for Aquaculture** (DPRA) and DPRA 2, which set out shared objectives across the aquaculture sector, regulating authorities and statutory bodies on

development planning, case handling and co-operation, collaboration and alignment. The DPRA 2 report is available [here](#).

**Table 3.1: A Fresh Start: findings from the key theme: improved systems for licensing aquaculture developments (Marine Scotland, 2009)**

Issues identified by stakeholders	Link to other themes	SG Strategic Objectives					Desired outcomes
		WF	S	H	SS	G	
Improved availability of sites for expansion and rationalisation	M, F,	✓	✓	✓	✓	✓	Aquaculture plans, in the context of marine plans and river basin management plans, which provide a clear indication of where aquaculture development may take place for production of shellfish, finfish and other species
Large numbers of undeveloped leases	M, F	✓	✓		✓		Maximise use of available sites where appropriate, informed by an improved database and other information sources and develop an alternative to the current system of ad hoc “firebreaks” created by unused consents
Fitness for purpose of locational guidelines	C, H	✓	✓			✓	Clear guidance for environmental quality, disease control and landscape, taking into account the assimilative capacity of water bodies and resolving the issue of unused consents
Simplification of procedures and links with Marine Bill and Marine Scotland	C, M, F	✓	✓			✓	Clear indication of how freshwater and marine aquaculture will be dealt with including maximising opportunities for linkage to other marine industries
Impact of aquaculture on other users	C, M, F	✓	✓	✓	✓	✓	Impact of aquaculture on wild fisheries, biodiversity and wider environment minimised through robust and appropriate planning and licensing systems

Other key themes: M: better marketing and improved image, F: improved access to finance, C: improved containment, H: healthier fish and shellfish. Strategic objectives: WF: wealthier and fairer, S: smarter, H: healthier, SS: safer and stronger and G: greener

ISLAD oversaw the preparation of the Working Arrangement document. The **Working Arrangement** (2010) document sets out the requirements and responsibilities of the main statutory consultees, as well as consultation protocols in relation to marine aquaculture planning applications. It sets out a Working

Agreement between Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), Marine Scotland Science (MSS) and District Salmon Fishery Boards (DSFBs) in how they provide advice to Local Authorities to inform Planning Permission decisions.

The actions and recommendations resulting from DPRA and DPRA 2, and their subsequent implementation can be reviewed [here](#). Actions included improving coordination between statutory consultees with respect to planning applications, EIA templates, developing a pre-application protocol, improved communication on industry technical innovations, the implementation of the 'Audit and Review' process, consultation on Permitted Development Rights (PDR), guidance on pre-application discussions and consultation, checklist guidance on completing application forms, planning fee review, exploring revision of the DEPOMOD modelling tool (SEPA), updating landscape guidance (SNH), and nature conservation sensitivity maps (SNH) to support Local Development Plans.

The 2013 **Aquaculture and Fisheries (Scotland) Act** focused on farm management and the interaction of farmed and wild fisheries. Chapter 4 contains some amended wording to Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm), but no significant change to the consenting regime was introduced at this time.

At the planning authority level, the planning system is divided into the plan-led Development Plan system, which comprises a mix of Strategic Development Plans for the four city regions, and Local Development Plans for each Local Authority area, and the Development Management system which handles consenting and control of development. In addition, Local Development Plans are supported by a range of statutory and non-statutory documents including Supplementary Planning Guidance, Development Frameworks, masterplans and development briefs approved by Councils.

There is a hierarchy of development:

- National Developments, which are projects included in National Planning Framework 3;
- Major Developments, which are projects listed in Schedule 1 of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 (the Hierarchy Regulations); and
- Local Developments, which are neither national or major developments.

The Hierarchy Regulations describe fish farming as the placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Planning Act. This definition applies to all waters covered by the Planning Acts, both freshwater and those within Scotland's marine territorial waters (out to the 12 nautical mile limit).

For aquaculture the threshold for major development is where equipment covers a surface area of water greater than 2 hectares. This triggers a twelve-week pre-application consultation period, which requires formal engagement with the local community. In practice only finfish farms with very large pontoons, numerous and/or large diameter cages or exceptionally large oyster farms are likely to fall into the major development category; – the vast majority of applications are considered under the local developments category.

## **3.2 EXISTING INITIATIVES AND PROJECTS**

### **3.2.1 Scotland's Aquaculture website**

The Scotland's Aquaculture website is part of Scotland's Environment Web and has been developed by a partnership of The Crown Estate, Food Standards Scotland, SEPA and Marine Scotland. It provides a database of resources relating to Scottish aquaculture including an environment library, publications, a list of organisations, and access to a wide range of datasets such as fish escapes, emissions, biotoxin monitoring and operator transfers.

The website hosts an interactive map with locational details on active and inactive aquaculture sites, CAR licensed fish farms, shellfish growing water areas, classified shellfish harvesting areas, active Crown Estate lease areas, Marine Scotland disease management areas, locational guideline areas, Special Protected Areas and Local Authority boundaries.

It is a very useful information resource, although it's scope does not extend to providing information about the planning process and consenting, which is available on Marine Scotland's website [here](#).

### **3.2.2 SARF project on Scottish shellfish aquaculture regulations**

The Scottish Aquaculture Research Forum (SARF) commissioned the project titled 'Strategic Considerations for Locational Regulation of Shellfish Aquaculture in Scotland' (SARF110). The aim of the study is to undertake a systematic review of all aspects of the Scottish shellfish planning decision-making process. The project remit was to assess the consistency with which planning determinations are made by Local Authorities across Scotland, with regard to the planning considerations that underpin the decisions. The project objectives were to:

- Review recent shellfish aquaculture regulatory decision-making in each of the main relevant LA areas in Scotland;
- Summarise the main issues or considerations that are difficult and/or inconsistent across Scotland;
- Take account of how current planning considerations under the Town and Country Planning Act might change or be integrated with the new Marine Planning Partnerships;
- Specifically identify the extent to which biological growth performance assessment is seen as a key decision-making issue for regulators;
- Identify whether or not there is existing guidance for the key issues identified; and
- Discuss the overall findings and recommendations of the research with key stakeholders, regulators and others.

The SARF project is on-going with a draft report expected imminently. The project team has maintained a dialogue with APBMer who are undertaking the work, and it is hoped that a brief summary of the outcomes can be included within the final reporting stages of this research.

### **3.2.3 Wild salmon research**

The interactions between wild and farmed salmon and impacts on wild populations are not fully understood. Currently aquaculture planning decisions relating to whether potential impacts on wild salmon are acceptable or not are made by the

relevant LA, who are informed by scientific advice from Marine Scotland Science and SNH, in consultation with the relevant DSFB.

In 2015 Marine Scotland started a ten-year programme of research to investigate any potential risk to wild salmon from sea lice in the Scottish coastal environment.

The Marine Scotland project will examine the outward migration of salmon smolts using acoustic tracking in key coastal areas coupled with modelling of salmon movement patterns based on swimming behaviour in relation to tides and currents. In parallel, maps of sea lice distribution in coastal waters will be generated, indicating areas of high and low concentrations of the parasite. The maps will be based on sea lice data from farms, and modelling of the dispersal of sea lice by prevailing winds or currents. Information on the distribution of smolts and of sea lice will be combined to assess the risk of interaction and data will also be collected to estimate the proportion of the lice in the fish's environment that can be expected to settle on the salmon. This information will be coupled with assessment of the effects different numbers of settled lice on the welfare of the salmon. In this way, it is hoped that any risk due to interaction and the impact of that interaction will be better understood.

Modelled predictions from this suite of studies will be compared with the evidence of impacts from smolt treatment experiments. The approaches and the data collected to look at sea lice distribution can also provide information on connections between different farming areas and how lice spread and establish between them.

Ultimately, this 10-year project will inform options for development and improved management of aquaculture and conservation of wild salmon stocks. It is expected that this research will support the provision of more specific advice from MSS in the future.

SNH provide advice on wild fish interactions through their Habitat Regulations responsibility for Special Areas of Conservation (SACs) for wild salmon (and for Pearl mussel); SNH have an internal Wild Fish Policy and Guidance document to support this advice.

A SARF research project is also currently underway looking at the scale of sea lice impact on numbers of wild salmon returning to spawn by collecting data from a network of sites in which survival of smolts treated with anti-lice chemicals will be compared with controls. This should complement the work being undertaken by Marine Scotland.

#### **3.2.4 Cultivated seaweed**

A Seaweed Policy Statement is currently being developed by Marine Scotland. It went out for consultation in August 2013; consultation responses have been analysed and will inform the finalised Seaweed Policy Statement.

The draft policy statement included presentation of a series of options for revising the current cultivated seaweed consenting process. Cultivated seaweed has therefore not been the focus of this work, although due regard has been given to any views and/or recommendations made throughout this project.

#### **3.2.5 Aquaculture sensitivity mapping**

As described in Section 2.1, 2015 saw the publication of the National Marine Plan and powers for the establishment of 11 Scottish Marine Regions. To support this and improve the information available to all stakeholders, Marine Scotland Science

have undertaken a mapping exercise for finfish and shellfish aquaculture – identifying areas on the basis of their potential suitability for new development using a wide diversity of spatial data including for example environmental sustainability and competing uses of space. The results will be made available on National Marine Plan interactive. This should assist in identifying problems during the planning process where potential planning/licensing issues are made apparent upfront.

### **3.2.6 Other studies**

Other relevant programmes and research include:

- Horizon 2020 EU Aquaspace – being led by SAMS – is considering consenting models. A stakeholder workshop is being held in January 2016. The project is considering 16 different tools including GIS, visual impact and landscape character maps. This will form another information resource to inform planning.
- SEPA model Autodepomod is being updated; it is likely that it will provide greater confidence for removing the precautionary biomass limit of 2,500 tonnes in certain circumstances e.g. where higher limits are indicated by modelling.

## 4 CURRENT CONSENTING PROCESS

### 4.1 OVERVIEW OF THE CURRENT CONSENTING PROCESS

An overview of the current consenting requirements for finfish, shellfish and cultivated seaweed aquaculture is presented in Table 4.1, which is colour coded for each licence/consent type.

**Table 4.1. Summary of licences, consents and assessments required for Scottish aquaculture including finfish (FF), shellfish (SF) and seaweed (SW)**

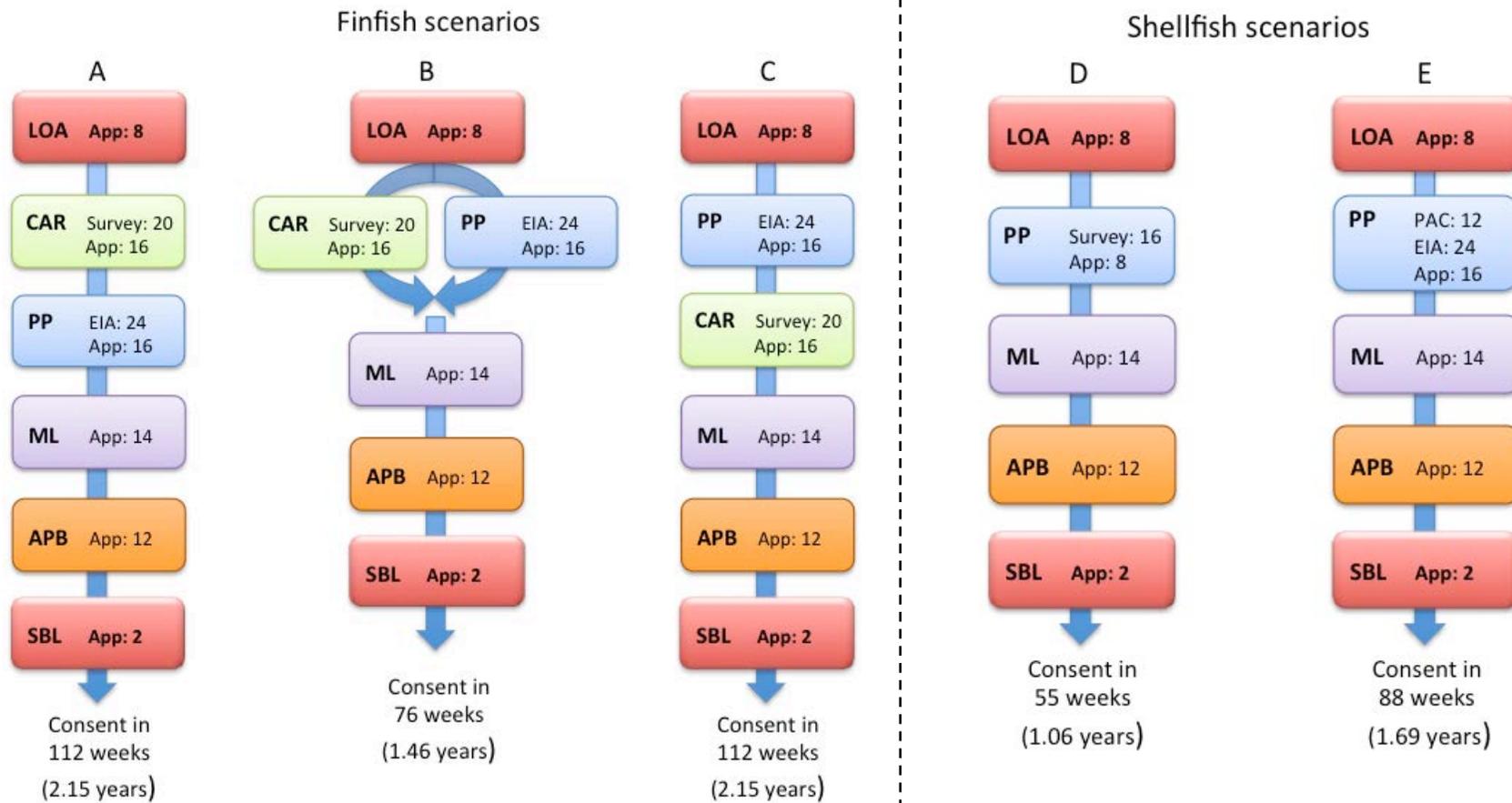
Application	Authorising regulator	Legislation	Aquaculture type		
			FF	SF	SW
<b>Planning Permission</b>	Local Authority (LA)	Town and Country Planning (Scotland) Act 1997	✓	✓	
<b>Environmental Impact Assessment</b> (if necessary, mainly relevant to FF, but can be required for SF)	Local Authority (LA)	The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011	✓	✓	
<b>Marine Licence</b>	Marine Scotland Licensing Operations Team (MS-LOT)	Marine Scotland Act 2010	✓	✓	✓
<b>Seabed Lease</b>	The Crown Estate	The Crown Estate Act 1961	✓	✓	✓
<b>Authorisation to operate an Aquaculture Production Business (APB)</b>	Marine Scotland Science Fish Health Inspectorate (MSS-FHI)	The Aquatic Animal Health (Scotland) Regulations 2009	✓	✓	
<b>Controlled Activity Regulations (CAR) licence</b>	Scottish Environment Protection Agency (SEPA)	The Water Environment (Controlled Activities) (Scotland) Regulations 2011	✓		
<b>Habitats Regulations Appraisal</b> (if necessary)	All of the above	The Conservation (Natural Habitats, &c.) Regulations 1994 and its amendments	✓	✓	✓
<b>Works Licence</b>	Shetland Islands Council	Zetland County Council Act 1974			✓

The following sections provide a summary of each of these licences/consents including individual process flowcharts (a process overview basemap is provided in Figure 4.10).

A summary of the common scenarios to gain consent for a new finfish and shellfish sites is presented in Figure 4.1 (including time periods). Certain consents/licences should be obtained before applying for others; for example a Marine Licence (for equipment and moorings) requires Planning Permission and Controlled Activities Regulations (CAR) licence to be granted before applications will be accepted. There is no prescribed order in which Planning Permission and CAR should be obtained, however some regulators and statutory consultees prefer scenario A where a CAR licence is in place prior to submitting the Planning Permission application (as CAR surveys and modelling will inform this process). Scenario A for a finfish development is therefore presented in more detail in Figure 4.2.

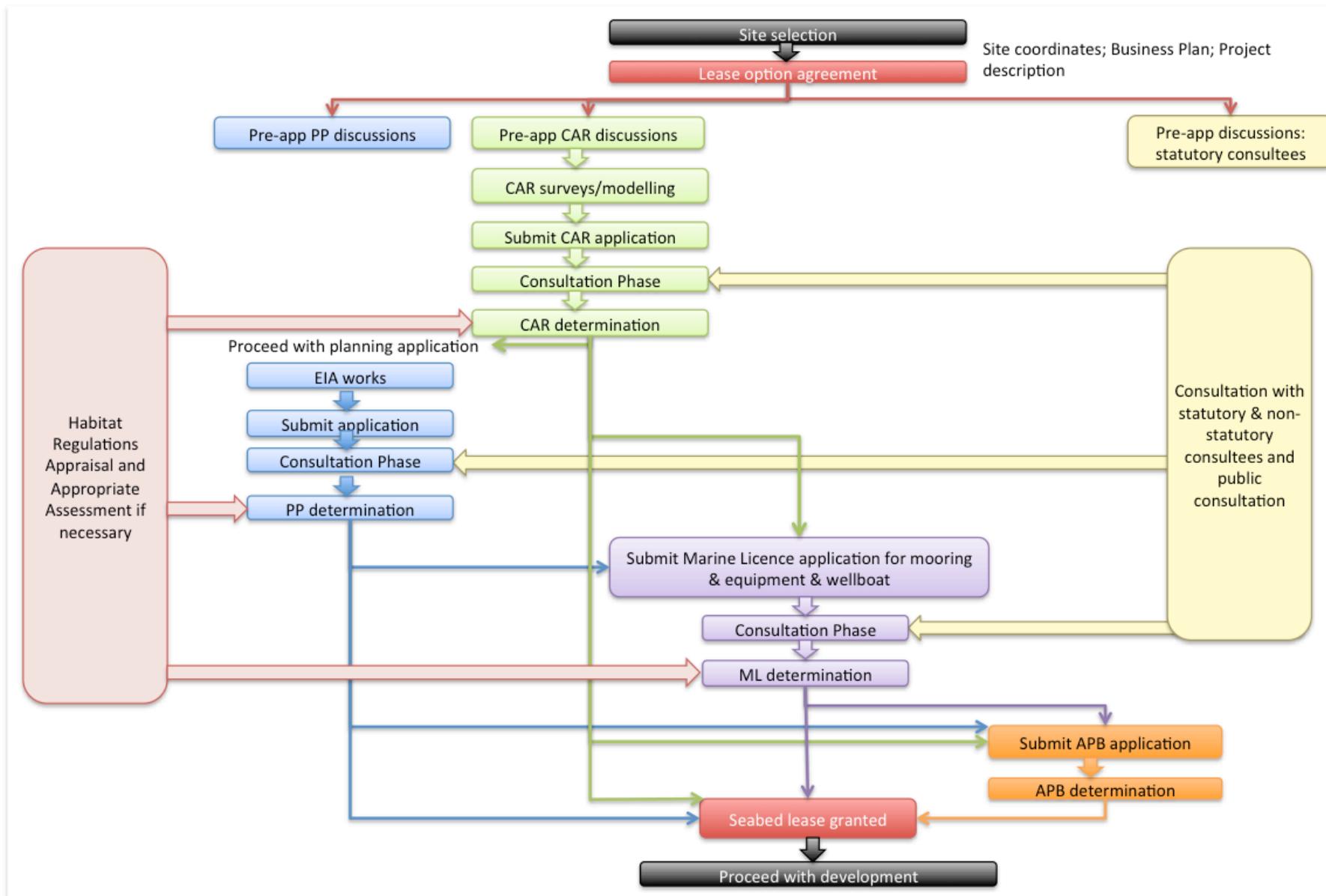
Prior to authorising an Aquaculture Production Business (APB), Marine Scotland Science Fish Health Inspectorate (MSS-FHI) will undertake a gateway check to see that all other licences/consents are in place; this is also the case for The Crown Estate who require all necessary consents in place prior to a full grant of lease.

**Figure 4.1: Scenarios for achieving consent for new finfish and shellfish aquaculture sites in chronological sequence (time periods are in weeks)**



Note: Scenario E relates to major applications. If major application were submitted for finfish developments then 12 weeks would be added to the process for PAC in scenarios A, B and C. Note that the appeals process for each of the licences/consents has not been included.

Figure 4.2: Overview of Scenario A in more detail, identifying key tasks in chronological sequence



## 4.2 REVIEW OF CURRENT CONSENTING REGIMES

### 4.2.1 Planning Permission

Marine finfish and shellfish farming developments (out to 12 nautical miles<sup>5</sup>) came under the jurisdiction of the Planning System in Scotland on 01 April 2007, when the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 came into force. Prior to this date, development consents for marine fish farms were under the jurisdiction of the Crown Estate, or in Shetland and parts of Orkney, the Shetland and Orkney Islands Councils respectively. It is noted that cultivated seaweed farms do not require planning permission under the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007.

The statutory planning authorities are now the mainland coastal councils, primarily the Highland Council, Argyll & Bute Council and North Ayrshire Council, and the three island councils of Shetland Islands Council, Orkney Islands Council and Comhairle nan Eilean Siar (Western Isles Council). The planning permission process for finfish and shellfish aquaculture is presented in Figure 4.3.

The Town and Country Planning (Scotland) Act 1997 considers fish farming as a development with the following definition (Section 26(6) of the Act):

*Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—*

*“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean or mollusc);*

*“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and*

*“tank” includes any cage and any other structure for use in fish farming.*

In relation to marine planning for aquaculture and the interaction with marine plans and development plans the Marine Planning Circular 1/2015 (available [here](#)) states that:

*Terrestrial planning authorities are also required to accord with marine plans in decision making unless relevant considerations indicate otherwise, and to have regard to marine plans in preparing development plans. Development plans and marine plans will direct decision making based on common evidence and policy, minimising the potential for ambiguity.*

*Marine Scotland is undertaking a three year project to identify areas of opportunity and restriction for both finfish and shellfish sectors. This work will contribute to the development of spatial policy to be reflected within both development and marine plans.*

*Scottish Ministers expect that, as the evidence base develops, marine plans will provide spatial frameworks for decisions about the location of new*

---

<sup>5</sup> It is noted that the role of planning authorities currently only extends to 3 nautical miles and that, in the future, should fish farming extend beyond 12 nautical miles a marine licence from Marine Scotland would be required as the primary consent to develop.

*aquaculture development. The consenting process will remain with terrestrial planning authorities.*

Formal pre-application consultation (PAC) is required for planning permission applications for major and national developments. Pre-application discussions (PAD) are non-formal, voluntary and confidential (if required); and can occur for any type (minor/major/national) of development. PAD is focused on early communication between aquaculture developers and planning authorities, regulators, agencies and other bodies who will have to be consulted on any subsequent planning application. The intention of PAD is to better understand the potential for showstoppers that may be applicable to specific sites and provide developers an opportunity to adjust applications in light of these discussions thereby reducing risk of delays and/or refusal. The Scottish Salmon Producers Organisation (SSPO) have developed a Industry Protocol for Preparing Planning Applications for Aquaculture Development as a guide to the finfish and shellfish industry, and a Pre-Application Protocol for the finfish industry.

Statutory consultees to the planning permission process are: Marine Scotland Science (on behalf of Scottish Ministers<sup>6</sup>), SNH, SEPA and DSFB(s).

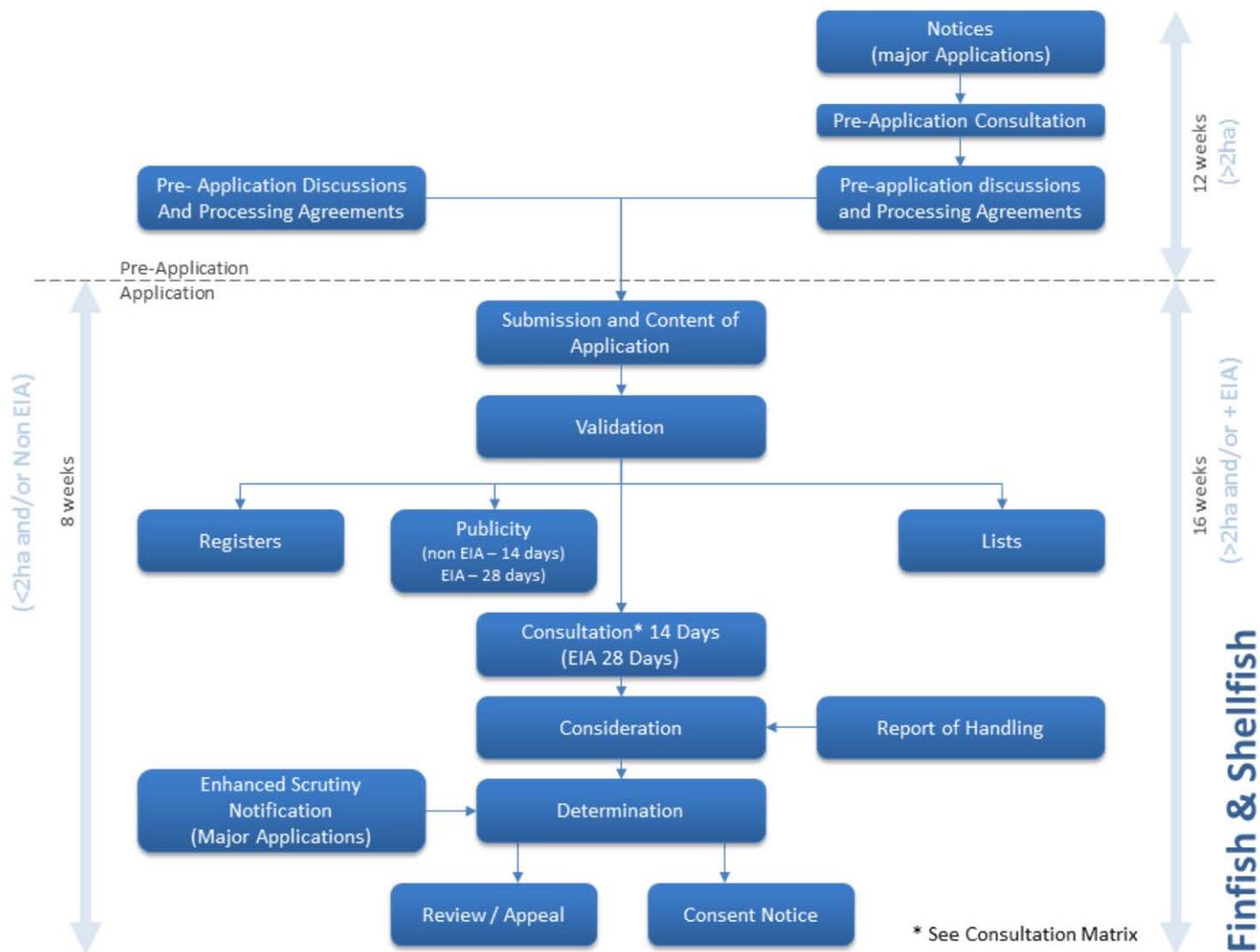
In terms of the statutory timeline for consenting, a planning authority has up to 16 weeks to determine applications for planning permission for major developments and up to 8 weeks to determine applications for planning permission for local developments. For EIA applications, the planning authority should determine the planning application within 16 weeks from the date of receipt of the environmental statement. These periods can be extended by agreement.

Details of the number of planning applications submitted for finfish and shellfish aquaculture is provided in Appendix 4. Across a five-year period (2010-2014) more than 95% of finfish applications and 98% of shellfish applications have been approved by the six Local Authorities. This high rate of success can in part be attributed to the pre-application submission work, which minimises the risk of 'show stoppers' post submission.

---

<sup>6</sup> As per Regulation 25, Schedule 25 Para 5 (7) of the Development Management Regulations 2013

Figure 4.3. Planning permission process for finfish and shellfish aquaculture



## **4.2.2 Environmental Impact Assessment (EIA)**

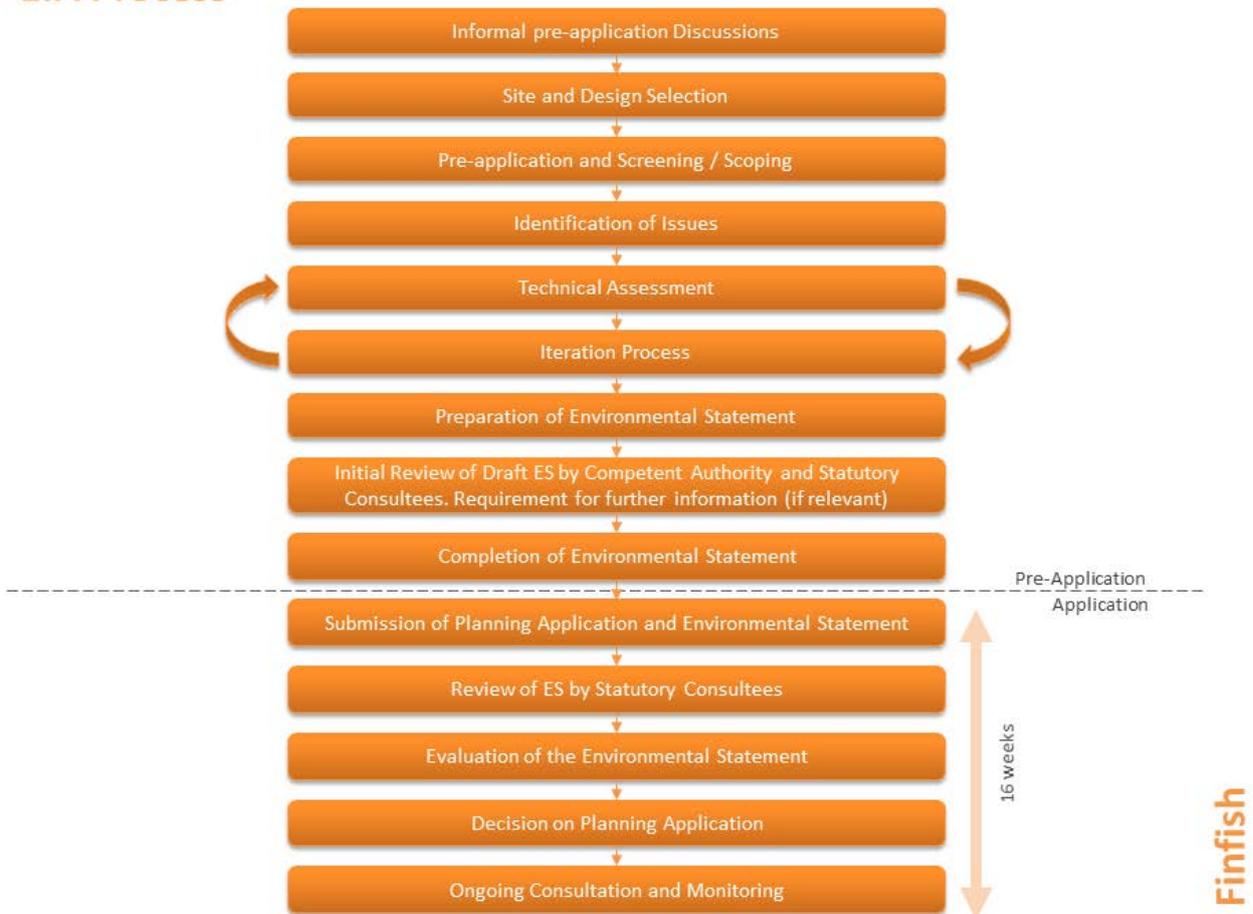
The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 implement the Council Directives (85/337/EEC and 97/11/EC as amended) on the assessment of the effects of certain public and private projects on the environment. Under the 2011 Regulations, an EIA, which is an assessment of the impact of the project on the environment, must be undertaken where any proposed finfish aquaculture development is to be carried out in a sensitive area, is designed to hold a biomass of  $\geq 100$  tonnes, will extend  $\geq 0.1$  hectare surface area of marine waters, including any proposed structures or excavations, or the installation resulting from the development is designed to produce more than 10 tonnes of dead fish weight per year.

An EIA is not required for shellfish farms or seaweed cultivation. An EIA template has been developed by SARF and is available for finfish farm developers to follow, although it is noted that the template has no statutory basis and it is up to the developer to compile an Environmental Statement as per Schedule 4 of the 2011 Regulations. The resulting Environmental Statement will accompany the planning permission application submitted to the relevant LA. Only LAs can act as the competent authority for EIA and the associated screening/scoping. The EIA process is presented in Figure 4.4.

Statutory consultees to this process are: Marine Scotland, SEPA, SNH, Scottish Water, adjoining Local Authorities where relevant and District Salmon Fishery Board(s).

**Figure 4.4. Environmental Impact Assessment process for finfish aquaculture**

**EIA Process**



### 4.2.3 Controlled Activity Regulations (CAR)

SEPA enforce The Water Environment (Controlled Activities) (Scotland) Regulations 2011 by issuing a CAR licence which sets site-specific limits on the amount of fish that can be held in the cages and the type and amount of medicines and chemicals that can be used.

CAR licence applications are supported by survey information undertaken by the aquaculture business on the physical, chemical and biological condition of the seabed and water column. AutoDepomod modelling software is provided by SEPA to the aquaculture industry to allow them to conduct computer-modelling simulations showing, for example how waste will be dispersed from a site. SEPA then verify data submitted with the CAR licence application before undertaking their own simulations (using the same AutoDepomod modelling software). The CAR licence process for finfish aquaculture is presented in Figure 4.5.

SEPA can withdraw or vary an authorisation if operators fail to comply with conditions of their CAR licence or if sites are not meeting SEPA published standards on an ongoing basis. However, the granting of a CAR licence is not dependent on planning permission being consented and cannot be revoked (for reasons other than those previously stated). Therefore a CAR licence could be granted, but not in use (e.g. if planning permission was refused). In such instances the biomass in the CAR licence is assumed to be in the water, whether it's present or not, and this could potentially impact the overall carrying capacity in an area as considered within Locational Guidelines<sup>7</sup>.

There are no statutory consultees to the CAR process, although it is anticipated that SEPA will routinely consult Marine Scotland and/or SNH in connection with a fish farm application. Furthermore, there is no statutory requirement for public consultation, with SEPA only requiring advertisement when an application is considered likely to have a significant adverse impact or an impact on other water users.

The statutory timeline for consenting is 16 weeks from validation of application.

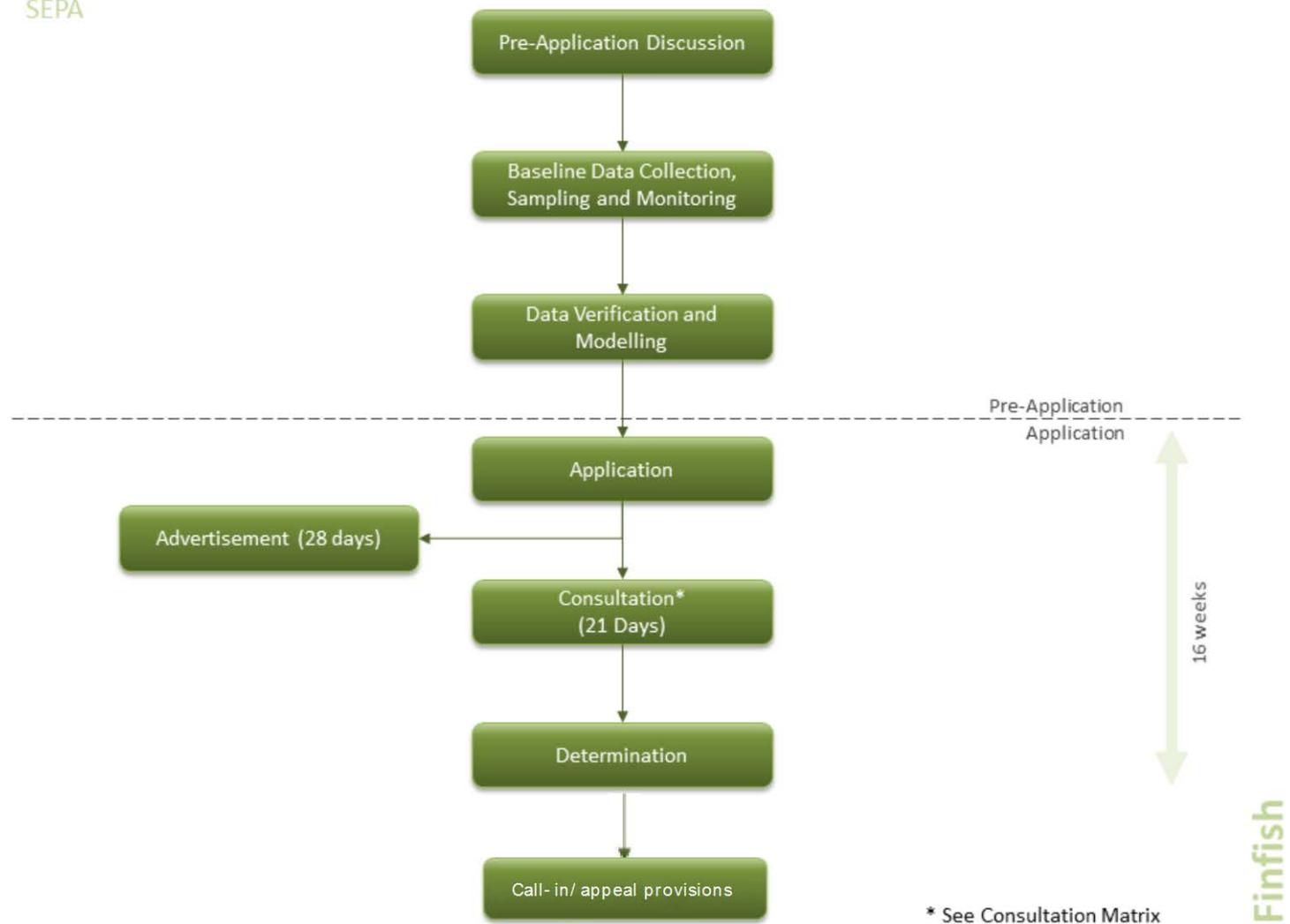
---

<sup>7</sup> SEPA consider that if this acts as a barrier to consent, then market forces should come to play whereby the company seeking consent acquires the unused CAR licence from the owning company.

Figure 4.5. Controlled Activities Regulation (CAR) licence process for finfish aquaculture

## CAR Licence Consent Process

SEPA



#### 4.2.4 Marine Licence

With respect to finfish and shellfish aquaculture, three types of activities require a marine licence(s):

- Equipment – including mussel lines, fish farm cages, walkways/pontoon;
- Moorings (i.e. deposits on the seabed); and
- Discharge of sea lice treatments from wellboats.

In relation to equipment and moorings, the marine licence focuses only on potential hazards to navigation and conditions may require appropriate markers and lighting. A separate marine licence for 'discharge of treatment agents' is also required for discharging from a wellboat. This is not focused on navigational safety and is not specifically needed to gain consent for a fish farm, but will be applied for during the operational phase, if required.

A marine licence (under the Marine (Scotland) Act 2010) combines the previously separate Food and Environment Protection Act 1985 (FEPA) and Coast Protection Act 1949 (CPA) consents. The relevant marine licences for finfish and shellfish aquaculture are focused on navigational safety (previously covered by a CPA consent).

One specific marine licence application form has been developed to cover 'moorings and marine finfish & shellfish farms'. This undergoes regular review by MS LOT to update where necessary with a view to seeking continual improvement. Companies are encouraged to submit an application to cover equipment and moorings in a single marine licence. Seaweed cultivation does not require planning permission, and therefore it is not appropriate for the marine licence to be limited to navigational safety considerations. This is because other environmental factors (that would have historically been addressed under FEPA) are not addressed at any other stage of the cultivated seaweed consenting process. As such, the 'marine construction' application form currently covers the marine licence for seaweed cultivation.

The marine licence process for finfish, shellfish and seaweed aquaculture is presented in Figure 4.6. Statutory consultees to this process are: SNH, SEPA, MCA and NLB.

There are no statutory timelines for marine licensing, however MS-LOT have a target timeframe of 14 weeks for licence determination.

#### 4.2.5 Seabed Lease

The Crown Estate has a statutory duty to obtain a return for any area of seabed or foreshore within Crown ownership that is used for commercial purposes. This encompasses the entire seabed around Scotland, out to 12 nautical miles (with the exception of one or two privately owned areas) and around 55% of the foreshore. Aquaculture operators therefore require a seabed (or foreshore) lease from the Crown Estate before production can commence.

To allow aquaculture businesses the opportunity to explore potential areas for development, the Crown Estate allow a company to apply for a **Lease Option Agreement (LOA)**. This secures the area of seabed, while planning permission and other licences are sought. Once all relevant consent and licences have been granted for the site, the Crown Estate will then proceed with granting a **seabed lease**. An aquaculture company is allowed up to five LOAs at any one time. LOAs expire after three years, with the condition that a planning permission application

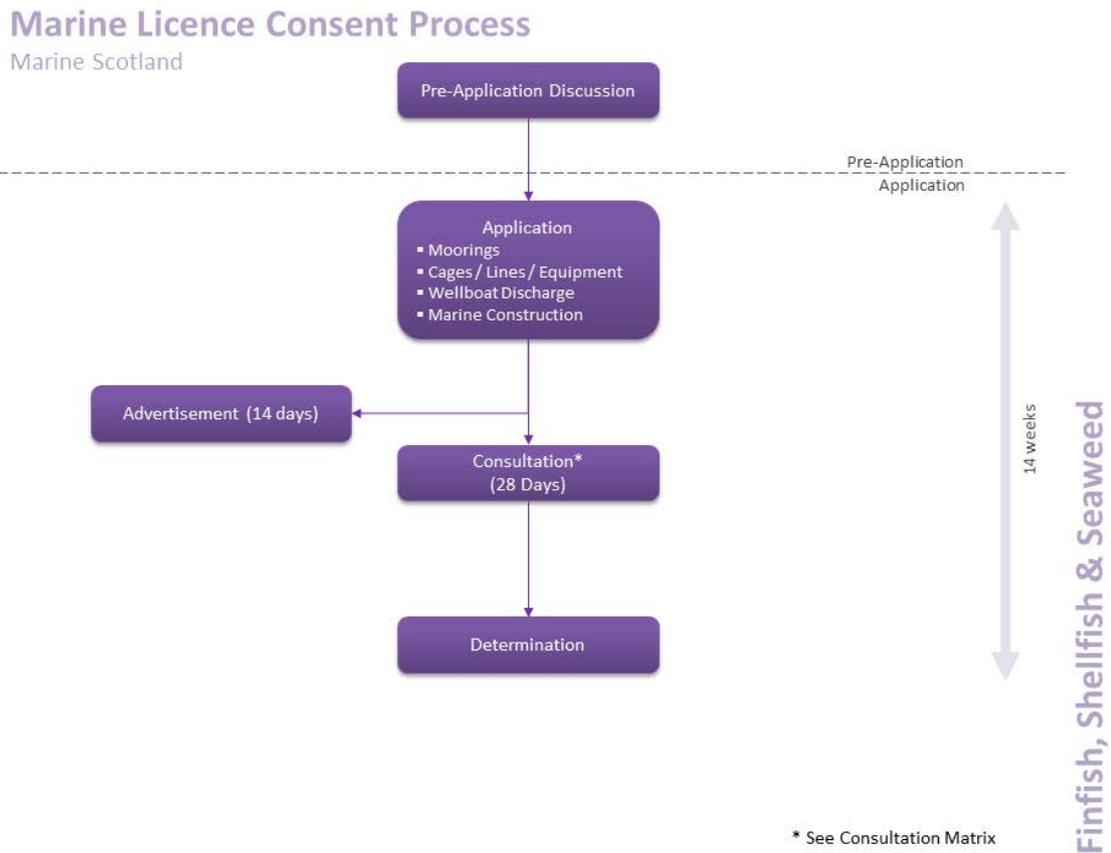
should be submitted to the relevant LA within two years of taking out the LOA, and one year's allowance for the determination process.

The Crown Estate is therefore in the unique position of making determinations at the very beginning of the consenting process, and at the very end. The main application determination process occurs at the LOA granting stage, so this element of the process is not repeated unless details have changes, such as location, area or equipment.

The terms and standard conditions for a LOA are available [here](#).

The process to obtain a seabed lease is presented in Figure 4.7.

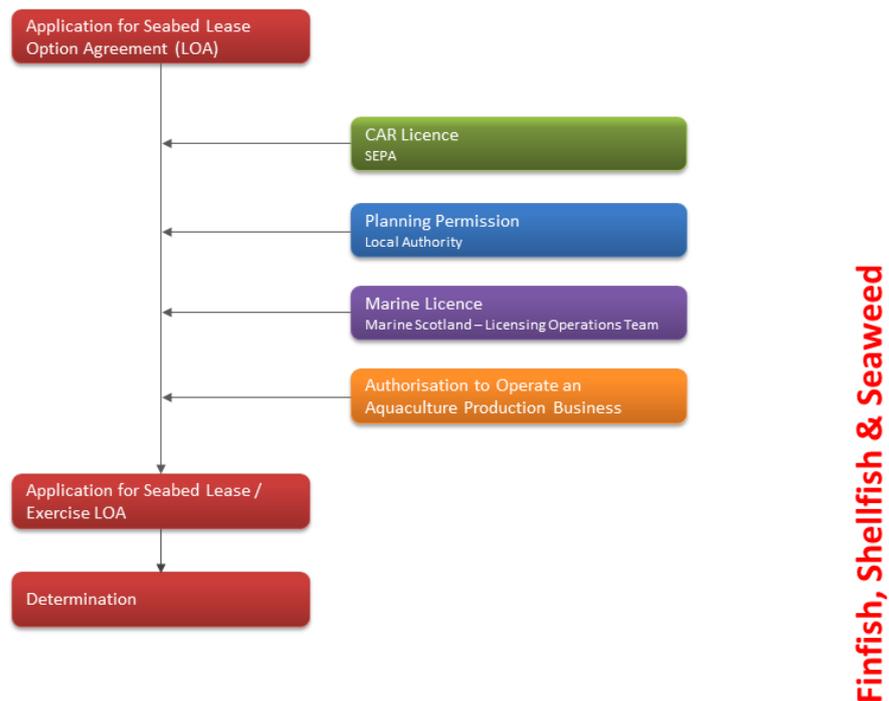
**Figure 4.6. Marine Licence process for finfish, shellfish and seaweed aquaculture through Marine Scotland Licensing Operations Team (MS-LOT)**



**Figure 4.7. Process to obtain a seabed lease**

**Seabed Lease Assessment**

The Crown Estate



#### **4.2.6 Authorisation to operate an Aquaculture Production Business (APB)**

Finfish and shellfish farm businesses require authorisation to operate an Aquaculture Production Business (APB) from Marine Scotland Science Fish Health Inspectorate (MSS FHI) before any development takes place. The APB authorisation includes details of each individual site that will be operated by the aquaculture business. It is the business, rather than a site that is authorised. However, as part of the authorisation details of all sites (name, location, address etc.) must be listed within a register (available to view [here](#)).

The APB authorisation is in relation to the animal health requirements for aquaculture animals and products thereof, and the prevention and control of certain diseases in aquatic animals. Authorisation, subject to conditions, is granted where the operation of the business will not lead to an unacceptable risk of spreading disease. Inspections are undertaken using a risk-based approach (sites that require a high surveillance frequency are inspected annually, sites with a medium surveillance frequency are inspected every 2 years, and finfish sites with a low surveillance frequency are inspected every 3 years whilst shellfish sites are every 4 years).

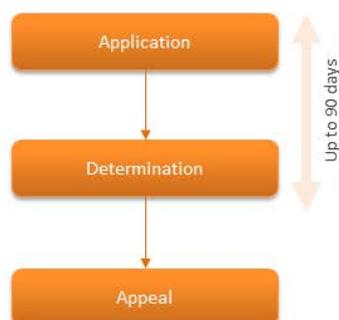
No statutory consultees are involved in this process and applications are not subject to public consultation. APB authorisations are rarely refused, although conditions may be imposed. Authorisations can be suspended or revoked if a company is not complying with conditions or requirements as per the Aquatic Animal Health (Scotland) Regulations 2009.

The authorisation to operate an APB is completely stand alone from the other consenting regimes, and while the MSS FHI would look to see if other required consents and licences are in place before issuing authorisation, they are not legislatively required to do so.

The process is presented in Figure 4.8.

**Figure 4.8. Authorisation to operate an Aquaculture Production Business process through Marine Scotland Science Fish Health Inspectorate**

**Authorisation to Operate an Aquaculture Production Business**  
Marine Scotland Science – Fish Health Inspectorate (MSS-FHI)



#### 4.2.7 Habitats Regulations Appraisal

The Conservation (Natural Habitats, etc.) Regulations 1994 and its amendments require all competent authorities to carry out an appropriate assessment (AA) of a plan or project if that plan or project is likely to have a significant effect on a Natura site. This process is now known in the UK as a Habitats Regulations Appraisal (HRA) (SNH, 2015).

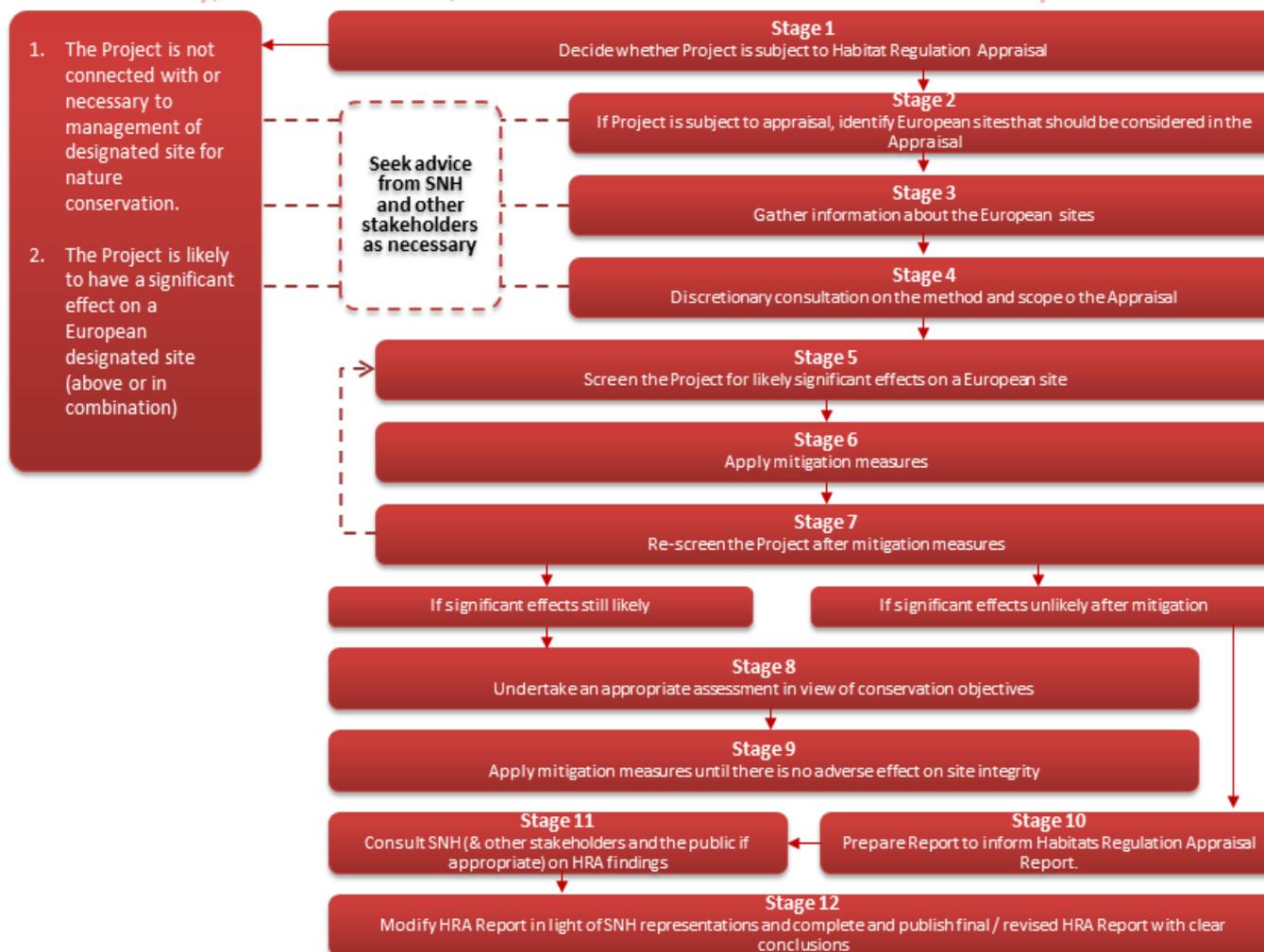
HRA is a rigorous precautionary process (Figure 4.9) centred on the conservation objectives of a designated Natura site's qualifying interests. A competent authority must not authorise a plan or project unless, by means of this appropriate assessment, they can ascertain that it will not adversely affect the integrity of a Natura site. The only exception is if there are no alternative solutions, and there are imperative reasons of overriding public interest for the plan or project to go ahead (SNH, 2015).

In relation to aquaculture, an HRA may be carried out for the same site for each application sought. The LA may carry out an HRA in relation to planning permission; Marine Scotland may carry out an HRA in relation to a marine licence; and SEPA may carry out an HRA in relation to a CAR licence etc.

**Figure 4.9. Habitats Regulations Appraisal process for finfish, shellfish and seaweed aquaculture**

## Habitat Regulations Assessment

Local Authority; Marine Scotland; SEPA in consultation with relevant statutory consultees



#### **4.2.8 Permitted Development Rights**

Permitted development rights (PDR) for fish farms are regulated by the Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012 and permit the addition or change to equipment on a farm and changing production from one species to another without the need to apply for planning permission.

PDR allows the following equipment changes to be accommodated within the existing planning boundary of a site, subject to a set of prescribed limits:

- Replacing an existing finfish cage or installing an additional finfish cage (e.g. amongst other conditions, if <100m in circumference if circular, or < 796 m<sup>2</sup> if not circular; and no increase in biomass);
- Replacing an existing feed barge, in the same or a different location, or relocation of an existing feed barge;
- Replacing top nets and their support structures at a finfish farm (if new structures do not exceed 2.5m);
- Deploying equipment temporarily (excluding fish pens) at a finfish farm (e.g. amongst other conditions, if temporary equipment does not increase total surface area by >1%);
- Adding longlines at a shellfish farm (must not exceed the lesser of 500m<sup>2</sup> or 10% of original configuration); and
- Switching species from Atlantic salmon to sea trout, rainbow trout or halibut.

A prior notification is submitted to the relevant LA. This process is not subject to statutory consultation, and it is for the LA to determine whether any consultation is required. The function of PDR is to avoid going through the formal planning process for relatively minor changes to a development.

PDR is currently undergoing an internal review by Marine Scotland and therefore is not considered further within the scope of this project.

### **4.3 CROSS CORRELATIONS BETWEEN CURRENT CONSENTING REGIMES**

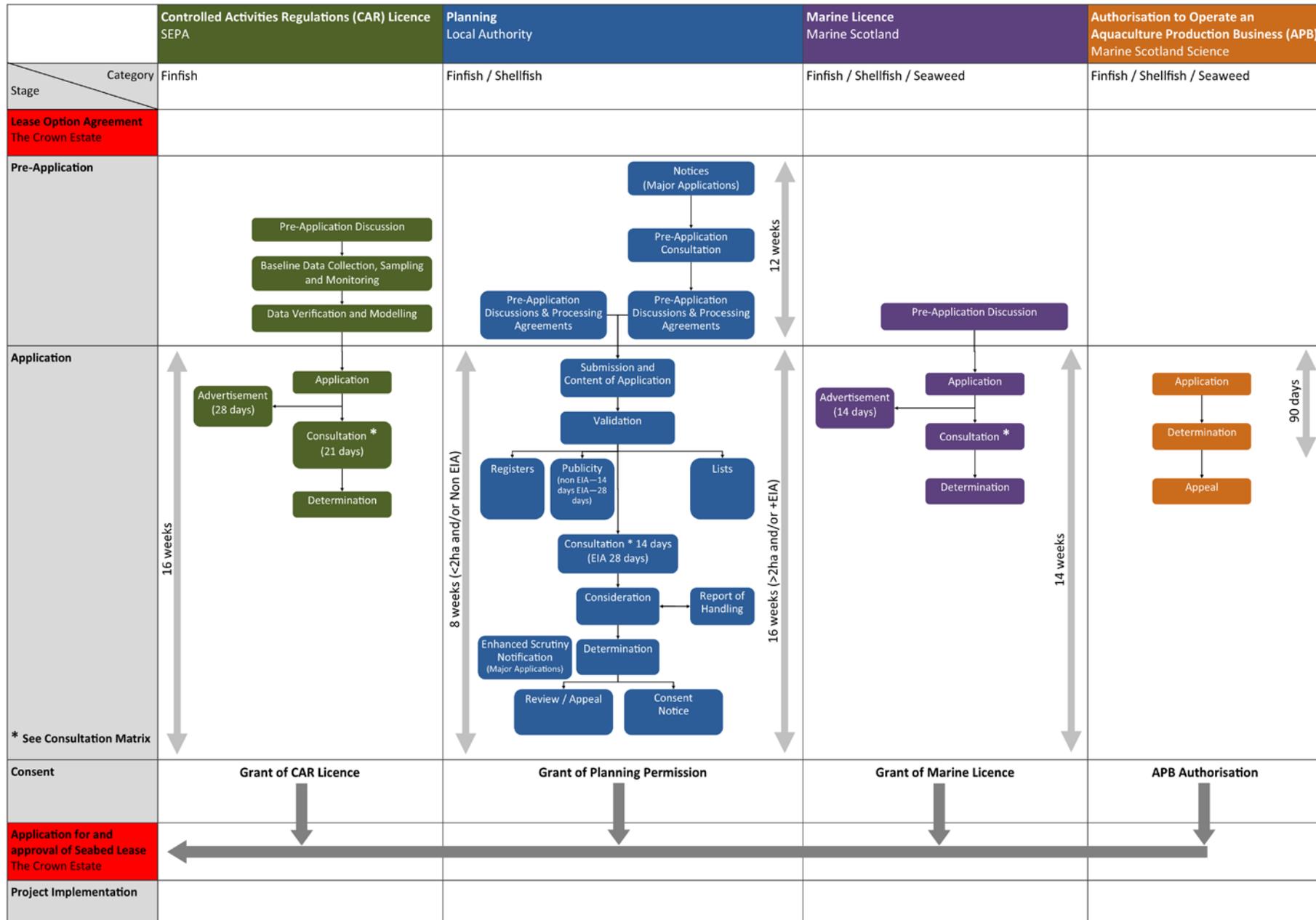
#### **4.3.1 Overview of licensing processes**

An overview of the Scottish aquaculture consenting regime is presented as an aligned process in Figure 4.10 indicating pre-application, application and consultation stages.

The consultation matrix referred to with this figure is presented in Table 4.2.

As noted in Section 4.1 and illustrated in Figure 4.1 and Figure 4.2, in reality the process is not aligned as CAR is often sought in advance of seeking planning permission. However it serves to illustrate areas of potential duplication along with comparative complexities and timescales.

Figure 4.10: Overview of licencing application processes for Scottish aquaculture



### **4.3.2 Overview of consultation requirements across consenting regimes**

The Planning Permission, CAR licence and Marine Licence processes require formal consultation with statutory and non-statutory consultees; those involved in these processes are listed in Table 4.2. This illustrates a number of duplications in consultations for each process, including some that are statutory to one process, and non-statutory to another including: SEPA, Scottish Natural Heritage (SNH), Marine Scotland, DSFBs, MCA, NLB, and Historic Environment Scotland.

The Seabed Lease issued by the Crown Estate and the authorisation to operate an Aquaculture Production Business (APB) issued under MSS-FHI are not included within the table as they do not involve a consultation period; although they both undertake an informal gateway check to ensure all licences/consents have been granted prior to their approval.

**Table 4.2: Consultation matrix indication statutory and non-statutory consultees to each of the consenting processes**

<b>CONSULTEE BODY</b>	<b>Planning Permission Local Authority Formal Consultation</b>	<b>Environmental Impact Assessment Formal Consultation</b>	<b>CAR Licence SEPA Formal Consultation</b>	<b>Marine Licence MS: LOT Formal Consultation</b>
<b>The Crown Estate</b>				Non Statutory
<b>Scottish Environment Protection Agency (SEPA)</b>	Statutory	Statutory		Statutory
SEPA - Internal Departments			Internal to SEPA	
<b>Local Authority (LA)</b>			Non Statutory	
LA – Internal Departments	Internal to LA			
<b>Marine Scotland (MS) on behalf of Scottish Ministers</b>	Statutory	Statutory (for marine only)	Non Statutory	Statutory
MS Science (MSS) – Environment Programme	Internal to MS	Internal to MS	Internal to MS	
MSS – Fish Health Inspectorate	Internal to MS	Internal to MS	Internal to MS	
MSS – Freshwater Fisheries Programme	Internal to MS	Internal to MS		
Marine Scotland Compliance				Internal to MS
<b>Scottish Natural Heritage (SNH)</b>	Statutory	Statutory	Non Statutory	Statutory
<b>District Salmon Fisheries Boards</b>	Statutory	Statutory	Non Statutory	
<b>Community Councils</b>	Non Statutory			
<b>Food Standards Scotland</b>			Non Statutory	

<b>CONSULTEE BODY</b>	<b>Planning Permission Local Authority Formal Consultation</b>	<b>Environmental Impact Assessment Formal Consultation</b>	<b>CAR Licence SEPA Formal Consultation</b>	<b>Marine Licence MS: LOT Formal Consultation</b>
<b>Harbour Authority</b>	Non Statutory			Non Statutory
<b>Historic Environment Scotland</b>	Non Statutory	Statutory	Non Statutory	
<b>Ministry of Defence<sup>8</sup></b>	Non Statutory			
<b>Maritime Coastguard Agency</b>	Non Statutory			Statutory
<b>Northern Lighthouse Board</b>	Non Statutory			Statutory
<b>Scottish Water</b>	Non Statutory	Statutory		
<b>SportScotland</b>			Non Statutory	
<b>Transport Scotland</b>	Non Statutory			
<b>Fishermen's Associations incl. Inshore Fisheries Groups</b>	Non Statutory			Non Statutory
<b>Environmental NGOs *</b>	Non Statutory			
<b>Recreational &amp; local interest groups **</b>	Non Statutory			Non Statutory
<b>Public Consultation</b>	Statutory	Statutory	Non Statutory	Statutory

\* For example: Hebridean Whale & Dolphin Trust, RSPB, Whale & Dolphin Conservation Society, Raptor Study Groups (Eagles).

\*\* For example: Royal Yachting Association, West Highland Anchoring Association, Local Amenity Trusts Local Special Interest Groups.

<sup>8</sup> Both the UK Secretary of State and Scottish Ministers must be consulted where marine fish farm development might affect a site covered under Protection of Military Remains Act 1986.

### **4.3.3 Overview of elements considered within each consenting regime**

The overlap of consenting areas and topic areas for key regulators and statutory consultees is presented in Figure 4.11 and Figure 4.12. These demonstrate the complexities of the consenting process and highlight overlap and duplication by topic area and responsibility.

In some cases the same element is covered by different competent authorities, but is examined from different perspectives. For example benthic impacts due to chemical treatments and solid organic waste are assessed by SEPA, while the potential impact to sensitive habitats of equipment and moorings is assessed by LAs within Planning Permission, with SNH providing advice as a statutory consultee. In this example, the overlap is correct and justified.

Figure 4.11: Venn diagram illustrating overlap in consenting areas for key regulators

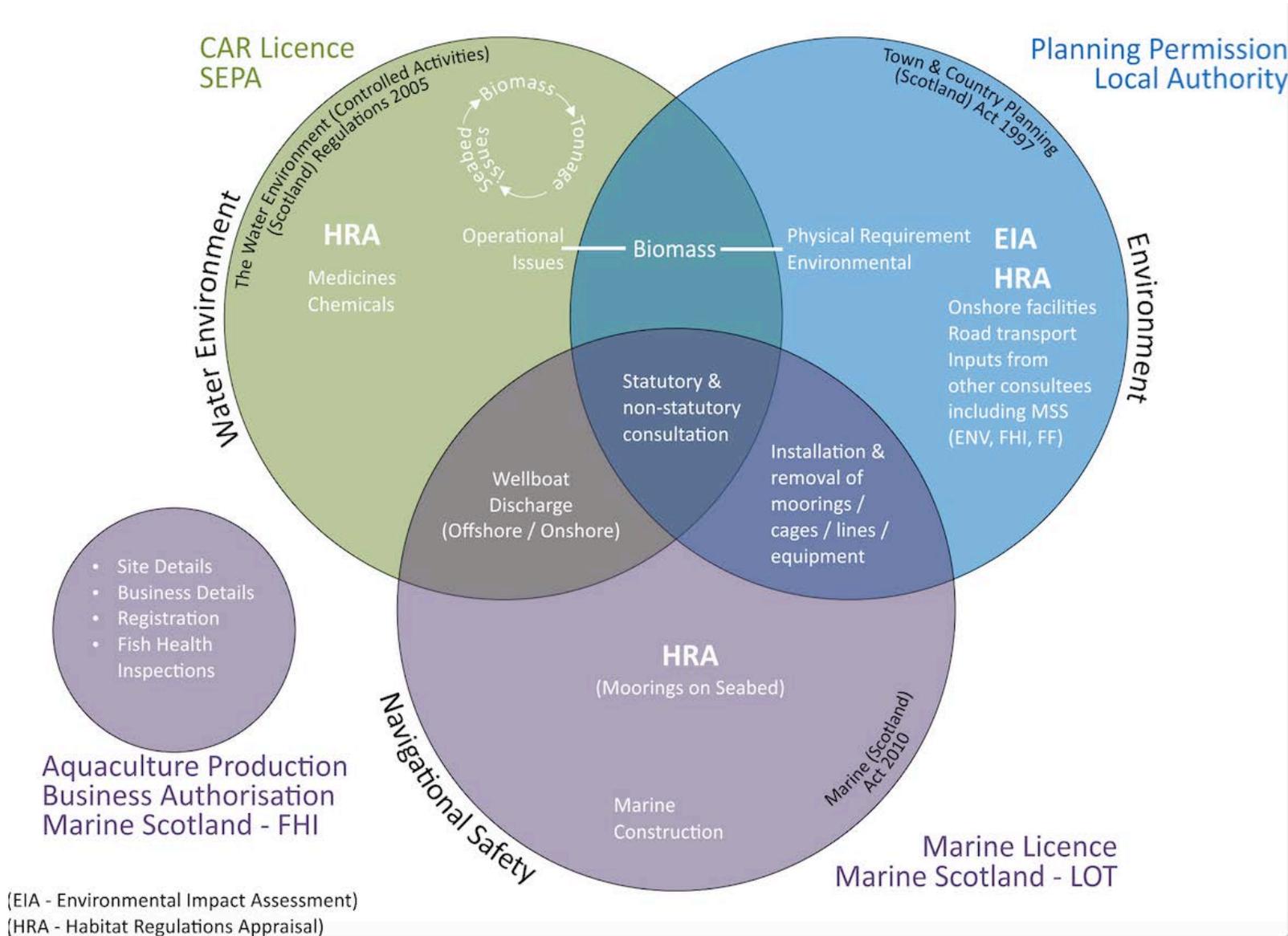
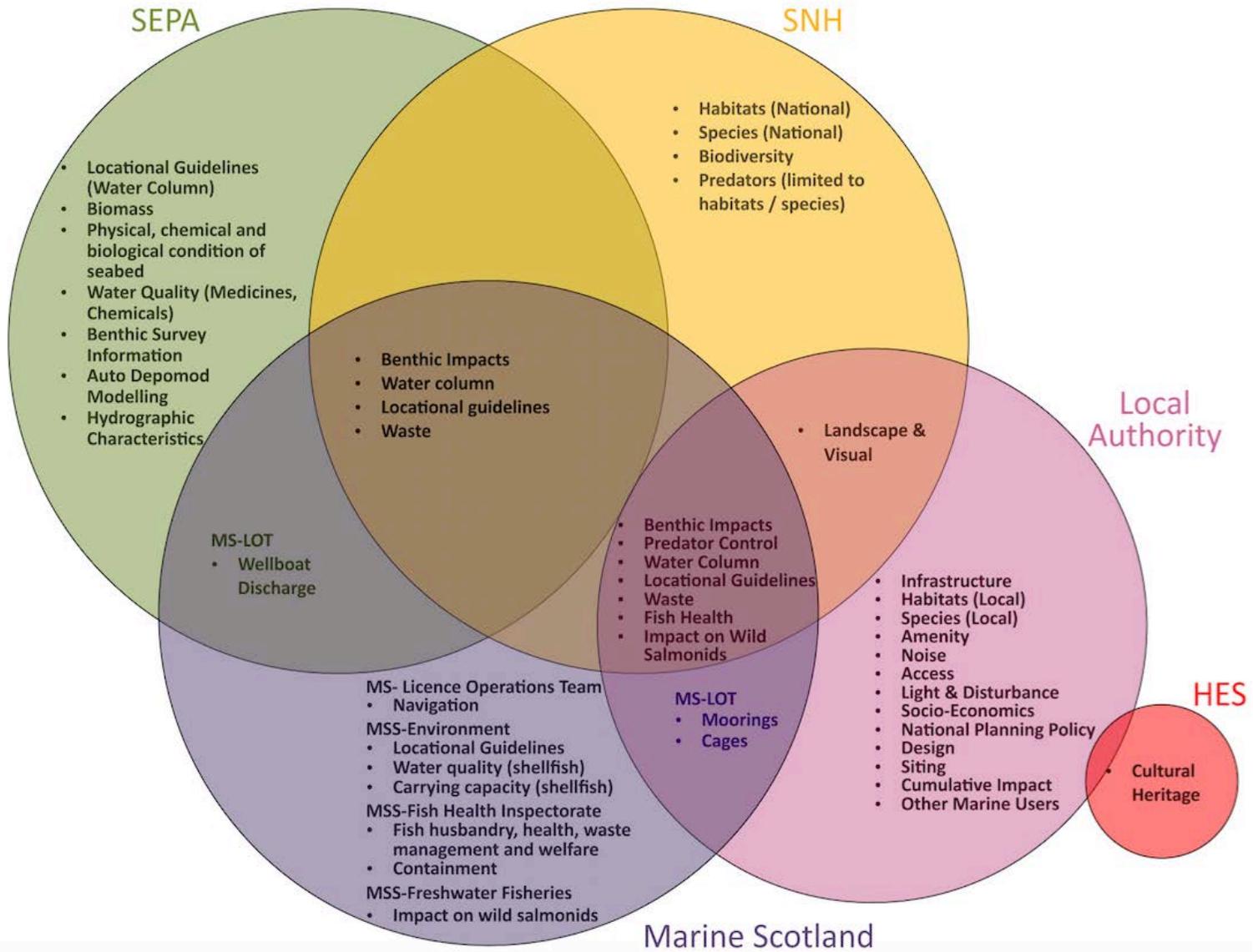


Figure 4.12: Venn diagram illustrating cross-over in topic areas for key regulators and statutory consultees



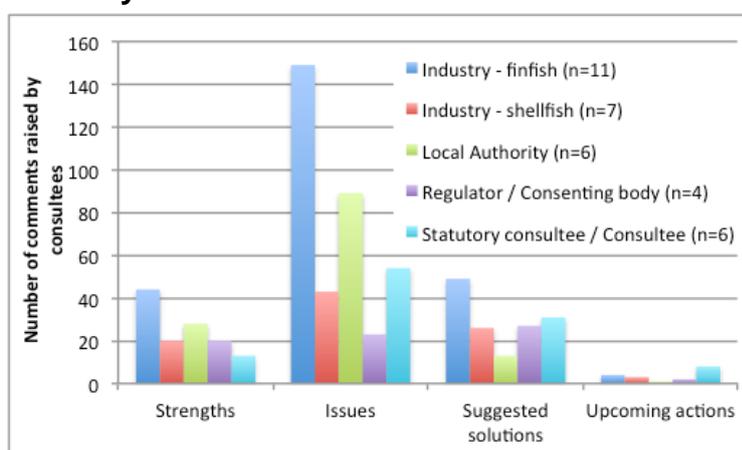
## 5 CONSULTATION ANALYSIS

### 5.1 REVIEW OF CONSULTATION

The consultation database collated 647 comments based on consultation with 37 companies, authorities and organisations; these entries were categorised into strengths, issues, suggested solutions or upcoming actions (Figure 5.1). On average the finfish industry and Local Authorities (LAs) raised the most issues (14 and 15 per company/authority respectively); while other regulatory/consenting bodies and the shellfish industry raised the fewest (on average 6 per company/authority).

Strengths, issues and suggested solutions are discussed in the sections below. Information pertaining to upcoming actions have not been analysed, but used to inform the relevant sections of this report (Section 3 and Section 4).

**Figure 5.1: Number of strengths, issues, suggested solutions and upcoming actions listed by consultees**



#### 5.1.1 Strengths

The strengths and positive elements of the current consenting regime cited by consultees is presented by topic in Figure 5.2.

The pre-application discussions have been consistently highlighted across all consultees as being very helpful in flagging up issues, pre-empting progress on non-viable sites, and helping to smooth the application process. These pre-application discussions are undertaken voluntarily, set up by the developer and undertaken via face-to-face meetings, telephone and email on a one-to-one basis, or as a round table meeting.

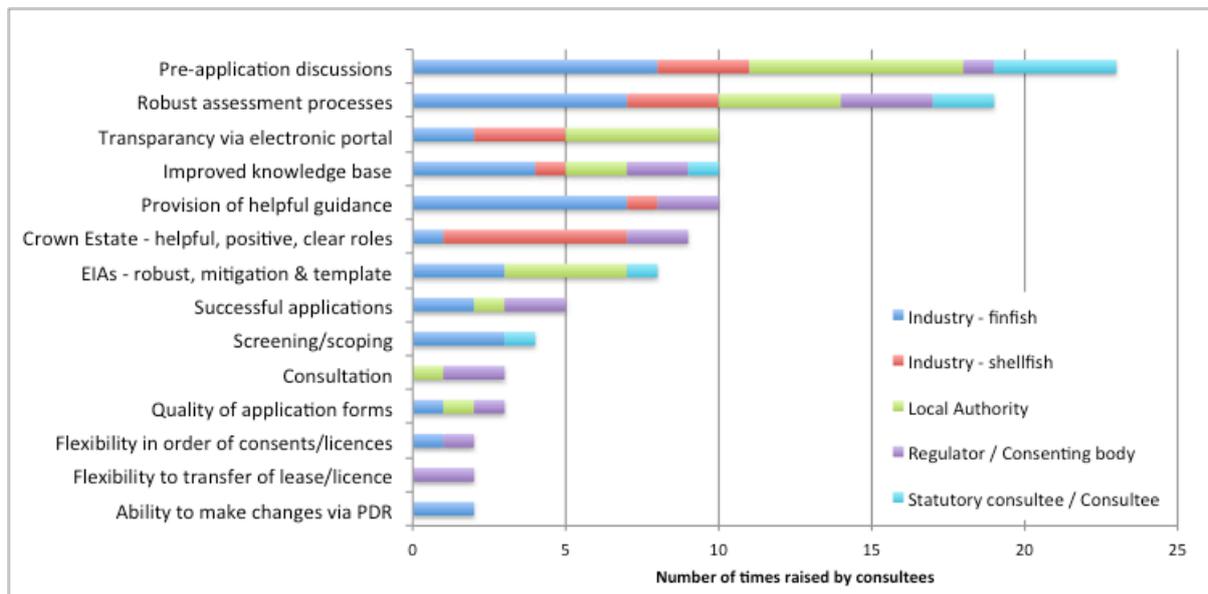
The robust and rigorous assessment process for all consents was also consistently praised. The consenting regime provides confidence to the industry that they are there for the right reasons and supports the knowledge that the environment is not being inappropriately impacted. The Scottish finfish industry consider that applying such stringent environmental quality standards assists Scottish salmon in achieving its market price.

In addition, planning decisions are noted to be made with democratic accountability and the transparency provided by the LA electronic portals was considered to add strength to the process.

The improved knowledge base of all those involved within the Scottish aquaculture sector was highlighted; including the industries ability in understanding and

completing application forms and associated studies/EIAs, and the LAs general knowledge of aquaculture and the marine environment.

**Figure 5.2: Strengths of the current consenting system listed by consultees**



The availability of helpful guidance was highlighted by the finfish industry, including SEPA's guidance on CAR applications and undertaking hydrographic surveys, SNH's advice and guidance on landscape and visual issues, and the general user friendliness of templates and application forms.

Other strengths mentioned included:

- Helpfulness and positive approach taken by the Crown Estate (particularly noted by the shellfish industry);
- The fact that the majority of applications are successful;
- The usefulness of the Screening & Scoping stages of EIA (as per reasons associated with pre-application discussions);
- Efficient consultation processes were noted by regulators, including standardised responses;
- Improved quality of applications, as industry gains experience;
- The flexibility in the order in which CAR and Planning Permission can be obtained;
- The ability to transfer seabed leases and CAR licences; and
- The ability to make changes via PDR, as opposed to submitting Planning Permission applications.

## 5.2 KEY ISSUES

The issues, frustrations and problems encountered by all stakeholders involved in the consenting process are presented in Figure 5.3 (top 10 issues) and Figure 5.4; the main issues identified are discussed further below.

### ***Wild and farmed salmonid interactions***

How wild and farmed salmonid interactions are considered within the consenting process was the top issue raised across the board by the finfish industry, the LAs

and statutory consultees. The concern is focused on the level of advice and guidance provided by statutory consultees (Marine Scotland Science, SNH and DSFBs) and who is responsible for interpreting that advice (LAs).

As background, in the Scotland's National Marine Plan Chapter 8 addresses Wild Salmon and Diadromous Fish and in terms of Marine planning policies: WILD FISH 1 states: *The impact of development and use of the marine environment on diadromous fish species should be considered in marine planning and decision making processes. Where evidence of impacts on salmon and other diadromous species is inconclusive, mitigation should be adopted where possible and information in impacts on diadromous species from monitoring of developments should be used to inform subsequent marine decision making.* This extract from Scotland's National Marine Plan introduces the issue of wild salmon and diadromous fish into the Planning Permission decision making process, as well as within the EIA process.

It is considered by finfish industry stakeholders that in the last 5 years, no one organisation has taken the responsibility of dealing with sea lice interactions. This has been to the extent that one statutory consultee (DSFB) considers interactions between wild and farmed fish to be an unregulated area.

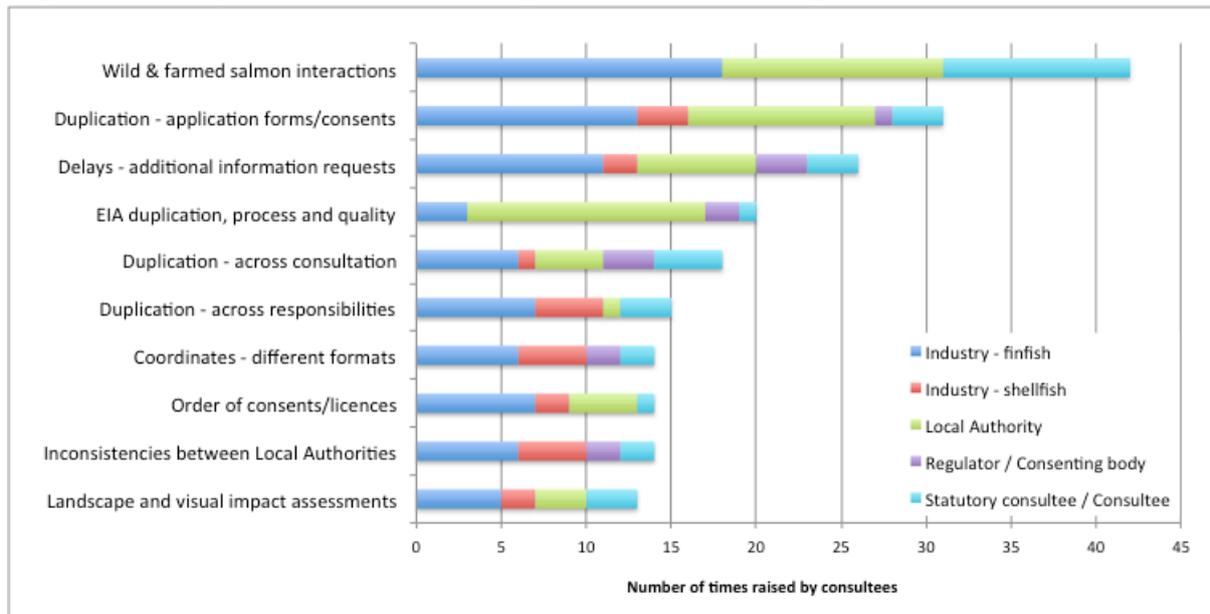
However, in the last year Local Authorities (LA) may ask that Environmental Management Plans (EMPs) be developed and implemented as part of a condition of consent. Monitoring of farmed fish is essential and integral to an effective EMP. In some cases monitoring data is provided to the SSPO and aggregated into a publically available report, but this is not always the case.

In addition to EMPs, the LAs may grant temporary planning permission (e.g. for 10 years). This is commended by the DSFB as they consider it a mechanism for action to be taken if sea lice issues and/or unacceptable interactions with wild salmonids occur. However, temporary planning permission adds significant financial risk to any finfish aquaculture business.

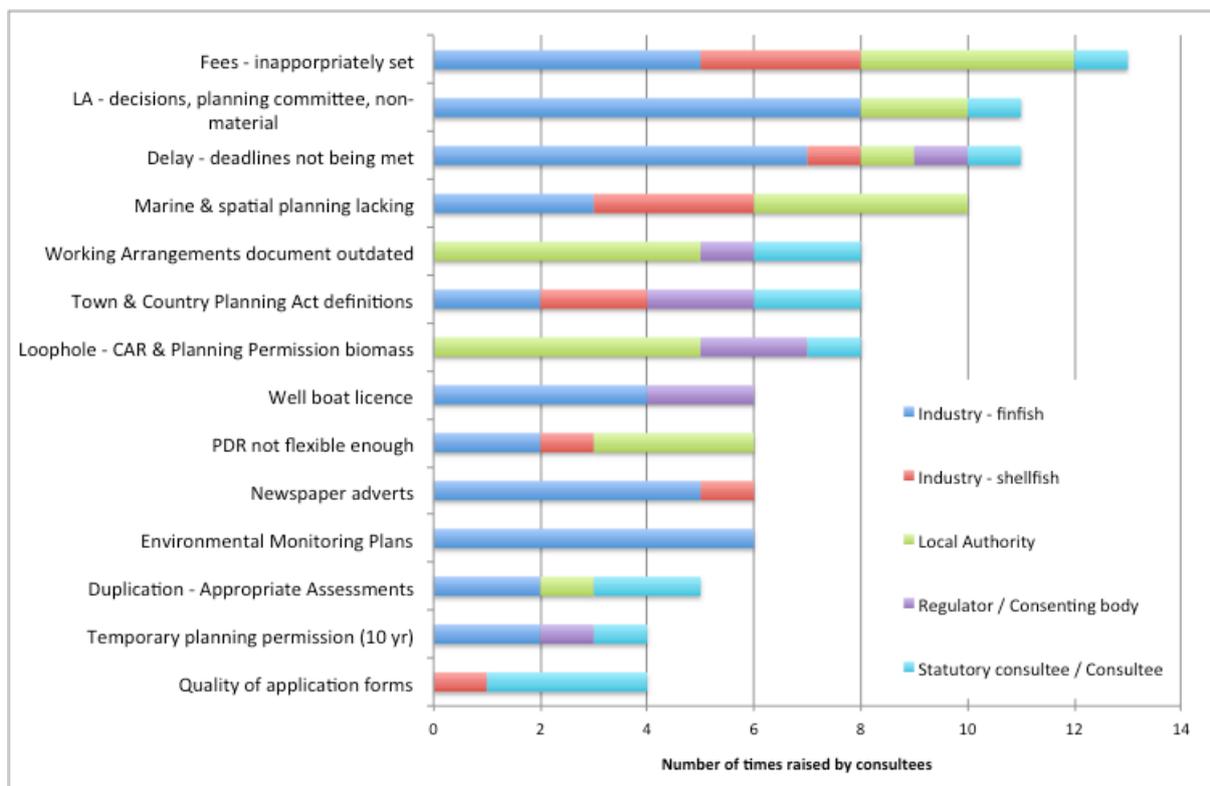
Putting EMPs and 10-year temporary planning aside, the crux of the issue relates to the planning system, which is designed to consent the physical infrastructure of a fish farm, having to also address scientific areas of biomass, carrying capacity and fish health issues to which they may not have expertise or the most relevant knowledge. LAs should receive advice from the relevant statutory consultees (MSS, DSFB and SNH) on this area, but often feel that this advice is not site specific, generic in nature and therefore difficult to interpret.

It is considered that there is a lack of definitive guidance or guidelines on how to assess and deal with interactions between wild and farmed salmonids, and that a clear set of monitoring requirements and appropriate criteria which set limits triggering management actions if proven necessary should be developed.

**Figure 5.3: Top 10 issues raised by consultees during consultation**



**Figure 5.4: Other issues and/or frustrations raised by consultees during consultation**



### ***Duplication within application forms/consents***

Duplication was consistently raised in relation to application forms – notably for summary information and site details that are required in different formats within every application form, including formats of coordinates and scale of maps.

Apparent duplication is considered across regulators' responsibilities, however in some instances this is appropriate and necessary due to the regulator's remit. For example, SEPA's regulatory role in relation to sea bed impacts does not absolve the LA from its responsibility to consider sea bed impacts as part of its biodiversity duty.

Three quarters (75%) of the finfish industry, all of the shellfish industry, and 6 regulators/statutory consultees cited duplications between Marine Licences (for moorings and equipment) and Planning Permission. This is related to the fact that Marine Licences focus on the navigational safety of moorings and equipment, while planning considers all other aspects.

### ***Delay due to additional information and survey requests***

Delays due to requests for additional information are a cause of frustration for all parties and can result in lengthy delays and significant extra cost to the developer.

The finfish and shellfish industry noted statutory consultees requesting further information through the planning process on issues which are generally not relevant to Planning Permission. Examples include MSS asking how mortalities are to be removed from the cages, MSS requesting data on deoxygenation levels, MSS requesting biosecurity information and SEPA looking for Equilibrium Concentration Enhancement values for nutrient. Many of these aspects are required by relevant authorities to make judgment and/or allow them to provide a comprehensive statutory consultee response. Nevertheless, there remains confusion in relation to the specifics of information requirements, why it is needed and whose responsibility it falls under.

While MSS cite applicant's misinterpretation of Scoping Opinions or lack of clarity/specifics on what information is required and the quality of that information as being the reason for additional information requests.

### ***Variations in approach by Local Authorities***

Variations in approach between LAs were highlighted in a number of areas, including the implementation of Environmental Management Plans (EMPs), and introduction of temporary planning permission (which last 10 years); and perceived general view of aquaculture developments (with industry consultees citing some LAs as being very supportive and helpful, and others being generally more negative and less supportive of development).

In relation to EMPs: there is a perception that Highland Council and Argyll & Bute Council require EMPs for all new Planning Permission applications, while the Western Isles Council only require them when considered necessary.

### ***Consultation duplication***

Statutory consultees are approached numerous times in relation to the same development, at different phases of the consenting process i.e. because the consents/licences are not aligned.

Non concurrent public consultation phases also occur across consents/licences and developers are required to take out separate newspaper adverts for each of them.

This was considered to cause duplication in effort and have the potential to cause confusion within local community.

### ***Landscape and Visual Impact Assessment***

Visual impact was cited as a reason for several rejections or withdrawal of planning applications. Landscape and visual impact assessment is noted as being costly, time-consuming and of variable quality. Some LAs noted that landscape and visual impact assessment is gradually improving, while the industry commented on impracticable viewpoints being requested.

### ***Town and Country Planning Act***

The key concern noted by the inclusion of aquaculture in the Town and Country Planning Act relates to aquaculture being considered a development associated with infrastructure, rather than the activity of growing finfish or shellfish within the marine and freshwater environments. The interpretation of the Town and Country Planning Act results in Planning Permission being relinquished if all the equipment at an aquaculture site is removed (e.g. for maintenance, cleaning etc). This is considered by industry to impact their normal husbandry operations.

### ***Biomass Consenting Loophole***

A biomass consenting loophole has been highlighted by regulators and statutory consultees i.e. that planning permission can be obtained for new infrastructure without biomass considerations, then CAR obtained for an increase in biomass, which is then added to the site without having been assessed via EIA or planning (and therefore wild salmonid interactions have not been considered). In this example an increase in production capacity/biomass has been consented via CAR by SEPA, without reference to or consultation with the planning authority.

It is understood that SEPA is moving away from imposing biomass limits as regulatory conditions in CAR licences and thus the Biomass Loophole will no longer be relevant.

### ***Duplication of Habitat Regulation Appraisals***

It was noted by statutory consultees and regulators that sometimes two or even three Habitats Regulation Appraisals and associated Appropriate Assessments can be undertaken by each competent authority for the same development.

### ***Environmental Impact Assessments***

LAs note that the overall quality of Environmental Statements (ESs) are variable. Some are very site specific and readily understandable by the general public. Other ESs are often a collection of scientific documents, not easily read, and mitigation measures difficult to identify. The increasing interest in local communities in applications and the quality and quantity of representations has helped focus the industry on producing better ESs. Fish farm ESs tend to be of a poorer quality than for those for terrestrial development, but the quality is improving. In the past ESs tended to cover in excessive detail about lice treatment chemicals and how they worked, rather than concentrating on whether they would impact on the wider environment. ESs are now much more targeted and precise in what they include. There is a general recognition in EIA for the need to move away from quantity of submitted material to more site-specific assessment and mitigation.

Statutory consultees feel that too much generic text is used within ESs that does not respect the specific nature of individual sites, noting that all assessments should be specific to the site under investigation.

It was also noted that developers tend to submit Screening and Scoping reports using the EIA Template (although not required to do so). The LAs note that the industry, by using this template, generally provide considerably in excess of the information required for screening and scoping purposes. Often the information submitted comprises the majority of the information required as part of an EIA application. This information overload compromises the efficient operation of the screening and scoping stages.

Industry noted two EIA topics that are onerous to complete: Landscape and Visual Assessment (as previously discussed) and assessing potential impacts on commercial fisheries.

### ***Lease Option Agreements***

Number of Lease Option Agreements (set at 5 per company at any one time) was seen by two companies as being somewhat limiting when exploring development opportunities, but the majority felt that this limitation is fair, justified and appropriate from a resource perspective.

## **5.3 OTHER ISSUES**

Further issues mentioned frequently, but not included within the scope of this work include:

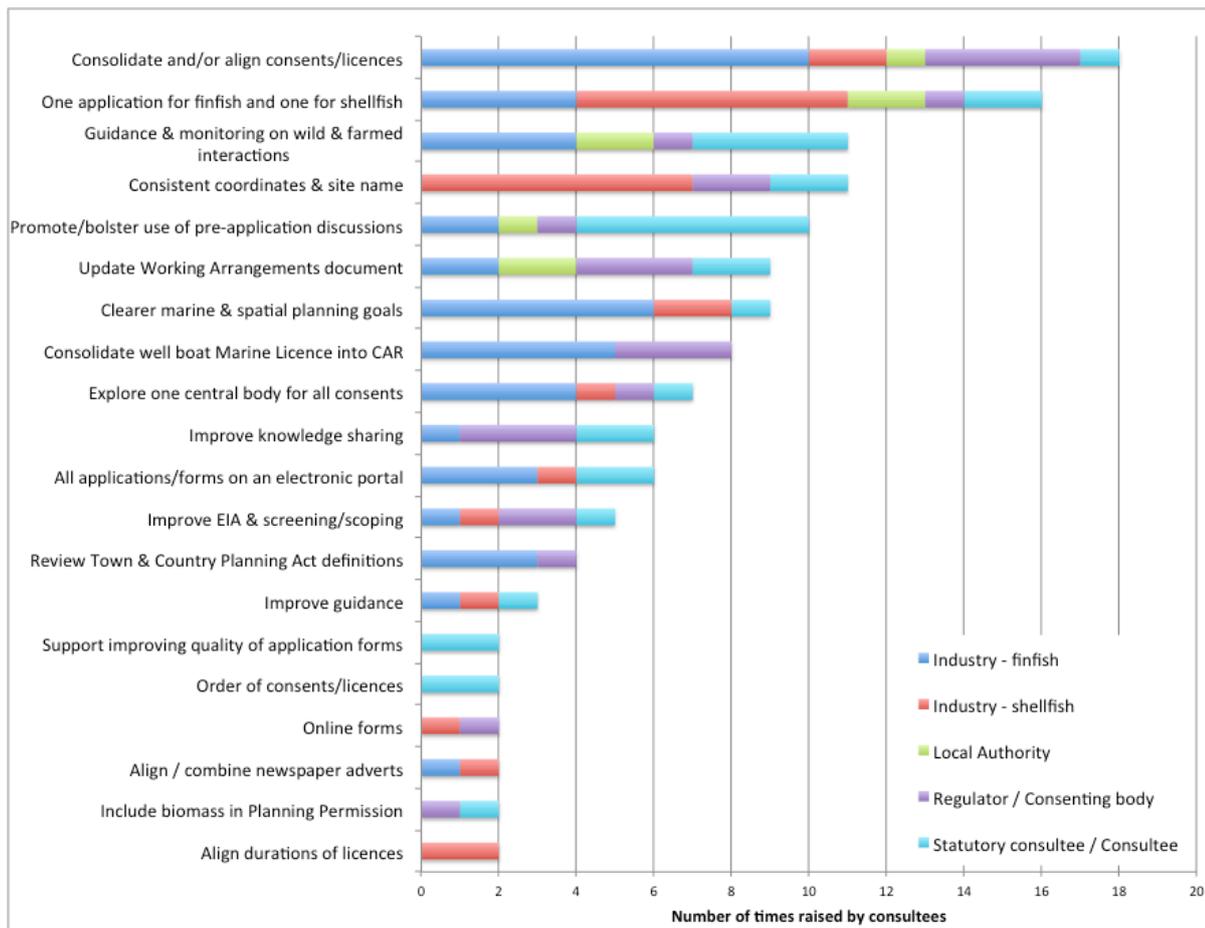
1. **Marine planning** - Uncertainty on how the National Marine Plan and Local Development Plans will work together and how the sensitivity mapping project currently being finalised by Marine Scotland will influence the identification of suitable sites for development
2. **Acoustic Deterrent Devices (ADD) and European Protected Species (EPS) licencing:** LAs often seek to protect cetaceans from noise disturbance as a result of the use of ADDs by conditioning approvals to prevent the use of ADDs. MSS are a statutory advisor during the planning process and MS-LOT are the licencing authority for EPS licencing in the marine environment. It is noted by industry that SNH often advise against ADDs and when an EPS Marine Licence is sought for an ADD, MS-LOT request advice from SNH as a statutory consultee; this is seen by the industry as a conflict of interest with no opportunity for independent appraisal or appeal. EPS licencing is not required as part of the consenting process, but during the operation of a fish farm and is therefore not considered further in this study.
3. **Fees** – it is commonly acknowledged that shellfish farms struggle with planning fees in relation to their turnover/profit levels - yet there seems little means under the planning rules to resolve this issue. It is understood that the level of fees and how they are applied is currently under review; it is therefore not considered further within this study.
4. **Permitted Development Rights (PDR)** – the current PDR system is not considered to function well for both the LAs and the industry. Due to the high cost of planning fees, the industry tends to minimise the red line boundary of the proposal based on the surface level area. This provides no flexibility to

use PDR to add to/change equipment, which in turn require formal planning approval, which is more time consuming and expensive. If planning fees were reduced, the industry could utilise slightly bigger red line planning boundary lines to allow greater flexibility and the benefits of PDR. It is understood that there was a recent consultation on PDR and that the legislation is currently under review by Marine Scotland; it is therefore not considered further within this study.

## 5.4 SUGGESTED SOLUTIONS

Solutions suggested by consultees are presented in Figure 5.5, and Table 5.1 indicates where these solutions have been considered within the report.

**Figure 5.5: Potential solutions proposed by consultees during consultation**



**Table 5.1: How potential solutions raised are assessed within this report**

<b>Quick wins</b>	<ul style="list-style-type: none"> <li>• Consistent coordinates &amp; site name</li> <li>• Promote/bolster use of pre-application discussions</li> <li>• Update Working Arrangements document</li> <li>• Improve EIA &amp; screening/scoping</li> </ul>	<ul style="list-style-type: none"> <li>• Consolidate well boat Marine Licence into CAR</li> <li>• Improve knowledge sharing</li> <li>• Support improving quality of application forms</li> <li>• Online forms</li> </ul>
<b>SCOPE analysis</b>	<ul style="list-style-type: none"> <li>• Consolidate and/or align consents/licences</li> <li>• One application for finfish and one for shellfish</li> <li>• Site specific guidance &amp; monitoring on wild &amp; farmed interactions</li> <li>• Explore one central body for all consents</li> <li>• All application/forms on an electronic portal</li> <li>• Improve EIA &amp; screening/scoping</li> </ul>	<ul style="list-style-type: none"> <li>• Review Town &amp; Country Planning Act definitions</li> <li>• Improve guidance</li> <li>• Support improving quality of application forms</li> <li>• Order of consents/licences</li> <li>• Online forms</li> <li>• Align / combine newspaper adverts</li> <li>• Include biomass in Planning Permission</li> <li>• Align durations of licences</li> </ul>
<b>Existing initiatives</b>	<ul style="list-style-type: none"> <li>• Clearer marine &amp; spatial planning goals</li> </ul>	

## 6 QUICK WINS AND ALTERNATIVE CONSENTING OPTIONS

### 6.1 QUICK WINS

A number of quick wins are recommended in Table 6.1. These emerge from the consultation process and the review of current consenting regimes. They could be implemented relatively easily on a short timescale (within 1 year) and would require less resource/effort to address than the consenting options considered in subsequent sections.

**Table 6.1: Recommended quick wins**

No.	Action	Responsibility
<b>QW1</b>	<p><b>Strengthen the pre-application process</b></p> <ul style="list-style-type: none"> <li>• Inform developers of the process and ensure the SSPO Industry Protocol for Pre-Application is readily available on the Scottish Aquaculture website.</li> <li>• Review the SSPO Protocol, update for the shellfish industry and include clear guidance on how to initiate discussions with relevant authorities, regulators and statutory consultees.</li> <li>• Ensure the Protocol includes an up-to-date pro-forma with an information checklist to be provided confidentially to statutory consultees allowing identification of immediate showstoppers.</li> <li>• Support a tiered pre-application discussion process so that advice can be updated when relevant information becomes available e.g. benthic surveys.</li> <li>• Explore potential scope for a pre-application screening checklist approach which leads to a 'likely to be consentable' or 'not likely to be consentable' first step before discussion with the competent authorities<sup>9</sup></li> </ul>	<p>LAs</p> <p>Marine Scotland</p> <p>The Crown Estate</p>
<b>QW2</b>	<p><b>Introduce consistent format for co-ordinates, site name and summary information</b></p> <ul style="list-style-type: none"> <li>• Standardise the required site summary information across all applications.</li> <li>• Standardise format of co-ordinates across all applications. Seek agreement from regulators as to the appropriate format. Use the LOA as first form completed, allowing developers to copy into other forms. The Crown Estate to provide a shape file based on LOA, allowing the developers to submit this with all further applications. Recommend that LOAs be included for all applications where additional (new) seabed extents are required.</li> <li>• Promote, assist and support the industry in improving the quality of application submissions providing requisite attention to detail of all specific requirements.</li> </ul>	<p>The Crown Estate</p> <p>MS-LOT</p> <p>SEPA</p> <p>MSS-FHI</p> <p>LAs</p>

<sup>9</sup> For example, as used by SEPA for small hydro schemes.

No.	Action	Responsibility
QW3	<p><b>Update of Working Arrangements document</b></p> <ul style="list-style-type: none"> <li>• Reflect current arrangements and agree most efficient engagement with consultees. Clearly identify responsibilities across authorities/regulators and statutory consultees.</li> <li>• Ensure it is available on the Scottish Aquaculture portal.</li> <li>• Update via frequent review cycles to ensure any changes are accurately reflected e.g. every three years.</li> </ul>	<p>All regulators and consenting bodies</p> <p>All statutory consultees</p>
QW4	<p><b>Integrate wellboat Marine Licence into the CAR Licence</b></p> <ul style="list-style-type: none"> <li>• It is understood that this would require one additional sentence to be added to the CAR Licence.</li> <li>• It is assumed that this would cover all wellboat discharges.</li> <li>• It is noted that SEPA and the finfish industry support this consolidation of licences.</li> </ul>	<p>SEPA</p> <p>MS-LOT</p>
QW5	<p><b>Update Scottish Aquaculture portal</b></p> <ul style="list-style-type: none"> <li>• Ensure it includes easily accessible links to all relevant licence/consent applications.</li> <li>• Include all relevant regulation, guidance and advice.</li> <li>• Provide up-to-date contacts for key personnel..</li> <li>• Include detailed information on all planning consent (i.e. on the map) and allow direct access to monitoring and survey reports where possible.</li> <li>• Include link to SEPA's webpage that displays all CAR applications.</li> </ul>	<p>Marine Scotland</p> <p>SEPA</p> <p>Crown Estate</p> <p>Food Standards Scotland</p> <p>LAs</p>
QW6	<p><b>Support provision of electronic application forms</b></p> <ul style="list-style-type: none"> <li>• Ensure forms can be downloaded and completed electronically (e.g. word) rather than hand written for Marine Licences and Planning Permission application forms.</li> <li>• Review formatting of Marine Licence (which currently has various fonts and font sizes)</li> <li>• Within the Marine Licence form include a check box stating whether the site is within a Harbour Authority area or not, and if so, which Harbour Authority.</li> </ul>	<p>MS-LOT</p> <p>LAs</p>
QW7	<p><b>Update EIA template</b></p> <ul style="list-style-type: none"> <li>• Review EIA template (after the Working Arrangements document has been updated) to ensure structure/roles are addressed and that information requirements and format can be optimised.</li> <li>• Ensure fit for purpose and supports streamlined, site specific reporting.</li> <li>• Provide guidance on what should be included within a Screening/Scoping report.</li> </ul>	<p>Marine Scotland</p> <p>LAs</p> <p>Marine Scotland Science</p>

No.	Action	Responsibility
	<ul style="list-style-type: none"> <li>• Provide links to relevant guidance for completing EIA topics, including landscape and visual and commercial fisheries.</li> <li>• Marine Scotland Science to provide clear guidance on information requirements.</li> </ul>	
<b>QW8</b>	<p><b>Hold a Landscape and Visual Impact Assessment workshop between SNH, LAs and industry to:</b></p> <ul style="list-style-type: none"> <li>• Provide practical advice on what is required within LVIA.</li> <li>• Discuss how viewpoints are chosen.</li> <li>• Share knowledge on expected standards of assessments.</li> <li>• Provide an opportunity to agree with industry an effective, practical approach to implementing the current landscape/seascape policy of SNH and LAs .</li> </ul>	SNH LAs

## 6.2 ALTERNATIVE CONSENTING OPTIONS

This section considers five changes or alternative approaches for the consenting process. The objectives of all these alternative options are to simplify, speed up and remove uncertainty in the consenting process, while at the same time ensuring a key strength of the Scottish system, its robustness, is not compromised.

These options are more substantial than the quick wins proposed above and are explored in greater depth using SCOPE analysis. The options emerged from the consultation process, the review of the current Scottish aquaculture consenting regime and the review of other UK planning and worldwide aquaculture systems. The options assume that the quick wins outlined above would be implemented.

The five alternative consenting options are:

### **OPTION 1: Consolidate Marine Licencing (for Moorings and Equipment) into Planning Permission**

This option is proposed to address the duplications identified, e.g. in navigational remit by LAs and MS-LOT (the complexities of this are understood in that different elements of navigation are considered in each consent; however the navigational remit of a Marine Licence could easily be absorbed into planning considerations). Consultation for each is undertaken with the same consultees being statutory to one and non statutory to the other process. In addition it presents an obvious solution for minimising the number of consents and reducing the overall consenting timeframe.

### **OPTION 2: Aquaculture Act: Remove aquaculture from the Town and Country Planning Act and introduce a specific Aquaculture Act**

This option is proposed based on experience elsewhere, namely Norway's distinct Aquaculture Act. A Scottish Aquaculture Act could provide an opportunity for the details and specifics of the sector to be appropriately addressed including marine and freshwater aquaculture for finfish, shellfish and seaweed.

### **OPTION 3: Align Controlled Activities Regulation (CAR) and Planning Permission consents (finfish aquaculture only)**

This option is proposed to address duplication and delays. It would allow the stages and tasks required for finfish aquaculture to be aligned (including through pre-application, statutory consultee and public consultation phases, advertising, etc.) up to point of determination. This would ensure that each process was aware of the other (e.g. remove risk of biomass loophole), reduce duplication in the consultation process and the overall timeframe of consent, yet retain the flexibility within the system for instances when only CAR is required (e.g. specific medicine treatments).

### **OPTION 4: One-stop shop**

This option is proposed as it was repeatedly mentioned during consultation, and has been successfully implemented elsewhere, e.g. Norway. This option would provide a single contact point that drives the application/consenting process, most appropriately housed within an existing competent authority i.e. LAs (in which case there would be 6 one-stop-shops), Marine Scotland or the Crown Estate.

### **OPTION 5: Movement of technical biomass aspects from Planning Permission into Controlled Activities Regulation (CAR) licence (finfish aquaculture only)**

The first four options primarily consider potential improvements to the process of achieving consent, this fifth option is more technical in nature and focuses on which consent/licence is most appropriate for dealing with farmed and wild salmonid interactions – a key issue raised by both regulators and aquaculture operators throughout consultation. The CAR licence is proposed as a potentially suitable consent within which wild fish interactions are considered as SEPA already considers technical/scientific aspects as part of CAR licencing, which is specific to finfish aquaculture (and not required for shellfish).

Another potential alternative would be to transfer determination to MSS-FHI under the APB, however, at the consenting stage an APB authorisation is primarily required to add companies and/or sites onto the MSS-FHI database to inform future monitoring requirements during the operational phase of the fish farm. To introduce this contentious element of consent into APB would be a major shift in emphasis and procedural approach.

One LA suggested moving biomass aspects into a separate Marine Licence regulated by MS-LOT. This is not considered viable for two reasons: firstly it is MSS that hold the most appropriate knowledge on wild fish interaction, not MS-LOT; and secondly the introduction of additional licences goes against the intent to streamline the current system and improve efficiency.

Table 6.2 illustrates which of the five options address the key issues identified through consultation.

**Table 6.2: Where key issues identified during consultation could be addressed within the five alternative consenting options**

<b>Issue</b>	<b>Option 1. ML into PP</b>	<b>Option 2. Aquaculture Act</b>	<b>Option 3. Align CAR &amp; PP</b>	<b>Option 4. One stop shop</b>	<b>Option 5. Biomass to CAR</b>
Wild fish interactions advice					
Delay due to additional information and survey requests					
Variations in approach by Local Authorities					
Consultation duplication					
Town and Country Planning Act					
Duplication of HRA					
Biomass consenting loophole					

### 6.3 SCOPE ANALYSIS OF OPTION 1

OPTION 1: Consolidate Marine Licencing (for Moorings and Equipment) into Planning Permission	
<b>Situation</b>	
<p>This option considers combining the moorings and equipment Marine Licence(s) required for finfish and shellfish aquaculture into the Planning Permission process. Within the current consenting regime an aquaculture Marine Licence considers navigational safety (markers, lighting etc), while Planning Permission considers all other aspects of navigation such as the amenity of an anchorage, recreational use by yachters etc. Information required within a Marine Licence application has normally already been provided as part of the Planning Permission application, questioning the need for both. Duplication also occurs across consultation processes for both statutory and public consultations including:</p> <ul style="list-style-type: none"> <li>• Statutory consultees having to respond to two separate applications at two separate occasions for the same site, often repeating the response provided at Planning Permission in their Marine Licence response.</li> <li>• The public consultation periods are not concurrent (as planning permission is required prior to obtaining a Marine Licence); this results in the requirement for two separate newspaper adverts and ultimately adds an additional 2-4 months to the process (i.e. the time it takes to secure a Marine Licence).</li> </ul>	
<b>Core competences</b>	<b>Obstacles</b>
<p>The e-portal system hosted by Local Authorities for Planning Permission allows easy access to documents, is transparent, and user friendly.</p> <p>Technical insight provided by statutory consultees with a navigational remit (MCA and NLB) is unambiguous and considered with high regard.</p> <p>Communication between key statutory consultees is well established.</p> <p>There is a clear understanding of what constitutes a navigational issue, and these are often addressed during pre-application discussions, minimising refusals.</p> <p>Navigation is not a contentious issue nor is its assessment subjective.</p> <p>It is noted that section 51 of Marine Act allows for delegation of marine licensing functions to a public body (e.g. LA) by Order in Council.</p>	<p>The duration of the Marine Licence (which requires renewal every 6 years) is linked to the need to review the location of the site and update the UK Hydrographic Office of any changes – consideration on how this would be maintained is required if the Marine Licence was to be amalgamated into Planning Permission (which is generally permanent, but can be temporary e.g. 10-years).</p> <p>The procedures for statutory consultees responding to Marine Licences are well established with standard responses from SEPA and SNH (in progress), and clear work patterns/schedules for MCA and NLB.</p> <p>Marine Licences are required for many different types of marine developments, so removing the requirement for aquaculture to have them could impact high-level considerations of all Marine Licences, both at a Scottish and UK level.</p>

	<p>MCA and NLB are non-statutory consultees to the Planning Permission process, but statutory consultees to Marine Licence.</p> <p>One Planning Permission application form currently covers both finfish and shellfish, with many sections irrelevant to shellfish.</p>
<b>Prospects</b>	<b>Expectations</b>
<p>Amalgamating Marine Licence into Planning Permission would:</p> <ul style="list-style-type: none"> <li>• Reduce consultation fatigue, burden and repetition, particularly for statutory consultees.</li> <li>• Remove duplication of effort for form filling by developers.</li> <li>• Reduce possibility of public confusion over two separate adverts and public consultation periods.</li> <li>• Provide a clear understanding on how and where navigational issues are addressed.</li> <li>• Remove the need for two separate Habitat Regulation Appraisals and subsequent Appropriate Assessments.</li> <li>• Provide an opportunity to introduce shellfish and finfish specific application forms.</li> </ul>	<p>Amalgamating Marine Licence into Planning Permission could:</p> <ul style="list-style-type: none"> <li>• Deliver a stream lined consenting process.</li> <li>• Reduce the overall time taken to obtain consent.</li> <li>• Reduce the number of consents required and therefore reduce the complexity of the entire process.</li> </ul>

**Recommendation:** the consolidation of the moorings and equipment Marine Licence(s) into Planning Permission is recommended. Actions for implementing this recommendation are listed below with an indicative timeframe (short: 1 year, medium: 2-3 years and long: +3 years), expected resource and key actors responsible for delivery.

No.	Action	Timeframe	Resource	Responsibility
<b>1.a</b>	<p>Review the moorings and equipment Marine Licence form for finfish and shellfish aquaculture, determine any sections that are not covered by planning permission and amalgamate them into the planning permission application form.</p> <p>This will allow Marine Licences to be awarded by default when Planning Permission has been consented. This action amalgamates the application processes, but does not remove the Marine Licence altogether.</p> <p>[It is recommended that this action be prioritised].</p>	Short	Low	Local Authorities; MS-LOT, Marine Scotland
<b>1.b</b>	<p>Use application form as updated in 1.a to develop one specific form for shellfish and one for finfish.</p> <p>This will reduce the burden, eliminate confusion and assist the shellfish industry in completing application forms.</p>	Short	Low	Local Authorities, Marine Scotland
<b>1.c</b>	<p>Update the consultation status of MCA and NLB to statutory in the planning permission process.</p> <p>[It is recommended that this action be prioritised].</p>	Short	Low	Local Authorities, MCA, NLB
<b>1.d</b>	<p>Consider aligning the (currently 6-year) review cycle, that updates UK Hydrographic Office, into a condition of planning, subject to consultation with NLB and agreement with LAs.</p>	Medium	Low	MS-LOT, LAs, NLB
<b>1.e</b>	<p>Remove aquaculture from Marine Licencing requirements via legislative change.</p> <p>This should be considered after reviewing experience with the above arrangements (1a-1.d) and would fully integrate the objective of Marine Licensing (ensuring navigational safety) within Planning Permission.</p>	Long	High	MS-LOT, Local Authorities, Marine Scotland

## 6.4 SCOPE ANALYSIS OF OPTION 2

OPTION 2: Aquaculture Act: Remove aquaculture from the Town and Country Planning Act and introduce a specific Aquaculture Act	
<b>Situation</b>	
<p>This option considers the development of an Aquaculture Act – it is essentially a ‘clean slate’ option.</p> <p>Scottish aquaculture has emerged over the last 30-40 years and so has been considered through revision of a number of legislative instruments across several jurisdictions. The consenting arrangements reflect this, consisting of a seabed lease, CAR licence, Planning Permission, Marine Licence(s) and the authorisation to operate an Aquaculture Production Business.</p> <p>An Aquaculture Act would present an opportunity to address all of the issues identified within this review of the Scottish aquaculture consenting process. It would provide a framework for legislation to be specifically designed for the aquaculture industry that could: simplify the application process; stipulate and enforce time limits for the application process; provide efficiency improvements and coordination between sector authorities; introduce the ability to transfer and mortgage licences etc.</p> <p>Some consultees from the finfish aquaculture industry commented that the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") is primarily designed for terrestrial planning and is not fit for purpose when considering aquaculture. The definition of development in the 1997 Act (Section 26(6)) has been interpreted as meaning that the removal of equipment from the sea (including for repair and/or cleaning) extinguishes any planning permission for fish farming at that site<sup>10</sup>. There is concern that the 1997 Act does not give due regard to aquaculture as an activity in the dynamic marine environment and is not flexible or efficient enough for dealing with changes that may be required on a biological timescale.</p>	
<b>Core competences</b>	<b>Obstacles</b>
<p>Local Authorities involved in finfish and shellfish aquaculture have developed significant knowledge in this area since 2007.</p> <p>The current consenting system is robust and respected by industry.</p> <p>The current consenting regime under LA jurisdiction introduces the following characteristics:</p> <ul style="list-style-type: none"> <li>• Based in the local community</li> <li>• Local accessibility to planning staff for both developers and the local population</li> <li>• Well established planning practices</li> <li>• Transparency in the decision-making process</li> </ul>	<p>The resource and effort required to develop and implement new legislation would be very high.</p> <p>The timeframe for delivery would be long term.</p> <p>The proposed quick wins and recommendations of this report may be placed on hold if an Aquaculture Act is taken forward thereby losing the potential for short-medium term improvements while details of an Aquaculture Act are developed.</p> <p>The consultees and regulating authorities are likely to remain the same, and the consent regime/requirements are likely to remain as robust; therefore a huge</p>

<sup>10</sup> judicial review case 'Friends of Loch Etive Vs Argyll And Bute Council and Dawnfresh Farming Ltd (CSOH 61 2015)

<ul style="list-style-type: none"> <li>Political accountability</li> </ul> <p>The current consenting regime under LA jurisdiction allows public concerns about the industry's public accountability and environmental sustainability to be addressed.</p>	<p>amount of work could take place with little fundamental change.</p> <p>This could lead to centralisation of the consenting process and a loss of local accountability. This is contrary to the ethos of local decisions made locally.</p> <p>It is considered more advantageous to codify a system that works efficiently, rather than using an Act to fix problems.</p>
<p><b>Prospects</b></p>	<p><b>Expectations</b></p>
<p>A specific Aquaculture Act could consolidate all consents; remove duplication in consultation, application forms and Habitat Regulations Appraisals; minimise variations in approach between Local Authorities; ensure minimal delay associated with additional information requests and ensure appropriate assessment and advice on wild fish interactions.</p> <p>An Aquaculture Act could potentially result in the Local Authorities' licensing and development management role being transferred to another body (e.g. Marine Scotland), but this would be dependant on the details of the Aquaculture Act developed.</p> <p>All changes identified within the other options assessed could be delivered through a new Aquaculture Act.</p>	<p>A specific Aquaculture Act enabling the details and specifics of the sector to be appropriately addressed.</p>

**Recommendation:** the development of a specific Aquaculture Act is not recommended in the short-medium term due to the resource implications and the potential for achieving similar outcomes more quickly through alternative options/recommendations.

The following actions are, however, recommended:

No.	Action	Timeframe	Resource	Responsibility
2a	Review the definition of fish farming as a 'development' within the 1997 Act (as set out in Circular 1/2007 Planning Controls for Marine Fish Farming) to allow aquaculture related equipment to be partly or wholly removed for normal husbandry operations without	Short-medium	Medium	Marine Scotland, Scottish Ministers/Scottish Government

	relinquishing planning permission (e.g. specify its change to a 'use' as it is for other terrestrial business activities such as caravan parks).  [It is recommended that this action be prioritised].			
<b>2b</b>	Reconsider the potential to codify existing legislation into an Aquaculture Act when the consenting process is considered to be efficient/optimal e.g. via a review in 5 years.	Long	Low-high	Marine Scotland

As a further note to recommendation 2a, an update to the definition of 'development' should accommodate a reasonable range of practical husbandry operations required across finfish and shellfish industry, including (but not limited to): removal for cleaning cages/lines, ability to operate shellfish spat collection sites dependent on need and flexibility to allow sites to be out of production for extended periods due to specific issues such as water quality or biotoxins.

## 6.5 SCOPE ANALYSIS OF OPTION 3

<b>OPTION 3:</b>	<b>Align the CAR and Planning Permission consents (finfish aquaculture only)</b>		
<b>Situation</b>			
<p>The current consenting regime does not prescribe the order in which CAR and Planning Permission should be obtained. This often results in CAR being obtained first, followed by Planning Permission (as the latter is often informed by the former), which means that many elements of the application processes are repeated, resulting in duplication and a prolonged process.</p> <p>A CAR licence sets site-specific limits on the amount of finfish that can be held in aquaculture cages and the amount of medicines and chemicals that can be used. CAR is not applicable to shellfish and therefore this option is only of relevance to finfish aquaculture.</p>			
<b>Core competences</b>		<b>Obstacles</b>	
<p>Information within CAR, relating to the amount of fish and treatment of sea lice, informs the Environmental Impact Assessment undertaken as part of the Planning Permission process.</p> <p>The CAR models used by SEPA are provided to the industry allowing simulations to be completed by the industry prior to formal submission. This reduces the risk of not obtaining consent,</p>		<p>Applying for CAR then Planning Permission in sequence (i.e. not aligned) spreads the costs of applications, including associated surveys, studies and application fees. This reduces the financial risk to the aquaculture company, in that if CAR is not successful, then Planning Permission application fees have not been wasted and EIA studies have not commenced.</p>	

<p>and supports the industry in investigating the potential for new sites or expansion to existing sites.</p> <p>SEPA CAR modelling is currently being updated.</p> <p>The guidance provided by SEPA and the processes involved in determining whether a CAR licence should be granted are well understood and not dependant on other consents being in place.</p> <p>The CAR determination process by SEPA is relatively straightforward and associated consultation processes do not generally result in contentious representations.</p> <p>SEPA are currently reviewing their CAR application form with a view to streamlining and improving efficiency – improvements and lessons learnt from other types of CAR licences will be reflected in this update.</p>	<p>If alignment occurred from start to finish then determination outcomes could be dependant upon the timescale of the slowest process.</p>
<b>Prospects</b>	<b>Expectations</b>
<p>Aligning CAR and Planning Permission consents would allow key stages/tasks to be undertaken concurrently, including:</p> <ul style="list-style-type: none"> <li>• Pre-application discussions</li> <li>• Statutory consultation periods</li> <li>• Public consultation periods (and associated newspaper adverts)</li> </ul> <p>Aligning these tasks would reduce duplication and reduce the overall timeframe of obtaining consent.</p> <p>Aligning tasks would not influence the result from one on another and therefore avoid any bias being given towards a specific outcome.</p> <p>Aligning tasks would promote information sharing with the aim of reducing time spent collating any requested additional information via economies of scale (e.g. if additional benthic surveys required by</p>	<p>A streamlined consenting process delivered efficiently, reducing the timeframe by up to 16 weeks (i.e. in comparison to when CAR is obtained prior to Planning Permission).</p> <p>A more robust pre-application discussion stage, with greater clarity over what information is required to support consents, early indication of showstoppers and therefore reducing risk to developers.</p> <p>Aligning tasks would ensure that each process was fully aware of the aquaculture developer’s intentions and work towards closing the loophole related to biomass being consented under CAR<sup>11</sup>, but not considered within planning.</p>

<sup>11</sup> It is, however, understood that SEPA is moving away from imposing biomass limits as regulatory conditions in CAR licences and thus the Biomass Loophole will no longer be relevant.

two separate authorities these could be carried out concurrently).

Aligning consents would remove the need for two separate reports and consultations on Habitat Regulation Appraisals and subsequent Appropriate Assessments (if required). [NOTE: SEPA and LAs would remain responsible for carrying out relevant HRA sections, but with an output of one single report allowing consultation related to HRA (e.g. with SNH) would be aligned.]

Aligning tasks would support the EIA process and ensure all relevant data/surveys inform both CAR and EIA simultaneously.

Provides an opportunity to consider revocation of CAR in the event of non-utilisation.

**Recommendation:** It is recommended that procedures should be put in place to support the alignment of CAR and Planning Permission consents (i.e. a fast tracked consenting process). It is recommended that this is introduced for a trial pilot period (e.g. for 3-4 applications across at least two LAs) before full alignment is recommended. The pilot period should be assessed to determine whether alignment should be a mandatory process or whether the flexibility of separate processes remains beneficial.

It should be noted that the quick win associated with an improved pre-application discussion process should reduce the obstacle of financial risk, as showstoppers should have been identified prior to commencing the applications.

The following actions are recommended:

No.	Action	Timeframe	Resource	Responsibility
3a	<p>Agree working procedures and arrangements between Local Authorities, SEPA and all statutory consultees to enable the alignment of CAR and Planning Permission consents and therefore a fast-tracked consenting process.</p> <p>[This could be delivered as part of the Working Arrangements document update or as a stand alone procedure]</p>	Medium	Medium	LAs, SEPA, Marine Scotland, SNH, DSFB, Historic Environment Scotland

No.	Action	Timeframe	Resource	Responsibility
<b>3b</b>	Support facilitation of one HRA and associated Appropriate Assessment by standardising the format for reporting and setting out clear procedure (e.g. within Working Arrangements document)	Short-medium	Low	LAs, SEPA, SNH
<b>3c</b>	Implement a pilot period to test appropriateness of aligned consents.  Assess outcome of the pilot period to determine if alignment should be made mandatory.	Medium	Low	LAs, SEPA

## 6.6 SCOPE ANALYSIS OF OPTION 4

OPTION 4: One-stop shop	
<b>Situation</b>	
<p>The current consenting process requires aquaculture developers to submit each application separately to the relevant competent authority as follows:</p> <ul style="list-style-type: none"> <li>• Application for Lease Option Agreement is submitted to the Crown Estate</li> <li>• Application for CAR licence is submitted to SEPA (finfish only)</li> <li>• Application for Planning Permission is submitted to the relevant LA</li> <li>• Application for Marine Licence(s) is submitted to Marine Scotland Licencing Operations Team</li> <li>• Application for authorisation to operate an Aquaculture Production Business (APB) is submitted to Marine Scotland Science Fish Health Inspectorate</li> <li>• Application (or Notice to exercise LOA) for a seabed lease is submitted to the Crown Estate</li> </ul> <p>The onus is on the aquaculture developer to manage the submission of these applications and to follow/chase the process as determinations are made.</p>	
Core competences	Obstacles
<p>The roles and responsibilities of competent authorities and statutory consultees are clear and well understood (although not accurately reflected within the 2010 Working Arrangements document).</p> <p>In general, responsible individuals within each authority/organisation have remained consistently in place and are known and well respected by industry and others.</p> <p>The LA e-portals are effective in providing transparency and easy access to documents.</p>	<p>A one-stop shop could be seen as introducing an extra administrative step to the process and reduce contact between industry and the regulators responsible for approving consents/licences.</p> <p>It could be administratively complicated and expensive to set up.</p> <p>If not managed appropriately it could become more cumbersome than the current system.</p> <p>A delay in one aspect of the consenting process could impact all others and thereby increase resources needed by regulating authorities to stop and re-start their determination process.</p> <p>A one-stop shop removes the flexibility that aquaculture developers currently have in submitting one application at a time e.g. in order to spread costs (although a staged payment process could address this).</p> <p>Increases risk taken by aquaculture developers if one aspect is refused, while all processes have been instigated and</p>

	<p>paid for (although as above re staged payment).</p> <p>There is potential for similar efficiencies to be achieved without complete overhaul of the process (e.g. via Option 1).</p> <p>Could remove the ‘local element’ of fish farm consenting.</p> <p>If there is centralised determination, then regulators responsible for monitoring operator compliance may not have been responsible for drafting the licence conditions that they are monitoring against. This could affect the timeous, enforceability, relevancy and accuracy of conditions.</p>
<b>Prospects</b>	<b>Expectations</b>
<p>A one-stop shop would provide a single contact point for all application submissions making it more straightforward for developers to submit applications.</p> <p>The single contact point would drive the application/consenting process thereby assisting and navigating the developer throughout: from submission to determination.</p> <p>The one-stop shop would facilitate efficient dialogue between the applicant and relevant authority/statutory consultee if additional information is requested.</p> <p>It has the potential to prevent confusion when dealing with similar issues under different consenting regimes.</p> <p>The one-stop shop could be housed within an existing competent authority such as Local Authorities, Marine Scotland or the Crown Estate.</p>	<p>A streamlined and efficient consenting process, reducing the overall time taken to obtain consents.</p>

**Recommendation:** given the achievable efficiencies expected via Options 1 and 3, the development of a one-stop shop is not recommended at this time. However, the following action is recommended:

No.	Action	Timeframe	Resource	Responsibility
4a.	Review efficiencies achieved by Options 1 and 3 (after they have been fully implemented) to assess results and determine whether a one-stop shop option would provide further gains.	Long	Medium	Marine Scotland

## 6.7 SCOPE ANALYSIS OF OPTION 5

### OPTION 5: Removal of wild fish interactions from Planning Permission

#### Situation

This option principally considers where decisions on wild fish interactions are made within the consenting regime.

The following decisions, advice and considerations related to sea lice and wild salmon currently occur within the consenting regime:

- Scottish Environment Protection Agency (SEPA) regulate and consider the use of veterinary treatments to treat sea lice on farmed fish, but do not assess the increased sea lice levels in the wild as a result of the farmed fish biomass; they do not consider the efficacy of the medicines in treating the sea lice, but do consider the implications of potential overuse and increased residue concentration;
- Marine Scotland Fish Health Inspectorate (MS-FHI) regulate sea lice in terms of protecting the health of the farmed stock by considering the efficacy of chemical treatments and assess sea lice management strategies for satisfactory measures of control and eradication of parasites, but not in relation to protecting wild fish [it should be noted that this is not undertaken as a requirement for obtaining consent, but as part of FHI protocols during operation of a fish farm];
- Marine Scotland Science (MSS) advise the Local Authorities (LAs) on the efficacy of treatments regulated by CAR and on the status of wild fish in a given area (though it is understood that this advice is mainly generic in nature as a consequence of the lack of scientific analysis/evidence);
- Scottish Natural Heritage (SNH) and District Salmon Fishery Boards (DSFBs) are statutory consultees to the Planning Permission process, so have the opportunity to provide comment and advice on interactions with wild fish, and to state their position in relation to the impact assessment.
- LAs interpret the EIA undertaken by the applicant and advice given by MSS, SNH and DSFB to determine whether potential interactions with wild salmonids are acceptable.

LAs, statutory consultees (SNH, DSFB) and finfish aquaculture industry all recognise that LAs may not be the most appropriate authority to make decisions related to the potential impact of farmed and wild salmonid interactions. The problem relates to LAs not being given appropriate or decisive advice on this matter from the relevant statutory consultees (MSS and SNH) and must interpret generic advice to make site-specific decisions on whether potential interactions between farmed and wild salmonids are acceptable – an area that is not within their current technical skill set or expertise. In part this is due to a lack of scientific evidence, but also because there is not a clear remit for one agency to take responsibility for providing expert or site-specific advice on this issue.

This option considers the movement of wild fish interactions out of Planning Permission (by LA) and into the framework of an existing competent authority e.g. SEPA (via CAR licence) or MSS-FHI (as part of current operational requirements or via Authorisation to operate an Aquaculture Production Business (APB)).

Core competences	Obstacles
<p>SEPA currently make the decision in relation to other technical aspects of biomass, including fish farm effluent discharge to water environment and benthic deposition of food and fish faeces, which are currently assessed within a CAR application and have well-established protocols in consulting with statutory consultees.</p> <p>Both SEPA and MSS have models to assess dispersion from a fish farm. SEPA undertake detailed modelling of discharge patterns within the water column to inform the permissible level of medicines within the CAR licence. MSS are understood to have a sea lice dispersal model, but the extent to which this is utilised to inform consenting decisions is unclear.</p> <p><b>MSS-FHI collate significant amount of data via sampling of fish farm sites across Scotland (based on level of risk H, M, L). There must therefore be an opportunity to assess this data.</b></p>	<p>SEPA's current remit does not cover wild fish interactions and they may not have sufficient expertise or knowledge in this area.</p> <p>The CAR licence may not be fit for this purpose and would require significant revision to cover wild fish interactions, potentially risking the current efficient process.</p> <p>Moving this issue to SEPA might not solve the issue of obtaining decisive advice from relevant statutory consultees, and simply act to shift the burden of decision and responsibility.</p> <p>MSS-FHI consider the health and welfare of farmed fish, and undertake sampling from farms to monitor fish condition including sea lice levels. Marine Scotland Science Freshwater Fisheries Laboratory (MSS-FFL) undertake wild salmonid monitoring. MSS-FHI could therefore be best placed as the competent authority on this topic, with MSS-FFL providing advice.</p> <p>Moves away from established EMPs being introduced by LAs.</p>
Prospects	Expectations
<p>Address biomass consenting loophole</p> <p>Would not remove the need to consider wild fish within the EIA, but move this decision related to wild fish interactions out of LA responsibility.</p> <p>Allow an opportunity to improve monitoring and reporting of sea lice within farms.</p> <p>Allow an opportunity to update and implement the MMS modelling of sea lice to assess the potential risk to wild salmonids and inform consenting decisions.</p> <p>Provide clearer remit of responsibilities ensuring consenting decisions sit with the most appropriate regulator/authority.</p>	<p>Ensure wild salmon interactions are appropriately regulated.</p> <p>Improve decision-making processes.</p> <p>Ensure that wild salmon interactions are the responsibility of the regulator/statutory consultee with the most relevant expertise in this area (i.e. MSS-FHI and MSS-FFL).</p>

Potential to ensure enforceability once consent is granted i.e. via review of monitoring and requiring management action if necessary (currently within MSS-FHI remit for operation fish farms).

**Recommendation:** This option provides some positive prospects to address a complex and contentious issue. The short-medium term recommendations focus on improving the knowledge and advice to inform consenting decisions. The medium-long term recommendation is for wild fish interactions to be removed from planning permission and regulated by MSS-FHI and MSS-FFL.

Note: It is assumed that clear guidance on the roles and responsibilities of all regulators and statutory consultees involved in the interactions between farmed and wild salmonids will be included within the update of the Working Arrangements document (Quick Win 3).

The following actions are recommended:

No.	Action	Timeframe	Resource	Responsibility
5a	To support the analysis of risk - ensure monitoring and reporting of sea lice within farmed salmonids is reported at a site level. This will require discussion and agreement between the finfish industry and MSS-FHI on how this is to be implemented, recorded and reported.  [This assumes the decision remains within Planning Permission in the short-term]	Short-medium	Low-medium	Finfish industry, MSS-FHI
5b	To address provision of scientific advice - form a joint agency approach (e.g. as part of the National Technical Group, which is currently being formed/under discussion) between MSS-FHI, MSS-FFL, SNH, DSFBs and SEPA to take account of information on sea lice levels, treatments, wild fish monitoring and Natura information to enable provision of site specific advice and evaluation that gives a clear steer as to when an aquaculture proposal should be considered acceptable or not with regard to potential wild fish	Short-medium	Low-medium	SNH, MSS-FHI, MSS-FFL, SEPA, DSFBs

No.	Action	Timeframe	Resource	Responsibility
	<p>interactions. This could be based on an assessment of risk in data deficient instances.</p> <p>[This assumes the decision remains within Planning Permission in the short-term]</p>			
<b>5c</b>	<p>Update/expand current sea lice modelling tools used by MSS to model sea lice dispersal from a fish farm to inform consenting decisions (i.e. provide outputs for the joint agency to review and inform their advice).</p> <p>[This assumes the decision remains within Planning Permission in the short-term]</p>	Short-medium	Medium	MSS, MSS-FHI, MSS-FFL
<b>5d</b>	<p>Move the decision of consent related to wild fish interactions out of Planning Permission and into the remit of MSS-FHI (supported by advice provided via the joint agency (5b)). This could be implemented by expanding the remit already under MSS-FHI control during fish farm operations<sup>12</sup> and via expansion of the APB authorisation at the consenting stage, subject to advice/agreement from MSS-FHI.</p>	Medium-long	Medium-high	MSS-FHI

---

<sup>12</sup> i.e. the auditable, reportable system that ensures best practice, fish health and appropriate farm management, and ultimate control to close a site if this level of management is not demonstrated.

## 7 CONCLUSIONS

This analysis of the consenting regime for Scottish aquaculture has highlighted a number of opportunities for improvement. There are a quick wins that are comparatively simple and could be implemented quickly to improve existing arrangements.

One stand out quick win is the strengthening of the pre-application discussion process. This would support the industry in how they initiate discussions and ensure the correct information is available to regulators and statutory consultees. If implemented effectively, the additional resources required for statutory consultees and regulators during pre-application discussions would be outweighed by the improved advice given enabling a more efficient and focused application. The update, strengthening and regular review of the Working Arrangements document is also considered an important quick win and has the potential to provide a point of control that can maintain the regime's focus and efficiency across individual authorities and their separate legislative processes.

Scottish aquaculture products enjoy an excellent reputation for quality, and most consider Scottish producers exhibit good practice. These positive characteristics are underpinned by the comprehensive and robust nature of the current consenting process. The changes proposed recognise these positive elements and support them with improved governance processes.

The quick wins and wider recommendations are summarised in Table 7.1.

**Table 7.1: Summary of recommendations**

No. Actions	
<b>Quick Wins</b>	
<b>QW</b>	<ol style="list-style-type: none"> <li>1. Strengthen the pre-application process</li> <li>2. Introduce consistent format for co-ordinates, site name and summary information</li> <li>3. Update of Working Arrangements document</li> <li>4. Integrate wellboat Marine Licence into the CAR Licence</li> <li>5. Update Scottish Aquaculture portal</li> <li>6. Support provision of electronic application forms</li> <li>7. Update EIA template including links to relevant guidance</li> <li>8. Hold a Landscape and Visual Impact Assessment workshop between SNH, LAs and industry</li> </ol>
<b>1. Consolidate Marine Licencing into Planning Permission</b>	
<b>1.a</b>	<p>Review the moorings and equipment Marine Licence form for finfish and shellfish aquaculture, determine any sections that are not covered by planning permission and amalgamate them into the planning permission application form.</p> <p>This will allow Marine Licences to be awarded by default when Planning Permission has been consented. This action amalgamates the application processes, but does not remove the Marine Licence altogether.</p> <p>[It is recommended that this action be prioritised].</p>

<b>No. Actions</b>	
<b>1.b</b>	Use application form as updated in 1.a to develop one specific form for shellfish and one for finfish. This will reduce the burden, eliminate confusion and assist the shellfish industry in completing application forms.
<b>1.c</b>	Update the consultation status of MCA and NLB to statutory in the planning permission process. [It is recommended that this action be prioritised].
<b>1.d</b>	Consider aligning the (currently 6-year) review cycle, that updates UK Hydrographic Office, into a condition of planning, subject to consultation with NLB and agreement with LAs.
<b>1.e</b>	Consider removing aquaculture from Marine Licencing requirements via legislative change. This would fully integrate the objective of Marine Licensing (ensuring navigational safety) within Planning Permission.
<b>2. Review definitions with Town and Country Planning Act &amp; consider long term future Aquaculture Act</b>	
<b>2a</b>	Review the definition of fish farming as a 'development' within the 1997 Act (as set out in Circular 1/2007 Planning Controls for Marine Fish Farming) to allow aquaculture related equipment to be partly or wholly removed for normal husbandry operations without relinquishing planning permission (e.g. specify its change to a 'use' as it is for other terrestrial business activities such as caravan parks). [It is recommended that this action be prioritised].
<b>2b</b>	Reconsider the potential to codify existing legislation into an Aquaculture Act when the consenting process is considered to be efficient/optimal e.g. via a review in 5 years.
<b>3. Align CAR and Planning Permission</b>	
<b>3a</b>	Agree working procedures and arrangements between Local Authorities, SEPA and all statutory consultees to enable the alignment of CAR and Planning Permission consents and therefore a fast-tracked consenting process. [This could be delivered as part of the Working Arrangements document update or as a stand alone procedure]
<b>3b</b>	Support facilitation of one HRA and associated Appropriate Assessment by standardising the format for reporting and setting out clear procedure (e.g. within Working Arrangements document).
<b>3b</b>	Implement a pilot period to test appropriateness of aligned consents. Assess outcome of the pilot period to determine if alignment should be made mandatory.
<b>4. Re-assess one-stop shop</b>	
<b>4a.</b>	Review efficiencies achieved by Options 1 and 3 (after they have been fully implemented) to assess results and determine whether a one-stop shop option would provide further gains.

No. Actions	
<b>5. Improve consideration of farmed and wild fish interactions</b>	
<b>5a</b>	To support the analysis of risk - ensure monitoring and reporting of sea lice within farmed salmonids is reported at a site level. This will require discussion and agreement between the finfish industry and MSS-FHI on how this is to be implemented, recorded and reported.  [This assumes the decision remains within Planning Permission in the short-term].
<b>5b</b>	To address provision of scientific advice - form a joint agency approach (e.g. as part of the National Technical Group, which is currently being formed/under discussion) between MSS-FHI, MSS-FFL, SNH, DSFBs and SEPA to take account of information on sea lice levels, treatments, wild fish monitoring and Natura information to enable provision of site specific advice and evaluation that gives a clear steer as to when an aquaculture proposal should be considered acceptable or not with regard to potential wild fish interactions. This could be based on an assessment of risk in data deficient instances.  [This assumes the decision remains within Planning Permission in the short-term]
<b>5c</b>	Update/expand current sea lice modelling tools used by MSS to model sea lice dispersal from a fish farm to inform consenting decisions (i.e. provide outputs for the joint agency to review and inform their advice).  [This assumes the decision remains within Planning Permission in the short-term]
<b>5d</b>	Move the decision of consent related to wild fish interactions out of Planning Permission and into the remit of MSS-FHI (supported by advice provided via the joint agency (5b)). This could be implemented by expanding the remit already under MSS-FHI control during fish farm operations <sup>13</sup> and via expansion of the APB authorisation at the consenting stage, subject to advice/agreement from MSS-FHI.

If implemented, the above recommendations would result in a streamlined consenting process as illustrated in Figure 7.1.

In comparison to the current consenting system these process improvements would reduce the overall time taken to achieve consent by at least 30 weeks. In comparison to scenario A presented in Figure 4.2, this would lead to consent within 52 weeks (i.e. 1 year)<sup>14</sup>.

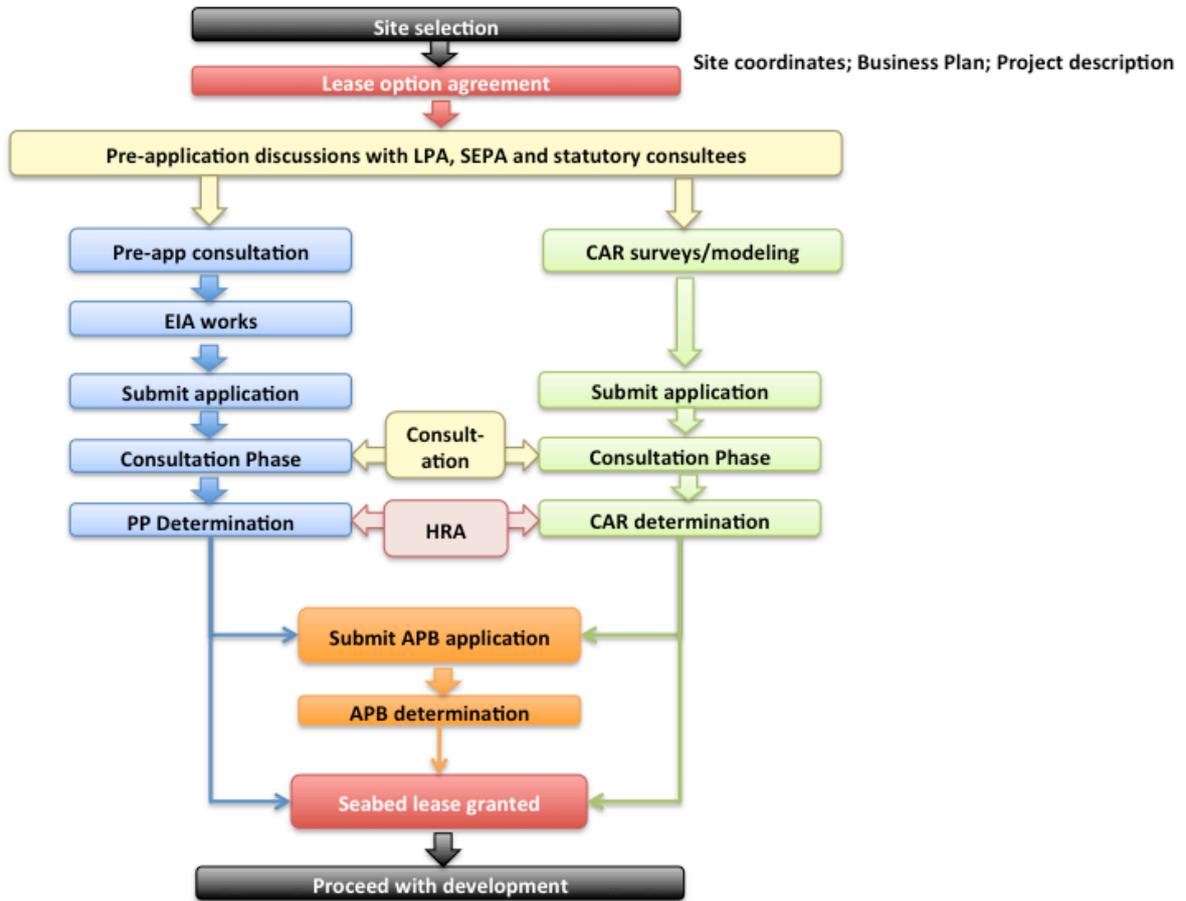
<sup>13</sup> i.e. the auditable, reportable system that ensures best practice, fish health and appropriate farm management, and ultimate control to close a site if this level of management is not demonstrated.

<sup>14</sup> This assumes that the aquaculture developer is not new to the industry and therefore the APB process will not require 12 weeks.

The time and process improvements are achieved through:

- Integrating certain licensing elements;
- Aligning CAR and planning processes (made possible through improved pre-application discussions to reduce project risk); and
- Avoiding duplication in application and consultation, but without removing any of the existing scrutiny or the extent of consultation.

**Figure 7.1: Recommended consenting regime for Scottish aquaculture (noting that CAR is required for finfish only)**



## REFERENCES

---

COM (2000) Communication from the Commission on the Precautionary Principle. 1–28.

EC (2013) COM 229 final. Strategic Guidelines for the sustainable development of EU aquaculture. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 12 pp.

EEA (2001) Late lessons from early warnings: the precautionary principle 1896 – 2000. Environmental Issue Report No 22. 1–211.

EU (2013) Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council regulations (EC) No 2371/2002 and (EC. Off J Eur Union 354:22–61.

European Commission, 2013. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strategic Guidelines for the sustainable development of EU aquaculture

Cefas (2015) Jeffery, K.R., Vivian, C.M.G., Painting, S.J., Hyder, K., Verner-Jeffreys, D.W., Walker, R.J., Ellis, T., Rae, L.J., Judd, A.D., Collingridge, K.A., Arkell, S., Kershaw, S.R., Kirby, D.R., Watts, S., Kershaw, P.J., and Auchterlonie, N.A. 2014 Background information for sustainable aquaculture development, addressing environmental protection in particular. Sustainable Aquaculture Development in the context of the Water Framework Directive and the Marine Strategy Framework Directive Cefas contract report < C6078>

Marine Planning Circular 1/2015. Circular 1/2015 The Relationship Between the Statutory Land Use Planning System and Marine Planning and Licencing. Friday, June 12, 2015

Marine Scotland, 2010, Delivering Planning Reform for Aquaculture – Progress on Actions

Scottish Government, 2015. <http://www.gov.scot/Topics/marine/Fish-Shellfish> Accessed on 07 December 2015 (webpage last updated 02 October 2015).

SNH, 2015. <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/natura-sites/habitats-regulations-and-hra/>

**APPENDIX 1 LIST OF CONSULTEES**

Type	Company/Authority	Key contact	Title
<b>Local Authorities</b>	Argyll and Bute Council	Richard Kerr	Senior Planning Officer
		Mark Steward	Marine & Coastal Development Manager
	The Highland Council	James Bromham	Aquaculture Development Officer
		Colin Wishart	Principal Planner
	Orkney Islands Council	Margaret Gillon	Planning Officer
	Shetland Islands Council	Martin Holmes	Head of Marine Section
	Comhairle nan Eilean Siar (Western Isles Council)	Morag Ferguson	Development Manager
		Malcom Burr	Chief Executive Officer
Keith Bray		Head of Development Services	
North Ayrshire Council	Ross Middleton	Case Officer	
<b>Regulators / statutory consultees</b>	The Crown Estate	Alex Adrian	Aquaculture Operations Manager
	Scottish Environment Protection Agency (SEPA)	Douglas Sinclair	Aquaculture Specialist
		Janet Davies	Specialist II (Water) for Aquaculture
		Michael Montague	Specialist II (Water) for Aquaculture
	Scottish Natural Heritage (SNH)	Suzanne Henderson	Aquaculture advisor
		Liam Wright	Policy and Advice Officer - Aquaculture
		Cathy Tilbrook	Head of Coastal & Marine Ecosystems Unit
	Marine Scotland Science	Dr. Matt Gubbins	Planning & Environmental Advice Programme Manager
	Marine Scotland Science Fish Health Inspectorate	Charles Allan	Head of Fish health Inspectorate
	Marine Scotland Science	Anna Donald	Aquaculture Planning Co-ordinator
	Marine Scotland Licencing Operations Team	Mike Bland	Marine Licensing Section Head
	Marine Scotland Planning and Policy	Sarah-Jane Smith	Licensing Policy Advisor
	Northern Lighthouse Board	Steven Driver	Coastal Inspector
Maritime and Coastguard Agency (MCA)	Helen Croxson	Navigation Safety Specialist Support	

Type	Company/Authority	Key contact	Title
	Highland and Island Enterprise	Iain Sutherland	Senior Development Manager - Food & Drink
	Association of Salmon Fishery Boards	William Whyte	Chairman of Wester Ross DSFB
		Craig MacIntyre	Clerk of Argyll Fisheries Trust
<b>Industry Organisations</b>	Scottish Salmon Producers Organisation (SSPO)	Peter Jarosv	Clerk of Wester Ross DSFB
		Scott Landsburgh	Chief Executive
		David Sandison	Company Secretary
		Jamie Smith	
	Stephen Bell	SSPO consultant	
	Association of Scottish Shellfish Growers (ASSG)	Nick Lake	Chief Executive Officer
	Scottish Shellfish Marketing Group (SSMG)	Michael Tait	Chairman
British Trout Association (BTA)	Oliver Routledge	Chairman	
Seafood Shetland	Ruth Henderson	Chief Executive	
<b>Salmon Producers</b>	Marine Harvest	Claire Lumley-Holmes	Environmental Analyst
		Chris Read	Environmental Manager
		Gareth Butterfield	Technical & Environmental Services Manager
	Cooke Aquaculture Scotland	Chris Webb	Environmental and Development Manager
	Wester Ross Fisheries Ltd	Gilpin Bradley	Managing Director
	Scottish Sea Farms Ltd	Sheena Warnock	Environment Manager
	Loch Duart Ltd	Sonja Brown	Environmental Services Manager
	The Scottish Salmon Company	Rebecca Dean	Environmental Manager
		Paul Condy	
		Penny Hawdon	
Greig Seafood	Kaye Williamson	Environmental Controller	
<b>Trout Producers</b>	Kames Fish Farming Ltd	Stuart Cannon	Managing Director
	Dawnfresh Farming Ltd	Alison Hutchins	Technical Manager

Type	Company/Authority	Key contact	Title
<b>Shellfish Producers</b>	Loch Fyne Oysters	David Attwood	Aquaculture Director
	Inverlussa	Douglas Wilson	Director
	Fassfern Mussels Ltd	Shona McCauley	Director
	Isle of Mull Oysters	Nick Turnbull	Owner/Director
	Arisaig Mussels	Ian McKinnon	Owner
	Shetland Mussels	Michael Tait	Owner and Operations Director

### OTHER SCOTTISH AND UK CONSENTING REGIMES OR ADMINISTRATIVE PROCESSES

To explore improvements to the current aquaculture consenting regime in Scotland it is useful to consider other marine consenting processes from within Scotland and the wider UK, and also aquaculture consenting regimes elsewhere, including Norway, with a view to understanding what has and has not worked and recognise any lessons learnt.

Examples explored within Scotland include Marine Licences and Renewables and Harbour Orders. The SEA Gateway process provides an example of an alternative administrative and advisory system. The Planning Inspectorate (for UK nationally significant projects) acts as both a gateway process and consenting authority. The aquaculture sector examples present the different arrangements and legislative requirements in Norway, Europe and Tasmania.

#### **Marine Licensing – Marine (Scotland) Act 2010 and Offshore Renewables**

##### ***Background***

The consenting regime and administrative network for marine licensing was of interest to this project as it provides an example of a ‘one-stop-shop’ approach seeking to streamline consenting.

In response to perceived challenges in development of offshore renewables, Marine Scotland set up a centralised system for offshore wind, wave and tidal developers to obtain consents/licences for marine renewable developments in Scottish waters.

This included:

- Licensing Manual - providing information and guidance to developers on the licensing process and work is under way to update it to incorporate offshore wind licensing elements, policy guidance and licensing policy created by the Marine Act
- Guidance – on surveys, deployment and monitoring requirements

Demonstration Strategy – using monitoring of consented schemes to inform potential future developments

Marine licensing and consenting is led by Marine Scotland’s Licensing Operations Team (MS-LOT). MS-LOT provide an impartial single point of contact responsible for the assessment of applications, ensuring compliance with all relevant legislation and the issue of all related permissions.

Marine Scotland are committed to streamlining the consenting process for the offshore renewables sector, seeking to manage the process for both applicants and regulators, and have established a simplified licensing system and a one-stop-shop for consents/licences for offshore marine renewable developments.

Marine Licensing covers the following key development types:

- Coastal and marine developments;
- Offshore wind farms (OWF);
- Wave and tidal power; and
- Removal and disposal of marine dredged material at sea.

A guidance document for developers, regulators, statutory advisors, interested parties and the public was produced in October 2012 (still marked as Draft). It applies to projects within Scottish Territorial Waters (0-12nm) and the Scottish Renewable Energy Zone (12-200nm) and is intended to assist offshore renewable energy developers (wave, wind and tidal developers) when applying for a Marine Licence and consent under the Electricity Act 1989 (as amended) also known as a Section 36 consent. The document provides guidance on the following key areas:

- The licensing process;
- The legislative context; and
- Production of supporting documentation such as Environmental Impact Assessment (EIA) and Habitats Regulations Appraisal (HRA).

The changes to the licensing system were intended to establish a closer working relationship with consulting bodies by running Section 36 (s36) and Marine Licence (ML) applications simultaneously.

MS-LOT co-ordinate the liaison and consultation to ensure issues are raised at the appropriate time. Marine Scotland advise within the Licensing manual that independent planning advice is provided by a separate team in MS Planning and Policy (MSPP). MS-LOT has a close working relationship with key people within statutory and non-statutory consultees including, Joint Nature Conservation Committee (JNCC) and RSPB.

### ***Benefits and challenges***

- The guidance provides clear signposting and information requirements for teams progressing through Marine Licensing and s36 applications.
- The consideration and consultation of documents submitted across multiple consent and licensing regimes is co-ordinated – as an example, one EIA document is produced to cover multiple consenting requirements and MS-LOT co-ordinate the consultation.

### ***Lessons Learnt***

- Early and effective consultation with key statutory consultees and agencies at EIA Scoping Stage and thereafter during drafting of Environmental Statements is important to avoid late stage issues arising.

## **Harbour Orders**

### ***Background***

The consenting regime and administrative network for harbour orders was of interest to this project as it provides an example of a collaborative / joined-up approach to consenting on a voluntary basis based on an acknowledgement of overlaps in supporting documentation between harbour orders and other linked consenting regimes such as planning or marine licences. Scottish Ministers have powers under section 14 or 16 of the Harbours Act 1964 to make various types of harbour order, for the purposes of introducing new harbour legislation or amending existing harbour legislation in relation to a specific harbour. Transport Scotland administers Harbour Orders on behalf of Scottish Ministers. It should be noted that the HRO process is a

legal process and therefore has defined requirements for development and consultation and associated administrative support within Transport Scotland.

Guidance (latest revision 2015) produced by Transport Scotland provides information to prospective applicants seeking to embark on a Harbour Order application and covers aspects such as pre-application consultation, EIA and HRA and consultation and determination on an application.

Transport Scotland is the relevant authority in terms of a Harbour Empowerment Order/Harbour Revision Order and both the HEO/HRO can be aligned with application for Planning Permission and Marine Licence(s). Land based development requirements also require Planning Permission and the EIA/HRA documentation produced across all of the consenting regimes is important to the determination process.

Whilst the guidance is clear that the applicant is responsible for ensuring that they have all of the necessary consents in place prior to undertaking any works proposed, Transport Scotland do indicate willingness to consider aligning the application for the harbour order along with any other consent that may be required such as Marine Licence from Marine Scotland or for Planning Permission from the relevant LA (where the works fall out with those that would otherwise be authorised by section 29 or 35 of the General Permitted Development Order).

Where other consents such as planning permission and marine licence are required, Transport Scotland are committed to work with the other consenting bodies and, where practical, agree a joint approach to environmental assessment and issue a single scoping and screening response for a single Environmental Statement to cover all aspects of a project to streamline the consents process.

### **Benefits**

- The guidance provides clear signposting and information requirements for teams progressing through complex consenting regimes. There is a clear programme and process from initiation to decision and the guidance includes a checklist for validation of applications and routemap – a gate-check process.
- TS provide a co-ordination role and administer the consenting and licensing requirements including consultation with key agencies
- The consideration and consultation of documents submitted across multiple consent and licensing regimes is co-ordinated – one EIA document is requested to cover the various requirements and TS co-ordinate the consultation.

### **Challenges**

- Places an administrative burden on the co-ordinating party in Transport Scotland to implement the requirements.

### **Lessons Learnt**

- Transport Scotland are currently progressing a Harbours (Scotland) Bill through Parliament, which seeks to address a number of issues concerning current harbours legislation which includes commitment to increase the efficiency and effectiveness of existing procedures and processes for stakeholders.

## **Environmental Assessment (Scotland Act) 2005 - Strategic Environmental Assessment and the SEA Gateway**

### ***Background***

Whilst SEA does not apply to individual aquaculture development applications, the SEA Gateway is an example of an administrative support where there are multiple steps to complete and multiple consultations to be completed within set timescales.

In Scotland, the requirements of the EU Directive (2001/42/EC) are taken forward by the Environmental Assessment (Scotland) Act 2005. The Act requires that environmental assessment is undertaken on all public sector plans, programmes and strategies which are likely to have significant environmental effects. The 2005 Act has been in force since February 2006.

The SEA Gateway was set up to administer Scottish SEA coupled with a corresponding network of gateways operated by the Consultation Authorities or CAs (SNH, SEPA and Historic Environment Scotland). The SEA Gateway act as a post-box for the Responsible Authorities (RAs) producing the Plan, Programme or Strategy and associated SEA reporting and with the co-ordinated CA gateways seeks to ensure consultation is carried out in a streamlined manner in line with statutory timescales. The Gateway process works in the following way (from The Scottish Environmental Assessment Review, 2011, Scottish Government):

- Step 1 RA sends the SEA consultation documentation to the Scottish Government SEA Gateway;
- Step 2 the Scottish Government SEA Gateway registers the consultation in its database and sends the relevant documents directly to the CAs (via their SEA gateways) informing them of the statutory or agreed deadline;
- Step 3 the CAs register the consultation in their local casework recording systems (often part of, or linked to, systems for recording other consultations and casework (e.g. planning consultations)) and assign a case officer;
- Step 4 on completion of a response, the CA sends the documentation to the Scottish Government SEA Gateway within the statutory or agreed deadline set;
- Step 5 the Scottish Government, on receipt of responses from each of the CAs, sends these to the RA with a covering letter.

The SEA Gateway Team is based within the Scottish Government and is responsible for administering and recording statutory SEA correspondence. The Scottish Government also has a specialist Environmental Assessment Team that undertakes the statutory assessments required for various Departments; they can provide technical support to the Gateway Team as and when required.

Wider functions carried out by the SEA Gateway include:

- Providing general bespoke advice (non-legal) to RAs on SEA;
- Maintaining a searchable online database of all SEA casework undertaken in Scotland;
- Producing SEA guidance and topic-specific guidance for practitioners;

- Administering the SEA Forum, which offers practitioners an annual opportunity to share experience and hone assessment skills.

### **Benefits**

- SEA Gateway provides a one stop shop for advice to RAs which has developed and strengthened skills in SEA;
- The Gateway acts as a portal for submission of SEA documents and consultation responses which streamlines the consultation and engagement process; and
- The SEA database provides a significant source of information and best practice guidance regarding environmental assessment which is easily accessible.

### **Challenges**

- The SEA process and Gateway has taken time to 'bed in' and has required a resource and funding commitment from Scottish Government since inception as well as a commitment from the Consultation Authorities and Responsible Authorities.

### **Lessons learnt**

- The setting up of a dedicated SEA Gateway and annual review through the SEA Forum have developed skills in SEA in Scotland for both Regulatory Authorities and Consultation Authorities (SNH, SEPA and HES). It has streamlined and signposted the SEA process in Scotland and has ensured transparency of decision making. This approach could benefit other sectors.

## **The Planning Inspectorate (PINS)**

### **Background**

The Planning Inspectorate or PINS process relates to nationally significant projects in England and Wales and whilst aquaculture is not of a scale that would be considered under this consenting regime, it represents an example of a portal used to handle applications at all stages of the consenting process.

The Planning Act 2008 process was introduced to streamline the decision-making process for nationally significant infrastructure projects, making it more transparent and accountable for stakeholders whilst committing to set timescales for determination. The portal addresses the following key stages:

- Pre-application
- Acceptance - Gate-checking to ensure the application meets the standards required to be formally accepted for examination.
- Pre-examination – public consultation over 3 month period
- Examination - Planning Inspectorate has six months to carry out the examination. Representations including public consultation and other statutory consultation
- Decision - Planning Inspectorate must prepare a report on the application to the relevant Secretary of State, including a recommendation, within 3 months of the six month examination period. The Secretary of State then has a further

3 months to make the decision on whether to grant or refuse development consent.

- Post decision - once a decision has been issued by the Secretary of State, there is a six week period in which the decision may be challenged in the High Court via Judicial Review.

### ***Benefits***

- There is a clear programme and process from initiation to decision and includes a checklist for validation of applications and routemap – a gate-check process.

### ***Challenges***

- The timescales associated with meeting milestones for each stage are challenging and resource intensive / procedural and do not seem to allow much flexibility to respond to changing conditions/new information etc.

### ***Lessons Learnt***

- The validation and gate-check process ensures documentation is complete before the application is considered further which streamlines the determination process in accordance with agreed timescales.
- Early engagement established potential issues and allows them to be addressed prior to formal application where possible to reduce programme risk.
- Importance for early pre-scoping dialogue between developers, ECU and statutory consultees to ensure only likely suitable sites are brought forward through the formal Section 36 process or PINS process – fully considering natural heritage / landscape and visual impacts etc and alignment with local spatial frameworks where these have been produced by local authorities which seek to focus development in less sensitive areas.
- Promoting high quality environmental supporting documentation ensures any public inquiry is focussed on key issues of concern.

## OTHER AQUACULTURE CONSENTING REGIMES

### Norway

#### ***Background***

In Norway the regulation of aquaculture is predominately achieved through the Aquaculture Act (2005), which establishes a licensing system that covers environmental standards, land utilisation, registration, transfer and mortgaging of licences, as well as control and enforcement. The express purposes of the Aquaculture Act are to “promote the profitability and competitiveness of the aquaculture industry within the framework of sustainable development and contribute to the creation of value on the coast”. This indicates the desire to create a permanent industry activity which is supported by the legal status of Norwegian aquaculture sites.

#### ***Benefits and challenges***

The Aquaculture Act establishes a licensing system for aquaculture, and allows the Ministry to limit the number of licences allocated for aquaculture of salmon, trout and rainbow trout . Accordingly, the Ministry may prescribe:

- The number of licences to be allocated.
- Geographic distribution of licenses.
- Prioritisation criteria.
- Selection of qualified applications in accordance with the prioritisation criteria, including the drawing of lots etc.
- Licence fees

Following the introduction of the Aquaculture Act, a ‘single-window’ system was established for the processing of aquaculture licence applications, whereby the aquaculture operator submits their application to the appropriate regional office of the Directorate of Fisheries, who will forward the application to the relevant authorities to obtain all the required licences (Figure 0.1). These authorities are: The Food Safety Authority, the County Governor, the National Coastal Administration and the Water Resources and Energy Directorate. The Act prescribes that the different authorities administrating the different Acts, as well as the municipality, are obligated to undertake an efficient and coordinated processing of applications.

For fresh water aquaculture in Norway’s inland counties, where regional Fisheries Directorate offices are not present, the County Governor adopts the same coordinating role for aquaculture applications.

This single-window enables a coordinated process, so that consents/licences are granted at the same time or in an appropriate sequence. The overall purpose of the scheme is to facilitate and simplify the process for applicants, by enabling applicants to deal with one public agency, and to make the processing of the applications more efficient and more expedient.

The introduction of Norway’s ‘single-window’ approach is considered to have reduced the average licencing time by half, from 1 year to 6 months; this is in comparison to aquaculture authorisation procedures in other EU Member States lasting on average 2-3 years (Figure 0.2, EC, 2013). However, it should be noted that applicants in Norway will have undertaken the majority of pre-application, assessment and surveys prior to submitting their application, so these elements are

not included within the 6 month period, so it is not directly comparable to the Scottish consenting period.

Another benefit established in the Aquaculture Act is the legal right to transfer and mortgage aquaculture licences between companies or geographically. This mortgage right allows a licence to be used as collateral for a creditor's security interest, contributing to greater predictability and improved access to capital for the industry. The mortgage will be afforded legal protection when it has been registered on the licence's record in the aquaculture register.

The aquaculture license permits the production of specific species in limited geographic areas (sites), subject to the prescribed terms. The Ministry may prescribe detailed provisions regarding the content of the aquaculture licences, including the scope, time limitations, etc. by administrative decision or regulations.

Under the Act, the Ministry may amend or revoke aquaculture licences, including for sea ranching:

- If this is necessary due to environmental considerations;
- If there are changes in any material assumptions underlying the licence;
- In the event of gross or repeated contravention of the provisions prescribed in or pursuant to this Act;
- If the licence is not used, or only used to a limited extent; and
- If one or more of the licences required has lapsed.

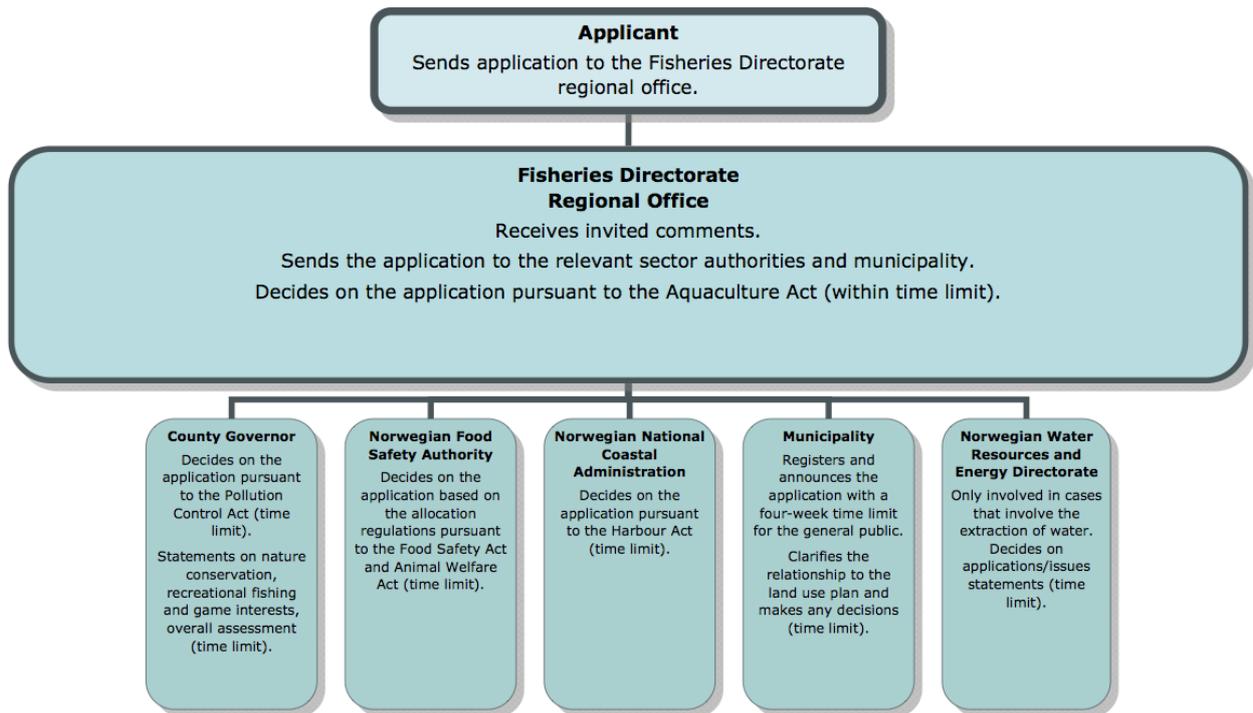
An applicant for an aquaculture licence is required to obtain a permit to discharge wastewater in order to obtain a licence under the Aquaculture Act (2005). The applicant does not have to send a separate emission application, as the application will be forwarded by the Directorate of Fisheries.

The Licensing Regulations (2004) establish a maximum breeding biomass for each licence.

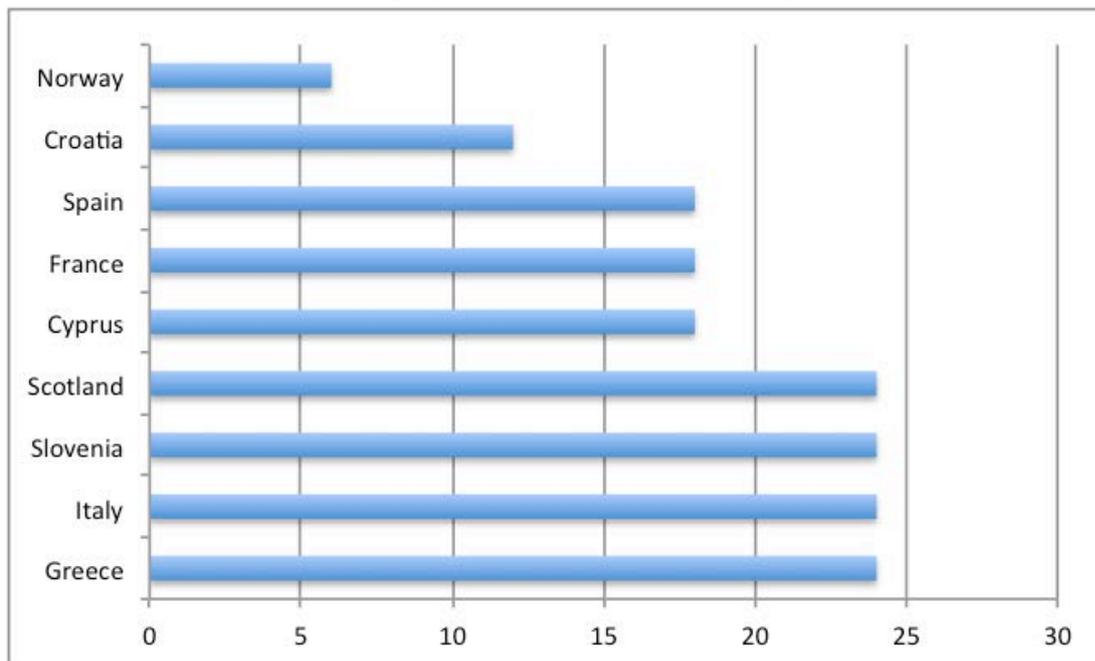
### ***Lessons learnt***

- The Aquaculture Act (2005) has supported streamlining of Norway's consenting process, with demonstrable reductions in the time taken to achieve licences.
- The 'single-window' approach provides a clear and single point of contact for the aquaculture industry.

**Figure 0.1: Organisation of aquaculture licence applications in Norway**



**Figure 0.2: Licencing time (months) for new aquaculture farms in some Member States and Norway (adapted from EC, 2013)**



## **Elsewhere in Europe**

### ***Background***

A recent project by the Centre for Environment, Fisheries and Aquaculture Science (Cefas) undertook an extensive review of aquaculture environmental regulations across EU Member States (Jeffery *et al.*, 2014). The following sections give a summary of these findings including good practice and key recommendations that are relevant to the aquaculture consenting process. The Cefas review included a number of Scottish examples of good practice, and these have been mentioned below with links to the relevant section of this report where further details are provided.

### ***Benefits and challenges***

Strategic Guidelines for the Sustainable Development of EU aquaculture (EC, 2013) highlight four priority areas: i) simplification of administrative procedures, ii) co-ordinated spatial planning, iii) competitiveness and, iv) a level playing field.

Specific examples of good practice from regulators across EU Member States identified by the Cefas report (Jeffery *et al.*, 2014) include:

- One-stop-shops and streamlining of licensing processes: whereby applicants submit a single application to one authority which then passes it onto other relevant authorities for consideration and co-ordinates the response. Norway is provided as an example of successfully implementing this type of structure (see section 0). However it is also highlighted that other countries, such as Denmark, have successfully streamlined processes without a one-stop-shop. This has been achieved through ensuring the process for marine licensing is clear and transparent, with an aim of granting a licence within 9-12 months after application.
- Development of strategies for aquaculture: examples include the Aquaculture Development Strategy for Hungary, the renewed Strategic Framework for Scottish Aquaculture (A Fresh Start, see section 3.1), and Greece for spatial planning in the marine environment.
- Cooperation, dialogue and sharing of understanding between relevant authorities, fish farmers and other stakeholders: The Co-ordinated Local Aquaculture Management System (CLAMS) approach in Ireland and 'Scotland's Aquaculture' website? (see section 3.2.1) are cited as good examples.
- Spatial planning for aquaculture: with the aim of reducing conflicts; encouraging investment by instilling predictability and transparency; and increasing coordination between administrations/authorities. For example Allocated Zones for Aquaculture are implemented in Greece informed by research and modelling and monitoring of environmental quality standards.
- Computer-based modelling for assessing carrying capacity: the internet based Ecosystem Approach for Sustainable Aquaculture (ECASA) project toolbox includes a range of indicators, models and procedures, tailored for different farming techniques and species (see [here](#)). In addition, the Horizon 2020 funding will provide further research into any cumulative effects of

aquaculture. SEPA CAR modelling is also highlighted as a good example (see section 4.2.2).

- Risk- and evidence-based approach to determining monitoring requirements: ensuring that standardised monitoring requirements are not implemented across all sites and that requirements are specific to individual sites.
- Appropriate use of the Precautionary Principle: sensible and pragmatic application of the precautionary principle in line with EU guidance and consistently applied to all types of activities.

### ***Lessons learnt***

Key recommendations from the Cefas report with respect to environmental regulations of aquaculture include:

- Need to provide clear systems and guidelines and an efficient licensing process that delivers decisions within a set time frame.
- Having a single point of contact for the aquaculture industry in the regulatory system to improve the efficiency of regulation i.e. a “one-stop-shop”.
- To provide a permitting system that is flexible enough to include mitigation practices or new techniques for the management of environmental impacts.
- The Precautionary Principle be applied to aquaculture consistent with EU guidance (EC 2000; EEA 2001).

It is also worth noting that the best practice examples highlight several aspects of Scotland’s regulatory regime, which should not be forgotten when attempting to streamline processes.

## **Tasmania**

### ***Background***

The Tasmanian aquaculture industry is an interesting example to explore as it has shown significant expansion, by around 320% in gross value terms over a ten-year period (from 2001/2 to 2011/2), is predominately related to salmon (>90% gross value) and covers more than 10,000 leasable hectares.

Tasmania has legislation specifically relating to aquaculture, the Marine Farming Planning Act 1995, which covers establishing aquaculture zones and allocating leases. Licensing of aquaculture activities is done under relevant fisheries legislation for either marine or inland aquaculture. Marine aquaculture must occur in a specified aquaculture zone. The approvals required are:

- A marine farming licence (under the Living Marine Resources Management Act 1995)
- A marine farming lease for an area designated in a marine farming development plan (under the Marine Farming Planning Act 1995).

There have been 14 Marine Farm Development Plans developed under the Marine Farming Planning Act 1995, which identify specific sites for aquaculture.

### ***Benefits and challenges***

Generally Development Plans are prepared by the Department of Primary Industries, Parks, Water and Environment (DPIPWE), and then sites defined by the plan are leased to proponents. The onus has therefore been on the regulating authority to define site sizes and locations, and undertake Environmental Impact Statements (EISs) at a zone level. Where the DPIPWE is the planning authority, the process for allocating leases within an aquaculture zone is set out in the Marine Farming Planning Act 1995. In practice, leases have generally been allocated using some form of public application process. Applications are assessed by a Board/Panel, which then makes recommendations to the Minister.

The Marine Farming Planning Act 1995 also allows for circumstances where the marine farming zone is designated under a privately prepared draft plan or as a result of a privately requested amendment to a marine farming development plan. This has recently led to industry undertaking EIAs and amendments to plans with a view of securing sites directly.

Marine Farm Development Plans specify various Management Controls, which typically include: nitrogen outputs, carrying capacity, disease controls, visual controls, monitoring requirements etc.

### ***Lessons learnt***

- Development at a spatial zone level, including zonal Environmental Impact Statements, has allowed a relatively rapid expansion of Tasmania's aquaculture industry.
- The onus of site selection and EIS being carried by the relevant authority reduces burden on the industry, but removes a degree of flexibility which has resulted in industry privately carrying out plan amendments and EISs with a view to securing new sites directly.

INDEPENDENT CONSENTING REVIEW FOR AQUACULTURE  
CONSULTATION STRATEGY

## 1 INTRODUCTION

---

### 1.1 INTRODUCTION

This document forms a Consultation Strategy in relation to the project titled ***Independent Review of the Consenting Regime for Scottish Aquaculture*** being undertaken for The Crown Estate and Marine Scotland by **Poseidon Aquatic Resource Management Ltd** (Poseidon) in association with **Ironside Farrar**.

It covers consultation being undertaken with regulators, Local Authorities and aquaculture industry. In the context of this work on the consenting process for aquaculture, the focus is on finfish and shellfish; although information and views on seaweed will also be collated where relevant.

### 1.2 CONTENTS AND STRUCTURE

This report provides a 1-page summary on the project background and objectives (Section 2), which will be used to introduce the project to all consultees.

This is followed by two separate questionnaires to be used when consulting:

- Local Authorities, regulators and statutory consultees (Section 3); and
- Industry (Section 4).

The list of consultees has been developed and refined in conjunction with the Project Steering Group, and is provided in excel format as Appendix 1: Independent Consenting Review (ICR) Consultee Directory.

### 1.3 APPROACH TO CONSULTATION

Consultation with Local Authorities (LA) will be undertaken by James Miller of Ironside Farrar. The relevant contacts from each LA will be contacted by phone and/or email prior to undertaking a structured interview conducted through face-to-face meetings or telephone/videoconference. After collating responses from individual LAs, an opportunity will be provided for a group response. This will be facilitated by the project team requesting a written response from the relevant LA representative, who would consult with the LA group in formulating their response. Advice will be sought from the LAs on who would be appropriate for this role; otherwise the current LA/CoSLA representative on the Capacity Working Group will be approached.

Consultation with other regulators / statutory consultees and industry will be undertaken by Fiona Nimmo of Poseidon. Again, each stakeholder will be contacted by phone and/or email prior to undertaking a detailed interview, which will be conducted by phone/video conference or through face-to-face meetings. Meetings

anticipated to be undertaken in person are indicated within the Consultee Directory (Appendix 1) and categorised as “Face-to-face” under the heading *Type of Consultation*. Some consultees within the directory have been included to ensure complete representation across the consenting process and may not have specific views or want to input in detail to this project. In such cases, they will be provided information and asked for any general comments, but may not wish to be interviewed in detail. These consultees have been indicated within the Consultee Directory and categorised as “Email/general comments” under the heading *Type of Consultation*. The majority of consultation will be completed by a combination of email and telephone/video conference; categorised as “Email & telephone/video conference” within the Consultee Directory.

Both questionnaires will be piloted during the first interviews and reviewed before subsequent consultation to capture any edits and any other emerging aspects or questions. Any additional emerging questions will be put forward to the Steering Group for approval prior to incorporation into the questionnaires.

The Steering Group highlighted the synergies of this project with the SARF 110 project titled ***Strategic Consideration for Locational Regulation of Shellfish Aquaculture in Scotland***. The SARF project is currently underway and holding a stakeholder workshop in Inverness on 29 October. It is proposed that Fiona Nimmo will attend this workshop to share knowledge and experiences from each project to date.

In addition the Association of Shellfish Growers (ASSG) are holding a conference on ***Scottish Cultivated Shellfish – Demand Driven Success*** in Oban on 22-23<sup>rd</sup> October. A number of shellfish farm directors/owners are presenting and attending this conference, providing a good opportunity for face-to-face consultation. It is therefore proposed that Fiona Nimmo attends this conference.

#### Five year time period

When collating information on the number of applications received / submitted, the questionnaires focus on a time period of five years (2010-2014). The Steering Group concur that a five year time period is reasonable, and covers the period of current legislation in place and associated consenting policies and processes under scrutiny, following both the transfer of planning controls to Local Authorities in 2007 and coming into force of the Marine (Scotland) Act 2010.

## **1.4 TIMING OF CONSULTATION**

Consultation will be undertaken from mid October through to the end of November 2015.

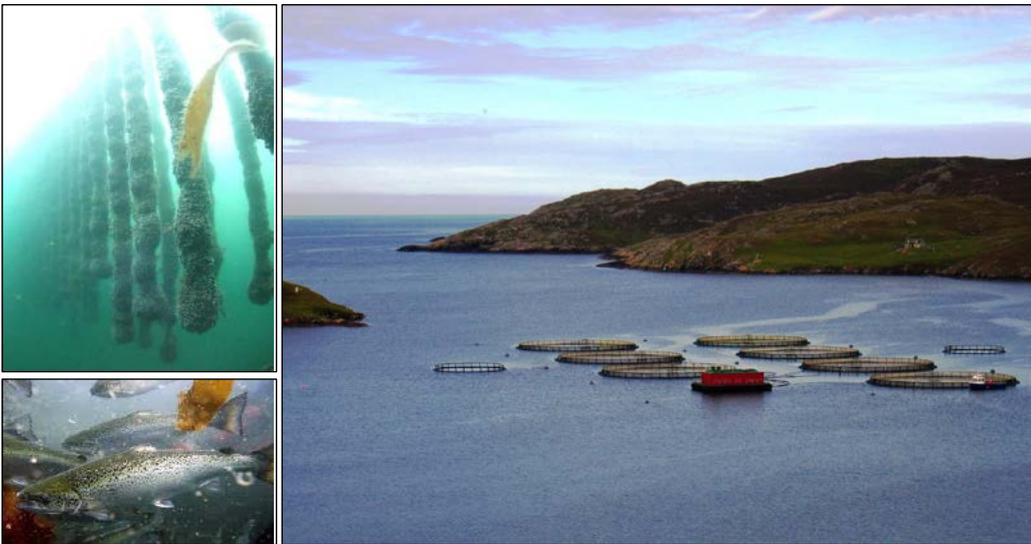
## **2 ONE PAGE PROJECT SUMMARY**

---

See overleaf.

# Independent Review of the Consenting Regime for Scottish Aquaculture

October 2015



Project commissioned by:  
**The Crown Estate and Marine Scotland**

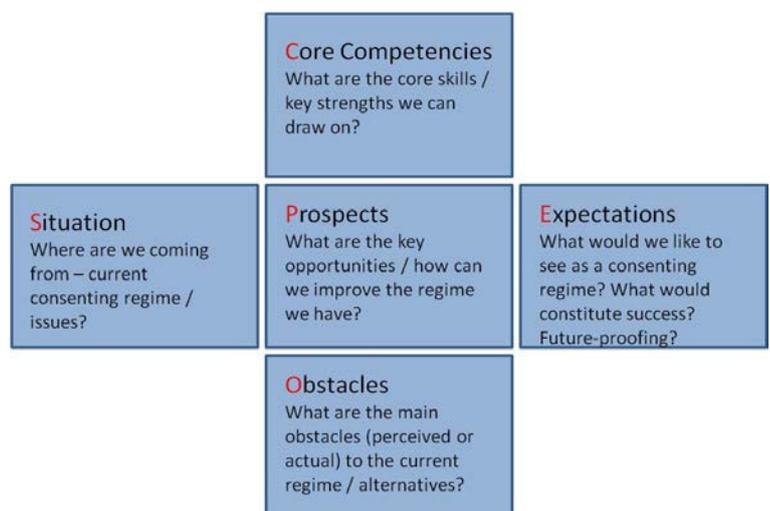
Undertaken by:  
**Poseidon Aquatic Resource Management**  
in association with  
**Ironside Farrar**

**The purpose** of the study is to review the current consenting regime for Scottish aquaculture, focusing on finfish and shellfish, and collating views on seaweed where relevant. The multiple consenting regimes will be mapped to establish their interactions, overlap, duplication, and potential for conflict, durations and areas of sequential or parallel processes.

**Consultation is crucial** to the success of the project, in particular gathering views from key stakeholders, especially in relation to the strengths and weaknesses of the consenting process. We want to establish what works well with the current consenting system; what are the challenges, frustrations, and issues; and what are the commonalities across stakeholders?

The project will then apply a SCOPE analysis to the current multiple consent regime.

This will enable us to focus on the key issues and consider how these could be addressed through a series of **recommendations**.



The project **will be delivered** over four months, with consultation undertaken during October and November, analysis during December and a final report planned for January 2016.

Your input is greatly appreciated and we will be contacting you soon. For further general project details please contact Fiona Nimmo (Email: [fiona@consult-poseidon.com](mailto:fiona@consult-poseidon.com)).

### 3 LOCAL AUTHORITIES, REGULATORS AND STATUTORY CONSULTEE QUESTIONNAIRE

Please find a questionnaire below relating to your experiences of the consenting process for Scottish Aquaculture. Fiona Nimmo, from Poseidon, or James Miller from Ironside Farrar will be in contact soon to talk through each of these questions and discuss any other comments you may have.

1. General			
<b>1. 1. Name</b>		<b>1.2. Position</b>	
<b>1.3. Organisation</b>		<b>1.4. Location</b>	
<b>1.5. Confidentiality</b>	Please indicate the instances when answers should be treated as confidential. Please note that confidential answers will contribute to the analysis, but organisation/ personnel will remain anonymous.		

2. Role in consenting regime	
<b>2.1. Can you describe your organisation's role in the consenting process of Scottish Aquaculture for finfish, shellfish and seaweed?</b>	
<b>2.2. Do you feel that this role is appropriate, or that your organisation should have more/less involvement in the consenting process?</b>	
<b>2.3. Do workload pressures result in delays in the consenting process, for both current and anticipated future workloads?</b>	
<b>2.4. Do you have any other general comments about your role in the consenting process?</b>	

**3. Recent experience**

<b>3.1. Number of applications received over last five years (2010-2014):</b>	Finfish:	Shellfish:
<b>3.2. Is a summary database of applications held by your organisation? If so can it be made available (anonymously if required)?</b>		
<b>3.3. Reason for application:</b> (Please provide numbers for each category)	<b>Finfish</b>	<b>Shellfish</b>
New site		
Extension to existing site		
Relocation of existing site		
Transfer to new production (e.g. finfish to shellfish)		
Any other situation:		

**3.4. Experience of these applications, by category:**

	<b>Outcome</b>	<b>Challenges &amp; Successes</b>	<b>Average timing for entire process</b>
New site			
Extension to existing site			
Relocation of existing site			
Transfer to new production			
Any other situation:			

<b>3.5. [For Local Authorities only] Does the Council publish an annual review of planning applications?</b>	
--	--

<b>4. General experience of consenting processes:</b>				
<b>4.1. What works well with the current consenting process?</b>				
<b>4.2. What are your main challenges, frustrations and issues with the current consenting process?</b>				
<b>4.3. Are there duplications of effort across the different consenting processes?</b>				
<b>4.4. Is the overall aim of each consenting process clear and distinct from each other?</b>				
<b>4.5 Do you require other consents to be granted before issuing yours?</b>				
<b>4.6. Do you feel that the consenting process is more straightforward/ streamlined for specific application types? i.e. for: new sites, extensions to existing sites, relocation of existing sites or transfer to new production?</b>				
<b>5. Consenting process issues</b>				
<b>5.1. Describe your organisation's requirements and responsibilities at each stage of the application and consents process, highlighting any particular issues encountered:</b>				
	<b>Requirements/ responsibilities</b>	<b>Duration</b>		<b>Key issues &amp; strengths</b>
		<b>Statutory requirement</b>	<b>Actual Average</b>	
a. Initial consultation				
b. CAR surveys/monitoring				
c. Screening Opinion				
d. EIA screening, scoping & EA production.				
e. Habitat Regulations and Appropriate Assessment				

f. Submit applications (Marine Licence, Planning & CAR)				
g. Public consultation				
h. Decision				
i. Appeals process				
j. Other				

<b>5.2. During the consenting process, which stage is the most onerous in terms of information/resources and issues encountered?</b>	
<b>5.3. During the consenting process, which stage is the most straightforward in terms of information/resource requirements and issues encountered?</b>	
<b>5.4. Can you comment on the quality of applications and supporting documents received in terms of main strengths and/or weaknesses?</b>	
<b>5.5. Do you provide guidance to applicants and/or direct applicants towards any specific information sources?</b>	

<b>6. Consultation</b>	
<b>6.1. Can you list who you consult with on aquaculture applications, including: your organisation's internal departments and statutory consultees?</b>	
<b>6.2. Can you list the non-statutory consultees you consult with on aquaculture applications?</b>	
<b>6.3. What is your experience of these consultations, and can you suggest any changes which would enhance this process?</b>	
<b>6.4. Do you feel that there is too much, too little or duplications in the current consultation regime?</b>	

<b>6. Consultation</b>	
<b>6.5.</b> In 2010 SEPA, SNH, ASFB & MSS agreed a consultation protocol for marine aquaculture planning applications. <b>What is your experience of this protocol, and can you suggest any amendments, which would enhance its operation?</b>	
<b>[For Local Authorities only] 6.6.</b> For Major applications, what level of community consultation is required by the Council, and undertaken by the applicant?	

<b>7. Environmental Impact Assessment (EIA)</b>	
<b>7.1.</b> When an EIA is required, do applicants engage with you during EIA screening and scoping?	
<b>7.2.</b> Can you describe the overall quality of Environmental Statements?	
<b>7.3.</b> Are there any EIA topics which are regularly deficient in their scope and depth of coverage or which have too much information/unnecessary detail?	
<b>7.4.</b> Do you have any other comments on the EIA process and documentation?	
<b>7.5.</b> Are you satisfied with the consultation responses from statutory consultees on technical/scientific topics addressed in the EIA?	
<b>7.6.</b> Do you include the EIA mitigation measures as conditions attached to the consents?	

<b>8. Refusal and withdrawal of applications</b>	
<b>8.1.</b> Has your organisation refused any aquaculture applications? If so, can you advise on the grounds of refusal?	
<b>8.2.</b> Have applications been withdrawn during the consenting process? If so, how many; what stage did the applications get to; and were any reasons given for the withdrawal?	

<b>9. Post consent monitoring</b>	
<b>9.1. Does your organisation undertake any monitoring during the operation of approved fish/shellfish farm?</b>	
<b>9.2. If yes, who undertakes this monitoring?</b>	
<b>10. Views and recommendations</b>	
<b>10.1. What do you feel are the main strengths of the current consenting regime?</b>	
<b>10.2. What do you feel are the main problems with the current consenting regime?</b>	
<b>10.3. Can you suggest any solutions to these problems?</b>	
<b>10.4. Are there any current or proposed actions that would address these problems?</b>	
<b>10.5. Are there any current or proposed actions that would make the situation worse?</b>	
<b>10.6. Do you have any experience or knowledge of any other regimes where lessons could be learned?</b>	
<b>10.7. Do you have any other recommendations to improve the consenting process?</b>	
<b>10.8. Do you have any further comments on the current operation of the consenting regime for aquaculture?</b>	

Thank you for your time and input to this study.

For further information please contact Fiona Nimmo ([Fiona@consult-poseidon.com](mailto:Fiona@consult-poseidon.com); 0131 467 5510; 07776251210).

For further information please contact James Miller ([James.miller@ironsidefarrar.com](mailto:James.miller@ironsidefarrar.com); 0131 550 6500).

#### 4 INDUSTRY QUESTIONNAIRE

Please find a questionnaire below relating to your experiences of the consenting process for Scottish Aquaculture. Fiona Nimmo, from Poseidon, will be in contact soon to talk through each of these questions and discuss any other comments you may have.

1. General			
1. 1. Name		1.2. Position	
1.3. Organisation		1.4. Location	
2. Confidentiality	Please indicate the instances when answers should be treated as confidential. Please note that confidential answers will contribute to the analysis, but organisation/ personnel will remain anonymous.		

3. Recent experience		
3.1. Number of applications submitted over last five years (2010-2014):	Finfish:	Shellfish:
3.2. Do you keep a summary database of applications? If so can it be made available (anonymously if required)?		
3.3. Reason for application: (Please provide numbers for each category)	Finfish	Shellfish
New site		
Extension to existing site		
Relocation of existing site		
Transfer to new production (e.g. finfish to shellfish)		
Any other situation:		

<b>3.4. Experience of these applications, by category:</b>			
	<b>Outcome</b>	<b>Challenges &amp; Successes</b>	<b>Average timing for entire process</b>
New site			
Extension to existing site			
Relocation of existing site			
Transfer to new production			
Any other situation:			

<b>4. General experience of consenting processes:</b>	
<b>4.1. What works well with the current consenting process?</b>	
<b>4.2. What are your main challenges, frustrations and issues with the current consenting process?</b>	
<b>4.3. Are there duplications of effort across the different consenting processes?</b>	
<b>4.4. Is the overall aim of each consenting process clear and distinct from each other?</b>	
<b>4.5 Do specific consents need to be granted before others can be applied for?</b>	
<b>4.6. Do you feel that the consenting process is more straight forward/ streamlined for specific application types? i.e. for: new sites, extensions to existing sites, relocation of existing sites or transfer to new production?</b>	
<b>4.7. Would you have liked to submit more aquaculture applications? And if so, what was the main barrier to doing so?</b>	

**5. Consenting process issues**

**5.1. Describe what you have to do at each stage of the application and consents process, highlighting any particular issues encountered:**

	Information Requirements	Duration (actual average)	Key issues & strengths
a. Initial consultation			
b. CAR surveys/monitoring			
c. Screening Opinion			
d. EIA screening, scoping & EA production.			
e. Habitat Regulations and Appropriate Assessment			
f. Submit applications (Marine Licence, Planning & CAR)			
g. Public consultation			
h. Decision			
i. Appeals process			
j. Other			

<b>5.2. During the consenting process, which stage is the most onerous in terms of information/resource requirements and issues encountered?</b>	
<b>5.3. During the consenting process, which stage is the most straightforward in terms of information/resource requirements and issues encountered?</b>	
<b>5.4. Are you provided with guidance and/or directed towards any specific information sources?</b>	

<b>6. Consultation &amp; Environmental Impact Assessment (EIA)</b>	
<b>6.1. Do you feel that there is too much, too little or duplications in the current consultation regime?</b>	
<b>6.2. When EIAs are required; do you have any comments on the EIA process and documentation?</b>	
<b>6.3. Are there any EIA topics that are onerous or difficult to complete?</b>	
<b>6.4. Are there any EIA topics that are straightforward to complete?</b>	

<b>7. Refusal and withdrawal of applications</b>	
<b>7.1. Have any of your aquaculture applications been refused? If so, why?</b>	
<b>7.2. Have you ever withdrawn applications during the consenting process? If so, why?</b>	

<b>8. Views and recommendations</b>	
<b>8.1. What do you feel are the main strengths of the current consenting regime?</b>	
<b>8.2. What do you feel are the main problems with the current consenting regime?</b>	
<b>8.3. Can you suggest any solutions to these problems?</b>	
<b>8.4. Are there any current or proposed actions that would address these problems?</b>	
<b>8.5. Are there any current or proposed actions that would make the situation worse?</b>	
<b>8.6. Do you have any experience or knowledge of any other regimes where lessons could be learned?</b>	
<b>8.7. Do you have any other recommendations to improve the consenting process?</b>	
<b>8.8. Do you have any further comments on the current operation of the consenting regime for aquaculture?</b>	

**Thank you for your time and input to this study.** For further information please contact Fiona Nimmo ([Fiona@consult-poseidon.com](mailto:Fiona@consult-poseidon.com); 0131 467 5510; 07776251210).

## APPENDIX 4 NUMBER OF PLANNING APPLICATIONS

Based on consultation with Local Authorities the numbers of planning applications received for finfish and shellfish farms are presented in Table 0.1 and Table 0.2.

**Table 0.1. Number of finfish planning applications (2010-2014)**

Council	New Site		Extension		Relocation		Transfer		Other		Outcome*		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	A %	R %	No.	%
Argyll & Bute	9	20	11	9	1	50	-	-	-	-	95	5	21	11
Highland	14	30	21	17	-	-	-	-	6	32	-	-	41	21
North Ayrshire	-	-	-	-	-	-	-	-	1	5	10	-	1	1
Orkney	3	7	3	2	-	-	-	-	4	21	10	-	10	5
Shetland	8	17	54	43	-	-	-	-	-	-	95	5	62	32
Western Isles	12	26	37	29	1	50	-	-	8	42	98	2	58	30
<b>TOTAL</b>	<b>46</b>	<b>100</b>	<b>126</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>-</b>	<b>-</b>	<b>19</b>	<b>100</b>			<b>193</b>	<b>100</b>
<b>%</b>	<b>24</b>		<b>65</b>		<b>1</b>		<b>-</b>		<b>10</b>				<b>100</b>	

\*A Approval  
R Refusal

### **Key Finfish Characteristics**

- 65% of all applications were to extend an existing site.
- 24% of all applications were to create a new site.

### **Total Applications by Authority**

- Shetland - 32%
- Western Isles - 30%
- Highland - 21%
- Argyll & Bute - 11%
- Orkney - 5%
- North Ayrshire -1%

### **Outcome**

- More than 95% of finfish applications approved by the six authorities.

**Table 0.2. Number of shellfish planning applications (2010-2014)**

Council	New Site		Extension		Relocation		Transfer		Other		Outcome*		Total		
	No.	%	No.	%	No.	%	No.	%	No.	%	A %	R %	No.	%	
Argyll & Bute	4	4	4	10	3	10	0	-	-	-	-	100	-	11	7
Highland	10	10	5	12	-	-	1	10	3	75	-	-	-	19	12
North Ayrshire	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Orkney	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Shetland	64	62	30	73	-	-	-	-	-	-	98	2	-	94	62
Western Isles	25	24	2	5	-	-	-	-	1	25	100	-	-	28	18
<b>TOTAL</b>	103	100	41	100	3	100	1	100	4	100				152	100
<b>%</b>	67		27		2		1		3					100	

\*A Approval  
R Refusal

#### **Key Characteristics**

- 67% of all applications are to create a new site.
- 27% of all applications are to extend an existing site.
- North Ayrshire and Orkney received no shellfish applications.

#### **Total Applications by Authority**

- Shetland - 62%
- Western Isles - 18%
- Highland - 12%
- Argyll & Bute - 7%

#### **Outcome**

- More than 98% of shellfish applications approved by the four relevant authorities.



© Crown copyright 2016

ISBN: 978-1-78652-353-2 (web only)

This document is also available on The Scottish Government website:  
**[www.gov.scot](http://www.gov.scot)**

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS71452 (07/16)

**W W W . G O V . S C O T**