SCOTTISH CONSUMER COUNCIL

DEVELOPMENT OF THE SEABED IN SCOTLAND

Public Consultation and Decision Making Processes

A Summary of the views of organisations throughout Scotland

May 1988
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INTRODUCTION

DEVELOPMENT OF THE SEALED IN SCOTLAND

Since its inception the Scottish Consumer Council's Consumer Network (see Appendix I) has drawn our attention to local concern over the issuing of seabed leases in Scotland.

The SCC, therefore, decided to assess the views of local authorities and other local organisations, as well as the Crown Estate Commissioners and the Scottish Development Department into the decision making process when deciding on the development of the seabed in Scotland.

The following questions were asked:

(i) Do you believe that the present system by which the Crown Estate Commissioners grant seabed leases to commercial fish farming concerns and for moorings works in the best interest of the local community?

(ii) In view of the considerable growth in fish farming and its wider effects on employment and local economic development, do you believe that some system of local consultation and appeal should be introduced?

The initial enquiry was finalised in Autumn 1987. The following extracts summarise the views of the organisations which responded.

Scottish Consumer Council
May 1988
The present system for the granting of marine fish farm leases in Scotland came into effect on 1 October 1986 following a period of public consultation undertaken by the Scottish Office.

The new consultation procedures allow the fish farming industry, local authorities, conservation bodies, private individuals and others to comment on proposed new fish farm developments around the Scottish coastline. Some 30 organisations are directly involved in the consultation process.

The Commissioners also publish a formal public notice in the appropriate local newspaper and this indicates that a copy of the application is available for inspection at a local Post Office close to the proposed site and also at the Commissioners' offices in Edinburgh. Representations to this office are requested within 28 days of the appearance of the advertisement.

In all cases where comments have been received the Commissioners indicate the reasons for their decision when intimating it to the applicant and their decision letter is copied to all interested parties.

One of the attractions of fish farming in the Commissioners' view is that it can be successfully integrated with the many other activities in coastal areas but there are some conflicts which need to be foreseen and resolved. Under these new procedures we seek to strike a balance between development and conservation and we do indeed recognise the important role fish farming plays in providing employment and economic activity in remote rural areas of Scotland.

There is no doubt about the actual and potential social and economic benefits from the development of fish farming in Scotland (the recent article in the Scotsman on 28 July summarises the growth trend). This is not offset by any significant environmental effects, conservation constraints being some of the primary considerations in the consultation process.

Finally, very great efforts are made by our professional staff (operating from Edinburgh and Fort William) to make a detailed local assessment of fish farming proposals and to discuss these with developers, objectors and local residents.

With regard to other leases or licences granted over Crown foreshore or seabed for various other diverse activities including moorings, all applications receive the most careful consideration and are only granted if all statutory consents are first obtained including that of the Department of Transport (Marine Division) which has the responsibility for navigation.
Consultations with other interested parties are undertaken where considered necessary given the particular circumstances of each individual case.

In fact so far as moorings are concerned the Commissioners have in recent years been instrumental in setting up locally based mooring committees to manage concentrations of moorings to the benefit of all concerned.

SCOTTISH DEVELOPMENT DEPARTMENT
Peter A D Ritchie, HEOD, Planning Division I
per letter to Assistant Secretaries in Rural Environment
and Nature Conservation Division, SDD, and Division K, DAFS
31 August 1987

The Government recognise the need to ensure that the rapidly growing fish farming industry in Scotland is developed in a balanced and sensible way and that account is taken in the consideration of applications for leases both of the needs of the industry itself and of the views of others who could be affected by the overall growth of fish farming or by individual developments.

A consultative paper containing proposals for new consultation procedures was in fact issued by this Department in March 1986 and new procedures, based on the proposals in that paper, were introduced last October.

Under these arrangements the Crown Estate Commissioners send copies of applications for leases to a wide range of organisations, including the lease holders of fish farms operating near the proposed development, the National Farmers Union of Scotland, the Department of Agriculture and Fisheries for Scotland, the Highlands and Islands Development Board, the Countryside Commission for Scotland and Nature Conservancy Council. Direct consultation also takes place with the planning authority. In addition, the Department of Transport receives a copy of the application so that it can carry out its own consultations with those who have an interest in navigation matters, including harbour and yachting interests; and a notice is published in the appropriate local newspaper indicating that a copy of the application is available for inspection at the nearest Post Office to the proposed site and at the Crown Estate Commissioners' office in Edinburgh.

Anyone who wishes to object to the application has 28 days in which to submit his objections to the Commissioners or, in relation to navigational matters, direct to the Department of Transport. If an overriding objection on navigational grounds is upheld by the Secretary of State for Transport, the application is refused. If however navigational consent is likely to be forthcoming, the Commissioners consider carefully all the comments received.
In considering applications the Commissioners are very conscious of their responsibilities in managing this national asset in accordance with the principles of good estate management and to the benefit of the Exchequer and the nation.

In particular, in considering applications they have regard to both local and national matters including environmental and amenity aspects. They are also able to draw on advice from the full-time Planning Adviser whom they have recruited to advise them on the issues arising from consultations on applications.

In all cases where comments have been received, the Commissioners indicate the reasons for their decision when intimating it to the applicant and their decision letter is copied to all interested parties.

Any on-shore development associated with proposed fish farm developments is of course subject to the normal planning controls.

You may be interested to know that of the 180 applications for marine fish farm site leases received since last October, the Commissioners have made decisions in 100 cases so far, with 35 being approved as submitted, 40 being approved subject to modifications and 25 being refused.

The consultation arrangements are being kept under review and if significant changes are thought necessary alterations to the procedures will be considered.

Finally, I should add that fish farming – and, in particular, salmon farming – has created considerable new job opportunities in rural and economically fragile areas where alternative employment opportunities are limited. The industry has generated more than 1,200 jobs directly at the primary production stage with as many again in related activities such as processing, packaging and transport and the creation of these jobs has obviously been a significant benefit to local communities.

HIGHLANDS AND ISLANDS DEVELOPMENT BOARD
Stuart Edmond, Assistant Secretary
5 August 1987

You will be aware that a new consultation system covering the granting of sea bed leases was introduced by the Crown Estate Commissioners last year. We believe that this is working well, and attempts to take account of a wide range of views, including those of local communities.
NATURE CONSERVANCY COUNCIL
James McCarthy, Deputy Director, Scotland
7 August 1987

We are currently reviewing our experience in relation to consultation with the CEC over new fish farm proposals.

The recently instituted consultative procedure is certainly an improvement on what went before but is proving quite difficult to operate due to lack of detailed information on the location and scale of existing development and of any locational planning strategy for future development.

We shall be discussing these matters with the CEC shortly, and it is too early yet for us to commit ourselves to specific proposals for improving the consultative mechanism.

CROFTERS COMMISSION
I.A. Macpherson, Secretary
10 August 1987

The Commission are currently one of the parties involved in the consultation procedure and through Commission Assessors, who reside locally, we are able to gauge local opinion before responding to the Crown Estate Commissioners.

The Commission are very much aware of the importance of the benefits for employment and local economic development arising from the growth in fish farming but in the end recognise that the ultimate sanction must come from the local community.

COMHAIRLE NAN EILEAN
Robert J.C. Barnett, Director of Administration and Legal Services: 21 August 1987

The Council is of the view that the present system does not work in the best interests of the local community. The Council would wish to see the existing control by the Crown Estate Commissioners replaced by a system of licensing by the local authority.

As you will be aware there is local consultation in that the local authority is consulted by the Crown Estate Commissioners. There is, however, no appeal procedure by any party to a decision of the Crown Estate Commissioners and the Council has not formulated a policy on that issue.
DUMFRIES AND GALLOWAY REGION

DUMFRIES AND GALLOWAY REGIONAL COUNCIL
William N. Alexander, Assistant Chief Executive
8 September 1987

This authority has no experience on the granting of seabed leases.

HIGHLAND REGION

HIGHLAND REGIONAL COUNCIL
Richard W.G. Cameron, Director, Department of Planning
12 August 1987

Council has established a Working Party of members to examine a number of issues in detail.

The Council considers that a number of improvements could be made to the system operated by the Crown Estate Commissioners for considering sea bed lease application. I will send you a copy of the Council's report in due course. (See Appendix II)

REGIONAL COUNCILLOR DR MICHAEL FOXLEY
Highland Regional Councillor for Mallaig-Ardnamurchan and Small Isles: 20 August 1987

With respect to seabed leases - the Crown Estate Commissioners control over the seabed is totally unsatisfactory. The local community, amongst others, are consulted about any fish farming proposal but their representations are considered and decisions made in secret by officials working for the undemocratic and unrepresentative Crown Estate Commissioners.

Applications for seabed leases should come under the democratic control of the local Planning Authorities. This would allow for full local consultation and appeals. It would allow for the modification of proposals to avoid any conflict which appeared with other users of our sea lochs and shores.

The local authority would also provide a public map and register of fish farm sites, a positive development and management plan for fish farming, encourage increased community involvement by crofting townships and co-operatives, improve the visual and landscape aspects of fish farms and also ensure the establishment of a research and supervisory agency to control disease and pollution.

Basically seabed leases are still being granted by the Crown Estate Commissioners on an "ad hoc" basis in secret. Highland Regional Council, the Western Isles Islands Council, the H.I.D.B. and the MP's representing the Highlands and Islands are now all united in calling for planning controls over the inshore
waters to ensure that the seabed is used in the best interests of the community and of the Highlands and Islands.

It is only by this local management control that we will be able to produce and maintain industry which will provide long-term economic and social well-being for the Highlands and Islands.

LOCHABER DISTRICT COUNCIL
David A.B. Blair, Chief Executive
20 July 1987

The Council is concerned about the procedures followed by the Crown Estate Commissioners in leasing the seabed. There is now a conflict of various commercial fish farms, the tourism industry and the planning authority which will require urgent resolution.

ROSS AND CROMARTY DISTRICT COUNCIL
Douglas Sinclair, Chief Executive
24 August 1987

The issues that you raise essentially touch on the question of planning control and you will be aware that the District Council, along with the other Highland Districts, does not exercise a planning function. Nonetheless, the issues that you raise clearly are of concern to the Council in terms both of its geography and the implications of these developments for the well-being of the community in Ross and Cromarty.

You will be aware there is no public legislation available to local authorities which enables them to control developments in the sea (the control that exists is limited to oil-related developments where the control is exercised by central government or a few instances of powers granted to individual authorities through private legislation, for example, the Ross and Cromarty Coastal Waters Pollution Order, 1979.)

While it is true to say that certain controls exist at present which govern the way a development is implemented, for example, the requirement for a licence under the Dumping at Sea Act, 1974, the only form of control as to whether a development will take place or not is that exercised by the Crown Estate Commissioners as owners of the seabed.

I appreciate that the Crown Estate Commissioners have a difficult task but the essential problem is that the control exercised by them is minimal. I am not aware as to whether any detailed assessment is carried out by the Commissioners of the potential conflict of a proposed development with other developments in the same area. I know of an example whereby Crown Estate Commissioners granted a lease to a firm to prospect for minerals and aggregates on a sea-bed within a massive area off the east coast of Scotland when, clearly, the development
could have had a harmful effect on the local fishing industry; but to the best of my knowledge, no account whatsoever was taken of this by the Crown Estate Commissioners in deciding whether or not to grant a licence.

I do not think that the improvements made by the Government in terms of the requirement for proposals to be advertised and for comments to be received can, in any way, be considered adequate. The applicant does not receive copies of the objections and there is no right of appeal. The system lacks open accountability and inevitably must attract a degree of suspicion.

I think one obvious solution would be to extend planning control to an area lying within a specified distance of the coast. This would mean that the principles applied on land in considering planning applications would, by analogy, be applied to marine factors. Such a system would not impinge on the Crown Estate Commissioners' role as owners but would provide a means whereby the appropriate local authority could consider and control developments.

SKYE AND LOCHALSH DISTRICT COUNCIL
D.H. Noble, Chief Executive
24 July 1987

The arrangements brought into effect in April, under which the Crown Estate Commissioners advertise proposals for fish farm seabed leases, have improved the extent of consultation. The Highland Regional Council, as Planning Authority, are specifically consulted on these proposals although the District Council, as a non-planning authority, can only be kept informed by checking public advertisements.

As yet, it is not clear to what extent the Crown Estate Commissioners take local representations into account when deciding on applications for seabed leases. The Crown Estate Commissioners also have a conflict of interest as their primary duty is to secure the maximum income for the Crown Estates rather than to protect amenity or adjudicate between conflicting uses or proposals. It would be more effective for seabed fish farming to be brought within the general system of planning control.

Another problem is the reluctance of the Crown Estate Commissioners to publish information on existing seabed leases. This information would be of considerable use to potential developers and to the local community.
SUTHERLAND DISTRICT COUNCIL
D.W. Martin, Chief Executive
20 July 1987

Council members would not wish anything to happen that would prejudice employment prospects in areas where these are scarce and where the fragile economy might be assisted and sustained by fish farming development.

Having said that, the Council would be alive to the need to avoid over provision or proliferation and to avoid developments which were not carried out in accordance with best possible practice.

In these circumstances, I feel sure that Council members would welcome a system of local consultation, and if necessary, appeal when fish farming developments are first mooted. Control of these developments is exercised, as I understand it, by the Regional Planning Authority with input from the Highland River Purification Board, but I think that Council members would certainly wish to see a much greater involvement at an early stage on the part of the local community to be affected by the development.

ORKNEY ISLANDS COUNCIL
Jeremy Baster, Director, Department of Economic Development
21 August 1987

I do not think that the areas of concern you highlight in your letter of 17 July are ones which have caused problems here. Our principal concern has been about the level of rents levied from fish farmers for sea bed leases. The fish farmers themselves are keen to get leases in order to protect their claim to the sites they use. The fish farmers are almost all local concerns and their activities and the granting of leases to them has not caused any local anxiety.

Within the Harbour area, the Council itself exercises additional control through the granting of works licenses, so there is an opportunity for local views to be made known in respect of a proportion of applications. The Council would be happy to see this system extended and take the place of Crown Estate Commission leases as a means of increasing local control of the system.

Crown Estate Commission control has only been seen to work against the best interests of the local community in respect of the level of rents. If the Commissioners were to insist on leases for moorings this would cause grave concern, but they have made it clear they will not do this in our area.

Increased local consultation as such is not seen as an issue. Local control of the system, if this were an option, would probably be welcomed by the Council.

9.
CITIZENSHIP DISTRICT COMMISSION

845 Masse Street, Cambridge, Massachusetts

20 July 1978

The Commission hereby issues this statement of its position on the issue of police force expansion. The Commission believes that the police force should be expanded in a manner that is consistent with the principles of community involvement and participatory decision-making. The Commission further supports the idea of a community-based approach to police force expansion, recognizing the importance of involvement from citizens in the decision-making process.

I, James R. Baker, Director of Economic Development, hereby certify that this statement is true and correct to the best of my knowledge and belief.

James R. Baker
Director of Economic Development

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I, James R. Baker, Director of Economic Development, hereby certify that this statement is true and correct to the best of my knowledge and belief.

James R. Baker
Director of Economic Development
SHETLAND ISLANDS COUNCIL
J. M. Burgess, Director of Research and Development
28 July 1987

Of all the Local Authorities in the U.K., Shetland Islands Council is unique in that, under the Zetland County Council Act 1974, it has powers to control offshore developments within 3 miles of the coastline. These powers were originally granted with oil-related developments in mind, but subsequently it was realised that the powers could also be applied to control fish farming developments. It is therefore the practice of the Council to licence such works.

The licencing procedure, as laid down in the Act, demands public consultation as an essential part of the process. All applications are advertised in the Local Press, and a period of 28 days has to pass before the Council considers an application, to allow for comment or objections from affected third parties or other bodies such as the Nature Conservancy Council. So far, this procedure has worked very well.

For its guidance the Council has a Salmon Farming Policy, which lays down the 'rules' for the location of salmon farms, their size and the necessary separation zones between each farm plus the requirements for proper moorings and anti-predation measures. Licences are granted only in accordance with this Policy. I think it is fair to say that this has produced an orderly and well-structured development of the salmon industry in Shetland, by comparison with the rest of Scotland. The Crown Estates Commissioners themselves recognise this, because since March 1985, the Commissioners have granted seabed leases only to applicants holding a valid Council Works Licence. The 'consultation procedures' recently adopted by the Commissioners in dealing with Scottish applications do not apply to Shetland as a result.

Having experienced the benefit of local control over fish farming developments, and observed events in the rest of Scotland, we have long held the opinion that local control and consultation is the most appropriate method of developing salmon farming in a fair and orderly manner.

There is an intrinsic conflict in the present system operated by the Commissioners; while their main remit is to maximise the financial return to the Crown, it seems contradictory that they should refuse any applications for seabed licences!

STRATHCLYDE REGION

STRATHCLYDE REGIONAL COUNCIL
Michael Wilkinson, Depute Chief Executive, Strategic Issues
3 September 1987

The issue concerning the rapid growth of marine fish farming was
The above correspondence was in line with the local government's policy of encouraging community development and participation. It is important to note the role of local authorities in facilitating the process of community development. The community development committee, with its focus on inclusive and participatory processes, plays a crucial role in enhancing the quality of life for residents. The committee's efforts are aimed at ensuring that community development initiatives are sustainable and beneficial to all members of the community. This approach is in line with the principles of good governance and community empowerment. The correspondence also highlights the need for collaboration between local authorities and community organizations to achieve shared goals. The local government is committed to working closely with community stakeholders to ensure effective implementation of development projects. This collaborative approach is crucial in promoting sustainable development and improving the well-being of the community. 

Local government policies and regulations are designed to support community development initiatives. They aim to create a conducive environment for the growth and prosperity of communities. The correspondence further emphasizes the importance of community involvement in decision-making processes. This ensures that development projects are aligned with the needs and aspirations of the community. The local government is committed to providing resources and support to facilitate community-driven development. The correspondence also highlights the need for continuous evaluation and feedback mechanisms to assess the impact of development initiatives. This approach is essential in identifying areas for improvement and ensuring that development efforts are effective and sustainable.

The correspondence concludes by thanking the community for their continued support and cooperation. It recognizes the significant role played by community members in driving development initiatives. The local government expresses its commitment to working closely with community stakeholders to achieve shared goals. The correspondence also emphasizes the importance of maintaining an open and transparent dialogue to ensure that community development initiatives are well-received and effective. The local government is committed to ensuring that community development is inclusive and responsive to the needs of all members of the community. The correspondence concludes with an invitation to community members to participate actively in the development process and to provide feedback on ongoing initiatives. This approach is crucial in promoting community-driven development and ensuring that the needs and aspirations of the community are met.
considered by the Council's Planning and Development Committee at their meeting held in April 1987. The Committee noted that whilst these fish farm developments brought economic benefits to rural areas, the rapid growth and limited planning control gave cause for concern, particularly in view of the potential cumulative impact concentrations which such developments might have on the environment.

The Committee also noted that the consultation procedures for dealing with lease applications excluded Regional Council's from direct consultation and therefore the Regional Council had to rely on District Council's to safeguard Regional interest although an informal agreement has been reached with the Crown Estate Commissioners which enables the Regional Council, in liaison with the relevant District Council, to comment on individual lease applications. The Committee also agreed that the Director of Physical Planning should:

(a) make direct representation to the Crown Estate Commissioners on individual lease applications in accordance with structure plan policy ENV5;

(b) investigate the possibility of establishing a positive forward planning framework to assist in determining lease applications through the structure plan process;

(c) enter into discussions with the Crown Estate Commissioners and other public bodies with a view to establishing an agreed system for monitoring the impact of marine fish farm developments on the environment.

Subsequently, discussions have been initiated with the Crown Estates Commissioners and the Regional Council are now formally consulted on all applications for fish farm licences. It is also intended to liaise with District Council's to clarify and if possible unify the system for responding to these consultations. This will not, however, overcome the fact that there is no formal procedure for mutually resolving a dispute or objection to a proposed development.

Structure Plan Policy ENV5 states:

"Proposals for fish farming will not conflict with the Regional Development Strategy where they have regard to:

(a) the landscape quality of scenic areas or coasts;
(b) nature conservation;
(c) the quality and capacity of water catchment areas and supplies; and
(d) the value of other fishery interests."

The Council is also investigating the possibility of establishing a forward planning framework to assist in determining lease applications through the structure plan process.

11.
The Director of Physical Planning will also enter into discussions with the Crown Estate Commissioners and other public bodies with a view to establishing an agreed system for monitoring the impact of marine fish farm developments on the environment.

Ideally it would be logical to bring fish farming developments under Planning Control, similar to the system that operates for coal extraction where the lease agreement is separate and additional to formal planning approval. A simplified system could possibly be introduced with the co-operation of the CEC who could make the granting of a seabed lease conditional upon the receipt of planning consent. Such a system would give the public the required confidence in the decisions being taken. (See Appendix III)

ARGYLL AND BUTE DISTRICT COUNCIL
J.A. McLellan, Director of Administration
31 August 1987

The Commissioners undertake fairly extensive consultation to gauge the spread of interests involved in any one case, though there is no formal democratic accountability.

All applications are locally advertised and individuals or bodies can lodge comments directly with the Crown Estate Commissioners. It is not possible to see how an equitable overview is eventually reached but there is evidence that the public comment does influence the decision which is taken.

SCOTTISH CROFTERS UNION
Jim Hunter, Director
21 July 1987

The SCU is one of the organisations consulted by the Crown Estate Commissioners about prospective seabed leases. However, we are far from happy with the present system.

We believe that controls on the development of fish-farming are inadequate and that local interest, particularly the interests of local crofter-fishermen, are not taken fully into account by the Crown Estate Commissioners.

On a specific point, we see no reason why the Crown Estate Commissioners should not make available coastline maps showing who has leased what. Such information is currently unobtainable.

WEST HIGHLAND ANCHORAGES AND MOORINGS ASSOCIATION (WHAM)
Mike Bolton, Honorary Secretary: 29 August 1987

"Does the present Crown Commissioners system work in the best
interests of the local community?" From the point of view of yachtsmen and fishermen in the local community, the answer has to be an emphatic NO. The system is geared to the Commissioner's principal aim of extracting money from seabed users, both in the local community and in business in general. It does this inefficiently and sometimes unfairly and it gives almost nothing to the community in return.

It is inefficient because:-

- Communication with local communities is poor. The Commissioners have just one part-time consultant for liaison along the whole of the Scottish west coast. I am not aware of any explanatory literature, nor attempts to explain the Commissioners policy, possible benefits to local communities etc.

- As the Commissioners offer almost nothing in return for rent, there are no incentives to most users to take out leases. The result is a muddle.

- Separate permission for moorings etc. has to be obtained from DoT, Marine Division. There appears to be no reason why CEC and DoT should not get together so that a single application could automatically be processed by both.

- In general, the Commissioners keep all records of leases confidential. The local community has no way of knowing which areas of seabed have been leased and consequently whether or not the licencees are operating outside their allocated areas.

- There is no overall plan for the efficient collection of rent from all users.

The Commissioners system is sometimes unfair because:-

- They collect rent from groups of users who are most easily identifiable whilst hundreds of others in less accessible areas simply keep a low profile and pay nothing. This generates resentment.

It is worth noting here that, since the appointment of Mr Martin Gravestock as Crown Receiver a year ago, the Commissioners have become noticeably more helpful and conciliatory.

"Should some local system of local consultation and appeal be introduced?" My answer is that it is certainly a desirable aim which should involve all potential users of the seabed, not just fish-farms. Whether it could be achieved efficiently is another matter which would require careful thought.
APPENDIX I

SCOTTISH CONSUMER COUNCIL

CONSUMER NETWORK

In September 1986 the SCC established a network of volunteers throughout Scotland.

The aims of the scheme are twofold:

- volunteers assist with the SCC's research;
- volunteers send information to the SCC every month on issues which they consider to be of importance in their local areas.

55 volunteers and 17 reserves from a variety of backgrounds and age groups have participated in some aspect of the scheme.

The volunteers have been extremely valuable in helping with the SCC research, in particular the monitoring of bus deregulation. This aspect of Consumer Network is being, and will continue to be used on other areas of the SCC's work.

Volunteers have also brought to the SCC's attention areas of consumer concern which had previously not been considered. Consumer Network is proving to be valuable, interesting and innovative.
N Stewart Esq  
Convention of Scottish Local Authorities  
Rosebery House  
9 Haymarket Terrace  
EDINBURGH EH2 5XZ

Dear Mr Stewart

FISH FARMING

I refer to your letter of 17th February, 1988 and our previous exchange of views with senior officials of Scottish Development Department and I welcome the opportunity to express my further views on the extension of planning control powers. It is my firm opinion that provision should be made by the Government as a matter of some priority, to extend the powers of Planning Authorities in Scotland, seawards and beyond the current limit of Low Water Mark, for the purposes of controlling and regulating the development of fish farming. This would be a desirable innovation in the light of continuing development and distribution of fish farming and the inadequacies of current provisions for control.

Highland Regional Council have extensive experience of recent change in the development of fish farming. Whereas at the time of Local Government Reorganisation in 1975, there was but limited activity in this pursuit, currently there are some 180 production sites within the Region and it is now a major industry employing some 800 persons (F.T.E.). Salmon production alone within the Region is estimated at 7,500 tonnes in 1987 and as expansion continues, this is expected to reach 11,000-12,000 tonnes in 1988. Clearly, therefore the industry imposes considerable impact on the environment; it influences the allocation of resources for transportation and infrastructure; and it substantially affects the social and economic welfare of the community. All of these are important considerations to the Council as the Local Planning Authority.

The Council welcomed the introduction of consultation procedures by the Crown Estate Commission in October, 1986 and since then have co-operated with the Commission in their consideration of applications for seabed leases. Certain aspects of this procedure however give concern to the Council and in October, 1987, they made representations to the Secretary of State for Scotland, seeking his consideration of extension of powers to Planning Authorities to control fish farm development on inshore waters.
From the response however, it appears that the Government might wish the current procedures to continue unless perhaps there is tangible evidence of practical difficulty or problems arising through the absence of planning control powers.

Highland Regional Council would submit that any decision to extend the powers of control of Planning Authorities will not turn merely on the perception of difficulty arising. It is also a question of deficiencies in the current regime that will increasingly give rise to problems in the future. Moreover there are issues of principle to take into account. It is appropriate therefore to consider all of these issues in turn.

DIFFICULTY ARISING FROM EXISTING PROCEDURES

Content of Applications for seabed lease: Numerous applications are deficient in detail content, being devoid of valuable information on the scale of development proposals, the pattern of layout and type of proposal. Moreover, 95% of applicants provide no information on any shore based servicing requirements. Thus the Council faces difficulty in assessing the impact of applications and establishing productive rapport with parties having an interest. By comparison, absence of this essential information would normally deter a Planning Authority from decision on planning applications, particularly in regard to major proposals with far reaching transport and servicing implications.

Inconsistency in publicity: There is evidence of complaint by local public on procedures and venues for publicity. Similarly there is no clear procedure for neighbour (existing fish farming) notification. Given the absence of local presence by CEC, this frequently gives rise to enquiry to the Council for clarification and guidance.

Consultation timescale: The 28 day period for response to consultation is insufficient for proper appraisal and considered response. This timescale cannot coincide with the cycle of Committee meetings of the Council and accordingly requires the delegation of response to Council officials. This may prove unsatisfactory given the increasing scale of many applications and the increasing level of controversy – an inevitable consequence of intensification of the industry.

Consultation procedure on modification: A mature system of consultation is not yet established. An agreed procedure should be applied consistently to ensure consultation on all modifications and amendments to original proposals to avoid current difficulty and confusion. This is an administrative matter that may be rectified with ease, but it may impose pressure on limited resources.
Interaction of inshore and onshore developments: The granting of seabed leases in advance of determination and approval of any shore based servicing or transport facility, is a matter of the greatest concern to the Council. Applicants' disclaimers in this regard are also of concern and it is the Council's experience that severe difficulty arises from the sequence of decisions where planning approvals may be sought subsequent to the grant of seabed leases. This sequence is pre-emptive and it prejudices the orderly control of land use. It is also anomalous, given the seabed lease cannot be put into effect except with licence from the Department of Transport (safety for navigation) and with Consent to Discharge authorised by Highland River Purification Board. Sample evidence of difficulty arising in this regard is detailed in Appendix 1 attached herewith. Notably a variety of problems arise in locations including:

Kylesku       Loch Greshornish
Loch Ewe      Loch Hourn
Loch Torridon Loch Sunart
Loch Long     Loch Leven
Loch Bay

The Council believes the situation is worsening. It does not readily oppose prospective new development, but increasingly it has occasion to object to applications where it perceives consequential on-shore difficulties arising and the prospect of second-best solution to servicing problems.

Variable Assessment: It is a matter of relative satisfaction to the Council that the assessment of seabed lease applications is substantially based on conventional planning considerations. It is of particular dissatisfaction however that significant difference is emerging in relative assessment by the Council and the Crown Estate Commission. Of 75 decisions taken by CEC to December 1987, 31 (40%) were in some conflict with the views of the Council. This is detailed in Appendix No.2 attached herewith. Primarily the differences relate to problems with shore based facilities; scale of development; transport/road deficiencies; conflicting land use interests; navigational priority and detail matters.

DEFICIENCIES IN EXISTING PROCEDURES

Absence of Public Register: Public and other agencies interest in fish farming activity merits the establishment of a public register, similar to that maintained by Local Planning Authorities. The absence of such register with comprehensive information on development activity leads to time consuming enquiry when interest arises.
A democratically elected and accountable body are then enabled to carry out the normal process of securing orderly use. First, they are enabled to survey and assess the circumstances prevailing in their area, formulate policy, exercise control in the context of such policy and enforce the provisions of their control.

Regardless of the limitation of their powers to L.W.M., Highland Regional Council have established to their own satisfaction that a Local Planning Authority does have power to establish policy for inshore fish farming. (This is implicit in the Secretary of State's satisfaction with the Council's adoption of policy within the recently prepared Ardnamurchan Local Plan wherein the right to establish policy was unsuccessfully challenged at Inquiry).

This power to establish such policy may continue to be open to challenge however without specific extension of the Planning Authority's jurisdiction. In the current situation, the Authority's powers are vulnerable, the moreso since a Planning Authority's policy is largely one of advocacy. Its objectives will be difficult to secure and it might be breached with impunity; without the concomitant power of enforcement.

The question of accountability also arises. Without a statutorily based remit, it appears to the Council that the current regime constitutes a conflict of interest. At very least, this places CEC in a difficult position having to reconcile their proprietorial interest with that of the common good. The Council would acknowledge that CEC bear the burden of this task with commendable success but consider the position to be vulnerable. One that should not be permitted to endure given the continuing intensification of development activity, the need for continuing improvement and refinement in procedure and the opportunity to utilise the provisions of a well established system of policy planning and land use control.

Finally there arises the issue of CREDIBILITY. At the present time there exists a situation that brings the credibility of all participants in this developing industry into question. Whether this is justified or otherwise is immaterial, the Council believes that it prevails from evidence available and views expressed. The introduction of a planning control system however would have the beneficial effect of:

i) Restricting the function of CEC to that of their normal proprietorial remit; a purpose for which they have the experience, the resources and the statutory back up.

ii) Elevating the locus of the Planning Authority, enabling it to carry out the functions also for which it has the resources, the expertise and the accountability.

iii) Establishing an authoritative baseline for the orderly growth and development of a valuable industry.
iv) Facilitating the formulation of policy at national, regional and local level for the purposes of ensuring proper balance between development and environmental conservation interests.

I hope these views are helpful to COSLA.

Yours sincerely

[Signature]

Director

enc

P.S.

In reply to your further points.

1. **Nature Conservancy Council Report.** I enclose a copy of my reply to NCC. The document is a very useful base-line study though perhaps a little academic - it requires to be taken further in terms of policy and practical recommendation.

2. **National Trust for Scotland Policy.** I have read this document with interest. It accords closely with COSLA and HRC views, and I would welcome in particular the clear call for extension of planning control (Policy 3) and the preparation of national guidelines by the Secretary of State.

   Perhaps more stress should be given to the urgency of the need for action.
Illustrations of grant of sea-bed leases, subsequently causing planning difficulties over shore-based development.

**LOCATION**

1. **Kylesku**

   **DEVELOPER, DEVELOPMENT/ISSUE**
   (Wester Ross Salmon Ltd)

   Proposed shore base at fishing pier withdrawn following local opposition. Alternative site at Newton, Glencoul, not yet the subject of a planning application - road access/croftin/amenity problems.

2. **Loch Ewe**

   **DEVELOPER, DEVELOPMENT/ISSUE**
   (Kincardine Fisheries Ltd)

   Despite Council representation to CEC on lack of servicing base, development of salmon and shellfish farms proceeded, using unsatisfactory temporary expenditures of slipway adjoining housing, amenity areas, and Navy depot.

3. **Loch Torridon**

   **DEVELOPER, DEVELOPMENT/ISSUE**
   (Marine Harvest Ltd)

   Grant of major fish farm lease in sensitive sea loch. Company indicated that Wester Alligin shore site might be possible, but no planning application submitted to test amenity and road access problems.

**NOTES**

Leases developed in Lochs Glendhu and Glencoul without shorebase, by using former ferry slip. This unsatisfactory expedient requires replacement with purpose-made facility, storage and services. Discussions with Planning Authority did not resolve problems, recently compounded by grant of further leases by CEC.

HRC requested consent for lease to be dependent on planning solution to servicing problem. The request was repeated during consultation over additional lease for expansion of salmon farming, to no avail. Planning application still not received.

2 separate planning applications now submitted, one for a shore base involving demolition of historic building and construction of industrial building. Substandard road access problem and request for temporary cage assembly site on a prominent site off the main road. Problems difficult to reconcile.
4. Loch Long
(by Dornie)
(MacLennan Fisheries Ltd)

Proposed shore base near Conchra to serve adjoining salmon sea bed base, immediately offshore.

Planning application refused by Divisional Committee, the site being isolated, exposed and unscreened - commercial development would be an unsatisfactory intrusion. Further application now submitted but jetty/shore base element raises same problems of intrusion.

5. Loch Bay
(N.W. Skye)
(Marine Harvest Ltd)

proposed shore base at Stein to serve adjoining offshore seabed lease for salmon.

Regional Council objected to the proposed lease - based on anticipated servicing difficulty. Planning application now received for shore base on a site which is visually prominent with unsatisfactory road access: subject to considerable objection and recommended for refusal.

5. Loch Greshornish
(N.W. Skye)
(Highland Fish Farmers Ltd and Edinbane Sea Farms Ltd)

applied for sea bed bases for salmon farms in the one relatively small sea loch, the latter eventually obtaining consent.

First applicant was allocated sea bed lease, provisional on obtaining planning consent for shore base. Planning application however refused by Divisional Planning Committee (because the selected site was physically constrained and development would be intrusive in the landscape). Application by the competitor approved. This situation is of considerable frustration having led to the selection of a controversial site of doubtful merit given planning and servicing deficiencies.

Loch Hourn
(Strathaird Farms Ltd)

A series of sea bed leases - some in inaccessible remote sites, and commencement of development using existing pier and Estate building.

Scale of permitted production is unknown. Access to the area is by substandard road incapable of taking substantial heavy traffic. Safeguarding of amenity is also an important issue. Recent refusal of lease to potential competitors considered unjustified by Regional Council. There is priority need for determination of satisfactory servicing arrangements.
(Salen Shellfish Ltd)

Recent refusal of shore base for servicing scallop farm offshore because of problems on road access and visual intrusion in a shore identified for conservation importance. Appeal pending.

A major shellfish base granted 2 years ago has led to production build up. Developer requires to transport live shellfish to Fort William for grading and return to Salen, a long return journey, creating considerable expense and frustration.

(Camus Mhor Fish Farm Ltd)

Shore base developed alongside designated scenic route and subsequent problems of control onshore (apart from control of offshore activity on the adjoining Loch).

Scale of activity offshore (and apparent loss of control of further expansion) has accompanied on-shore servicing problems including the controversial burial of quantities of diseased fish next to a cemetery.

<table>
<thead>
<tr>
<th>Area</th>
<th>Proposals to Date</th>
<th>Decisions to Date</th>
<th>C.E.C Decision broadly in line with HRC views</th>
<th>Views in conflict, or major difference</th>
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<td>1</td>
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<tr>
<td>2) Wester Ross</td>
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<td>Skye and Lochalsh</td>
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<td>14</td>
<td>12</td>
<td>2</td>
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<tr>
<td>(1 subsequently withdrawn, 2 modified re-submissions)</td>
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</table>

| Regional Total | 118 | 75 | 44 | 31 |

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24
APPENDIX III

STRATHCLYDE REGIONAL COUNCIL

BUILDINGS AND PROPERTY COMMITTEE

CROWN ESTATES COMMISSION OPERATIONS IN STRATHCLYDE

Report by Chief Executive: 26 April 1988

Purpose of Report: To advise members following the acceptance by the September 1987 Buildings and Property Committee meeting of a motion by Councillors Dr Christopher M. Mason and Mrs Carole A. MacIntyre which read "the Director of Estates in consultation with the Chief Executive and other Chief Officers report within six months on the operations of the Crown Estate Commission in Strathclyde and their economic and social effects".

The following is an extract from the above Report regarding marine fish farm developments.

"Fish Farming

13. One of the Council's other contacts with the Crown Estate Commission is via the Department of Physical Planning in relation to proposals for Marine Fish Farms. Such developments lie outwith formal planning control. The sea-bed is in the ownership of the Crown and applications for its use are dealt with by the Crown Estate Commissioners who, until recently did not consult local authorities or interested bodies on lease applications. However following the introduction of new consultation procedures the Regional Council and others are now consulted on all lease applications for fish farms."
14. The fish farming industry in Scotland has experienced a rapid growth in recent years. Farmed salmon production rose from 520 tonnes in 1979 to 10,337 tonnes in 1986, an average increase in tonnage of about 56% per year. Production in 1987 was expected to be of the order of 16,000 tonnes. Recent publications identify a total of 416 fish farms currently operating in Scotland, 95 of them in Strathclyde Region.

15. The nature of the industry necessitates its location in some of the more remote parts of the region and with it it has brought welcome economic benefits which help to sustain remote rural communities. Figures produced by the Department of Agriculture and Fisheries in Scotland for 1986 show that 1244 people were employed directly in the fish farming industry in Scotland. The pro-rata figure for Strathclyde is approximately 284 jobs. In addition where fish farms are owned and operated by a local company, profits are often ploughed back into the community. It should be noted however that nearly 80% of the industry in Scotland is operated by just three multinational companies, Marine Harvest, McConnell Salmon and Norsk Hydro.

16. Although the new developments bring economic and social benefits, the rapid growth and limited planning control give cause for concern, particularly in view of the potential cumulative impact concentrations of such developments may have on the environment.

17. An analysis of the sea-bed leases granted in Strathclyde by the Crown Estate Commissioners indicates that approximately three quarters are located in sensitive areas. If, as is likely, the growth in fish farming continues there could be increasing pressure on these sensitive locations and on potential marine nature reserves in such areas as Loch Sween. The impact on tourism, another major employer in remoter rural communities, needs to be assessed more fully considering that the majority of these developments are located in Argyll and Bute, a District which benefits from its natural attractions of scenery, beaches and anchorages which provide the base for tourism development.

18. Continued expansion of the fish farming industry also has implications for Regional Service Departments. Roads in remoter rural areas are not always best suited to the heavy traffic needed to service such developments and as a result can suffer damage. Responsibility for their repair and maintenance falls on the Regional Council who receive no rate income from development using the sea-bed. The Crown Estate Commission on the other hand receive an income of approximately £50 per tonne of salmon produced.

19. The Planning issues that have been raised by the growth in fish farming are reflected in an emerging wider public concern to ensure that the economic benefits are secured whilst safeguarding the sensitive environment within which fish farms tend to locate. The new consultation procedures mentioned earlier were introduced in an attempt to resolve conflict between the two. However, although District and Regional Councils are now consulted on lease applications, the ultimate decision still rests with the CBC who have a financial interest in the development of the sea-bed and are therefore not best equipped to act as planning authority arbitrating on amenity or environmental grounds.
20. Logically, marine fish farming should be brought under formal planning control however this principle has not yet been accepted. In the meantime the Physical Planning Department are pursuing a number of measures which could improve the situation. These involve,

a) responding to consultations on individual lease applications;

b) investigating the possibility of establishing a positive forward planning framework to assist in determining lease applications through the Structure Plan process;

c) entering into discussion with the Crown Estates Commission and other public bodies with a view to establishing an agreed system for monitoring the impact of marine fish farm developments on the environment.

21. It should be noted that the issue of fish farming, as an emergent industry is of great concern in Argyll vis-a-vis the conflict between it as a new industry and the existing fishing and leisure industries.

22. The Director of Roads has stated that the main problem with fish farming applications is that very rarely is there any information about the on-shore developments likely to be associated with the marine activity. Although the question is asked on the application form, the response is usually that no on-shore development is proposed, or that existing facilities are to be used. These existing facilities may well be remote from the site and access will be by boat. In other cases it will be necessary to form an access from a public road, and buildings for storage and staff housing will be needed. If planning applications are submitted after the fish farms have been brought into use, these will be supported by claims of operational need and the planning authority may feel obliged to give consent to proposals which would normally be unacceptable.

23. Argyll and Bute District Council, in their recent Local Plan review suggest that applicants should be required to submit an overall management/operational plan indicating the location and extent of development which may be required above low water mark as well as below it. They are also suggesting that "sensitive" areas should be identified where there will be a presumption against fish farming unless the proposal can be justified against a set list of criteria.

24. It is unlikely that the Regional Council would be involved in providing any new services for fish farms. Inland fish farms could have an adverse effect on existing or potential public water supply sources. An example was the small supply at Kilmelford which was badly affected by algal bloom caused by fish cages, and which eventually had to be replaced with a water supply scheme based on an alternative source at considerable expense to the Regional Council.

25. In one case at Loch Gair a marine fish farm was proposed in a small enclosed sea loch and it had to be pointed out that there were several largely untreated sewage outfalls discharging into that loch, and that it would be unwise to permit a new shellfish farm to set up, and then have complaints about the water quality. In a somewhat similar case on the Island of Tiree where a marine fish farm has been set up, the Regional Council have been obliged to alter existing arrangements for sludge disposal, and halt the septic tank emptying service normally offered to ratepayers not connected to a public sewer. This has resulted in a petition of complaints from the people affected.
26. Many of the sites proposed for marine fish farms are served by minor roads subject to weight restrictions. This is always pointed out when comment is made on the consultations. Nevertheless there have been cases of over-weight vehicles delivering feedstuffs to fish farms, and some operators have tried to obtain special exemption from the restrictions for example at Knock and Loch Spelvie on the Island of Mull. One marine fish farm at Cairndow was formed before the consultation procedure was set up by the Crown Estate Commissioners. The District Council advised that the operation was exempt from planning control being an agricultural activity. Complaints from the local Community Council about heavy goods vehicles being taken through the village of Cairndow were received.

27. One aspect of these fish farms which can create a traffic hazard is the practice of floodlighting the cages, presumably as a security precaution. If these are badly located they can dazzle drivers at night and this problem is very evident at Cairndow, and Ormidale on Loch Riddon.

28. The Council's Estates Department also deal with the Crown Estates Commissioners in relation to properties in coastal areas, normally the sea-bed or foreshore for the provision of slips, piers, jettys, roads, parking areas, outfall sewers etc.

29. The Buildings and Property Committee has previously been advised of a long outstanding debate with the Crown Estate Commissioners on the method and detail as to how the land transactions should be progressed. The main areas of concern to the Estates Department are tenure and lease conditions which were examined earlier.

Crown Estate Commissioners Act 1961

30. The Solicitor to the Council contends that the Crown Estate Commissioners have the discretion to grant concessionary rentals/nominal rentals and the Solicitor to the Council considers that the Regional Council's requirements and functions are appropriate in terms of the legislation for the Commission as to exercise their discretion. This view is not accepted by the Commissioners.

31. Recent reports to the Buildings & Property Committee in respect of such land have, on the advice of the Solicitor to the Council been reported subject to a "without prejudice" qualification in respect of tenure, lease conditions and interpretation of the Crown Estate Commissioners Act 1961.

32. The Solicitor to the Council has continued to press the Crown Estate Commissioners for an acceptable agreement in these various aspects and has advised that he is currently investigating the position with a view to taking Counsel's opinion on the matter. Once these consultations and negotiations are complete the picture will become clearer in respect of future transactions with the Crown Estate Commissioners.

Recommendation

The report is submitted for information.

ROBERT CALDERWOOD
Chief Executive

MJW/GT/RFB/ST
26th April 1988

RCEIRB013/ab
Appendix IV:
The Crown Estate
Extract from the Report of the Commissioners
for the year ended 31 March 1987

HISTORICAL NOTE

1. The Crown Estate is an estate in land. Its origins go back at least to the reign of King Edward the Confessor. It includes a wide variety of land and landed property deriving from a number of different sources.

2. Up to the reign of King George III the reigning Sovereign received the rents and profits of the Crown Estate. Since 1760 the surplus rents and profits (after deducting management expenses) have at the beginning of each reign been surrendered by the Sovereign to Parliament as part of the arrangements for the provision of a Civil List. The Estate itself remains part of the hereditary possessions of the Sovereign in right of the Crown. It is not government property, as is that managed by the Property Services Agency for the Ministry of Defence and other public departments; but neither is it part of the private estate of the reigning monarch.


4. The duty of the Commissioners is to maintain the Crown Estate as an estate in land (with such cash or investments as may be required for the discharge of their functions) and to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management. By the Civil List Act 1952 the net income from the Crown Estate after defraying costs of collection and management is to be paid into the Exchequer and made part of the Consolidated Fund.

5. The Crown Estate is administered by a Board of Commissioners appointed by the Sovereign. They consist of a First Commissioner who is Chairman of the Board; a Second Commissioner who is the senior permanent official of the Crown Estate Office and also Deputy Chairman, Secretary and Accounting Officer; and up to six other Commissioners who, like the First Commissioner, serve on a part-time basis. The part time Commissioners between them bring to the management of the Crown Estate expert knowledge and experience of matters directly relevant to the running of the estate in all its aspects.

6. There follows a schedule giving general and geographical details of the Crown Estate portfolio. A more detailed schedule is published quadrennially. The last such schedule was contained in the Report for the year ended 31st March 1984.