

Report of hearings in relation to the proposal to vary marine licences

24 June 2020

This report relates to hearings in relation to the proposal by the licensing authority to vary marine licences to permit a threefold increase in the amount of the sea lice medicine, azamethiphos, permitted for release in any 24 hour period. The details of the proposal are found in the notification (Annex 1) sent to the licensees and any other person whom the licensing authority considered would be adversely affected by the variation.

Hearings were held by the appointed person on the 16th and 17th of June 2020 with the following bodies:

- Scottish Salmon Producers' Organisation
- British Trout Association
- Scottish Fishermen's Federation
- Orkney Fishermen's Association
- Shetland Fishermen's Association
- Communities Inshore Fisheries Alliance
- Clyde Fishermen's Association

This report details the hearing and reports on the merits of the representations heard.

The licensing authority must have regard to this report on the representations and any other written representations in its consideration of the proposal to vary the marine licences as detailed in the notification (Annex 1).

Representation from the fish farming sector

The fish farming sector representatives requested as much flexibility as possible. They recognised that there are concerns around shellfish interests and advised that the sector had spent time with SEPA on the new SEPA position and risk assessments to minimize any potential impact from activities. They advised that SEPA's position allowed greater flexibility to operate where it is seen that there will not be an impact on protected areas where there might be a greater impact from the plume. The sector advised that it will be providing a written position for points previously raised by Marine Scotland following the written representations. These would include: the need for wellboat usage under Covid -19; wellboat activity is one of many activities, and one facet of being able to manage the welfare of fish and works with other measures and needs to be aligned with SEPA advice; confirm operation aspects of the medicines (how it behaves, and basis of risk assessment); confirm confidence around additional concentrations (using modelling and evidence); reason for the need for wellboat treatment and advantages of wellboats (different from tarpaulin treatment); and address risk assessment processes and measures to protect the environment.

The sector representatives advised that, whether key workers or not, the sector is doing everything it can to protect workers from Covid -19, so even where it is able to reduce restrictions due to essential workers classifications it is choosing not to do so.

Upon the understanding that one of the reasons for the variation was because of a change in circumstances relating to human health, namely the outbreak of Covid -19, the sector representatives advised that a written response will be submitted to Marine Scotland to cover such points.

They advised that they had spoken with inshore fisheries groups (excluding Shetland) and sought to hear their concerns.

The sector representatives expressed that the current variation process repeated what has already been provided or discussed in the original request at the outset of the Covid -19 outbreak and that there were a range of pressures in terms of reduced staff, etc. which was in the original request to MS-LOT and to SEPA.

The sector representatives stated that, from asking member companies, it appeared that approximately 60% of sites would be able to operate within the various risk assessments in reference to the additional volume.

The representatives advised that they will provide as much information as possible in the written response to Marine Scotland but there is very much site specific nature and moment of time factor as it is about personnel and availability of other tools.

The sector representatives advised that there had been a limited uptake of the varied position prior to this past week and will see greater uptake in quarter three because the volume of fish in the sea is increasing, as the sector holds fish for longer, and the growing rates are slowed at the same time as the conditions are more favourable for lice.

The sector representatives advised that the original submission was emergency scenario but the reasons and the motivations have not changed greatly, advising there may be repetition but were clear on what they needed to provide.

The sector representatives sought clarity on timeframe and process for response and expressed concern that this processes could be stretched out and reactive. And lastly asserted that the environmental regulatory body has risk assessed this thoroughly.

Representations from the fishing sector

Representations were heard from five representative bodies representing different regions across Scotland. There were strong similarities across the representations and therefore the after mentioned aspects of the representations have been grouped.

Representatives advised of the vulnerable nature of shellfish fisheries, the value of, and reliance upon, the role that such fisheries play in coastal communities, in terms of economy (up to £ 10's millions) and employment.

All representatives considered that sea lice treatment medicines do have an effect upon shellfish and shellfish fisheries and felt strongly that relaxing farming rules due to Covid-19 will impact wild fisheries, some stating this could lead to collapsing shellfish markets and that additional discharge provisions should consider the impacts on the shellfish that support local communities.

Representatives expressed that no more chemicals should be released to the environment and there were general concerns in relation to the use, and possible misuse, of sealice medicines. Some representatives expressed low confidence in the fish farming sector discharging in accordance with the rules and in claims that medicines are harmless.

Some considered that the effects upon shellfish fisheries are poorly understood, might not get recorded, take a long time to recognise and recover, and that there were not enough studies to show there is no impact on wild stocks so the precautionary principle should apply. Some stated that the fishing sector wouldn't be permitted such relaxations until it can be shown that the environment can take it.

Reference was made to SEPA's 2018 study from Shetland where evidence of toxicity of medicines to sea life was reportedly found, confirming long held concerns, and concerns were expressed that this will be the case in other areas. Some reported that sea lice are becoming resistant to the medicines and that Heriot Watt university research showed that wellboat medicines did enter wild shellfish populations.

Some reported observing reduction in shellfish and fish stocks over many years and that chemicals can have significant detrimental effect on shellfish populations and recruitment of shellfish. Representatives expressed that fishing or sensitive areas can be identified (using VMS data which might be available from representative bodies for example) which should be shown the same level of protection as shellfish farms are in SEPA's position and the

notification (Annex 1) and that there are few fish farms that do not have fishing activity within 2.5km. Some also questioned the application of restrictions near to shellfish farms but not shellfish fisheries.

Concerns were expressed about the chemical being adequately flushed away and on SEPA's modelling of plumes; that real tidal activity is more complex and not picked up by modelling; that chemicals will be mixing to mid-water (where pre-harvest planktonic stages are); and expressing caution in relying on SEPA saying that azamethiphos is not mixing. Some stated that inshore waters have low circulation and dilution. Some stating that tidal areas are described as well flushed but that they do not believe there is data to show this. One stating a preference for more discharge but over a longer period of time.

Representatives described the VMD's warning that azamethiphos should not be used if crab and lobster are in proximity of the discharge. Some stating that allowing the discharge means accepting the impacts on wild stocks and their destruction. One representative described that they were not medicines but toxins which kills crustaceans. Representatives expressed that farmed fish are subject to a 'withdrawal period' following treatment but that this cannot be applied to wild caught fish.

Some representatives stated that more treatments are proposed for when the stocks of crab and lobster are most vulnerable, as juveniles are present in the water and spawning is happening, when shellfish farms harvest and when naturally occurring toxin levels may be higher which can affect mortality of next year's stocks..

One representative stated that the fish farming industry has developed in harmony with fisheries in most locations and that the economic impacts of farming are important but there has to be a balance of sustainability of one sector and no adverse impacts on other traditional industries.

Representatives expressed the need to share the sea and offered other solutions to reduce the need for chemicals in the summer months when fisheries are reportedly vulnerable, such as taking a similar approach as to ballast water so that discharge would take place in deeper water, that biomass and stocking density could be reduced, potential by adding more cages during this emergency situation, that freshwater may be able to be used to treat for sealice. Some stated that Scotland and the government promote shellfish harvesting that must be clean and fresh, but adding chemicals to water is of no interest to anyone.

Some stated that the Scottish Government has a need for the salmon industry to develop but expressed that the companies are not from Scotland and would not get away with it in their own waters and that they should not be in business if they cannot fix the problems in any

other way. Representatives recognised the need to coexist but considered the loss of grounds and balance to be unfair. One stated that National Marine Plan must be considered and the fishing sector can help to inform decision making.

Representatives could not see the need for any relaxation of rules, and some were sceptical of the approach, stating that salmon markets have only increased now and there are no more fish in cages than usual. Representatives reported that people on vessels already have PPE and wellboats are automated and advised that the sector is working as usual, and that this was more to do with other issues in supply chain than physical distancing and advising MS to consider if there have been any changes in working conditions in farms due to Covid-19.

Some representatives questioned the approach taken to the two sectors more generally, highlighting that fishing vessels require licences to be able to process fish, but more chemicals in the environment runs counter to that; that fishing is very closely monitored; that the sector would not be allowed to catch three times the amount of fish due to Covid-19; that the fishing sector has had to adapt and farming should do the same; that fishermen go back to sea if there is a market so why would it be different for the aquaculture sector, and advised that the fishing sector should not be unfairly treated against another sector; that fishermen should be guaranteed the same protection as farmers and traditional grounds for fisheries should be preserved.

Representatives were keen to see better engagement with the sector, through presentations to the inshore fisheries groups, potentially facilitated by Marine Scotland; some stating that engagement was getting poorer.

The merits of the representations heard

The purpose of this report is to enable the licensing authority to have regard to the merits of the representations heard in its determination of the proposal to vary marine licence for wellboat discharges due to the present Covid -19 outbreak.

The merits of the representations from the fish farming sector (representing licensees) were:

- aligning with SEPA's position;
- the requirement for flexibility to enable continued working during covid -19 period;
- protecting staff by having fewer staff on sites;
- that the representatives will provide a written response to point raised, showing acceptable environmental effects;
- that farms had not been able to use the previous relaxations as hoped;
- that there will be a greater demand for the efficient treatment during the following three months.

The merits of the representations heard from others who would be affected by the variation were that:

- treatment chemicals affect wild populations, notably at recruitment planktonic stages and so allowing more to enter the sea will have a detrimental impact upon fisheries;
- reduction in recruitment of stocks affects fisheries with knock on economic and employment effects;
- not enough is known about the effects of treatment chemicals on wild shellfish;
- sensitive areas could be identified and avoided;
- the fishing sector should not be disadvantaged by farming practices;
- stocks of wild shellfish are reducing and are vulnerable at the times when releases of treatment chemicals are most frequent;
- there may not be a need for the variation as the farming sector is managing to work and still has markets presently;
- the VMD advice in relation to azamethiphos should be considered;
- assumptions on tidal movements and modelling of the fate of a plume may not be accurate;
- treatment chemicals in the upper water column would affect planktonic life-stages of commercial species;
- there should be better communication between the fish farming and fishing sectors;
- consideration should be given to other ways of addressing problems.

Recommendation

It is recommended that the above merits are considered in any determination of the proposal to vary the marine licences for wellboat discharges, alongside all written representation received during the notification period, or following the hearings.

[Redacted]

24 June 2020

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Annex 1.

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

NOTIFICATION OF INTENTION BY MARINE SCOTLAND UNDER SECTION 30(3)a OF PART 4 OF THE MARINE (SCOTLAND) ACT 2010 TO VARY LICENCES TO DEPOSIT ANY SUBSTANCE OR OBJECT WITHIN THE SCOTTISH MARINE AREA IN RELATION TO CHEMICALS OR AGENTS FROM WELLBOATS

The Scottish Ministers recognise that the COVID-19 outbreak continues and as a consequence the holders ("Licensees) of marine licences to deposit any substance or objects within the Scottish marine area in relation to chemicals or agents from wellboats ("The Licences") may continue to face challenges in resourcing activities performed under The Licences (see Annex 1 for details of The Licences). There is the potential for licensed activities to be compromised by a lack of available staff or due to the need to protect staff through social distancing measures in response to COVID-19. This in turn could have implications for fish health and welfare.

Mindful of the challenges posed by the COVID-19 outbreak, the Scottish Ministers propose to vary The Licences, in accordance with section 30(3)(a) of the Marine (Scotland) Act 2010 ("The Act") because of a change in circumstances relating to human health. This is a notification of this proposal under part 4, section 31(2) of The Act.

The proposed variation would be in place until the current COVID-19 physical distancing restrictions are lifted or such other date as the Scottish Ministers specify in any subsequent notification of variation (whichever is the shortest).

In making this variation proposal, the Scottish Ministers have taken account of the position statement issued by the Scottish Environment Protection Agency ("SEPA") entitled 'Temporary Regulatory Position – Response to Covid-19' on 7 April 2020, and this proposed variation is consistent with that position as it refers to bath treatments of fish.

As noted in condition (d) of Part 1 – Particulars and Conditions (Annex 2), this proposed variation will not apply to licences for wellboat discharge at fish farm sites within 2.5 km of sites where there is growing for production taking place in shellfish harvesting areas. For more information a map is available on [Scotland's Aquaculture website](#) with active aquaculture (finfish and shellfish) sites and shellfish harvesting areas.

The Scottish Ministers will appoint a person ("the appointed person") for the purpose of hearing any representations and preparing a report on the merits of such representations. If you wish to submit any representations regarding the proposed variation please ensure they are submitted to the Scottish Ministers, in writing, to no later than **03 June 2020** and should be sent by email using the email address: MS.MarineLicensing@gov.scot, please use "FAO The Appointed Person" as the subject of any email correspondence.

E: ms.marinelicensing@gov.scot

If you have not responded by this date, the Marine Scotland Licensing Operations Team will assume a 'nil return'.

Marine Scotland's Licensing Operations Team Privacy Notice is available [here](#). If you have any queries or concerns about how your personal data will be handled, please visit the MS-LOT [website](#) or contact MS-LOT at MS.MarineLicensing@gov.scot.

Signed: [Redacted]

For and on behalf of the Scottish Ministers

Date: 06 May 2020

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Annex 1. The Licences which Scottish Ministers propose to vary

Scottish Sea Farms Ltd:

06203/17/0
06267/17/0
06377/17/0
06378/17/0
06379/17/0
06380/17/0
06381/17/0
06382/17/0
06383/17/0
06384/17/1
06385/17/0
06386/17/0
06613/19/0
06614/19/1
06615/19/1
06616/19/2
06617/19/0
06618/19/1
06620/19/0
06621/19/0
06622/19/0
06623/19/1
06624/19/0
06696/19/0
06697/19/0
06698/19/0
06699/19/1
06715/19/0
06716/19/0
06717/19/2
06726/20/0
06727/19/0
06728/19/0
06729/19/0
06734/19/0
06735/19/0
06736/19/0

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06741/19/1
06816/19/1
06918/19/0
06919/19/1
06925/19/1
07034/19/0
07038/19/0
07137/19/0
07192/20/0
07229/20/0

Cooke Aquaculture Scotland Limited:

05815/17/0
06476/18/0
06835/18/0
06903/19/0
06904/19/0
06905/19/0
06913/19/0
06914/19/0
06915/19/0
06916/19/0
06929/19/0
06930/19/0
06931/19/0
06932/19/0
06933/19/0
06934/19/0
06935/19/0
06936/19/0
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06941/19/0
06942/19/0
06943/19/0
06944/19/0
06945/19/0

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06946/19/0
06947/19/0
06950/19/0
06951/19/0
06957/19/0
06958/19/0
06959/19/0
06960/19/0
07266/20/0
07267/20/0

Grieg Seafood Shetland Limited:

05293/20/1
05628/20/1
05873/20/1
05879/20/1
06575/18/0
06576/18/0
06714/18/0
06752/18/0
06753/18/0
06881/19/0
07036/19/0
07124/20/0
07125/20/0
07126/20/0
07128/20/0
07129/20/0
07130/20/0
07132/20/0
07136/20/0
07171/20/0
07154/20/0

The Scottish Salmon Company:

06198/17/0
06199/18/0

Marine Laboratory, 375 Victoria Road, Aberdeen, AB11 9DB
<http://www.gov.scot/Topics/marine/Licensing/marine>

E: ms.marinelicensing@gov.scot

06200/18/0
06201/18/0
06202/18/0
06307/17/0
06340/18/0
06363/19/0
06364/18/0
06365/17/0
06366/17/0
06367/18/0
06368/18/1
06369/17/0
06370/18/0
06371/19/0
06372/18/0
06373/18/0
06374/19/0
06375/19/0
06376/17/0
06394/17/1
06395/17/0
06396/17/0
06397/17/0
06399/18/0
06401/17/0
06402/18/0
06440/17/0
06443/18/0
06459/17/0
06460/17/1
06462/19/0
06463/18/0
06464/17/0
06508/19/0
06512/18/0
06590/18/0
06646/19/0
06668/18/0
06700/18/0
07223/20/0
07224/20/0

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07226/20/0

Loch Duart Limited:

06332/17/0

Kames Fish Farming Ltd:

06831/19/0

MOWI Scotland Limited:

05891/17/0

05995/18/0

05997/17/1

06311/19/0

06362/18/0

06391/19/0

06431/19/0

06853/20/0

06855/20/0

06890/19/0

06891/19/1

06892/19/0

06894/19/0

06895/19/0

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06897/19/0

06898/19/1

06899/19/0

06900/19/1

06928/19/0

06949/20/0

06991/19/0

06993/19/0

06996/19/0

06998/19/0

06999/19/0

07002/20/0

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07003/19/0
07004/19/0
07005/19/0
07025/19/0
07026/19/0
07027/19/0
07028/19/0
07029/19/0
07030/19/0
07031/19/0
07032/19/0
07033/19/0
07052/19/0
07056/19/0
07066/19/0
07077/19/0
07084/19/0
07085/19/0
07140/20/0
07211/20/0
07064/20/0

Dawnfresh Farming Ltd:

06445/17/1
06525/18/0
06524/18/0

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Annex 2. Part 1 – Particulars and Conditions

The Licences specify certain chemical(s) or agent(s) which can be deposited in the Scottish marine area in accordance with the terms of The Licences. The Licences contain time limitations upon the quantity of the specified chemical(s) or agent(s) that can be discharged in 3-hour periods and 24-hour periods.

For the purposes of this variation, a “Treatment Cycle” means a single cycle of treatment of fish, using chemical(s) or agent(s) as specified within The Licences, during which all fish from each stocked pen on a fish farm site are treated once with the relevant chemical(s) or agent(s).

The time limitations contained in The Licences concerning the quantity of the chemical or agent, azamethiphos¹ that can be discharged in 24-hour periods are varied as follows, subject to the following conditions, for the duration of this variation:

- a) Licensees must ensure that the total quantity of azamethiphos released during a Treatment Cycle does not exceed the amount specified in the most recent version of the Bath Auto modelling spreadsheet for the relevant site approved by SEPA² ;
- b) Licensees must ensure that the total quantity of azamethiphos released in any 24-hour period does not exceed a quantity which is three times the individual amount listed in The Licences as being permitted for discharge within a 24-hour period³ ;
- c) Licensees must ensure that the cumulative quantity of azamethiphos released during a Treatment Cycle at the site, from both wellboats and from net pens, remains within the limits set in the conditions specified in (a) and (b) above;
- d) This variation does not apply to licences for wellboat discharge at fish farm sites within 2.5 km of sites where there is growing for production taking place in [shellfish harvesting areas](#)⁴ ;

¹ The licensed discharge limits for the bath treatment medicine, deltamethrin, are all in the form of 3-hour limits.

² This information is part of the information that was submitted by Licensees to SEPA when they applied for the authorisation to discharge azamethiphos.

³ Condition (b) allows the peak concentrations of chemical or agent residues in the environment around the fish farm site to be temporarily higher than normal in the hours immediately following the discharge. Under condition (a), by 96 hours after discharge, environmental concentrations are expected to be at, or approaching, the concentrations expected under compliance with the conditions of the licence.

⁴ This condition is designed to ensure that the waters immediately around active shellfish harvesting areas are not exposed to elevated concentrations of chemical or agent residues as a result of this variation. The distance of 2.5 km is the average tidal excursion radius from a range of existing Scottish fish farms plus 500 m.

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- e) Licensees must ensure that there is a minimum period of 8 days⁵ between the end of a Treatment Cycle on a fish farm site and the start of a further Treatment Cycle on that fish farm site;
- f) Licensees must ensure that action to control sea lice must be coordinated across suitable areas of sea, such as the relevant [disease management area](#), insofar as possible, and keep a record of such actions;
- g) Licensees must give consideration to how efficacious the treatment with azamethiphos is likely to be and must keep records of these considerations; and
- h) Licensees must:
 - i. Notify the Marine Scotland - Licensing Operations Team (“MS-LOT”) 2 working days in advance of each instance in which the 24-hour quantity limit as originally provided in the licence is going to be exceeded;
 - ii. Provide an explanation, specifically related to the effects of the COVID-19 outbreak, as to why it was necessary to exceed the 24-hour time limitation; and
 - iii. Provide confirmation that there is no growing of shellfish for production taking place within 2.5 km of the site at any shellfish harvesting areas.

Provided condition (c) above is met, conditions relating to restriction on simultaneous discharges of azamethiphos at the fish farm site are removed for duration of this variation.

Notifications are to be submitted to: ms.marinelicensing@gov.scot.

The information referred to in condition h (ii) and (iii) should be reported to MS-LOT at the above email address at the time of the notification referred to in h (i).

⁵ 8 days is half-life of azamethiphos in the environment used by SEPA in modelling bath treatments.