RURAL ECONOMY AND CONNECTIVITY COMMITTEE

SALMON FARMING IN SCOTLAND

SUBMISSION FROM WESTER ROSS AREA SALMON FISHERY BOARD

Introduction

In this submission, WRASFB provides evidence, and its comments on, the regulation of aquaculture in the Board area insofar as relevant to the protection of wild salmonids (salmon and sea-trout).

The Regulatory Picture

Over the past 10 years, 5 planning consents have been granted in the Board area for the installation and use of fish farm structures in marine waters. There are currently 11 sites in place, all of which are operational.

Planning consents have rarely been refused by the planning authority (the Highland Council (HC)) and, where they have been refused, this has been overturned on appeal.

The upshot has been to create ever-increasing adverse pressure on wild salmon and sea-trout from the presence of increased background levels of sea lice resulting from those operations.

The result of the consents granted, other planning-related decisions of the HC and planning appeals has been that there is no regime in place whatsoever that protects wild fish through oversight and control of the operations of consented aquaculture sites.

Such controls, as exist by other regulations, are not directed at, let alone suited, to the protection of wild fish. The Aquaculture & Fisheries (Scotland) Act 2013 contains measures to control sea lice numbers on farms but these are only directed at the health of adult farmed fish and are hopelessly inadequate to protect outgoing salmon and sea-trout smolts, which are very much smaller in size and unable to tolerate the numbers of lice that may be tolerated by adult fish. Unlike the farmed fish, it is impossible to treat these wild smolts when they are infected by sea lice at sea.

SEPA's powers and duties do not include protection of wild salmonids. SEPA does exercise a supervisory function over the operations of aquaculture sites (as well as a consenting function). However, this is directed at benthic impacts. Any reductions on biomass on aquaculture sites that may occasionally result from its supervisory functions result from those considerations and provide in that sense, an accidental protection to wild fish.

Once a site has been consented, an operator may apply for an increase in biomass at the site regardless of effects on wild fish by any increased sea lice loading. Only SEPA's consent is required by the aquaculture company and that is given unless

SEPA considers that other adverse effects (particularly benthic) would not preclude such an increase. SEPA`s remit does not cover sea lice or wild salmonids.

The current state of affairs in the Board area can fairly be described as totally unsatisfactory as regards any meaningful protection of wild salmonids from the adverse effects of fish farm operations. This is likely to continue unless the regulatory system is made fit for purpose in relation to the protection of wild fish.

The examples given below tell a sorry tale. They show that the legal implications of planning applications and other regulations concerning the marine environment are ill-suited for the protection of wild salmonids. It is important to stress that this is so, regardless of the merits or demerits of particular decisions. The regulatory framework is not fit for purpose in relation to the protection of wild salmonids.

From 2010 until 2014, HC purported to apply the precautionary principle in Wester Ross where there were doubts as to whether or not a company`s mitigation measures for wild fish interactions would be robust enough to protect wild fish. In four such cases, consents were granted (arguably contrary to the precautionary principle itself) and instead, a diluted version of the precautionary principle was applied by way of 10-year time limited consents.

This time period was designed to give the developer 10 years of production to demonstrate that their fish farm was not causing a significant adverse impact. Effectively, it was the same as the current Environmental Management Plan (EMP) but with a “consequence” should adverse impacts be found. When the planning permission ran out at the end of the 10-year term, all the evidence would be examined during the new planning application and if adverse impacts were found to be of sufficient significance, the consequence would be that the planning consent would not be renewed.

When WRASFB enquired of the HC how wild fish monitoring would be carried out during these periods, the authority stated that they expected the company involved to provide the wild fish data required. WRASFB approached the three companies involved with a view to offer our expertise and to put together a protocol for monitoring each of the four fish farms. These offers came to nothing, because the operators refused to agree due to inappropriate requirement of confidentiality clauses on their part.

Some Examples

SGEIR DUGALL FISH FARM (Operator / The Scottish Salmon Company)

The concept of a time-limited consent was challenged by the operator. The time-limited consent was granted in 2012 in relation to this site located in Loch Torridon. By a curiosity of planning law, a person may apply under Section 42 (s42) of the Planning Act for a consent to run alongside a time-limited consent, with the result

that if the s42 application succeeds, the aquaculture company can operate under the consent of the s42 process at the end of the time-limited term.

Having launched an appeal against the time-limited consent at the time, the operator then abandoned the appeal. It then made a s42 application to HC to operate the fish farm without the time limited condition, which was refused. This was then challenged again through the DPEA (PPA-270-2113 Sgeir Dughall), which was again refused. This decision was challenged again, through the Court of Session where the refusal by the DPEA was overturned and the application was sent back for redetermination where, it was finally found in the appellants favour (PPA-270-2113-1) and the time limited consent was removed and replaced by a full and permanent consent with an EMP condition. To date no EMP has been agreed and the appellant continues to operate the fish farm under the original consent. It is not even clear that any meaningful steps have been taken to agree the EMP and even if they have been, WRASFB has been wholly excluded from any such process.

Importantly, it is not clear what the effect of any non-compliance with the terms of the EMP would be, e.g. if sea licence numbers exceeded any levels that might be designated by the EMP.

KENMORE (Operator / Scottish Salmon Company)

In September 2015, the operator made a successful application to SEPA to increase the biomass at this site. Despite the WRASFB response to SEPA urging caution in relation to the increase in biomass leading to a proportionate increase in lice numbers, the increase was approved.

SEPA noted in their response that:

“SEPA notes your concern regarding the increased threat to migratory wild salmonids caused by the cumulative increase in sea lice in the Loch Torridon area but considers that this is something that is controlled by Marine Scotland under the Aquaculture and Fisheries (Scotland) Act 2007.

It is therefore SEPA`s view that the issue of sea lice infestation on wild salmonids is not a factor that should prevent an authorisation in this instance, especially as this falls under the regulatory remit of Marine Scotland”

SEPA is mistaken on the remit of Marine Scotland under the 2007 act (now 2013 Act) as it does not embrace wild fish. See above.

ISLE OF EWE FISH FARM (Operator / Marine Harvest Scotland)

Since 2009, the Loch Ewe fish farm has been consistently classified as “unsatisfactory” under SEPA`s benthic self monitoring program. Due to these classifications, the maximum biomass has been reduced down further to 770.5 tonnes. Despite this final reduction, the company fully expects to increase the

maximum biomass again through the proposed Depositional Zone Regulations (DZR). It is evident that the accumulation of waste from this farm is not being fully dispersed by local currents as originally predicted by SEPA. It is therefore highly likely that sea lice numbers from this farm are also contained within the same area.

ARDESSIE B FISH FARM (Operator / Wester Ross Fisheries Ltd)

In 2009, this fish farm was granted planning permission to change the cage configuration from round to square cages. A major part of this application was based on an Environmental Impact Assessment (EIA) written in 2002. Despite this permission being conditional on the site successfully passing the Marine Scotland Audit and Review for existing fish farms, the company informed Marine Scotland that as it had full planning permission, it did not require being Audited or Reviewed. In a review of EIA`s, Marine Scotland determined that based on the Ardessie EIA from 2002, planning permission should be withheld – but this did not come to light until 2014.

As the equipment had changed from round to square cages, the site could not go through Audit and Review. Highland Council advised WRF that it would need to apply for planning permission with a new EIA. WRF removed all of the development for refurbishment (thereby ending the permission). Instead of reapplying, they instead applied for a Certificate of Lawfulness of Existing Use or Development (CLEUD) thereby circumventing the planning system and need for an acceptable EIA. The Ardessie fish farms are the only sea water sites that are operating by the grace of a mechanism more used for conservatories without planning permission than fish farms.

LOCH KANAIRD FISH FARM (Operator / Wester Ross Fisheries Ltd)

This application was for a relocation and expansion of an existing site (13/01494/FUL) that was consented on the 6th November 2013. On the 3rd November 2016, an initiation of development notice was received by the Highland Council (just in time before the 3 year limit for development ran out). However, there seemed to be no signs of development at the site until the 19th of April 2018 when the vessel Multicat arrived at Ardmair to start laying the Loch Kanaird site moorings. As it seems unlikely that a floating fish farm can be initiated without moorings, this anomaly is also currently with Highland Council.

Conclusions

The result from each of these examples is that the precautionary principle has been not applied in relation to the protection of wild fish, or, if applied to any extent, it has been overruled by law. Since 2014, there has been an apparent move away from time-limited consents to consents with an EMP. However, these arrangements have delivered absolutely no monitoring of adverse effects, let alone any regime for so

doing. Consequences for non-compliance with an EMP are at best opaque with a distinct lack of consequence being normal.

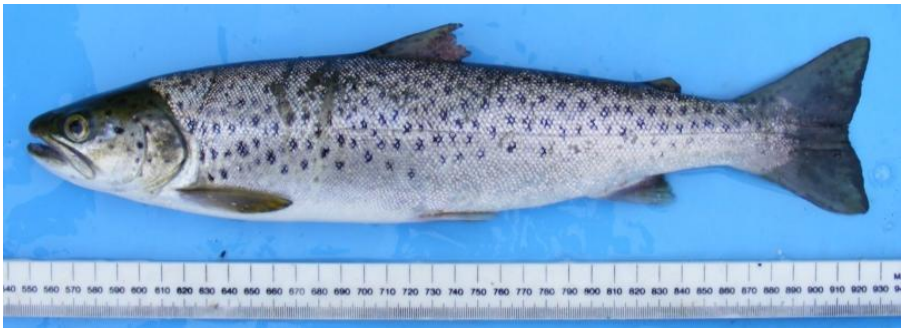
The reporting methodology used by the SSPO in publishing the Fish Health reports can also be misleading. While all stages of sea lice on the farm are counted, only the “adult females” are reported. This means that if the wild post smolt pictured below was in a farm and the lice counted, then the absence of adult female lice means the fish pictured below would be classified as zero for the SSPO report. The reduction in number of adult female lice reported to SSPO, may be nothing more than the result of cleaner fish pulling off the larger females while leaving the much smaller juveniles. It certainly does not mean the fish in the farm are lice free.

In view of the contents of this document, it is critical that effective arrangements be put in place to deliver meaningful regulations to protect wild salmonids which include robust consequences for non-compliance.

Further, until more information is to hand through the research being conducted by Marine Scotland Science to better understand the impacts on wild salmonids, the fish farm industry led aspiration to achieve their 2030 goal in production levels, should remain no more than an aspiration until all of these issues are resolved. The regulation status quo must not be allowed to remain an option.

Sea Trout caught in the Flowerdale (Loch Gairloch) estuary on 26th June 2017.

Statistics: 365mm, 541g,
(c.f. 1.11),
244 sea lice counted (equates to 0.451 lice per gram).
Dorsal fin damage 3.



Close up of some of the sea lice on this fish

Wester Ross Area Salmon Fishery Board
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