NatureScot
Scotland's Nature Agency
Buidheann Nàdair na h-Alba

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Our ref: NAT/MAR/AQU

Dear Mike,

SEA LICE RISK FRAMEWORK – PROPOSED NEW REGULATORY FRAMEWORK

We write in response to SEPA's consultation of May 2023 on the detailed proposals for a risk-based framework for managing interactions between sea lice from finfish farms and wild salmonids in Scotland. We appreciate the opportunity to provide further comments on the framework.

We welcome the proposed framework as set out in the online consultation document. We acknowledge that some aspects of the framework as currently proposed will require further refinement as new evidence emerges in the future. However, we are satisfied that the framework will provide an enhanced level of protection for wild salmonids in Scotland from the outset. In addition, we are of the view that the framework will provide the regulatory foundations required to further the level of protection afforded to wild salmonids in Scotland in the future. Moving forward, we will be happy to continue to work closely with SEPA and other key parties on the implementation phase of the framework.

We have not provided detailed comment on each of the pre-defined questions raised within the online consultation document. Instead, the focus of our response (see attached annex) is on the joint responsibilities of SEPA and Local Planning Authorities (LPAs) as competent authorities under the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "1994 Habitats Regulations").

We hope that our comments are helpful and would welcome the opportunity to discuss this further with SEPA as the implementation phase of the framework commences in the coming months.

Yours sincerely

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SEA LICE RISK FRAMEWORK – PROPOSED NEW REGULATORY FRAMEWORK
NATURESCOT COMMENTS

We note that the current consultation document does not refer to the requirements as set out in The Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "1994 Habitats Regulations"). We would like to highlight the importance of ensuring that SEPA fulfil their responsibilities as a competent authority. However, despite SEPA taking the role of lead regulatory authority for impacts on wild salmonids due to farm derived sea lice, it is important to note that the Local Planning Authority (LPA) will retain its own responsibilities as a competent authority. In our opinion, further consideration may be required in order to ensure that an appropriate process is in place, allowing planning and SEPA's proposed framework to align, and where required integrate, so that both SEPA and the LPA can fulfil their respective responsibilities as competent authorities.

We are in agreement with the proposed risk assessment process and acknowledge that a phased approach is required to ensure that SEPA can prioritise key Wild Salmonid Protection Zones (WSPZs) for further action. However, we would also highlight the importance of prioritising application of the proposed screening process to identify potential risk to Special Areas of Conservation (SAC), including progressing virtual post-smolt tracking models for SACs supporting Atlantic salmon as a protected feature. This will be particularly important for any SAC river feeding in to a WSPZ that SEPA has identified as being potentially high risk.

We would also note that where there is connectivity with a SAC, the onus should be on proving there will not be an adverse effect on site integrity, rather than proving that the activity is contributing to an adverse impact. This will be an important consideration for SEPA when assessing existing sites in the context of the proposed framework.

If SEPA's screening models identify existing sites as high risk, and there is clear connectivity with a SAC, we would recommend that SEPA should adopt a precautionary approach. In such cases, it is our view that SEPA should apply suitable limits or mitigation to address the elevated risk to ensure that the licence is not capable of hindering the conservation objectives for the site. On this basis, where an SAC is involved, it is our view that SEPA should implement any limits or measures required to address risk at the outset, rather than delaying until further monitoring and modelling has proved the activity is contributing to an adverse impact. We would be happy to discuss this further with SEPA moving forward.

Further to the above, in areas identified as high risk, particularly where there is connectivity with a SAC, we believe the proposed framework should distinguish between existing licences and existing biomass. Where existing CAR licences are present but have never been developed, we consider that these should not be treated as existing biomass under the framework. In our opinion, any such licences should have appropriate limits placed on them to manage potential risk as though they were new sites, rather than have no deterioration limits based on hypothetical typical levels of lice.

As highlighted previously, due to the joint responsibilities of SEPA and the LPA as competent authorities under The Habitats Regulations, it is our view that further consideration may need to be given to how SEPA's HRA process will feed in to that of the LPA's. For new sites, this may involve the LPA adopting SEPA's Habitats Regulation Appraisal (HRA). However, SEPA's screening models will be re-run each year in light of new data relating to reported sea lice levels and WSPZ capacity. Given the likely dynamic nature of SEPA's HRA process, further consideration may need to be given to how best to integrate this with planning, to ensure the LPA can incorporate this within their own HRA process.

In the future, SEPA modelling may identify some existing farms that are operating under an EMP aimed at managing risk to a SAC, which pose no risk to the relevant SAC. In cases such as this, the transition process from the EMP to the SEPA Framework may be relatively straightforward.

A more complex situation may arise for existing sites with connectivity to a European Site, that are situated in a WSPZ identified as having no or limited remaining capacity. In such cases, it is likely that the EMP will need to continue to function alongside the Framework until such time that the LPA is satisfied the Framework has adequately addressed any risk, thus ensuring they can conclude that an adverse effect on site integrity will be avoided.

Where SEPA identify an existing licence as high risk, under current proposals, they will only introduce limits to reduce lice levels at the site once a collaborative programme of modelling and monitoring is complete. This may take several production cycles to complete. During this period, the site can continue to operate based on 'no deterioration' limits, to ensure that the operator does not exceed 'typical' levels of lice at the site (judged against past performance).

We would highlight the challenge that this approach may present to the LPA, where an EMP is in place to manage risk to a SAC. A situation may arise where the evidence emerging through the Framework identifies certain existing sites as posing a high risk to a SAC. Where an existing EMP is in place and SEPA identify the site as posing a high risk to an SAC, the LPA may have no option but to seek to address this risk in the interim through the EMP process, regardless of the collaborative programme of modelling and monitoring that is being progressed by SEPA. Because of this, we would emphasise the importance of close integration between the SEPA framework and any existing EMPs that function to manage risk to a European Site.

Based on the above, we are of the view that SEPA and the relevant LPAs should consider options in the interim / transitional period, for closer integration between planning and the proposed SEPA framework. It is our view that this should include provisions to ensure that the advanced modelling required through the framework can feed in to existing EMPs and through the review process, be used to influence the management of the site in the interim, ensuring the best available evidence can be used to address any potential risk to European Sites.