

**Review of the application and Environmental Statement submitted
by Dawnfresh Farming Limited for the formation of fin-fish (Rainbow
Trout) farm comprising 10 No. 80m circumference cages plus installation
of feed-barge at Sailean Ruadh (Etive 6) Loch Etive, Argyll And Bute
(planning ref 13/01379/MFF)**



Friends of Loch Etive
Scottish Charitable Incorporated Organisation SC043986
c/o Muckairn
Taynuilt
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July 2013

Executive Summary

- i) Dawnfresh Farming Limited, the rainbow trout fish-farming company, is seeking planning permission to build a massive and permanent floating 10-cage fish-farm at Sailean Ruadh on Loch Etive, effectively doubling the tonnage of rainbow trout as compared to their five existing farms on Loch Etive.
- ii) While slightly smaller than the original 14-cage application withdrawn in July 2013 following a storm of local protest, the new application retains most of the features of the earlier application that locals found so objectionable and would be a significant and unacceptable industrialisation of fish-farming activity on Loch Etive.
- iii) While Dawnfresh had tried to suggest that the initial 14-cage fish-farm application was part of some wider consolidation plan for its sites on Loch Etive as a whole, it has now dropped all pretences to be seeking to reduce its other operations on Loch Etive. Consolidation does not form part of the revised 10-cage application being considered by the Argyll and Bute Council. The proposed fish-farm will effectively double the total tonnage of farmed-fish on Loch Etive, following which Dawnfresh has let slip that it expects the other sites to 'increase organically over time', possibly by exploiting recently-granted Permitted Development Rights which allow the addition of extra cages and changes in feed-barges at existing sites without any further public consultation.
- iv) Dawnfresh has suggested that ultimately it will seek permits for a biomass of 7500 tonnes of rainbow trout from Loch Etive, a three to four fold increase on what is currently permitted.
- v) The proposed fish-farm will be a hazard to navigation and will exclude sea-angling charter boats, commercial fishing and creeling vessels, recreational canoeists and kayakers, sailors and yachts, from a huge additional area of the surface of Loch Etive, and will impede safe access to the sheltered anchorage and mooring in Sailean Ruadh itself. This will make Loch Etive less attractive to tourists seeking to use the loch for recreational purposes.
- vi) The proposed fish-farm will have unacceptable impacts on the wild landscape of Loch Etive, not only for residents of the surrounding area, but for visitors and hence those tourism businesses upon which Loch Etive and the Oban area so depends. The siting of the proposed fish-farm is contrary to planning policy and the Loch Etive Integrated Coastal Zone Management Plan that was drawn up after a very large public consultation exercise.
- vii) The loch has already suffered from creeping industrialisation over the last 3 years, all of which has occurred without any public consultation with the local community at Loch Etive, involving the granting of permanent planning permission by Scottish Ministers to hitherto temporary fish-farms elsewhere on Loch Etive at Inverawe, Port na Mine and Ardchattan, reductions in fallowing periods required by SEPA from 8 months to only 6 weeks and an increase in permitted biomass of fish – all for the benefit of just one company, Dawnfresh.
- viii) Following an investigation in 2013 by Friends of Loch Etive, the operator Dawnfresh has conceded to the Argyll and Bute Council that it has been breaching planning conditions at its existing fish-farm at Etive 4 (Airds Point) by failing to observe fallowing periods required under planning conditions and operating both Etive 4 and Etive 3 (Port na Mine) farms simultaneously. Planning conditions, imposed when Etive 4 was given planning permission in 2008, require that Etive 4 and Etive 3 never hold fish at the same time. A further planning application must be made by Dawnfresh to allow them to operate both farms at once – in effect, this would be an application for another operational farm on Etive.

- ix) As Dawnfresh places strong emphasis on having farms in groups of three, the current application for a new 10-cage farm at Etive 6 and the retrospective application that is now required at Airds Point (Etive 4) represent a single project and should, in any event, now be assessed together under the EIA Directive as such. This the application documents submitted by Dawnfresh completely fail to do.
- x) European law on Environmental Impact Assessment also requires Dawnfresh to consider alternatives to its proposed fish-farm, but it has failed completely to consider other floating-cage sites outside Loch Etive (even though it has one such site already in Loch Slapin, on the Isle of Skye). Indeed, it appears to have made no enquiries at all to find new marine sites outside Etive. It has dismissed, with a cursory 'visual' survey, other potentially less harmful sites on Loch Etive. It has dismissed the growing of rainbow trout in river-side systems (despite such sites already being operated by Dawnfresh elsewhere in Scotland).
- xi) It is important to remember that the sea-bed is owned by the Crown Estate on behalf of us all, pursuant to the Crown Estate Act 1962. No-one can own the water of Loch Etive itself. Finally, there is a public right of access to navigate over the entire surface of marine waters, which is enjoyed by everyone. Dawnfresh owns neither the seabed, nor the water column, nor the loch surface, yet it already has five fish-farms on Loch Etive and now seeks a sixth farm at which it will occupy both the sea-bed and surface of the loch to the exclusion of all others, including creelers, yachtsmen, recreational fishermen and all others and it will prevent fishermen or divers using the waters where the huge cages would be moored.
- xii) The proposed 10-cage fish-farm at Etive 6 threatens to further damage wild fisheries by causing more escapes of farmed fish or by the threat of sea-lice or other diseases. Many anglers (both freshwater and sea anglers) come to Loch Etive, the River Awe and Loch Awe because it is a valued wild fishery, with the River Awe arguably the most valuable salmonid fishery on the west coast of Scotland.
- Any purported benefit to wild fisheries that had been suggested in the now withdrawn 14-cage application from consolidating operation away from the Inverawe farms near the mouth of the River Awe has now gone with Dawnfresh dropping completely its consolidation plans. The threat to wild fisheries in all these waters that the proposed fish-farm will create, will make repeat visits by angling tourists less likely.
- xiii) The proposed fish-farm will threaten otters, seals and sea-birds. Quite apart from the failure to observe the legal requirements imposed by, for example, the Habitats Directive in respect of the disturbance of otters during the operational phase of the farm (including by the use of acoustic seal deterrents), the applicant fails to appreciate that the nature conservation interest of Loch Etive is an extremely important feature of the loch for residents, other loch users and for tourist visitors.
- xiv) Dawnfresh already holds a licence to kill and has shot many seals on Loch Etive in recent years. Ultimately more seals may be shot by Dawnfresh if they are attracted repeatedly to the many hundreds of thousands of fish held in these new cages.
- xv) The cumulative impact of the benthic damage that will be caused by this proposed 10-cage fish-farm must be considered in conjunction with all the other rainbow trout farm operations in Loch Etive, and particularly the impact on the protected priority sea-bed habitats that will be further degraded as a huge new area of the sea-bed is smothered by organic wastes from the farm.
- xvi) Tourists come to Loch Etive – and to its hotels, bed and breakfasts and holiday cottages – and support its angling charter businesses, river fishing, outdoor pursuits centres, wildlife experience operators, pubs, restaurants and other services, precisely because Loch Etive is a landscape of exceptional natural beauty, with excellent opportunities to use the loch for a variety of activities. This

fish-farm will diminish the whole tourist experience of the wild and natural Loch Etive that attracts tourists of all types, will make repeat visits less likely. This will damage the local economy, incomes and risks employment.

- xvii) The new 10-cage fish-farm will, by Dawnfresh's own admission, create no new direct jobs in the rainbow trout operations on Loch Etive. The new farm will have automated feeding via a feed-barge and feed pipe system which has meant fewer jobs across fish-farming wherever it has been introduced. Nor will the failure to secure a sixth Dawnfresh farm genuinely threaten Dawnfresh's existing operations on Loch Etive, with Dawnfresh already stated that they would not pull out of the loch.
- xviii) Overall, this 10-cage application is a step too far for Loch Etive. It runs contrary to the Loch Etive Coastal Zone Management Plan and unacceptably threatens Loch Etive's wildlife, wild fisheries, loch recreation, tourism and tourist businesses, all for the benefit of just one private company and its owner, and at the expense of the local community. It will create no new direct jobs and will in all likelihood reduce overall employment in the Etive area.
- xix) If the lack of a suitable, environmentally acceptable site for a new fish-farm is "detrimental to the company's established business plan", rather than demanding the Loch Etive community submits to its demand for a huge new farm, like very many other businesses in all sorts of other sectors, Dawnfresh should now consider changing its business plan to one that is more respectful of other stakeholders in Loch Etive.
- xx) As the Friends of Loch Etive Response to the Planning Statement shows, planning policy, plans and other relevant plans strongly suggest that this application should be rejected.

Contents

	Page
1. INTRODUCTION	6
2. PURPOSE OF THE REPORT	11
3. ISSUES	12
3.1 Creeping industrialisation of Loch Etive	13
3.2 Interference with navigation and other users of the surface of Loch Etive	15
3.3 Damage to the landscape of Loch Etive	20
3.4 Negative interactions with wild fisheries	25
3.5 Disturbance of and harm to otters, birds and seals	32
3.6 Benthic pollution	39
3.7 Noise and light pollution	42
4. THE LACK OF PROPER CONSIDERATION GIVEN TO ALTERNATIVES	44
5. THE NEGATIVE IMPACT ON ETIVE EMPLOYMENT	47
6. DAWNFRESH BUSINESS PLANS AND PLANS FOR LOCH ETIVE	48

1. INTRODUCTION

Dawnfresh, the rainbow trout fish-farming company, is seeking to build a massive and permanent floating 10-cage fish-farm at Sailean Ruadh just to the north-west of the applicant's existing farm at Airds Point.

Despite being slightly smaller than the originally proposed 14-cage farm which was withdrawn by Dawnfresh in July 2013, after a sustained wave of local protest, this new farm, shown below in a photomontage taken from the applicant's Environmental Statement (ES), will still be the biggest farm on the loch by some margin – containing 1500 tonnes of rainbow trout in 10 round cages covering a huge area of the loch surface and with a permanently moored 'feed-barge' on site.



Figure 1: Montage of proposed 10-cage fish-farm, produced by Friends of Loch Etive

It will effectively more than double production of rainbow trout by the applicant on Loch Etive (assuming that Dawnfresh is currently operating its fish-farms within their planning permissions, which it has not been doing – see section 3.1.2).

This is a significant industrialisation of the fish-farming activity on Loch Etive. Indeed, the A&BC noted that the now withdrawn 14-cage application “would introduce large scale fish-farm operations into an area currently subject to aquaculture, **but not sites on the scale proposed**”¹. This must remain the case with the revised 10-cage application.

Although the site was once a small-scale shellfish-farm, the proposed 10-cage rainbow trout farm with feed-barge is a step-change from what went before making a mockery of the Dawnfresh claims that “this application is essentially for the reorganisation of this existing aquaculture site”² and that “the float arrangement on the sea surface for shellfish is not unlike that for trout. The only difference being the addition of a feed-barge to allow for automated feeding”.

Do Figure 1 above and Figure 2 below really look that similar to the aerial photo of the old shellfish-farm at Muckairn at Figure 3?

Further, do the mussel ropes really look like a “float arrangement on the sea surface not unlike that for trout” such that the trout farm proposed is just a “reorganisation of this existing aquaculture site”?

Patently not and the claims made in the application by Dawnfresh are nothing short of ridiculous.

1 Screening Opinion, A&BC, 29th June 2012, page 4

2 Letter to A&BC from GVA Grimley for Dawnfresh, 5th July 2013

Neither does the schematic in Figure 5 of the now withdrawn 14-cage application that caused such a storm of local opposition such that the applicant had to withdraw it, look that different to the new 10-cage application in Figure 6?



Figure 2: Montage of proposed 10-cage fish-farm, produced by Dawnfresh (note that the cages are 'lined up' in pairs to appear fewer in number and the feed-barge is obscured by a tree)

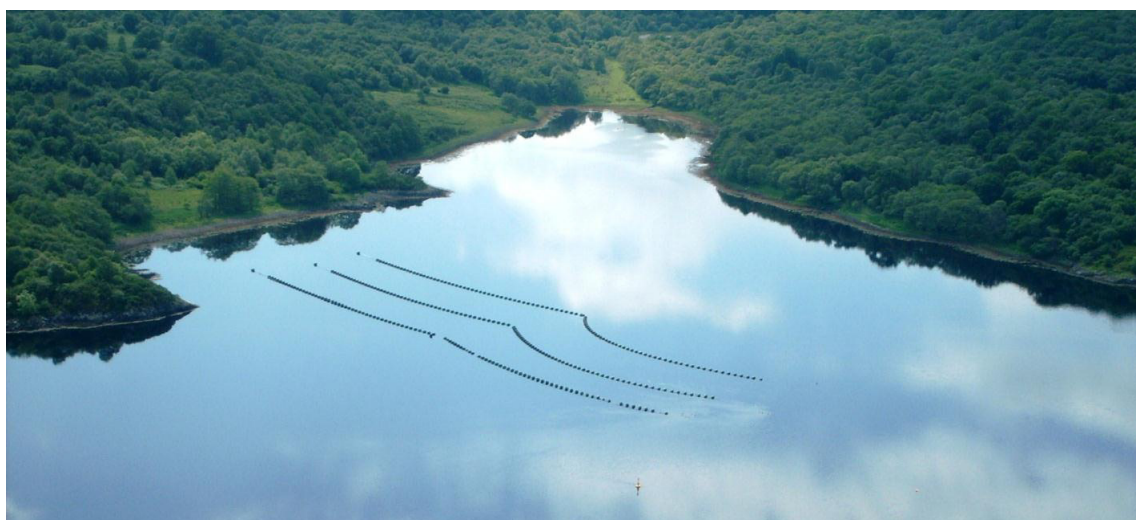


Figure 3: The old mussel shellfish-farm at Muckairn, now removed.



Figure 4: A yacht moored in Sailean Ruadh – note that the proposed farm will effectively fill the visible loch surface behind the yacht

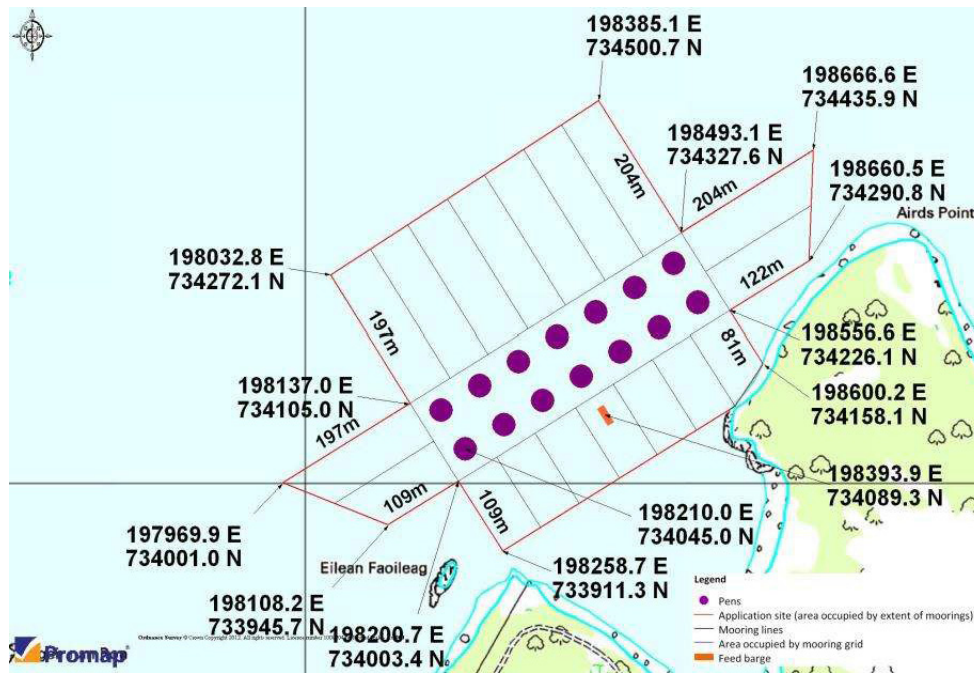


Figure 5: Schematic of the proposed 14-cage farm (now withdrawn) and extent of the mooring grid

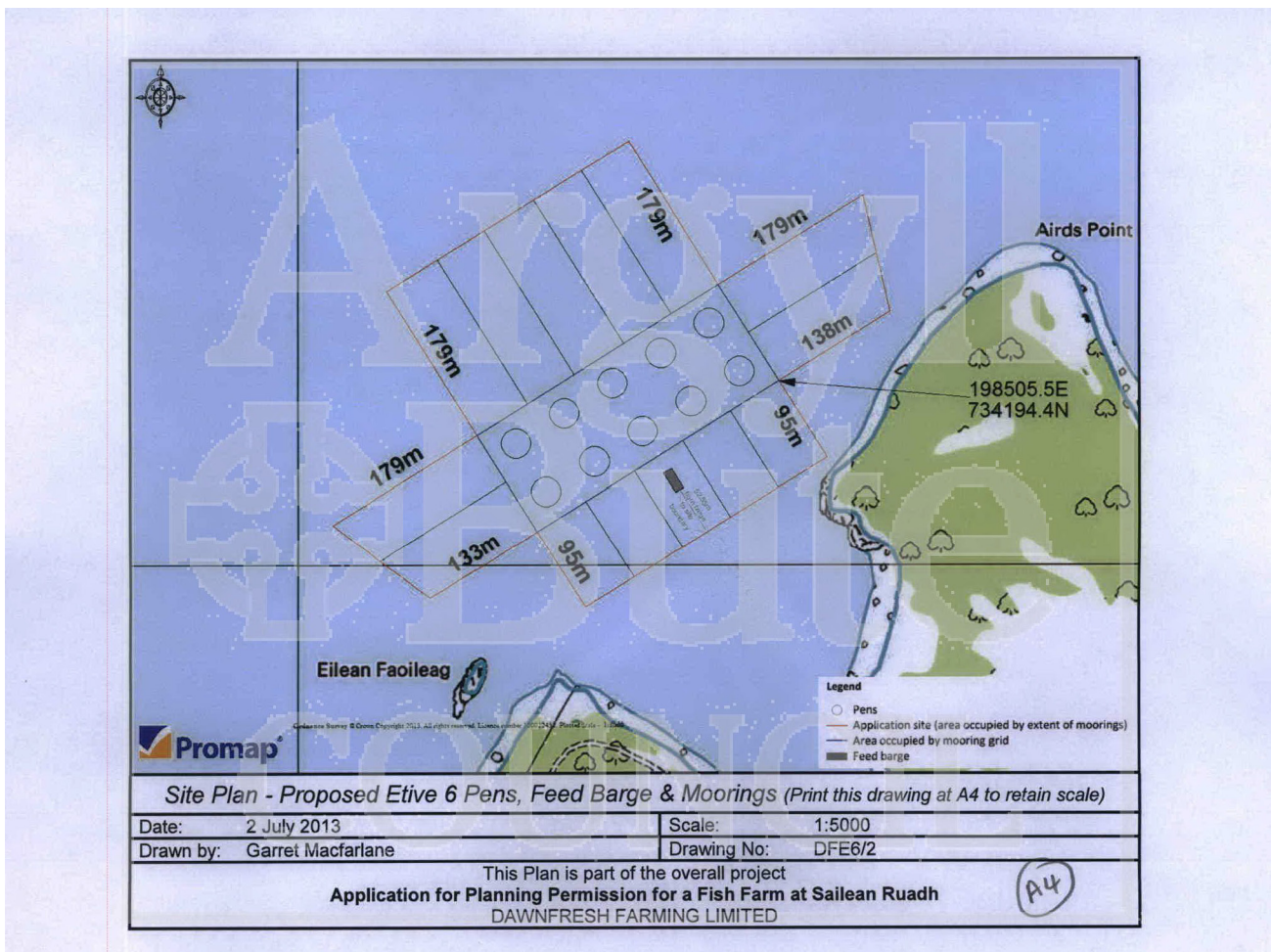


Figure 6: Schematic of the new 10-cage farm proposals and extent of the mooring grid

The A&BC was asked earlier in 2012 to undertake a Screening and Scoping exercise to decide whether the 14-cage plan required a full environmental impact assessment. That Screening and Scoping Opinion was issued on 2nd July 2012, requiring Dawnfresh to carry out an environmental impact assessment and submit an ES with any application for planning permission, pursuant to the European Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

Despite the withdrawal of the 14-cage application, the formal application for planning permission for the 10-cages site, with accompanying ES was advertised for public consultation on 18th July 2013, with the period for representations extending to 15th August 2013.

Importantly, the application for the 10-cage farm still needs to be examined in the context of the Screening and Scoping Opinion, the Argyll and Bute Structure Plan, the Argyll and Bute Local Plan and the Loch Etive Integrated Coastal Zone Management (ICZM) Plan in view of the considerable restrictions it will place on other loch users, residents of the area and visitors to Loch Etive, its impacts on wildlife and the wider environment and in relation to each of the issues raised in the subsequent sections of this report.

The A&BC Local Plan Policy LE AQUA 1 makes any support for fin-fish-farming subject to landscape, visual amenity, scenic character, nature conservation, wild fish, seabirds etc. and states that “if a coastal framework plan [such as the Loch Etive ICZM Plan] is in place it should be considered as a significant material consideration...” .

It was the failure of the 14-cage farm application to be consistent with the Loch Etive ICZM Plan that led to its withdrawal. The 10-cage application, on the same site, with almost all of the same problems, has the same basic failings with respect to the Loch Etive ICZM Plan and should now be withdrawn too.

The A&BC has stated that LE AQUA 1 “means that we would consider a new site if it was part of a wider consolidation/rationalisation of existing developments and in such a case would expect the developer to identify one or more sites that would be reduced in size or removed altogether. In this type of proposal we would be looking at the impacts of any new site and any benefits of reduction/removal of other site(s)”³.

Given the 10-cage proposal now contains absolutely no element of rationalisation or consolidation of existing fin-fish sites on Loch Etive, and indeed hints at their expansion in future, this proposal must now be rejected.

This revised application also needs to be considered in the light of Scottish Planning Policy⁴ which requires that “*when determining planning applications, authorities should take into account the direct and cumulative effects of the proposed development on the environment, including carrying capacity, visual impact and the effects on landscape, marine historic environment and the sea or loch bed. The needs of local communities and other interest should also be taken into account...where adverse cumulative impacts are significant and cannot be mitigated, planning permissions should not be granted*”.

Finally, the Scottish Government⁵ advises that the A&BC, as a planning authority, “*is responsible for evaluating the ES to ensure it addresses all of the relevant environmental issues and that the information is presented accurately, clearly and systematically. It should be prepared to challenge the findings of the ES if it believes they are not adequately supported by scientific evidence. If it believes that key issues are not fully addressed or not addressed at all, it **must** request further information. The authority has to ensure that it has in its possession **all** relevant environmental information about the likely significant environmental effects of the project **before** it makes a decision whether to grant planning permission.*” (Scottish Government’s emphasis).

Mention also needs to be made of the Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012 which will permit future development of the site without any further planning permission.

Specifically, this Order will give Dawnfresh the ability to replace any finfish pen in the same or a different location with a finfish pen of the same size, colour and design or a different size, colour or design and will enable the installation of an additional finfish pen. Essentially what this means is that there is no guarantee that the 80 metre cages proposed in the current application will remain as 80 metre cages and further that the number might be increased to 11 cages without any further planning permission being required.

Further, the 2012 Order allows the replacement of any feed-barge in the same or in a different location with a feed-barge of the same size, colour and design or indeed of a different size, colour and design meaning that there is no guarantee that the smaller feed-barge proposed with this 10-cage site will remain the feed-barge of choice for Dawnfresh and that they may revert to the larger feed-barge already proposed in the 14-cage application, again, without any planning permission being required.

3 Email from Mark Steward, Marine and Coastal Development Manager 23rd April 2013

4 Scottish Planning Policy (2010) at para 107, Fish-farming

5 Scottish Government Planning Directorate, Letter to Heads of Planning, Environmental Impact Assessment (EIA) – Questions and Answers, 22nd November 2007

2. PURPOSE OF THE REPORT

As part of the planning process – and to support Friends of Loch Etive’s objection to this application – this report examines the likely impact of these revised fish-farm proposals and how these have been dealt with in the ES produced by the applicant.

The sectoral or ‘issue-by-issue’ impacts of the proposed 10-cage Etive 6 fish-farm are reviewed in their legal, planning and factual contexts, together with the extent to which alternatives have been considered in the ES.

These issues require assessment in terms of the overall impact of the proposed Etive 6 fish-farm, as judged against the private commercial interests of the applicant, as well as cumulatively across all the applicant’s existing fish-farms on Loch Etive.

The report then considers what attention the ES has given to alternatives to the proposed Etive 6 fish-farm and the consolidation plan for Loch Etive and whether Dawnfresh has properly considered alternative sites.

The report also considers the likely overall negative impact on Etive employment and examines the claims made by Dawnfresh.

The report notes that the consolidation plan, proposed by Dawnfresh with its 14-cage application, has now gone, and deals with the relevance or not of Dawnfresh’s business plans and what Dawnfresh’s true intentions appear to be for Loch Etive.

3. ISSUES

The range of actual or potential impacts of the proposed Etive 6 fish-farm on other loch users, the local community, wildlife and landscape is extremely wide:

Creeping industrialisation of Loch Etive

Interference with navigation and other users of the surface of Loch Etive

Damage to the landscape of Loch Etive

Negative interactions with wild fisheries

Disturbance of and harm to wild species and other nature conservation interests

Benthic (sea-bed) pollution

Noise and light pollution

3.1 Creeping industrialisation of Loch Etive

This application must be viewed in the context of the creeping industrialisation of Loch Etive.

Both the A&BC's Screening and Scoping Opinion and importantly the Environmental Impact Assessment Directive (and the domestic Scottish regulations that flow from it) require an applicant to look at and examine the cumulative effects of any projects – including this proposed 10-cage fish-farm – with other existing projects – in this case, the existing 5 fish-farms on Loch Etive at Inverawe East, Inverawe West, Port na Mine (Etive 3), Airds Point (Etive 4) and Ardchattan, all of which are owned and operated by Dawnfresh.

Friends of Loch Etive has examined the licensing and consents given to the existing Dawnfresh fish-farms in Loch Etive at Inverawe (East and West), Ardchattan, Port na Mine (Etive 3) and Airds Point (Etive 4).

What these show is a history of creeping industrialisation of Loch Etive over the last three years or so, much of which has occurred without public consultation on changes to the loch.

3.1.1 Granting of permanent planning permission in 2011 by Scottish Government to fish-farms at Inverawe, Port Na Mine and Ardchattan Bay without any public consultation

Although the Scottish Government recognised that the initial assessment of the likely environmental impact of the fish-farm at Ardchattan was defective – and that that undertaken at Port na Mine was not compliant with Regulations and European law – and that there was no full assessment of the likely environmental impacts caused by the fish-farm at Inverawe, nevertheless, the Scottish Ministers gave all three of these farms permanent planning permission in 2011, without any public consultation with the local community in Argyll.

Before then, the farms existed only by virtue of time-limited leases of the sea-bed granted by the Crown Estate, which, upon expiry over the next ten years or so, would have triggered public consultation with the Etive community to decide whether those farms should remain or be subject to revised conditions of operation.

Now they are permanent and there will be no further public consultation with the Etive community.

3.1.2 Persistent breaches of planning conditions at Airds Point (Etive 4) and Port na Mine (Etive 3) between 2008 and 2013

Only the existing farm at Airds Point has been through the normal planning permission system run by the A&BC. However, a Friends of Loch Etive investigation has shown that planning conditions imposed on the Airds Point farm in 2008 – which should have ensured that the Airds Point farm and the Port Na Mine farm should never hold fish at the same time – have been regularly breached since 2008, including by the applicant Dawnfresh.

This has now been investigated by the Planning and Enforcement Office at the A&BC and they have indicated to Dawnfresh that they must stop the breaches and submit a further planning application to allow them to stock Airds Point (Etive 4) and Port na Mine (Etive 3) at the same time and to reduce the fallowing periods at each from 8 months to only 6 weeks.

Dawnfresh's reaction has been that "management plans outlined in the 2008 environmental statement were 'never intended' to be adhered to long term"⁶.

6 Oban Times, 18th July 2013

When this application comes, it will be an application to allow both farms to run together. It will essentially be to allow the noise, disturbance, interference with navigation, water pollution, loch-bed pollution and the ecological damage to the birds, fish and the other wildlife of Loch Etive, already caused by the farms at Etives 3 and 4, to be doubled – in effect, Dawnfresh will be asking the local community to accept the extra impacts of another whole new farm operation, in addition to this new 10-cage farm at Etive 6.

3.1.3 Fallowing periods under SEPA licences reduced in 2010 and 2011 without any public consultation

Across Scotland, almost every marine fish-farm is required to stay fallow for a period to let the loch-bed recover a little (although it takes many years for a loch-bed under a fish-farm to fully return to its pre-fish-farm condition and for pollution-sensitive marine species to return).

At the time of the ES produced for Etive 3 (Port na Mine) SNH noted in 2005, before even Airds Point (Etive 4) was established, that “Loch Etive has limited further capacity to hold stock during the proposed 9 month fallow period”.

The A&BC is also quoted in the Crown Estate’s 2005 Screening and Scoping Opinion for Port na Mine thus – “the Council looked at the loch in a comprehensive way in 2002, in an attempt to evolve a sound policy approach to new proposals. It concluded that there should be a general presumption against new medium and large scale developments”.

Fallowing also limits the noise and operational disturbance to other loch users and the loch-side community, reduces water pollution and the overall impact on wildlife of having an operating intensive fish-farm in a sea loch. Cages may also be removed from the water or towed to different sites if the fallow period is long enough and so the visual or landscape impact is reduced by having a significant fallowing period.

However, between 2010 and 2011, again without any public consultation or indeed any consultation at all with any other statutory body (including the nature conservation body, Scottish Natural Heritage, or the A&BC or the wild fisheries body, the Argyll and District Salmon Fishery Board), the required fallowing period to protect the loch-bed for the Dawnfresh fish-farms at Port Na Mine (Etive 3), Airds Point (Etive 4) and Ardchattan was reduced by SEPA under pollution control regulations to only 6 weeks in a 2-year period.

Prior to that reduction the fallowing period had been a required 8 months in every 2 years at both Port Na Mine and at Airds Point.

What all this shows is that without any public consultation with the local community at Loch Etive, Scottish Ministers and statutory authorities have permitted a creeping industrialisation on Loch Etive over the last 3 years for the benefit of just one company, Dawnfresh.

It is important to remember that the sea-bed is owned by the Crown Estate on behalf of us all under the Crown Estate Act 1962. No-one can own the water in Loch Etive. Further, there is a public right of access to navigate over the entire surface of UK coastal marine waters, which is enjoyed by everyone. Dawnfresh owns neither the seabed, nor the water column, nor the loch surface, yet it already has five fish-farms on Loch Etive and now seeks a sixth farm at which it will occupy both the sea-bed and surface of the loch to the exclusion of all others including creelers, yachtsmen, recreational fishermen and all others and will prevent fishermen or divers using the waters where the huge cages would be moored.

To grant Dawnfresh a further 10-cage fish-farm at Sailean Ruadh should take into account both what has already been granted without any public consultation and the level of interference in Loch Etive already caused by Dawnfresh.

Most importantly, the 10-cage farm now applied for at Sailean Ruadh runs counter to the outcome of the only relevant public consultation that has been carried out to gather the views of the community on Loch Etive in this regard – the Loch Etive ICZM plan.

3.2 Interference with navigation and other users of the surface of Loch Etive

The extent of the interference

The surface ‘footprint’ of the proposed fish-farm and its 10-cages is given by Dawnfresh as 36,000 square metres.

The 10-cages each, in a 60m x 60m grid, will occupy 36,000 square metres of the loch surface (nearly the same area as nine football pitches) and the full extent of the moorings is a staggering 15.611 hectares (or 39 football pitches).

This does not include the area of loch surface occupied by the feed-barge and enclosed by feed pipes.

Most importantly, not only is the proposed farm in a largely different location to the old shellfish site it is **vastly bigger** in terms of the area of surface covered by equipment, the area of loch surface from which everyone else will be excluded and the area of sea-bed that will be smothered with wastes. This makes a mockery of claims made in the Planning Statement that the proposal is simply a re-organisation of an existing aquaculture site.

The A&BC appreciated this point in relation to the 14-cage application and the slight reduction in size represented by the revised 10-cage application should make little substantive difference to this view that “the introduction of development on this scale at this location would give rise to consequences in terms of the physical presence of the equipment...”⁷.

Indeed, this 10-cage fish-farm will still exclude other users from a significant part of the surface of Loch Etive – an area the size of nine football pitches – including for those canoeists and kayakers, for whom Dawnfresh tries to claim the proposal will have ‘no significant impact’⁸.

Creeling activities also occur in the central part of the loch “extending from the north of Muckairn to Airds Bay”⁹. Access for creelers would be impossible in the immediate footprint of the fish-farm and existing creeling sites would become inaccessible¹⁰. This is quite separate to the damage to benthic crustaceans such as crabs that will be caused by the smothering of the sea-bed below the cages.

The Loch Etive ICZM Plan records that the area of sea loch from Rubha Ban to Airds Point is a preferred angling area¹¹. Access to this preferred sea angling area for boat-based sea anglers would be significantly reduced by the proposed fish-farm at Etive 6. This will have obvious implications for those local businesses relying on angling-related tourism. Despite their farm being in a ‘preferred angling area’, Dawnfresh concludes dismissively that “the area that Etive 6 will occupy is minimal compared with the size of the loch that is available for sea angling”¹² – suggesting that sea anglers should just go elsewhere, failing to note that there is a legal right of access to navigate (and hence fish) over the entire loch surface, with which the new farm will interfere significantly.

7 Screening Opinion, A&BC, 29th June 2012, page 4

8 10-cage ES, page 25, para 51

9 Loch Etive ICZM Plan, at page 120

10 Loch Etive ICZM Plan – map on page 123 – the proposed fish-farm will overlap those existing creeling areas, shown shaded pink

11 Loch Etive ICZM Plan – map on page 123 – the proposed fish-farm will overlap those existing preferred angling areas, shown shaded green

12 10-cage ES, page 26, para 61

Contrary to the assurances in the ES, the proposed Eive 6 fish-farm will still effectively exclude safe use of the public right to navigate into and on the Sailean Ruadh inlet. As can be seen from the photomontages taken from the ES, the positioning of fish-farm will still make access to the Sailean Ruadh inlet difficult for all but the most confident or professional sailors and boaters, and impossible during rough or stormy weather, when it may be needed most. The anchorage at Sailean Ruadh is noted in the Loch Eive ICZM Plan¹³.

Although Dawnfresh claims that the Sailean Ruadh anchorage has had little use in recent years, this claim is not supported by any evidence at all in its application.

It is only worth noting that the consultant conducting the four-and-an-half-hour otter and bird surveys for Dawnfresh – during the one day visit – noted a yacht moored in Sailean Ruadh during the survey¹⁴.

The dangers presented by hidden mooring ropes and the cages themselves will make access to one of the very few safe anchorages on Loch Eive identified by boating groups very hazardous if not impossible. There is also a permanent mooring in Sailean Ruadh which will be very difficult indeed to use, especially in poorer weather when it is most needed¹⁵.

Although Dawnfresh tries to suggest that mooring chains will drop 7 metres almost vertically¹⁶, it would be a brave or perhaps foolhardy yachtsman or boater to assume that mooring ropes will always remain in that position for the sites entire lifetime of the farm or in rough weather.

In relation to the 14-cage application, these concerns were re-iterated by the RYAS in their objection of 18th December 2012¹⁷ which has stated that “the present proposed position of the farm is a hazard to navigation to any craft seeking to use Sailean Ruadh for shelter”. As can be seen from the proposed mooring grid for the 10-cage application, despite what Dawnfresh claims, the situation will remain hazardous for other loch users, particularly in bad weather when safe and easy access to the refuge and safe anchorage of Sailean Ruadh will be most needed.

It is interesting to note that the photomontage presented in the LVIA in the Appendices to ES in Figure 2 above appears to contain an extra cage at the left hand of the photo which the montage presented to the public at Dawnfresh’s public consultation exercise (at page 306 of the ES, page 23 of the Consultation Report) did not contain, giving the misleading impression at that consultation stage that access to Sailean Ruadh was to be far better than it would, in fact, be under the new 10-cage proposals.

The legal position

As the Scottish Law Commission has described, it is settled law that there is a public right to navigate at sea, which carries with it ancillary rights, such as the right to anchor. These rights cover the whole of Loch Eive, including the Sailean Ruadh inlet.

Patently, the applicant’s existing fish-farms on Loch Eive represent an existing interference in those rights.

The proposed Eive 6 fish-farm will represent a further interference in those rights, excluding the right to navigate from a significant area of the surface of Loch Eive (the immediate footprint of the cages), together with a further area beyond the cages around which it would be unsafe to navigate due to hidden moorings and ropes – any other loch users would be wise to give the proposed farm a ‘wide berth’.

13 Loch Eive ICZM Plan – map on page 123

14 10-cage ES, page 160

15 Loch Eive ICZM Plan – map on page 123 – the proposed fish-farm will effectively exclude access to the mooring in Sailean Ruadh (marked with a green dot)

16 10-cage ES, page 24, para 48

17 Email objection to A&BC from Dr David Vass RYAS, 18th December 2012

Again, the A&BC appreciates the issue – “the introduction of development on this scale at this location would give rise to consequences in terms of the physical presence of the equipment... it would also give rise to cumulative implications with existing aquaculture sites”.¹⁸

In respect of a grant of any lease of the sea-bed by the Crown Estate, the Scottish Law Commission has set out the legal position that “the grant must not constitute a material interference with the exercise of the public rights. If the exercise of a public right is rendered impossible, the public right prevails”. Only “where the interference is **minor** the Crown’s grant will prevail”¹⁹.

However, the cumulative interference of the proposed Etive 6 farm, together with the nearby Etive 4 and Ardchattan fish-farms (and indeed the other Dawnfresh farms in Loch Etive) is not minor.

The Scottish Law Commission effectively re-stated the law as expressed by the Court of Session in *Crown Estate Commissioners v Fairlie Yacht Slip Ltd*²⁰ in which the Lord President stated that “the public right is undoubtedly wide but it should not be regarded as having been infringed save in circumstances in which what is done by or with the consent of the Crown **constitutes or is likely to constitute a material interference** with its exercise by members of the public exercising their right reasonably” (emphasis added).

The proposed Etive 6 fish-farm will in itself patently amount to a material interference in the public right to navigate as it excludes all other users from an area the size of nearly nine full-sized football pitches.

Further the existing interferences at the five other Dawnfresh farms, together with Etive 6 if granted, will constitute a very significant material interference in the public right to navigate the whole of Loch Etive, this interference being not for the public benefit but for the benefit of a single legal entity, Dawnfresh and its effective sole owner.

The role of the Crown Estate

Although the Crown Estate gave Dawnfresh an Option to Lease the site, this appears to have been granted prior to proper consideration of the public right to navigate. As the Law Commission has pointed out, “the Crown’s ownership of the sea bed is, of course, subject to the public rights **which the Crown is obliged to protect**”.

In failing to recognise the material interference in the public right to navigate that the proposed fish-farm at Etive 6 will constitute, it is arguable the Crown Estate has failed in its duties.

The Scottish Law Commission has earlier described how, in their view “the Commissioners [the Crown Estate] have used their powers to enhance the value of the Crown Estate, as arguably they are obliged to do. This has given rise to controversy on the grounds that they have paid insufficient attention to the interests of the local community when reaching decisions in respect of the ownership and use of the sea-bed. The consultation responses we received confirmed dissatisfaction regarding the management of the sea-bed”.

In determining this application, unlike the Crown Estate, the A&BC must now ensure that sufficient attention and due weight is given to the legal interests of other Loch users and balanced against the increasing way in the public rights in Loch Etive are being turned over to the benefit of one legal person.

18 Screening Opinion, A&BC 29th June 2012, page 4

19 Scottish Law Commission (Scot Law Com No 190) Report on Law of the Foreshore and Sea Bed Report on a reference under section 3(1)(e) of the Law Commissions Act 1965 Laid before the Scottish Parliament by the Scottish Ministers March 2003 SE/2003/74

20 *Crown Estate Commissioners v Fairlie Yacht Slip Ltd* (1979) SC 156

The Marine Act licence application

There is no mention of any revised application being made to Marine Scotland's Licensing Operating Team under the Marine (Scotland) Act 2010 that is required to permit Dawnfresh to put the mooring grid and cages in place.

The previous application for the 14-cage farm initially proposed was never granted, despite Dawnfresh wrongful claims that it has been.

The revised application is required to enable Scottish Ministers to consider Dawnfresh plans as against the need to protect the environment, protect human health, prevent interference with other legitimate uses of the sea and any other matters Scottish Ministers consider relevant.

Notice of any application must be given and there is a public right to make representations, pursuant to section 26 of the 2010 Act, but the law requires all aspects of a project, such as this new fish-farm, to be considered together in the Environment Statement.

The Environmental Statement

The ES make little or no substantive mention of the impact on recreational kayaking or angling charter boats from the positioning of the proposed fin-fish farm at Etive 6 and the exclusion of all traffic from the immediate footprint of the farm.

Dr David Vass for the RYAS²¹ had stated of the previous 14-cage application that "the present proposed position of the farm is a hazard to navigation to any craft seeking to use Sailean Ruadh for shelter". This must remain a serious concern.

The ES is also incorrect to state that the mooring in Sailean Ruadh has had little or no use in recent years. The ES provides no evidence for that assertion. Despite the applicant's suggestion that this mooring is not frequently used, it is worth noting that the applicant's own commissioned otter expert, on the single day of his otter survey, noted "a yacht moored in Sailean Ruadh"²². This rather suggests the ES is incorrect in so lightly dismissing the use of the Sailean Ruadh inlet as a mooring. Further, the use by boats of Sailean Ruadh as a safe anchorage and refuge (as opposed to using the fixed moorings) is overlooked by the ES.

The ES acknowledges that the site footprint "encroaches on fishing grounds"²³ but appears to dismiss this concern on the basis of a single consultation with one active fisherman, who stated publically in response to the now withdrawn 14-cage application, that he has been mis-represented by the applicant²⁴.

The ES recognises that the farm site will exclude sea anglers, but fails (as is required by both the EIA Directive and the A&BC) to comment upon the **cumulative** impact on access for sea angling of the Etive 6 site together with the existing fin-fish sites run by the applicant in Airds Bay, at Ardchattan and elsewhere.

The applicant's assessment that the navigational impacts are not significant is patently wrong.

21 Email objection to A&BC from Dr David Vass RYAS, 18th December 2012

22 10-cage ES, at page 160

23 10-cage ES, at page 25

24 Oban Times, front page, 13th December 2012 – "local fishing tour operator, Ronnie Campbell, claims the company is misrepresenting him by quoting him as in favour of the project when he is not, adding "It's the wrong place. Loch Etive is famous for its scenery and they want to put it right where most people would see it"

The planning context

Scottish Planning Policy states²⁵ that planning authorities “should take into account... potential conflict with other users” and that “the needs of local communities and other interests should also be taken into account” and “the effect of fish-farm development on... angling interests should be considered. Other uses of the inshore area, such as recreational use, should also be taken into account when... determining planning applications”²⁶.

The Argyll and Bute Local Plan is clear (Policy LP Aqua 1) that support for fin-fish farming is “subject to there being no significant adverse effect, directly, indirectly or cumulatively on...(6) navigational interests...(9) recreational interests”²⁷.

The Loch Etive ICZM Plan notes²⁸ that fin-fish farms have the potential to create hazards for navigation and to compete for space with other sectors (eg commercial fisheries and recreational anchoring). It also noted that Loch Etive is “not served well by good anchorages”²⁹.

The Loch Etive ICZM Plan notes that “sea kayaking occurs through this zone either passing through or having launched from Achnacloch or Airds Bay” and that sea angling occurs here, with launching from Taynuilt Pier or Airds Bay to use other areas of the loch³⁰. The loch is an important recreational fishery for spurdog (spiny dogfish) and the areas to be occupied by the proposed farm at Etive 6 is a preferred sea angling area. Charter sea-angling boats run by local businesses are available for fishing on Loch Etive.

The Loch Etive ICZM Plan notes that the revenue from the very high number of sea angling visits to Loch Etive, at 44,300 angler-days per year, is approximately £4.1 million, with £1.5 million of income supported by sea angling³¹.

This area of Loch Etive is identified as having opportunities to increase recreational access to the loch³². This would be consistent with Policy LE GEN1 Part C³³ which “recommends measures to further enhance visitor appreciation of natural and cultural sites of significance in the area such as improved access...”.

Navigation and tourism

Access and the preservation of the landscape and nature conservation value of Loch Etive is key to ensuring the flow of tourist visitors to the loch. It is worth noting that some objectors to this application have already indicated that should the proposed fish-farm at Etive 6 go ahead, they would be less likely to visit the area³⁴. The risks of damage to tourism income and revenue for Etive communities cannot be over-emphasised. Tourists come to Loch Etive and Oban area – and its hotels, bed and breakfasts and cottages – to use the loch for recreational navigation (yachting, sea-angling, kayaking etc). This proposed fish-farm will diminish the tourist experience of the wild and natural Loch Etive that attracts tourists and, as the published objections to the now withdrawn 14-cage application on the A&BC Council website show³⁵, will make repeat visits by loch-users less likely, with all the economic implications for the communities of Loch Etive.

25 Scottish Planning Policy, para 105

26 Scottish Planning Policy at para 109

27 Argyll and Bute Local Plan at page 46

28 At 6.1.4

29 Loch Etive ICZM Plan at page 66

30 Loch Etive ICZM Plan at page 120

31 Loch Etive ICZM Plan at page 63

32 Loch Etive ICZM Plan at page 126

33 Argyll and Bute Local Plan, page 17

34 <http://publicaccess.argyll-bute.gov.uk/publicaccess/applicationDetails.do?activeTab=summary&keyVal=MAYLKBCH0A900>

35 http://www.argyll-bute.gov.uk/Planning/Ig/GFPlanningDocuments.page?Param=lg.Planning&SDescription=12/02095/MFF&org.apache.shale.dialog.DIALOG_NAME=gfplanningsearch&viewdocs=true

Conclusion on navigational impacts

The ES fails to deal properly with or wrongly dismisses many aspects of the navigational impacts of the proposed fish-farm at Etive 6.

In coming to its decision on this application, the A&BC must consider the existing and potential recreational and economic activity requiring navigation over Loch Etive (fishing, both recreational and commercial inshore fisheries, angling charter boats, recreational canoeing and kayaking, sailing and yachting).

The material interference in the public right to navigate that the proposed Etive 6 fish-farm will create is a very significant material planning consideration for the A&BC in the process of considering whether to grant planning permission.

Taken together with the significant existing interference in the public right to navigate on Loch Etive for the sole benefit of Dawnfresh, this extra interference should constitute sufficient grounds in itself, to reject the application for planning permission.

Importantly, if not properly considered, this issue could lead to expensive legal challenges to whatever decision may be made on the application.

3.3 Damage to the landscape of Loch Etive

Landscape at Sailean Ruadh and impact of the proposed fish-farm at Etive 6

The current situation on Loch Etive at Sailean Ruadh and Airds Point is that there is very little intrusion into the natural landscape of the loch.

Even when the Muckairn Mussels shellfish site was active, the landscape of the main loch at Muckairn and Sailean Ruadh was largely unspoilt, as can be seen from the photo in Figure 6, looking out from the Sailean Ruadh inlet into the main body of the loch.



Figure 7: Yacht anchored in Sailean Ruadh, with permanent mooring in the foreground

The proposed fin-fish farm at Etive 6 will be a step-change in any change to the largely natural landscape at this point. The 10-cages would completely fill the loch surface behind the yacht in Figure 7.

The landscape impacts are also shown in Figures 1 to 4 above.

In addition, the Northern Lighthouse Board recommends that the proposed fish-farm to lit, including at night, by yellow flashing lights on the cages to be visible from vessels approaching from all directions, as well as the feed-barge having a round fixed white light to be visible at least 2 nautical miles away³⁶.

In relation to the now withdrawn 14-cage application, the A&BC clearly appreciates this difference – “the footprint of the proposed trout farm is significantly larger (21ha) than the existing shellfish lease (1.5ha) and only overlaps with approximately one third of the shellfish lease... **the development proposal needs to be treated as a new site for planning purposes**”³⁷

This last point is highly significant. The A&BC has decided correctly that this is a new site. This is as true for the 10-cage application, as it was for the 14-cage application – if anything more so as the overlap with the old shellfish site is less under the 10-cage application – and cannot be treated in any sense as being a consolidation of an existing aquaculture site on Loch Etive.

The attempt by Dawnfresh to characterise the new site as ‘brownfield’³⁸ is nonsense.

Almost unbelievably Dawnfresh manages to conclude in its ES that “no significant landscape or visual effects... would arise as a consequence of the development”³⁹.

Further, the applicant tries to suggest that the site is “not subject to any form of landscape designation intended to afford it protection for its scenery or landscape quality”⁴⁰ while at the same time later acknowledging “the proximity of the site to the Area of Panoramic Quality (APQ)”⁴¹, that is the magnificent view up Loch Etive towards Ben Cruachan.

The planning context

In relation to fish-farming in general, Scottish Planning Policy states that “planning authorities should take into account... landscape”⁴².

Further “when determining planning applications, authorities should take into account the direct and cumulative effects of the proposed development on the environment, including... visual impact and the effects on landscape...”⁴³.

The Loch Etive ICZM Plan recognises that fish-farming has potential effects on landscape, character, scenic quality and visual amenity⁴⁴.

The Loch Etive ICZM Plan also states that “due to the amount of existing sites in Loch Etive, the loch is either at or approaching landscape capacity in many places”⁴⁵.

Most importantly, the Loch Etive ICZM Plan states clearly in relation to the immediate location of the proposed Etive 6 farm, that the “potential to accommodate additional marine aquaculture development has not been identified in this Policy Zone, largely due to number of existing sites (developed and undeveloped)”⁴⁶.

36 Letter to A&BC from Northern Lighthouse Board 13th December 2012 and 10 cage ES at page 89

37 Screening Opinion, A&BC 29th June 2012, page 3

38 10-cage ES at page 25, para 54

39 10-cage ES, page 25, para 54

40 Planning Statement, para 3.8

41 Planning Statement, para 3.19

42 Scottish Planning Policy (2010) at para 104

43 Scottish Planning Policy (2010) at para 107

44 Loch Etive ICZM plan at page 49

45 Loch Etive ICZM plan at page 51

46 Loch Etive ICZM Plan at page 128

Within Policy Zone D of Loch Etive there is a presumption against new aquaculture developments due to the number of existing sites “resulting in limited capacity for the landscape to accommodate new development”⁴⁷.

The Loch ICZM Plan is clear that, in Policy Zone D, there is a “presumption against new aquaculture developments in addition to existing sites”⁴⁸. As the proposed Etive 6 fish-farm will be in addition to Etives 4 and 5, the Loch ICZM Plan is clear that, in this Policy Zone D, **there is a presumption against the proposed Etive 6 fish-farm.**

It is important to note again that this is not about consolidation or rationalisation of existing aquaculture sites in Loch Etive. This is a massive expansion of production at this site and across the whole loch. The A&BC clearly appreciated this difference for the 14-cage application – “the footprint of the proposed trout farm is significantly larger (21ha) than the existing shellfish lease (1.5ha) and only overlaps with approximately one third of the shellfish lease. **The development proposal needs to be treated as a new site for planning purposes**”⁴⁹ – and this must remain true for the 10-cage application, which is only slightly reduced from the 14-cage application at 16 hectares.

Due to the massive increase in the footprint over the old Muckairn mussels site (not only is the proposed fish-farm far bigger, but there is far more cage and feed-barge structure visible – as Figures 1 to 6 show comprehensively), the A&BC must consider this application as contrary to Policy LP AQUA 1 of the Argyll and Bute Local Plan and the associated guidance in the Loch Etive ICZM Plan.

The now withdrawn 14-cage ES relied heavily upon a report into landscape/seascape carrying capacity by Scottish Natural Heritage (“SNH”) from 2007⁵⁰. A later as yet incomplete and unpublished review of this earlier report⁵¹ concluded that the A&BC should “maintain the current levels of industry” and examine and rationalise existing aquaculture development to ensure that “undeveloped bays dominate over developed bays” in this part of Loch Etive.

This review put forward two options to consolidate Etive 4 and Etive 5 on the Airds Bay site or to consolidate both on a new site in Sailean Ruadh itself.

It is very important to note that the 10-cage application from Dawnfresh takes neither of these options.

There is no longer any consolidation plan.

Dawnfresh intends to operate all their six sites (Inverawe East, Inverawe West, Etive 3 (Port na Mine) Etive 4 (Airds Point) and Ardchattan as well as the new Etive 6 if they get permission) and wishes to allow the other sites to grow ‘organically’ once they have secured Etive 6. All pretence of consolidation has been dropped.

Dawnfresh had even been reported as seeking a new 3,500⁵² tonne in Loch Etive.

In the same review, SNH identifies only one relevant area of lesser sensitivity to aquaculture, in Airds Bay, to the south-east of the proposed new Etive 6 site and around Airds Point. This is a disused shellfish site.

47 Screening Opinion, A&BC 29th June 2012, page 3

48 Loch Etive ICZM Plan, at page 128

49 Screening Opinion, A&BC 29th June 2012, page 3

50 SNH(2007) Landscape/seascape carrying capacity for aquaculture Report No 215

51 SNH(undated) Loch Etive Landscape/Seascape Capacity for Aquaculture (in draft)

52 www.seafoodsource.com “Trout: the new salmon?” 24th July 2012

Interestingly, the SNH review also suggests that removal of the Ardchattan fish-farm “would enhance the visual amenity of Loch Etive”. While Dawnfresh has clearly killed off any plans to close Ardchattan in its revised 10-cage application, patently, the establishment of a 10-cage fish-farm at Etive 6, in the same vista as the Ardchattan farm, must do the opposite and detract from the visual amenity of Loch Etive.

Importantly, the A&BC has stated that this draft SNH review “is not a policy document but has been produced as guidance to assist in the consideration of future consolidation of aquaculture sites in Loch Etive”⁵³. In view of the lack of any consolidation at all in Dawnfresh plans, it is even less supportive of the applicant’s revised 10-cage proposals than it was during the consideration of the 14-cage application.

The current application is a massive expansion of Dawnfresh operations on Loch Etive. Both Etive 4 and Ardchattan will continue in production. Etive 6 will be in addition to the Etive 4 and 5 sites – this will mean that, contrary to SNH advice, developed bays will start to dominate over undeveloped bays in this Policy Zone.

The draft SNH review supports the Loch Etive ICZM Plan’s presumption against new aquaculture development in this area.

Sensitive site at Ardchattan Priory

The A&BC is aware that the proposed fish-farm at Etive 6 has the potential to impact upon the view from the tourist visitor attraction and historic site at Ardchattan Priory⁵⁴. The site of Ardchattan Priory and Gardens is on the north coast of Loch Etive, approximately 1 km to the north-west of the proposed Etive 6 fish-farm.

The Argyll and Bute Local Plan – Policy LP ENV 11 – states that there is “a presumption in favour of **retaining, protecting, preserving and enhancing historic gardens** and designated landscapes... where a development would affect a heritage asset or its setting, the developer will be expected to demonstrate that... adequate measures will be taken to preserve and enhance the special interest of the asset”⁵⁵.

The proposed fish-farm would also run against Local Plan Policy LP ENV1(B) in that the proposal put forward by Dawnfresh does not adequately take into consideration the likely impacts on – per Policy LP ENV1(J) – historic gardens or designated landscapes⁵⁶.

The SNH report into landscape/seascape carrying capacity from 2007 notes that one constraint on any new aquaculture in this part of Loch Etive was the need to “protect the setting of historic features at Ardchattan Priory... from aquaculture development to maintain the integrity of their setting”⁵⁷. In this case, there are no adequate measures to mitigate for the visual impact of the proposed 10-cage fish-farm in the panoramic setting of Ardchattan Priory.

The Loch Etive ICZM Plan notes that “the setting of Ardchattan Priory is sensitive to poorly located development”⁵⁸ and gives specific policy guidance that planners should “protect the settings of Ardchattan Inventory Garden and Designated Landscape... from inappropriate marine development in order to maintain the integrity of that setting”⁵⁹. The proposed fish-farm at Etive 6 is just such an inappropriate marine development.

53 Email from Mark Steward, Marine & Coastal Development Manager, Development Policy, Planning & Regulatory Services, Argyll and Bute Council, 10th December 2012

54 Scoping Opinion, A&BC 29th June 2012, page 5

55 Argyll and Bute local Plan, page 23

56 Argyll and Bute local Plan at page 17

57 SNH(2007) Landscape/seascape carrying capacity for aquaculture Report No 215, at page 39

58 Loch Etive ICZM Plan at page 127

59 Loch Etive ICZM Plan at page 128

The owners of Ardchattan Priory and Gardens objected strongly to the now withdrawn 14-cage Etive 6 fish-farm – “this is a really bad idea for the local community and for tourism in the area which so many of us depend on”⁶⁰ – and are highly likely to maintain this objection to the 10-cage application.

Landscape and tourism

The preservation of the landscape value of Loch Etive is key to ensuring the flow of tourist visitors to the loch. It is worth noting that some objectors to this application have already indicated that should the proposed fish-farm at Etive 6 go ahead, they would be less likely to visit the area⁶¹.

The risks of damage to tourism income and revenue for Etive communities cannot be over-emphasised. Tourists come to Loch Etive – and its hotels, bed and breakfasts and cottages – because it is a landscape of exceptional beauty. This farm will diminish the tourist experience of the wild and natural Loch Etive that attracts tourists and, as the published objections on the A&BC Council website show⁶², will make repeat visits less likely, with all the economic implications for the communities of Loch Etive, Oban and the surrounding areas.

The ES

The ES contains a Landscape and Visual Impact Assessment at Appendix Q, although this is somewhat limited and, as such, the ES does not deal fully with the landscape issues presented by the proposed development.

The photomontages are positioned in such a manner as to ‘line up’ the cage pairs to reduce their assessed visual impact and the feed-barge is rather obviously hidden behind a tree⁶³.

The aim of the new photomontages is to downplay dramatically the visual impact of the 10-cage application as compared to the applicants own photomontages supplied with its 14-cage application, and must be viewed in that light.

The impact from other viewpoints, such as Muckairn, and indeed from many locations on the loch surface itself, will be very significant indeed, but are simply not assessed in the ES.

The SNH Loch Etive Landscape/Seascape Capacity for Aquaculture Review

The applicant attempted in its 14-cage application to draw support from the SNH document on landscape impact referred to by the previous 14-cage ES⁶⁴. This required close examination as that 14-cage ES badly misinterpreted and misrepresented the SNH documents.

At page 88 of the 14-cage ES, Dawnfresh tried to argue that SNH “indicates a preference for the consolidation on sites 4 and 5 in Sailean Ruadh”. In fact, the SNH document suggested two options for the consolidation of the existing Dawnfresh farms at Etive 4 and 5, either into Airds Bay or at a new site at Sailean Ruadh (i.e. Etive 6). Nevertheless, the applicant tried in the 14-cage application to draw support for Etive 6 from its then proposed consolidation.

Dawnfresh has now made it plain that there is no plan to consolidate any of its existing five sites on Loch Etive.

60 Robert Troughton, Ardchattan Priory. Objection to A&BC 12th December 2012

61 <http://publicaccess.argyll-bute.gov.uk/publicaccess/applicationDetails.do?activeTab=summary&keyVal=MAYLKBCH0A900>

62 http://www.argyll-bute.gov.uk/Planning/lg/GFPlanningDocuments.page?Param=lg.Planning&SDescription=12/02095/MFF&org.apache.shale.dialog.DIALOG_NAME=gfplanningsearch&viewdocs=true

63 10-cage ES at page 277

64 SNH(undated) Loch Etive Landscape/Seascape Capacity for Aquaculture (in draft)

Perhaps not surprisingly, the applicant now appears to have forgotten this SNH document even exists and makes almost no reference to it as it lends no support whatsoever to the proposed 10-cage site in the absence of any consolidation.

Conclusions on landscape impacts

The proposed 10-cage fish-farm at Etive 6 has unacceptable implications for landscape and hence for those tourism businesses upon which Loch Etive so depends.

It is contrary to planning policy and the Loch Etive ICZM Plan.

Unlike the applicant's previous attempts to derive support from the draft SNH review, there is no attempt to do this now as the consolidation plan has been dropped by Dawnfresh. As such the SNH document is entirely against the proposed 10-cage development.

Patently, the landscape impact of the proposed 10-cage farm is significant and unacceptable. The impact on landscape should, on its own, be sufficient grounds for refusal.

3.4 Negative interactions with wild fisheries

Loch Etive and River Awe and other wild fisheries

The Loch Etive ICZM Plan recognises that the importance of wild salmonid fisheries to the Loch Etive and wider catchment.

There are 10 rivers in the Etive catchment that support salmon populations. There are 10 rivers with a catchment over 5 square km that flow into Loch Etive, the largest catchments being the Awe/Orchy catchment (827km²), River Etive (161km²), River Kinglass (74km²) and Nant (46km²) that support salmon populations. Smaller rivers such as the Noe, Liver, Allt Easach, Abhainn Dalach and Esragan are primarily habitats for recruitment of sea trout. Most of the larger rivers are important salmonid fisheries. The Argyll Fisheries Trust has reported that Loch Etive itself also traditionally supported net fisheries and some rod fishing for sea trout.

The Loch Etive ICZM Plan recognises the importance of salmonid fisheries to Loch Etive and surrounds, including the River Awe, as managed by the Awe District River Improvement Association (ADRIA) and the Argyll District Salmon Fishery Board (ADSFB). Loch Etive and its rivers support potential for both recreational rod and line fisheries and commercial netting for salmon and sea-trout⁶⁵.

Both the Argyll and Bute Local Biodiversity Action Plans (BAP) and the UK BAP list both Atlantic salmon, brown and sea trout as priority species.

Escapes of rainbow trout

The Loch Etive ICZM Plan recognises that containment of farmed-fish is crucial to minimising interactions between farmed fish and wild fisheries. In the case of the rainbow trout that the proposed fish-farm at Etive 6 is intended to contain, the impact of any escapes would be by way of competition for habitat/food in the loch itself and in the rivers.

Once these farmed fish enter rivers, escapees become a management issue that can and do impact on the value of the fishery.

⁶⁵ Loch Etive ICZM Plan at page 30

The rainbow trout is an alien species to UK waters and, fortunately, cannot normally breed successfully in the wild after escape, although there are a number of reproducing rainbow trout populations in the UK, for example on the Derbyshire Wye in England, and so the risk cannot be completely ruled out.

Escapee rainbows have an impact upon wild fisheries ecology by competing for food with native wild brown trout, predated upon juvenile wild brown trout (fry) and salmon (parr and smolts) and competing for food with juvenile salmon. This is a feature of the escape of farmed rainbow trout that the ES completely fails to address. As the proposed 10-cage farm will rear 5kg rainbows, the size of these adults is likely to make the predation of wild smolts even more of an issue than for smaller rainbows.

Rainbow trout are currently farmed by the applicant within Loch Awe at two sites – Braevallich and Tervine – and in Loch Etive at five sites.

Over many years, rainbow trout escaping from the applicant’s Loch Etive farms have impacted upon the angling amenity of riparian proprietors with fishings on the River Awe. There is ample evidence that rainbow trout escaping from Etive farms can and have passed up over the hydro-electric barrage (situated at the top of the River Awe) into the Loch Awe. Escapee fish have interfered with the angling conducted in the River Awe and on the loch, as controlled by the Loch Awe Improvement Association. Generally, escapee rainbow trout interfere significantly with angling amenity by being caught in large numbers by those fly-fishing for wild salmon and sea-trout.

Escapee rainbows from Etive have also interfered with ecological work, most importantly, the migratory salmonid fish counter at the Awe barrage.

The risk of escapes

The risk of escapes from the applicant’s farms is not a theoretical possibility. The real evidence is overwhelming. There have been regular mass escapes of farmed rainbow trout into the waters of Lochs Awe and Loch Etive from the floating cage fish-farms positioned in both lochs, both prior to and since the purchase of the farms by the applicant Dawnfresh.

These are all recorded by Marine Scotland Science at <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18364/18692/escapeStatistics>.

Table 1: Recorded escapes from rainbow trout farms on Loch Awe and Loch Etive

Date	Origin	Number/size of fish
13/07/07	Etive 1 – Inverawe West	570 fish of 1300g each
16/08/07	Braevallich (Loch Awe)	14,442 fish of 412g each
03/03/08	Etive Ardchattan Bay	4,047 fish of 2.5kg each
[Dawnfresh take control]		
20/08/08	Tervine (Loch Awe)	1,254 fish of 350-400g each
02/09/08	Etive 4 (Loch Etive)	1,062 fish of 1kg each
22/09/08	Tervine (Loch Awe)	3,620 of 170-220g each
29/01/09	Etive Ardchattan Bay	4,671 fish of c.2.2 kg each
05/05/09	Tervine (Loch Awe)	700 fish of 60g each
17/06/09	Etive 4 ((Loch Etive)	523 fish of 3kg each
08/09/09	Etive 4 (Loch Etive)	unknown numbers
11/02/10	large rainbows reported in River Awe, high visceral fat (recent escapes)	
14/05/10	Etive 1 Inverawe West	40 fish of 3.6 kg each
21/05/10	Tervine (Loch Awe)	57 fish of 300g each
19/06/11	Braevallich (Loch Awe)	1,439 fish of 120g each
29/07/11	Etive 3 (Port na Mine)	200 fish of 350g each

In the five years to 2011, nearly 33,000 fish have escaped from rainbow trout farms in Lochs Awe and Etive now operated by the applicant. By way of comparison, in 2010, the entire number of escapes from all Atlantic salmon farms across the whole of Scotland, including the Hebrides and Shetland and Orkney, was only 17,987.

Most recently, since proposals for a new farm at Etive 6 first came forward, another escape of rainbow trout from Dawnfresh operations on Loch Awe occurred in May 2012. Rainbow trout from the Braevallich site on Loch Awe escaped on 28th May. 3056 fish weighing an average of 415g escaped during harvest.

The Argyll District Salmon Fishery Board has stated that a “consequence of rainbow trout escaping from farms on Loch Etive is the economic impact on rod and line fisheries. Rainbow trout that escape from Dawnfresh make their way to freshwater and are caught by paying customers on rivers. This creates a very poor impression of the Rivers Awe and Orchy and Loch Awe fisheries...”⁶⁶.

Adult rainbow trout were also reported as being caught in the River Awe in Spring 2013.

Note that the escapes recorded by Marine Scotland are those reported by the applicant and confirmed. No account is taken of the low-level ‘drip-drip’ escapes that are widely considered to be an inevitable consequence of open cage fish-farming. Even though no escapes were reported in 2011 from Loch Etive farms, 33 rainbows were caught by anglers on the River Awe in that year⁶⁷.

The ES – escapes

The ES fails to mention the appalling track record of escapes from rainbow trout farms operated by the applicant on Lochs Awe and Etive.

The ES addresses methods of containment and details the standard suite of containment measures that most fish-farmers would be expected to put in place as a basic minimum, but makes no comment, beyond a rehearsal of the generic issues associated with escapes of farmed fish, to examine what the **impact** of a large escape or chronic ‘drip-drip’ escapes from the proposed fish-farm at Etive 6 might be.

The ES for the 14-cage application had suggested that the consolidation of the applicant’s Inverawe farm would reduce the threat to the Rive Awe from escapes. As that consolidation no longer features in Dawnfresh plans, that will not now occur and it is highly likely that the Argyll District Salmon Fishery Board will want to object more strongly to this 10-cage farm application.

The ES has failed properly to assess the environmental impact of this specific application.

For example, the ES dismisses the possibility of escapes due to mink predation⁶⁸, but fails to recognise that the Muckairn Estate is currently funding with SNH support a programme of mink control to allow birds to re-establish their numbers at Muckairn, in the Loch Etive Woods SAC and on Eilean Faoileag, right next to the proposed farm – mink remain a constant problem.

The record of escapes calls into question whether or not the Loch Etive Escape Contingency Plan provided by the applicant can ever be sufficient. Merely having a plan for escape contingencies does not make that plan adequate of itself. The likelihood of recapturing escaped fish is very low indeed.

It is perhaps worth noting that the Etive 4 farm at Airds Bay, given planning permission in 2007, on the basis, at least in part, of the assurances given that its sites-specific “Escape Prevention and Recapture Strategy” would avoid escapes⁶⁹, shortly after that grant of permission, reported two significant escapes in 2009.

66 Objection from ADSFB 12 December 2012

67 Objection from ADSFB 12 December 2012

68 10-cage ES, at para 20, page 22

69 A&BC Development Services Delegated Report (2007) Site for 10-cage rainbow trout farm at Etive 4 Loch Etive, Airds Bay

The planning context – escapes

The escape of farmed fish is a relevant planning matter for the A&BC to consider.

For the avoidance of any doubt as to where statutory responsibility lies, SEPA has made it clear that it is not responsible and has no authority over the control of the escape of farmed fish from fish-farms.

The apparently inevitable escapes from the proposed farm site at Etive 6 risk damaging sea-trout populations in Loch Etive and will impact upon the amenity of wild salmonid fisheries in Loch Etive, the River Awe, other wild salmonid rivers and Loch Awe.

The A&BC must consider the potential for escapes of farmed fish from the proposed fish-farm at Etive 6 and what the impact of a large escape of fish from Etive 6 would be on fisheries, wild fish populations and hence on angler-tourism.

The potential for sea-lice problems at Etive 6

The applicant reports that sea-lice have never been an issue on Loch Etive fish-farms due to the brackish nature of Loch Etive.

However, in early 2012, perhaps due to the lower than usual freshwater inputs to Loch Etive in the early months of 2012, wild sea-trout with heavy lice burdens were caught at Muckairn. This shows that sea-lice can and do survive in the water conditions found at the proposed Etive 6 farm site.

It is wrong therefore to assume that the unusual brackish nature of Etive excludes sea-lice from being an issue in all conditions.

The ES records that Marine Scotland has given Dawnfresh special dispensation for reduced sea-lice monitoring⁷⁰. In fact, the usual sea-lice monitoring frequency on marine fish-farm is weekly (i.e. 52 times a year). The Fish-Farm Businesses (Record Keeping) (Scotland) Order 2008, Schedule 1(2) requires a record to be kept by fish-farmers of the number or parasites counted in the course of a *weekly* count.

It is not entirely clear from the ES whether there have never been sea-lice recorded on any of the Etive fish-farms.

However, the Argyll and District Salmon Fishery Board stated in its response to the A&BC ICZM Plan consultation that “from time to time there have been incidents of lice on farmed trout in Loch Etive. We suggest amending the last sentence to read, sea-lice are not currently considered to be a problem on trout farms and sea-lice treatments have not been used although as a precaution SEPA discharge consents for lice treatments are in place on the majority of farms in Loch Etive”.

Unfortunately, weekly sea-lice data, as is required to be kept by fish-farms under the Record Keeping Order, is not subject to any form of public access, for example under the Environmental Information (Scotland) Regulations 2004.

However a recent planning seminar hosted by the Association of Salmon Fishery Boards, and attended by the A&BC, recommended that weekly sea-lice count data of relevance to any planning application should be requested, made available to planners and interested parties.

⁷⁰ 10-cage ES at page 76

The applicant should therefore be required to provide the data from its own sea-lice monitoring at its 5 other sites on Loch Etive covering at least the last 5 years for more. Following provision of that data, a judgment can be made by the A&BC and all interested parties as to whether a detailed assessment is needed of the risks of a negative impact on wild fish from sea-lice – considering farmed fish numbers, the likelihood of sea-lice presence on farms, the production of any juvenile lice by fish-farms and the impact of those juvenile sea-lice on wild salmonid smolts in Loch Etive.

Treating sea-lice at the proposed Etive 6

Rainbow trout and Atlantic salmon are both susceptible to sea-lice.

The benthic modelling provided by the applicant suggests that the operators of the proposed Etive 6 fish-farm could not treat all its standing farmed-fish biomass at any one time with the in-feed treatment Slice to control sea-lice. The full standing biomass could not be treated with Slice without breaching EQS for benthic residues and the terms of the Controlled Activities Regulations (CAR) licence issued by SEPA.

Reliance on bath-type treatments may not be sufficient due to the widely reported increasing tolerance to and resistance to these organophosphate and pyrethroid-based chemicals in sea-lice populations.

Proper sea-lice control rests on the ability to simultaneously treat all fish in a single fish-farm and ideally at all farms in a single sea-loch, with the full suite of sea-lice treatments being available. However, at the maximum peak biomass tonnage envisaged at Etive 6, and for prolonged periods when the farm biomass is below that maximum, proper sea-lice control with Slice, should sea-lice become an issue, would not be possible.

This is an issue recognised by SNH. SNH seeks to ensure that adequate treatments are available in sufficient quantities to control sea-lice within the CoGP guidelines and subsequently protect wild fish populations from the risk of infection⁷¹.

However, in respect of the issue of a CAR licence, limiting permitted farmed-fish biomass to ensure the availability of sufficient sea-lice chemical treatments **to protect wild fish** (as opposed to ensuring the health of farmed fish) is not SEPA's function – it is however a relevant planning matter for A&BC.

The ES – sea-lice

There is a common misconception, repeated in the ES, that the fish-farming industry's Code of Good Practice (CoGP) will, or is designed to protect wild fish populations in respect of sea-lice infestations. The purpose of the CoGP is largely to deal with the health of the farmed fish.

Marine Scotland Science has noted that the CoGP is not necessarily sufficient to protect wild fish from sea-lice infestation, even if complied with, at the sea-lice thresholds currently applied.

For example, Marine Scotland Science in its response to an application for a fish-farm on Orkney⁷² in July 2011 stated that:

“There is evidence of an effect of lice from fish-farms on sea trout, although the extent to which the fish populations are affected is not clear. It appears that the range of effect of lice is at least 14km from farm source. This range will depend on both movements of lice and trout, which are not well understood. There is no published evidence of an effect of lice on trout at a population level, however, such an effect would be expected in view of the high infestation intensities observed near farms in the second years of salmon production cycles... the behaviour of sea trout differs from salmon in that they remain in the area of origin

⁷¹ SNH letter to SEPA, 24th April 2012

⁷² Orkney Council Planning and Protective Services Committee, Report by Director of Development and Environmental Services – proposed fish-farm at South Cava, Scapa Flow, Orkney, 6 July 2011

for considerable time after migrating to sea leading to increased chance of exposure to infective stages of sea lice. The Code of Good Practice for Scottish Finfish Aquaculture (CoGP) sets a trigger level for sea lice treatment at different times of year, it should be noted that this does not set a lice count level that farms have to keep numbers below.... It should also be noted that an ovigerous adult female louse may produce up to 1000 eggs. For example a farm holding 400,000 fish, even if it follows the CoGP, could potentially release 200M nauplii into the local environment significantly increasing infection pressure in the area... There is evidence that stage of farm cycle relates to level of lice infestation on sea trout with higher levels of infestation during the second year of production when lice numbers are known to be greater on farms. This relationship has been noted in a number of areas and was found to be significant across a 10-year period in Loch Shieldaig and across the Scottish west coast in 2002-03”.

As recognised by the A&BC in its response to the recent Aquaculture and Fisheries Bill consultation⁷³, current CoGP thresholds focus on the period of the spring smolt migration but “as sea-trout can be present in inshore waters all year round, suitable thresholds to safeguard sea-trout should be considered out with the spring migration period”.

While the applicant states in the ES that the site will conform with CoGP procedures in respect of sea-lice, this is not necessarily protective of wild fish. This aspect still falls to the A&BC to consider in determining whether planning permission should be granted.

Further, the Loch Etive ICZM recommends that “a sea lice dispersion model should be developed for Loch Etive to provide spatial guidance for finfish development and management⁷⁴.”

There is no such model referred to in the ES and it has not yet been developed. In that light, and by reference to the advice of the Scottish Government⁷⁵ that the A&BC, as a planning authority, “*has to ensure that it has in its possession **all** relevant environmental information about the likely significant environmental effects of the project **before** it makes a decision whether to grant planning permission.*” (Scottish Government’s emphasis), the granting of planning permission by A&BC for any further biomass of farmed fish in Loch Etive would be, at best, premature.

The role of Marine Scotland’s Fish Health Inspectorate

It is sometimes also asserted that the Aquaculture Act 2007 allows for Marine Scotland’s Fish Health Inspectorate to protect wild fish from sea-lice infestation from fish-farms.

This is incorrect.

The Fish Health Inspectorate has stated that it can only influence sea-lice control from the point of view of the health and welfare of the farmed fish. In 2011, it was confirmed to a number of wild fish interests by Charles Allan, the Head of the Fish Health Inspectorate that the 2007 Act does not allow fish health inspectors to order the treatment of sea-lice for the protection of wild fish but only for the welfare of the farmed fish. The Act does not permit the Fish Health Inspectorate to order the control of sea-lice on a fish-farm with the aim of reducing the impact on wild salmonids.

73 A&BC Executive Committee, Development and Infrastructure, Scottish Government consultation on a proposed Aquaculture and Fisheries Bill, 8 March 2012

74 Loch Etive ICZM Plan at page 55

75 Scottish Government Planning Directorate, Letter to Heads of Planning, Environmental Impact Assessment (EIA) – Questions and Answers, 22nd November 2007

The planning context – sea-lice

While the control of chemical emissions from fish-farms and the potential for breaches of sea-bed EQS etc. is a matter for SEPA, it does not fall to SEPA (nor to the Fish Health Inspectorate) to consider the impacts of juvenile sea-lice themselves emanating from the fish-farm and impacting upon wild fish. SEPA does not have any responsibility under CAR to limit the discharge of juvenile sea-lice into the wider public environment.

It falls to the A&BC to consider the impact of sea-lice from fish-farms on wild fish under the planning regime.

Sea-trout are a valuable natural resource in Loch Etive. The sea-trout is also listed as a Priority Species on the UK Biodiversity Action Plan list and appears on the final draft list of Marine Priority Features drawn under the Marine (Scotland) Act 2010. Sea-trout and wild Atlantic salmon are also priority species in both the UK and Local Biodiversity Action Plans.

The A&BC must therefore take into account both the potential nature conservation and the likely socio-economic effects of any sea-lice impact on sea-trout populations in Loch Etive that may be caused, noting that sea-lice control on-farm may be insufficient to control the sea-lice impact on wild fish outside the proposed fish-farm at Etive 6.

Other fish-farm-related diseases

Farmed fish, including rainbow trout, also suffer periodically from a range of other diseases.

Although the applicant states that “the likelihood of wild salmonids being infected from contact with farmed salmonids is very low as this would require a high proportion of the farmed fish to be infected and the contact time between wild and the infected farmed salmonids to be sustained”⁷⁶, this is not necessarily the case.

A high number of infected farmed fish being in close proximity to wild fish has occurred on Loch Etive. It is not a hypothetical or remote scenario. The applicant’s farm at Etive 4 operated during part of 2009 under a Confirmed Designation Notice under the Aquatic Animal Health (Scotland) Regulations 2009 following the discovery of Bacterial Kidney Disease (“BKD”) on that site. There were also at least two escapes of farmed fish from Etive 4 during 2009.

It is not clear what the impact of such BKD epidemics might be on wild fish, but it is unlikely to be positive.

The ES makes no comment as to the impact of such epidemics as may occur on Etive 6 on the wild salmonids present in Loch Etive, or indeed any other diseases such as Amoebic Gill Disease⁷⁷, Infectious Salmon Anaemia (ISA), a very serious viral pathogen can also replicate in rainbow trout, or other frequent disease of intensively farmed salmonids.

Conclusions

The past and recent track record of the rainbow trout operations on Lochs Awe and Etive make it difficult to have any confidence that the near doubling of biomass on Loch Etive (as proposed in this 10-cage application) will do anything other than make escapes of farmed fish – and the interference in wild fisheries – anything other than more likely. This is a point re-iterated by the Argyll and District Salmon Fishery Board in its objection to the initial 14-cage application⁷⁸.

While the applicant relies upon the brackish nature of Loch Etive as the method of control of sea-lice, further

⁷⁶ 10-cage ES, at page 75

⁷⁷ Marine Scotland (2012) Amoebic Gill Disease Topic Sheet No 96

⁷⁸ ADSFB letter to A&BC, 12th December 2012

information is required as to the actual occurrence of sea-lice in Etive, both on farmed and wild fish before the A&BC can satisfy itself – as it must do – that the lack of availability of a full suite of sea-lice treatments at the proposed Etive 6 fish-farm carries with it no unacceptable risk for wild fish populations and wild fisheries, particularly for salmon and sea-trout in Loch Etive and its wider catchment.

Damage to wild fisheries, whether by escapes or by sea-lice and/or other diseases, risks damage to angling-related tourism income and revenue for Etive communities. Many anglers (river, and sea anglers) come to Loch Etive – and its hotels, bed and breakfasts and cottages – because it is a landscape of exceptional beauty and because it is a valued wild fishery. As the published objections to the now withdrawn 14-cage application on the A&BC Council website showed⁷⁹, the threat to wild fishing that the proposed Etive 6 fish-farm will create, will make repeat visits less likely, with all the economic implications for the communities of Loch Etive.

3.5 Disturbance of and harm to otters, birds and seals

The Loch Etive ICZM Plan records that Loch Etive is an area rich with a diverse range of marine and coastal habitats and wildlife which attracts visitors to the area to appreciate its natural qualities⁸⁰.

The risks of damage to tourism income and revenue for Etive communities cannot be over-emphasised. Tourists come to Loch Etive – and its hotels, bed and breakfasts and cottages – because it is a landscape of exceptional beauty and is home to some superb wildlife, including iconic species such as salmon and sea-trout, otter, rare sea-birds and seals. This farm will diminish the tourist experience of the wild and natural Loch Etive that attracts tourists and, as the published objections to the now withdrawn 14-cage application on the A&BC Council website showed⁸¹, will make repeat visits less likely, with all the economic implications for the communities of Loch Etive.

Otters and the Loch Etive Woods SAC

The shoreline of Loch Etive right next to the farm site is known for its otters which use and inhabit the shoreline of the Loch Etive Woods Special Area for Conservation (SAC), designated under the strictest European nature conservation law.

The Loch Etive Woods SAC is designated in part for otter, an Annex II species protected under the Habitats Directive, as a qualifying feature.⁸²

The otter is also protected under the Wildlife and Countryside Act 1981 and is identified by the UK Biodiversity Action Plan as 'globally threatened'.

Entanglement and drowning of otters in nets at the proposed Etive 6 fish-farm cannot be ruled out. The ES records that otters have in the past been entrapped in Etive trout farm anti-predator nets (along with wild fish, birds and seals), which demonstrates that this species is attracted to fish-farms.

The ES reports that otters do not create problems for fish-farms.

This is not supported by the available evidence.

79 http://www.argyll-bute.gov.uk/Planning/Ig/GFPlanningDocuments.page?Param=lg.Planning&SDescription=12/02095/MFF&org.apache.shale.dialog.DIALOG_NAME=gfplanningsearch&viewdocs=true

80 Loch Etive ICZM Plan, at page 21

81 http://www.argyll-bute.gov.uk/Planning/Ig/GFPlanningDocuments.page?Param=lg.Planning&SDescription=12/02095/MFF&org.apache.shale.dialog.DIALOG_NAME=gfplanningsearch&viewdocs=true

82 JNCC on-line SAC database, 15th December 2012

For example, an inspection of Tanera fish-farm in the Summer Isles, Wester Ross in 2010 reported that the site has had otter predation problems, as that farm's 'cage 19' was close to a small island where an otter family lived⁸³. This is a very similar situation that would exist given the proximity of the Loch Etive Woods SAC to the proposed Etive 6 fish-farm.

Despite the applicant reliance on the work of Kruuk and Moorhouse from 1991, Ross (1998) has reported that otters were reported at 11% of fish-farm sites in Scotland as causing damage. Further, a questionnaire survey was sent in September 2001 by the Fisheries Research Service (now Marine Scotland Science) to managers of marine salmon farm sites in Scotland to update knowledge on problems from predators. Throughout Scotland, managers of the 195 sites surveyed reported 12 species of predator to cause problems at farms. Seals (both grey and harbour) were the most common predators, being reported at 81% of sites. However, over 30 sites reported that they had suffered loss or damage due to otters⁸⁴.

Further, an inspection by the Fish Health Inspectorate in 2009⁸⁵, following an escape of rainbow trout from the applicant's own, albeit freshwater farm on Loch Awe, noted the absence of a risk assessment for predators and recommended that a proper risk assessment is devised with consideration given to herons, cormorants, otters, mink...".

Otters are piscivorous. It is common sense to consider that otters from the nearby Loch Etive Woods SAC would be attracted by the presence of so many rainbow trout a matter of a hundred metres away. The possibility of an interaction cannot be lightly dismissed as the ES seeks to do.

It is also known that otters are sensitive to disturbance.

SNH has reported that "the development of fin-fish farming sites has the potential to cause disturbance to resident otter individuals or populations in the vicinity of such farms, mainly as a result of human activities such as noise and boat usage and through the use of ADDs..."⁸⁶.

The Scoping and Screening Opinion for the 14-cage application recorded that SNH takes the view that "the A&BC is required to undertake an appropriate assessment in view of the site's conservation objectives for the qualifying interest, otter. This assessment should in particular be based on an appraisal of the following: a) the potential for any significant disturbance to occur while otter are utilising the area for resting or breeding purposes..."

The applicant's otter report, appended to the ES, specifically excludes any examination of the impact of the operational lifetime of the fish-farm and only addresses the potential for disturbance during construction of the proposed Etive 6 fish-farm. It does not address operational disturbance during resting or breeding periods.

The otter report is based upon a single survey carried out over 4.5 hours on a single day. The author correctly recognises "the potential to miss signs of the target species based on a one-off site inspection" and notes that there are "no generic methodologies for the guaranteed detection of their [otters'] holts in this type of complex terrain"⁸⁷.

Nevertheless, the report states that "there is clear evidence that a population of otter utilises both the marine and terrestrial habitat within and adjacent to the Special Area of Conservation... based on the limits of a one-off survey, there may be higher use of the western shoreline of Sailean Ruadh"⁸⁸.

83 FRS Inspection Records Case Sheet, Tanera fish-farm, date of visit 16th June 2010

84 <http://www.scotland.gov.uk/Uploads/Documents/FW04Predators.pdf>

85 FHI Inspection Report, Date of Visit, 12th May 2009

86 SNH (2006) Guidance document for the Yell Sound Coast. SNH, March 2006

87 At section 1.1.4 of the Otter Report

88 At section 1.1.7 of the Otter Report

Further, the ES does not deal sufficiently with the potential for disturbance to otters in the SAC from the use of any seal acoustic deterrent devices (ADDs) at Etive 6.

In 2002 Scottish Natural Heritage commissioned a report into the potential impacts of acoustic deterrent devices on Scottish marine wildlife⁸⁹.

The main findings of that report were that although they have less sensitive hearing underwater at ADD frequencies than cetaceans, otters, diving birds and fish could also be affected but this possibility has been little considered and that “the hearing of individual marine mammals could be damaged by the more powerful ADDs at short range especially if individuals remains close to the source” as could be expected at Etive 6.

Further the SNH report conceded that there remain “some uncertainties about the effects of ADDs on both target and non-target species” and that “until these are clarified by research a precautionary approach to the introduction of such powerful noise sources into the marine environment is warranted”.

Indeed, some manufacturers of ADDs make the specific claim that their units are effective in deterring otters.

Specifically, the SNH Report notes that “the use of ADDs within otter SACs may be a management issue” and that “the effects on otters of ADDs used against seals in Scotland should be considered further”.

It is necessary now for the developers to carry out an Appropriate Assessment of the use of ADDs at the proposed Loch Etive 6 farm given its proximity to the Etive Woods SAC for which otter is a designated species

The planning context – otters

The Argyll and Bute Local Plan’s Policies LP ENV2, ENV3 and ENV 6 are all relevant to the protection of otters on Loch Etive.

Policy LP ENV2 states that the A&BC, when considering development proposals, will seek to contribute to the delivery of objectives and targets set by the Local Biodiversity Action Plan. The Argyll and Bute Local Biodiversity Action Plan has otter as a priority species.

Policy LP ENV3 is essentially a rehearsal of the legal requirements pursuant to Article 6 (3) of the Habitats Directive dealt with below.

Policy LP ENV6 states that the A&BC will give full consideration to the legislation policies and conservation objectives that may apply to habitats and species listed under the various annexes of the Habitats Directive which, of course, includes otter.

The potential for a significant effect on the Loch Etive Woods SAC requires Appropriate Assessment of the applicant’s plans under the EU Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) as implemented in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994, as amended.

⁸⁹ Gordon J and Northridge S (2002) Potential impacts of acoustic deterrent devices on Scottish marine wildlife SNH commissioned report FO1AA404

In relation to appropriate assessment of plans or projects under the Habitats Directive, the ruling of the European Court of Justice in Case C-127/02 (the ‘Waddenzee judgment’)⁹⁰ is that the decision maker has to be certain – no reasonable scientific doubt must remain – that there will not be an adverse effect on the integrity. This is a very high test.

The assessment of any risk has to be approached on a precautionary basis⁹¹.

In respect of the Otter Report, failing as it does to deal with the operational phase of the proposed fish-farm (including but not limited to the use of ADDs) and being based on a limited one-day survey, with all the acknowledged limitations of that, the applicant cannot hope to meet the required legal tests.

The Otter Report does not constitute an appropriate assessment of this planning application as required under Article 6(3) of the Habitats Directive as it does not conclude that it is beyond reasonable scientific doubt that the development at Etive 6, both its construction and operational life, including the use of ADDs, will not affect the integrity of the Etive Woods SAC and the species for which it is designated, in this case, otter.

In relation to the planned use of ADDs to deter seals, Dawnfresh recognises⁹² that “underwater audiograms for *L. lutra* [otter] are required to fully assess whether ADDs can disturb European otters. Without these it is impossible to speculate on the potential for hearing damage.”

The Habitats Directive requires that it has to be beyond reasonable scientific doubt that there will not be an impact on the species or features for which an SAC has been designated. Therefore, without such underwater audiograms forming part of the Environmental Statement any decision not to require an Appropriate Assessment of this aspect of the proposal in relation to the otter population of the Etive Woods SAC is likely to be unlawful.

As the decision-making authority, it falls to the A&BC to ensure that a full appropriate assessment of the applicant’s planning application is undertaken to the level required to meet the test in Waddensee and to analyse such assessment in the course of determining this planning application.

To grant this planning application in the absence of such an assessment would be unlawful.

Birds

The isle of Eilean Faioileag, at the mouth of Sailean Ruadh supports important breeding seabirds. Since 1991, common gull, black-headed gull, common tern, oystercatcher, eider, mute swan, arctic tern and greater black backed gull have all bred on Eilean Faioileag.

Ospreys are believed to nest in the hills behind Muckairn and feed in the bays along the coast near Sailean Ruadh.

90 European Court of Justice Case C-127/02 (the ‘Waddenzee judgment’) at 61:

“...under Article 6(3) of the Habitats Directive, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all aspects of the plan or project which can... affect the site’s conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications [of mechanical cockle fishing] for the site concerned in the light of the site’s conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.”

91 The precautionary principle is to be applied in making decisions under the Habitats Directive, per National Farmers’ Union [1998] ECR I-2211 para 63. In 2000 the Commission adopted a Communication on the precautionary principle which states “whether or not to invoke the precautionary principle is a decision exercised where scientific information is insufficient, inconclusive, or uncertain and where there are indications that the possible effects on the environment, or human, animal or plant health may be potentially dangerous and inconsistent with the chosen level of protection.”

92 10-cage ES, para 43 page 24

The islet of Eilean Faoileag is a ‘very high value feature for wildfowl and marine birds in a local context’.

The proposed fish-farm, with its feed-barge, feed pipes, nets and acoustic seal scarers, will be less than 150 or so metres away. Disturbance of birds is likely to be a key issue, not only during the construction phase of the farm, but also during its operational lifetime.

Birds on Eilean Faoileag are likely not merely to be disturbed by noise and similar activity during construction but also during operational activity on the farm so close to Eilean Faoileag, throughout the operational lifetime of the fish-farm and particularly during the breeding season for these birds.

The ES fails to deal with the potential impact on birds of local importance during the operational lifetime of the proposed Etive 6 fish-farm. Instead reference is made in the ES to some as yet unwritten ‘Bird Protection Plan’⁹³ being brought forward before the sites becomes operational, but the ES is patently incomplete without this Plan as it cannot without the Plan fully assess the likely impact upon birds.

The planning context – birds

The Argyll and Bute Local Plan Policy LP ENV1 states that the A&BC will assess applications for planning permission for their impact on the natural environment and will resist development proposals which would not take biodiversity into account.

Further, Policy LP ENV2 states that the A&BC will seek to contribute to the delivery of the objectives and targets set by the local Biodiversity and Action Plan when considering development proposals, particularly, “where there is evidence to suggest that a habitat or species of local importance exists on a proposed development site, the Council will require the applicant at his own expense to submit a specialist survey of the site’s natural environment.”

The Loch Etive ICZM plan notes that there are a number of sensitive bird breeding islands in Loch Etive⁹⁴. The Plan also notes⁹⁵ that “Airds Bay and the coastline from Muckairn to Airds Point are important areas for waders, eider-duck, oystercatcher, osprey, mute swan, common and Arctic tern, common gull, black-headed gull and grey heron”.

In respect of the isle of Eilean Faoileag there has been no substantive specialist survey, merely a snapshot survey based on a single days observation (also undertaken at the same time as the otter survey – 15th August 2012) and outside the breeding season.

The author of the birds report recognises its limitations – “the limitations on this assessment relate to the lack of data on breeding birds along the mainland between Muckairn and Airds Point. Also limited time was available to enable a database search by the Argyll raptor study group for the completion of this project”⁹⁶.

This survey, that predated the 14-cage application, appears to have been rushed under time pressure at the time, that no longer exists and should be re-done to address these points.

The lack of a longer ornithological survey is a major omission from the ES, leaving information gaps as to the species likely to be impacted and the locations they use. For example, the A&BC has stated that “there is a tern nesting colony in close proximity to the proposed site, known to be used by common and arctic terns. Terns are known to vary their nesting sites from year to year. Due to this, the absence of a tern colony during a single year’s survey does not mean that they may not be present during the next year”⁹⁷.

93 10-cage ES , page 24, para 40

94 Loch Etive ICZM Plan at page 26

95 Loch Etive ICZM Plan at page 121

96 10-cage ES Appendix J

97 A&BC Screening and Scoping Opinion, at page 15

The Muckairn Estate is currently funding with SNH support a programme of mink control to allow bird to re-establish their numbers at Muckairn, in the Loch Etive Woods SAC and on Eilean Faioileag. The proposed fish-farm could put that success of that project in jeopardy.

Overall, the ES fails to deal with the potential impact on the recognised importance of the immediate vicinity of the proposed Etive 6 fish-farm for bird populations limiting any discussion to the construction phase of the project. It is clear therefore that the ES is inadequate in respect of the operational impact of the fish-farm at Etive 6 on birds in the vicinity.

Seals

The applicant deals with seals largely as an issue of controlling predation on farmed-fish and damage to the cages and nets by seal attack.

Seals are not considered within the ES as a wildlife or conservation issue. It is worth noting that although the aquaculture industry regards seals as a potential predator and nuisance species, this is not a view shared by the vast majority of tourist visitors to and residents of Loch Etive.

In the UK, seals are protected under the Conservation of Seals Act 1970 (England, Scotland and Wales) and The Wildlife (Northern Ireland) Order 1985.

In Scotland, the legislation has been superseded by the Marine (Scotland) Act 2010.

On the 1st February 2011 it became an offence to kill, injure or take a seal at any time of year except to alleviate suffering or where a licence has been issued to do so by Marine Scotland under Part 6 of the 2010 Act. The method of killing or taking seals is detailed in the licences issued and regular reporting is required. Marine Scotland are the licensing authority for seals under the Marine (Scotland) Act 2010 and licences are issued annually authorising the killing or taking of seals for a number of activities including to protect the health and welfare of farmed fish and to prevent serious damage to fish-farms.

Both grey and harbour seals are listed in Annex II of the EU Habitats Directive, requiring specific areas to be designated for their protection.

The ES makes reference to a predator control plan and other protocols including the use of anti-predator devices, such as tensioned nets. Only if this measure is not sufficient to limit seal damage an acoustic deterrent will be used in several pens at the site.

However, the ES fails to deal adequately with the many other seal predation prevention devices listed in the Code of Good Practice, including the use of cone nets, false bottom cages, curtain nets or box nets. The CoGP requires that "in determining the anti-predator systems adopted on a given site, farmers should systematically record the reason why a particular approach was adopted"⁹⁸, yet Dawnfresh has dismissed the use of curtain and box type nets on the past experience of the now defunct previous operators of trout farms on Loch Etive.

In the light of Dawnfresh's frequent protestations that their cage and net equipment has been upgraded from those days, then these methods should be reconsidered.

The ES suggests that non-lethal control "is fully expected that the above measures will be satisfactory in providing an effective deterrent to seals". This does not sit well with the fact that Dawnfresh has an existing licence to shoot seals and has shot 6 seals in 2011 and 3 in the first three quarters of 2012, according to figures released under freedom of information by the Scottish Government.

98 <http://www.thecodeofgoodpractice.co.uk/annex/annex-14-procedures-and-standards-for-holding-facilities/anti-predator-measures>

The initial Crown Estate leases at Port na Mine and Inverawe had excluded the use of lethal predator control, although the figures show that seals have been shot at both of these farms.

The ES claims⁹⁹ wrongly that aquaculture and seals have been co-existing in the loch since the 1970s and even claims that Dawnfresh “will contribute to an enhancement” in relation to seals¹⁰⁰. This does not take into account the lethal control of seals by Dawnfresh. The optimism expressed in the ES as to the effectiveness of non-lethal methods appears misplaced.

The installation at Etive 6 of a more than doubling of the overall biomass of rainbow trout in Loch Etive as a whole is highly likely to result in more seal attacks which appears inevitably to require lethal control of more seals by the applicant in order to protect the stocked fish from attack and the nets from seal damage causing large scale escapes.

The planning context – seals

The Argyll and Bute Local Plan Policy LP ENV1 states that the A&BC will assess applications for planning permission for their impact on the natural environment and will resist development proposals which would not take into account the impact on biodiversity and the likely impact including cumulative impacts on the environment as a whole.

The likely cumulative impact of seal control measures on all Dawnfresh trout farms in Loch Etive requires consideration in the ES along with the proposed Etive 6 site. Failure to take into account the cumulative effect of seal control over the lifetime of the proposed Etive 6 farm is a significant omission from the ES.

Common seals, as found in Loch Etive, are a UK Biodiversity Action Plan (UKBAP) priority species. The Loch Etive ICZM plan notes¹⁰¹ that harbour seal can be sited along the Muckairn to Airds Point coastline and seals occasionally haul out on the south and south-western tip of Eilean Duirinnis. Clearly, the area within which the Etive 6 site will operate is important for harbour seal. The positioning of the Etive 6 fish-farm is likely to bring those seals into direct conflict with aquaculture. This is insufficiently dealt with within the ES.

Before granting a seal licence under the 2010 Act, Marine Scotland must have regard to any information they have about damage which seals have already done to the fish-farm concerned and the effectiveness of non-lethal alternative methods of preventing seal damage to the fishery or fish-farm concerned. This information, upon which basis Dawnfresh holds its Marine Act licence, should be included within the ES.

The Scottish Information Commissioner has very recently ruled that information on which named fish-farms have shot seals should be publically available under the Environmental Information (Scotland) Regulations 2004¹⁰². In relation to Loch Etive, information as to which Dawnfresh farms have shot seals over previous years should be included in the ES to enable proper assessment of the proposed seal control methods at Etive 6 and cumulatively over the whole loch.

Finally, the applicant fails to appreciate that the presence of seals in Loch Etive is a significant draw for tourists and that any increased shooting of seals on Loch Etive is likely to be a significant deterrent to families holidaying on Loch Etive with children.

Conclusions – otters, birds and seals

The otter and bird surveys contained in the ES were both undertaken on the same day over a very short period of time and the consultant has highlighted that the surveys’ limitations.

99 10-cage ES page 67, section 6.3.3

100 10-cage ES page 27

101 Loch Etive ICZM Plan at page 121

102 SIC (2012) Decision No 201201193 – Seal killings and killings under licence

These surveys predated the now withdrawn 14-cage application but no attempt has been made to plug the information gaps identified in the years since these surveys were conducted and in advance of the 10-cage application.

Quite apart from the legal requirements imposed by, for example, the Habitats Directive in respect of otters, the nature conservation interest of Loch Etive is an extremely important feature of the loch for residents, other loch users and for tourist visitors.

Overall the ES contains insufficient information on otters, birds and seals to enable the A&BC to come to a proper decision as to the likely effect of both the construction phase, but also the operational life of the proposed Etive 6 fish-farm.

3.6 Benthic pollution

Scottish Natural Heritage has identified the habitat on the sea-bed under the proposed fish-farm at Etive 6 as a 'priority habitat' for Scottish nature conservation under the national Biodiversity Action Plan.

As well as being an issue relating to the conservation of the UK BAP habitat, the benthic smothering below the Etive 6 site also has the potential to impact upon the productivity of the loch, for example, in relation to commercial crustacean species currently fished for by creel fishermen.

Despite this, the proposed fish-farm will smother the bed in organic waste in what is described as the Allowable Zone of Effect (AZE).

The ES predicts an area of degraded sea-bed (the AZE) of 137,479 square metres¹⁰³, adding to the 69,623 square meters that has already been degraded under Dawnfresh's existing 5 other fish-farm sites in Loch Etive.

To enable this to be pictured more easily, 137,479 sq metres is an area the size of thirty-four regulation size football pitches.

There is confusion about just what fallowing period Dawnfresh intends to apply at Etive 6. Dawnfresh describes a 22½ month cycle followed by a 6-week fallow period¹⁰⁴. This is not consistent with the fallowing period referred to in the Planning Statement of "6 to 10 months at all sites"¹⁰⁵ or indeed the figure given in the ES¹⁰⁶ which refers to a 22 month production cycle with a 2 month minimum fallow period.

An analysis of information supplied by SEPA pursuant to the Environmental Information (Scotland) Regulations 2004 shows a consistent problem with farms operated by the applicant on Loch Etive since 2009, with biomass limits for farmed fish being exceeded, borderline benthic pollution classifications, farms operating with different cage configuration to that used in modelling site-specific AZEs and failure to inform SEPA of fallowing/stocking.

All the farms shown below in the table operate at biomass tonnages considerably lower than that now applied for at Etive 6. That fact must call into question the grounds for optimism that the modelling at Sailean Ruadh will ensure that no further damage, beyond that already predicted, will occur.

103 10-cage ES, page 21 para 11

104 10-cage ES, paragraph 2.2 page 17

105 Planning Statement at para 1.7

106 10-cage ES at page 75

Date	Document	Farm	Event
20/03/2009	Final warning letter	Port Na Mine, Etive	Biomass exceeded permit by 40% December 2008 and January 2009
29/07/2009	SEPA Marine Fish Farm Monitoring Report	Airds Point, Etive	'Borderline' benthic classification.
30/07/2009	SEPA Marine Fish Farm Monitoring Report	Port Na Mine, Etive	'Borderline' benthic classification. Sulphide smell at cage edge. Site has not been fallowed for 4/16 months (April 2007 to September 2009) as per the licence. Site-specific AZE was modelled on 8x60m cages but 6x 60 m cages on site.
02/02/2010	SEPA Fish Farm Monitoring Report	Ardchattan Bay, Etive	'Borderline' benthic classification.
23/02/2010	SEPA Assessment Report	Ardchattan Bay, Etive	Exceedances for biomass and stocking density for Dec 09 due to Bacterial Kidney Disease outbreak in Etive. SEPA informed site would comply by Nov 09. Not achieve compliance until Jan 10.
06/10/2011	SEPA Compliance Assessment Report	Inverawe	1) Licence was for 80m circular cages, site farmed on 70m cages. The site has a site specific model and so the monitoring may not be representative of what was actually farmed. Fallowing notification not received by SEPA.
06/10/2011	SEPA Compliance Assessment Report	Ardchattan Bay, Etive	1) Borderline benthic survey 2010. 2) Site not being farmed in accordance with the licence – site only has 4 cages. 3) Notification of fallowing late and stocking not received.
06/10/2011	SEPA Compliance Assessment Report	Port na Mine, Etive	Site should be remodelled using autodepomod so that a representative analysis of the cumulative impact of the site can be assessed.
01/11/2011	SEPA Compliance Assessment Report	Port Na Mine, Etive	Exceedance in permitted biomass.
04/11/2011	SEPA Marine Fish Farm Monitoring Report	Ardchattan Bay, Etive	'Borderline' benthic classification. Cage edge 'very degraded'. 'Unsatisfactory' for chemistry due to redox failures and severe sediment degradation and anoxia
15/03/2012	SEPA Compliance Assessment Report	Ardchattan Bay, Etive	Borderline benthic assessment received 2012
23/03/2012	SEPA Compliance Assessment Report	Inverawe, Etive	1) Both sites failed the environmental monitoring carried out in 2011. 2) Inverawe's 2 locations have both failed to meet SEPA's environmental criteria demonstrating that they are operating outwith the assimilative capacity of the receiving environment. The sites have also migrated apart and are now almost 1km apart and can no longer be associated activities under one licence. A review will be undertaken by SEPA.
23/03/2012	SEPA Compliance Assessment Report	Port Na Mine, Etive	1) Site not located according to permit 2) Unsatisfactory benthic report 2012 The site is operating outwith the capacity of the receiving environment. The site should be relocated or remodelled as a matter of priority

It is worth noting that a recent analysis of fish-farmer reported benthic monitoring across the entire marine farmed salmon and rainbow trout sector, covering 2009 to 2011, showed that 44% of those benthic reports were classified by SEPA as unsatisfactory implying that the sites were exceeding the assimilative capacity of the benthic environment¹⁰⁷.

This high figure for unsatisfactory reports must call into question the validity of the modelling of those fish-farm sites using the Autodepomod modelling technique, which is now relied upon by the applicants in respect of Etive 6.

Further, it is worth noting that the Argyll District Salmon Fishery Board has raised the issue that the Autodepomod model was designed for use in marine locations and that, as Loch Etive is a brackish water site, it is not clear that the variables used to design the modelling software are applicable to the Etive 6 site¹⁰⁸.

Benthic impact on Sailean Ruadh

The ES fails to consider the likely impact of effluent, faecal deposits, uneaten feed and solid wastes from the proposed fish-farm at Etive 6 on the inlet of Sailean Ruadh (and indeed the shoreline of the Loch Etive Woods SAC).

The inlet is narrow and very close to the proposed Etive 6 site.

It is far from clear that the Autodepomod system can adequately take into account the very localised tides and currents in such a narrow inlet.

SEPA was asked to investigate and satisfy itself that the inlet will not become a sink for benthic residues from the fish-farm as it currently accumulates a great deal of floating debris (flotsam etc) and may similarly accumulate sub-surface wastes discharged from the cage sited so close to the inlet.

There is no comment on this and no effort has been made to address this in the new ES for the proposed 10-cage fish-farm

The planning context – benthic pollution

Although the earlier proposed 14-cage Etive 6 fish-farm had been granted a CAR licence by SEPA for the proposed biomass of 2,500 tonnes, this must now be varied – and should be subject to further advertisement and public consultation.

Nevertheless, benthic impact does remain a material planning consideration for the A&BC.

As the large area of the sea-bed immediately below and surrounding the proposed Etive 6 site that will be degraded as a result of the fish-farm operations will smother the marine priority habitat, “burrowed mud in deep water”, this application must be considered in respect of the cumulative impacts on this habitat in Loch Etive.

While the ES refers to the proportion of the whole Loch Etive sea-bed that will be degraded – there will be a 44% increase in the area of seabed of the whole of Loch Etive impacted by fish-farming operations¹⁰⁹ – it does not catalogue what additional proportion of the “burrowed mud in deep water” habitat of Loch Etive will be smothered and degraded by the Etive 6 site alone or has been cumulatively with the 5 other Dawnfresh farms.

107 S&TA Report, 5th September 2012 – www.standupforwildsalmon.org

108 Letter from Argyll District Salmon Fishery Board to SEPA 1st June 2012

109 Bases on figures given 10 cage ES at page 54

The revised 10-cage application, like the 14-cage application before it, merely dismisses the damage that will be caused by suggesting that because this protected species exists elsewhere in Loch Etive, it is acceptable for Dawnfresh to wipe it out below the new farm.

This misses the point that this feature is protected over all its range precisely due to its particular sensitivity to pollution and damage by smothering – it is not something to be ‘traded away’ to benefit Dawnfresh by suggesting wiping the feature out ‘here and there’ is in some way acceptable.

Conclusion on benthic pollution

While the Argyll and Bute Local Plan Policy LP AQUA 1 notes that “there is general support for fish-farming”, this is “subject to there being no significant adverse effect directly, indirectly or cumulatively on statutorily protected nature conservation sites, habitats or species.”

Despite the issue of the CAR licence to be addressed by SEPA, it falls to the A&BC to consider the cumulative impact of the benthic footprints of all rainbow trout farm operations in Loch Etive in respect of their cumulative impact on the benthic environment of Loch Etive, both as a whole and also on the protected habitats.

In doing this, the A&BC must take into account the reliability of the modelling produced by the applicant.

The A&BC must also satisfy itself that the impact on the Sailean Ruadh inlet is adequately considered and assessed.

3.7 Noise and light pollution

There is obvious potential for noise nuisance from the proposed fish-farm at Etive 6. The Loch Etive ICZM Plan notes that finfish sites have “potential to be a source of noise pollution due to activities associated with the construction and operation of the facility”¹¹⁰.

Etive 6 is proposed to operate with a feed-barge and feed pipes down which pelted food is ‘blown’ to the cages. It is likely that this automatic feeding system proposed will lead to constant low level intrusive noise. The blowing of feed down feed pipes which at other fish-farms has led to complaints of low level but constant and intrusive noise.

Further, the need for diesel generation systems onboard the feed-barge will also result in constant engine noise. The ES makes comparisons between the noise generated by the barge generator and feed-pipes to common indoor noises¹¹¹.

Of course, the more appropriate comparison is with outdoor noise which would of course be enhanced as the noise travels further over water. That would suggest that the generator will generate noise equivalent to somewhere between ‘urban night-time’ and ‘heavy traffic noise’ as will the feed-pipes.

What is clear is that, cumulatively, the generator and feed-pipes and other operational noise will create a significant noise nuisance where currently none exists nor did during the operation of the very low impact shellfish-farm at Etive 6.

The shoreline at Muckairn and Sailean Ruadh is currently extremely peaceful. As the A&BC has already noted “the site is located in an area of low ambient noise with properties which benefit from the absence of development. These constitute sensitive receptors and it should be demonstrated that the development will not have adverse consequences for the nearest properties”¹¹².

110 Loch Etive ICZM Plan, at page 49

111 10-cage ES at para 5.8 page 47

112 A&BC Screening and Scoping Opinion at page 7

Any noise produced by the fish-farm would be clearly audible and is likely to be intrusive given the low background levels of other noise.

Dawnfresh acknowledges that up to 200 tonnes of feed will need to be delivered to the feed-barge per week, which can only increase boat traffic and noise.

The applicant's own ES for the now withdrawn 14-cage proposal recognised the significance of the potential for noise from the feed pipes and noted that "you might hear some sound at less than 500 metres only if the wind was blowing towards the receptor".

Quite apart from nearby properties, there are sensitive receptors far less than 500 metres away in the form of sensitive wildlife – the birds on Eilean Faoileag and the Loch Etive Woods SAC.

In addition, the Northern Lighthouse Board recommends that the proposed fish-farm to lit, including at night, by yellow flashing lights on the cages to be visible from vessels approaching from all directions, as well as the feed-barge having a round fixed white light to be visible at least 2 nautical miles away¹¹³, impacting on this dark part of Loch Etive and nearby properties.

The 10-cage application documents include the specification for marine lanterns to be used on the new farm, which state that they incorporate "6 ultra-high intensity LEDs" each visible for 2 to 3 nautical miles, which would mean the lights of the proposed Etive 6 would be visible from many loch-side properties. The ES dismisses this by describing these lights – and the white light that will sit some metres above sea level, atop the feed-barge, and so will be visible from even further away – as 'low wattage'¹¹⁴. Of course, LED lights, unlike conventional lights, can be exceptionally bright while still being 'low wattage'.

The planning context – noise and light pollution

The ES' Non-Technical Summary does not mention the potential for noise nuisance, the likely impact and the control of operational noise is limited to largely unspecific commitments to make efforts not to disturb nearby properties.

The noise by the proposed Etive 6 fish-farm is a relevant planning consideration and should be taken into account by the A&BC when determining this application.

The ES tries to downplay the light pollution that will be created, but there is an obvious mismatch between any claims that the lighting will be unobtrusive, while at the same time being based on ultra-high intensity LEDs designed to be visible to boat traffic 2-3 nautical miles away.

113 Letter to A&BC from Northern Lighthouse Board 13th December 2012

114 10-cage ES, page 24, para 45

4. THE LACK OF PROPER CONSIDERATION GIVEN TO ALTERNATIVES

The Scottish Government has long recognised that, for all new fish-farm sites, the process of site selection is an integral part of the EIA process, and the applicant should include details of the decision making process in the ES, with justification of any consideration of alternative sites. A similar set of criteria can, in some cases, be applied to site modifications or rationalisations¹¹⁵.

The European Directive on Environmental Impact Assessment Directive also requires that any project subject to an ES deals with the question of alternatives to the proposals. This is a key and central purpose of the EIA Directive, which, as implemented in Scotland, governs this application.

Article 5(3) requires that an ES must include an outline of the main alternatives studied by the developer and an indication of the main reasons for the choice made, **taking into account the environmental effects**.

In the now withdrawn 14-cage application, there was only very cursory reference to the question of alternatives and largely in the context of the consolidation plan for Loch Etive which has now been completely dropped by Dawnfresh.

While the new 10-cage ES makes reference to alternatives (as it was reminded to do by the A&BC just before submission of the 10-cage application for validation) it remains incomplete.

The applicant has failed to bring forward detailed information as to how it has considered other floating cage sites outwith Loch Etive or the growing of rainbow trout in river-side systems as already operated by the applicant elsewhere in Scotland.

In relation to alternatives, Dawnfresh looks at four 'options'¹¹⁶.

i. Sites elsewhere in Scotland

Dawnfresh's dismissal of the option of a site elsewhere in Scotland is not considered as required by law "taking into account the environmental effects", but rather by some wish to protect an "Etive Trout" marketing brand.

By way of comparison, Marks & Spencer's very successful 'Lochmuir' brand of farmed salmon comes from a variety of marine fish-farms including the Summer Isles in Wester Ross as well as from farms in Argyll including near Oban. There is no need for geographical limits to apply to such branding.

There can certainly be no question of any protected status, such as might apply to Parma ham or other such products closely identified with a particular location, being applied to rainbow trout grown in Loch Etive.

A Google search for 'Loch Etive trout' conducted on 16th July 2013 revealed only one reference to 'Loch Etive trout' being marketed by Dawnfresh, this being a reference to Loch Etive Trout on a Californian website – Santa Monica Seafood – from July 2012.

It appears that the claimed marketing value of this brand should be, at the very most, a very minor consideration indeed for the A&BC in dealing with this application. It is certainly not a relevant planning matter.

115 Environmental Impact Assessment – Practical Guidelines Toolkit For Marine Fish Farming. Prepared For Scottish Aquaculture Research Forum. The Highland Council and Scottish Executive SARF 024 (2007)

116 10-cage ES at page 18

Dawnfresh also tries to argue that it needs farms in multiples of three, but as already shown, it effectively already has its three 'operational' farms in Etive already – the proposed new farm would be a fourth 'operational' site on Etive.

Dawnfresh claims that sites outside Etive are 'extremely rare', but Dawnfresh seems to have made no enquiries to find alternative sites with less environmental impact outside Etive.

Friends of Loch Etive requested information from the Crown Estate as to any enquiry made in relation to any non-Etive sites and requested all information pursuant to freedom of information law.

The Crown Estate, which leases the sea-bed around Scotland to fish-farms, replied that there was no information to disclose, confirming that they had no "records of correspondence entered into with Dawnfresh in respect of any sea-bed site other than those indicated in Loch Etive"¹¹⁷ showing that Dawnfresh has made no enquiries at all with the potential landlord of the sea-bed as to the availability of any other sites that the company could consider outside of Loch Etive.

The dismissal of sites outside Loch Etive is an expedient and the facts appear to suggest that Dawnfresh has not considered any site outside of Etive on business grounds alone, contrary to the EIA Directive requirements to do so taking into account the environmental effects.

Dawnfresh does, in fact, have a farm site in the marine environment on Loch Slapin on Skye, where, according to the owner Alistair Salvesen, quoted in the Scotsman, it is producing trout successfully. Indeed, the produce of that single farm appears to be sold to Marks & Spencers, which comments that "most of M&S' rainbow trout is reared in the freshwater loch and river systems of Scotland, in sea lochs along the west coast of Scotland and around the Isle of Skye. The saltwater lochs of Etive and Slapin experience regular rainfall and benefit from excellent tidal currents, conditions that are perfect for producing premium quality trout, as they need well-oxygenated, clean flowing water to encourage natural swimming activity, muscular development and to remove waste."¹¹⁸ There appears to be no issue for Marks and Spencers for marine grown rainbow trout sourced outside Loch Etive.

ii. Alternative sites on Loch Etive

The case presented by Dawnfresh is that there are no alternative site locations on Loch Etive.

This fails to deal with the matter according to the requirements of the Environmental Impact Assessment Directive, which requires alternative site locations to be considered as against the environmental impacts of those alternatives.

Specifically, as the A&BC is aware, the availability or not of an alternative site that Dawnfresh claims to have considered, at Airds Bay (the redundant shellfish site), is contested by Friends of Loch Etive, who have been in communication with the current owner, Celtic Sea Limited – that company is indeed willing to sell.

The suggested financial barrier to making that site available that Dawnfresh cites is not a material to consideration of the option under planning law.

Even though it claims to have tried to purchase the Airds Bay site – perhaps conveniently as this now supports their current application at Etive 6 – Dawnfresh has decided that it does not believe the Airds Bay location to be significantly superior in visual impact terms to the chosen site.

117 Email from Crown Estate to Guy Linley-Adams 26th April 2013.

118 http://plana.marksandspencer.com/we-are-doing/natural-resources/forever-fish/meet-the-fish/rainbow_trout

This contrasts with the claims made in 2008 in the Airds Point (Etive 4) Environmental Statement which suggested that the backdrop of dark woodland created by Airds Park significantly reduced the visual impact of that site and would therefore also do so for any alternative Airds Bay location.

Dawnfresh further states that it has also determined that the “visual hydrographic conditions at this alternative location do not look favourable for fish-farming”. What appears to amount to a quick look at the site (‘a visual hydrographic survey’) is not a proper consideration of an alternative site ‘taking into account the environmental effects’.

At the very least, Dawnfresh should now be required to carry out proper modelling of the Airds Bay site.

Further, Dawnfresh suggests that its existing Airds Point site (Etive 4) and any new site at Airds Bay would be too close together for bio-security reasons, but fails to point out that Dawnfresh’s existing sites at Port Na Mine and Inverawe are, in fact, closer than these two sites would be and that any bio-security issues suffered by one farm on Loch Etive, due to the relative proximity of all the farms to each other, would almost certainly be suffered by all irrespective of whether the separation distances being considered were those between the proposed Etive 6 site and the existing Airds Point site (Etive 4) or between Airds Point (Etive 4) and any new site on the shellfish site in Airds Bay.

In conclusion, Dawnfresh has not produced any proper justification for ruling out less damaging alternative sites on Loch Etive, taking into account the environmental effects as it is required to do by law.

iii. Expansion of an existing site within Loch Etive

As described earlier, there has already been creeping industrialisation and expansion at existing trout farms on Loch Etive without public consultation.

Further Dawnfresh admits in the 10-cage ES that production at its existing 5 sites can “increase organically over time” albeit that Dawnfresh tries to argue that this can only occur after Etive 6 is established¹¹⁹.

Patently therefore Dawnfresh believes that there is ‘environmental capacity’ at its existing five other farms, quite contrary to claims that it cannot increase production at its existing sites as an alternative.

As the EIA Directive requires the alternatives to be assessed in the ES as against the environmental impacts – not as against the applicant’s business plans – Dawnfresh has failed properly to consider expansion of existing sites as an alternative to farm now proposed at Etive 6.

iv. Establishing a land-based alternative

Dawnfresh fails completely to mention in the ES that trout are grown successfully at river-side tank-and-raceway farms in England and Scotland, including by the applicant Dawnfresh at, for example, Blairgowrie on the River Ericht.

As the EIA Directive requires the alternatives to be assessed in the ES as against the environmental impacts – not as against the applicant’s business plans – Dawnfresh has failed properly to consider land-based production sites as an alternative to the 10-cage farm now proposed at Etive 6.

119 10-cage ES at page 19

5. THE NEGATIVE IMPACT ON ETIVE EMPLOYMENT

Dawnfresh notes that it currently employs 13 full-time staff but 6 of which are on temporary contracts and argues that the creation of the Etive 6 site will result in all 13 staff being on permanent full-time positions¹²⁰.

In short, this means that the Etive 6 site will generate no more employment – in terms of increased man-hours – on Loch Etive.

Further there is no real evidence offered as to why the 6 temporary jobs now provided should necessarily be more secure if the 10-cage farm at Etive 6 is built. The demand for labour that the existing 5 farms currently create would remain the same if those farms continued to be operated in the absence of any new farm at Etive 6.

It is worth noting that Dawnfresh has confirmed that there will be no more staff employed by Dawnfresh as a result of the construction of a farm that will double the production of rainbow trout on Loch Etive. The reason for this is that the site will be automated, with feed-barge and feed-pipes, rather than requiring staff to be on site to feed the fish.

Nor is there any evidence that the existing Dawnfresh jobs on Loch Etive will be any less secure if Etive 6 does not receive planning permission. Indeed Gideon Pringle of Dawnfresh is quoted in the Oban Times of 4th April 2013 that in that event “pulling out is going too far” and that all refusal would do is “cap our ability to develop the site”.

It is misleading of Dawnfresh to run employment arguments in support of the application at Etive 6 when patently no more direct employment is envisaged.

Further, Dawnfresh describes spin-off benefits in terms of demand for well boat, feed delivery services, diving and engineering services and the like¹²¹.

All these services are currently demanded by the existing five sites on Etive run by Dawnfresh and it is mere speculation that there would be any real increase in employment in these sectors as a result of the addition of a single extra automated farm, with no increase in direct employment at Dawnfresh. Dawnfresh presents no evidence to suggest that any further staff would be taken on by hotels or any other local businesses as a result of the increase of their number of farms from five to six.

120 10-cage ES at page 26, para 57

121 10-cage ES at page 26, paras 58 and 59

6. DAWNFRESH BUSINESS PLANS AND PLANS FOR LOCH ETIVE

At the time of the 14-cage application, Dawnfresh stated that the application was part of a consolidation plan for Loch Etive¹²² as a whole – “*this development forms part of a long-term consolidation plan for Loch Etive*”. Much play was made of Dawnfresh’s intention to consolidate and ultimately give up sites further up the loch nearer the River Awe.

In its response to the Screening and Scoping exercise, SNH requested a plan of the applicant’s intentions to consolidate existing aquaculture sites¹²³.

It is important to note that consolidation of Dawnfresh’s existing 5 sites no longer forms any part of Dawnfresh plans whatsoever. Any such consolidation has now been scrapped and it is clear that Dawnfresh’s intentions are, should they get permission at the Etive 6 site, that production at the existing five sites including Inverawe would “increase organically over time” once the proposed Etive 6 site is established¹²⁴.

Contrary to the higher objectives ICZM Plan for Loch Etive, Dawnfresh has no intention of consolidating any of its existing five sites and, quite the opposite, is seeking to grow those existing farms up to the production ceiling placed on Loch Etive by the MSS Locational Guidelines.

Dawnfresh makes much play of the Locational Guidelines¹²⁵. Of course, Marine Scotland’s ‘ceiling’ placed on the total biomass that could theoretically be grown in Loch Etive does not take into account the landscape, navigation, interference in other recreational loch users and sheer noise and disturbance that the industrialisation of Loch Etive would create.

Dawnfresh has suggested that ultimately it will seek permits for a biomass of 7500 tonnes of rainbow trout from Loch Etive, a three to four fold increase on what is currently produced¹²⁶.

Further, Dawnfresh’s arguments at any ‘wasted’ costs of the withdrawn 14-cage application at Etive 6¹²⁷, are not relevant planning matters here. Dawnfresh submitted the application without carrying out a comprehensive ES and having failed properly to ‘test the temperature’ of the local community. Any such wasted costs are the fault of Dawnfresh and no-one else.

The costs incurred due to the need to withdraw the 14-cage application in advance of its highly probable refusal by the Argyll and Bute Council are entirely with Dawnfresh and should not be in any way weighed in the balance in favour of granting the current 10-cage application.

Much play is also made throughout the ES that Dawnfresh requires the Etive 6 site to fall into line with its business plan, but this is again not a material planning consideration.

Dawnfresh also makes much of the need of the company to produce trout of greater than 5kg¹²⁸, but that too is not a material planning consideration. Dawnfresh should not demand planning permission in a particular location merely because of a feature of the product it has decided it needs to produce for its own purely commercial reasons.

Dawnfresh also states that it requires fish-farms in multiples of three and so is seeking to increase to six farms on Loch Etive, with no consolidation.

122 ES at 2.2.1, page 14

123 ES, section 7 at page 12 and A&BC Screening and Scoping Opinion, page 16

124 10-cage ES at page 19, para 2.5.3

125 For example, 10 cage ES at page 27, page 61.

126 Gideon Pringle, Dawnfresh, April 2013

127 10-cage ES at page 19, para 2.5.2

128 10-cage ES at page 17

In fact, Dawnfresh effectively has its three sites on Etive – the new farm would be a fourth. Indeed, Dawnfresh’s Planning Statement recognises this – “Dawnfresh has five existing sites in Loch Etive, with up to three operating at any one time”¹²⁹. Firstly, Inverawe East and West cannot be operated together and count as a single farm. Etive 3 (Port Na Mine) and Etive 4 (Airds Point) also count as one as they should not be used together under the planning conditions that Dawnfresh has been breaching (which now requires it to make a further planning application to vary those conditions).

Planning permission for Etive 6 would merely give them a fourth operational site at any one time, which by their own calculations, they do not require.

To achieve two sets of three farms not only would Dawnfresh require planning permission at Etive 6, they would also require planning permission for a variation of the permission at Etive 4 such that they could then operate Port na Mine and Airds Point together, and they would still need an additional farm somewhere else in Etive (assuming that they do not try then to operate Inverawe East and West simultaneously).

The A&BC has already told Dawnfresh that it will need to make another application to vary the permission (which it may not get) or must cease using Port Na Mine and Etive 4 simultaneously.

Most importantly, if Dawnfresh really does need farms in operational multiples of three, then the 10-cage Etive 6 application and the retrospective application that is now required at Airds Point (Etive 4) represent a single project and should, in any event, now be assessed under the EIA Directive as such.

The failure to consider – across the range of issues (and not just landscape) – the aggregated effects of these two separate applications, which are in substance a single project, may render the ES inadequate and any decision made by the A&BC upon the current ES open to potential legal challenge.

If the lack of a suitable, environmentally acceptable site for a fish-farm within any already very crowded loch in line with local coastal zone management and landscape plans is, as Dawnfresh claims, “detrimental to the company’s established business plan”, rather than demanding the Loch Etive community submits to its demand for a huge new farm, like very many other businesses in all sorts of other sectors, Dawnfresh should now consider changing its business plan to one that is more respectful of other stakeholders in Loch Etive.

¹²⁹ Planning Statement para 1.7, page 5