Marine Directorate

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Scottish Government
Riaghaltas na h-Alba

XOcean UK Limited
Rathcor
Ireland
A91 DVT0

Our Ref: EPS-00011076 & BS-00011078

Date: 02 May 2025

Dear [Redacted]

Application to Disturb Marine Species, XOCEAN UK Limited.

Further to your application received on 23 January 2025 in relation to a geophysical survey at East of Fraserburgh, I can inform you that the licensable tests and conditions for issue of the licences have not been met and licences cannot be granted under The Conservation (Natural Habitats, &c.) Regulations 1994 ("The Habitats Regulations") to disturb European Protected Species ("EPS") or under the Wildlife and Countryside Act 1981 to disturb basking shark.

The Scottish Ministers cannot issue a licence to disturb EPS or basking shark unless they are satisfied:

1. There is a licensable purpose and;
2. There is no satisfactory alternative.

In addition, under the Habitats Regulations, a licence to disturb EPS cannot be granted unless the action authorised will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range.

The applications have been assessed and Marine Directorate – Licensing Operations Team ("MD-LOT"), acting on behalf of the Scottish Ministers, has determined that the applications have failed to meet the requirements of test one and two. The determination of the licence has been undertaken in line with established guidance and statute.

Licensable Purpose

In relation to the requirement for a licensable prupose, the application indicated that there were

- imperative reasons of overriding public interest including those of a social or economicnature and beneficial consequences of primary importance for the environment (Section 44(2)(e) of the Habitats Regulations) supported by information contained in Annex B of the application to disturb EPS

- a social, economic or environmental purpose (Section 16 (3) (i)) of the Wildlife and Countryside Act 1981) supported by information contained in Annex C of the application to disturb basking shark

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The information provided in the application form and Environmental Impact Statement did not satisfy the requirements of this test. The use of geophysical survey equipment will introduce underwater noise into the marine environment over a wide area. The applications appear to be speculative and not related to any specific project, thus not demonstrating an imperarative need. It is unclear who the data is being gathered for and how it will be used. The lack of detail also means it is not possible to determine exactly what public interest is being served.

MD LOT cannot conclude that the requirements for the licensable purpose test have been satisfied.

No Satisfactory Alternatives

As a licensing authority MD-LOT must be satisfied that no other option presented or possible can meet the identified and proven need for which a licence is sought.

MD-LOT notes that the equipment XOCEAN UK Ltd details in the application is appropriate for the purpose of the proposed surveys. However, no consideration has been given to other sources of data such as recent surveys or existing programmes of monitoring undertaken in relation to existing infrastructure. Most sites for proposed development in the survey area have already been surveyed to gather baseline data. In addition, assest owners have a well established system in place for monitoring existing structures. In light of this, it is unclear what the consequences would be if XOCEAN UK Ltd's proposal did not go ahead.

MD LOT cannot conclude that the requirements for the no satisfactory alternatve test have been satisfied.

Favourable Conservation Status

As the application failed to meet the requirements of the licensable purpose and no satisfactory alternative tests, no assessment has been undertaken with regard to impacts on favourable conservation status.

The Scottish Inshore Guidance contains further information with regard to EPS licensing.

If you have any questions or would like further information please contact MD-LOT at MD.MarineLicensing@gov.scot

Yours sincerely

[Redacted]
Marine Directorate - Licensing Operations Team