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Kames Fish Farming Ltd
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Date: 15th December 2022

Dear [REDACTED]

The Conservation (Natural Habitats, &c.) Regulations 1994

Application to Disturb Marine Species, Kames Fish Farming Ltd

I refer to your application dated 15th June 2022 for a licence to disturb European Protected Species ("EPS") as a result of acoustic deterrent device ("ADD") use at several fish farm sites operated by Kames Fish Farming Ltd ("the Application").

The Application covers six sites in total, five in Argyll (North Moine, Shuna Castle, Ardifuir, Kames Bay East and Kames Bay West) and one on Skye (Pooltiel). It is proposed that when fish mortalities as a result of seal attacks are observed, an Ace Aquatec RT1 device will be activated. Its use will continue until no seal activity has been detected for a period of two weeks. Four RT1 devices are available for use but only one shall be deployed per site at any one time. If however more than one RT1 device is deployed simultaneously across the sites, the devices will be set so that sound emissions do not overlap. In the event that the RT1 device is not effective at deterring seal activity an Ace Aquatec US3 device will be deployed. Only one US3 device is available for use and it will not be used on any site at the same time as an RT1 device.

The Scottish Ministers cannot issue a licence to disturb EPS unless they are satisfied: -

1. That there is a licensable purpose;
2. That there is no satisfactory alternative; and
3. That 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.

As part of the determination process, the Scottish Ministers have consulted with NatureScot (operating name of Scottish Natural Heritage). They have also sought advice from Marine Scotland Directorate and the Scottish Government Directorate for Agriculture and Rural Economy. An opinion document, [on the issues associated with the proximity of seals to farmed fish](#) (12 August 2022) provided by the Scottish Animal Welfare Commission ("SAWC")

in response to a request from Marine Scotland has also been considered. This document, the advice provided and the consultation representation received, are all attached in Appendix 1 for your attention.

Licensable Purpose

The Application has been made for the purpose of “*Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.*” The Scottish Ministers consider that this is an appropriate licensable purpose, however, the evidence provided in support of the Application is insufficient.

The Application notes that seal predation is reduced by 75% when ADDs are used but offers no figures or further detail to support this. It also notes that 6,884 mortalities were caused by seal attacks since removal of devices, but no figures are provided for mortalities prior to removal of ADDs. It is assumed that the numbers provided encompass all sites operated by Kames. No site specific detail is offered. The Application notes that the operational history of the devices is recorded on the Ace Aquatec Portal, but no detail is provided. There is a lack of peer reviewed literature available regarding the Ace Aquatec device, and the lack of site specific detail provided makes it difficult to assess the efficacy of the devices at the sites in question.

In addition, the Application proposes that the devices will be used at a reduced source level and the modelling data provided is based on this rather than the standard output of the devices. No evidence is provided to demonstrate the effectiveness of the device at a reduced output and therefore, it is not possible to determine the efficacy of the devices when operating at a reduced level.

It is noted that farmed fish are likely to be susceptible to stress, related to the presence of predators around cages which may result in impacts on behaviour, growth and health. However, the information provided does not make it possible to assess exactly what serious damage has been or will be done nor how the use of ADDs has or will prevent it. Without such clear site specific supporting evidence that demonstrates the efficacy of the proposed devices and their role in preventing damage, it is not possible for the Scottish Ministers to determine that the use of ADDs will fulfil the purpose of “*preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.*”

No Satisfactory Alternative

In the Application it is stated that there are no satisfactory alternatives to ADDs because ADDs keep seals out of proximity of cages, thus reducing both predation and the effects of stress caused by the proximity of seals to fish. This is in contrast to physical barriers and removal of attractants e.g. removal of dead fish. The Application notes that tensioned high density polyethylene nets are already in use at Kames’ aquaculture sites along with top nets. Moribund stock is regularly removed and stocking densities are kept low. These are considered by the Applicant to be a complementary suite of methods and are not hierarchical in nature. There is however a lack of site specific detail in regard to how these current measures operate (e.g. there is no detail on frequency of removal of dead stock). It is also unclear how the devices will be utilised across all sites. In particular, in regard to the US3 device, the Application states that it may be activated in the event of seal mortalities being detected, if seals are circling the cages or if ‘historical trends’ show an increase. There



is no reference to predator control plans or any additional containment methods such as anti-predator netting.

The Marine Scotland Directorate document "[Information Note and Frequently Asked Questions for the Operators of Finfish Farms on the use of Acoustic Deterrent Devices and the Requirement for a European Protected Species](#)" (Version 5, October 2021) ("FAQ Document") states "*your application must include a detailed analysis of all alternatives previously tried or considered at your site and the reasons why they are not a satisfactory alternative. Reasons such as an increase in cost or inconvenience will not be considered satisfactory. If no satisfactory alternative is found then you will have to demonstrate why lower risk alternatives have been discounted. Generic information will not be sufficient, evidence must be provided which is site specific*".

The Application does not include any consideration or analysis of alternative predator control methods. We note that both NatureScot and Marine Scotland Science ("MSS") have highlighted other methods which could have been considered.

The Scottish Ministers acknowledge the advice from the Scottish Government Head of Animal Welfare and the SAWC guidance note and also understand the obligations of aquaculture production businesses in regard to fish health and welfare. However, as the Application does not demonstrate that a range of alternatives have been considered, the Scottish Ministers do not consider it possible to conclude that there are no satisfactory alternatives to the methods currently used by the Applicant.

Favourable Conservation Status

In relation to impacts on the favourable conservation status of EPS, NatureScot noted the lack of independent evidence, but advised that the disturbed areas are small in terms of favourable conservation status and that therefore there will be no impact even if the ADDs are continuously active. The Scottish Ministers agree and conclude that the action will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range.

Other considerations

The Scottish Ministers refer you to the full details provided in the consultation responses and advice attached. In particular, the Scottish Ministers highlight the comments provided by both NatureScot and MSS on the assessment methodology used.

As previously highlighted, in Marine Scotland Directorate correspondence to you dated 3rd November 2021 your method for assessment does not make appropriate use of the information contained in the FAQ. In addition, NatureScot has advised that the methodology within your Application was hard to follow due to the inter-related nature of the supporting documents. A lack of clarity was noted in regard to the injury assessment when multiple devices are being used and noted that the proposed scenarios do not consider the worst case scenario. The lack of independent supporting information within the Application is also highlighted.

The Scottish Ministers also note that the Application does not include any consideration of cumulative effects. Your attention is drawn to the advice provided by NatureScot and MSS on this point, as well as the information contained in the FAQ Document.

Conclusion

Having considered the Application and supporting information, the Scottish Ministers have concluded that this application for a licence to disturb EPS as a result of ADD use at sites operated by Kames Fish Farming Ltd will not be granted.

If you have any questions on the above please contact MS-LOT via
Ms.marinelicensing@gov.scot

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Licensing Operations Team
Marine Scotland