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Loch Duart Ltd
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By Lairg
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Date: 24th March 2023

Dear [REDACTED]

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

Application to Disturb Marine Species, Loch Duart Ltd

I refer to your application dated 3rd October 2022 for a licence to disturb European Protected Species (“EPS”) as a result of acoustic deterrent device (“ADD”) use at the Clashnessie bay fish farm site operated by Loch Duart Ltd (“the Application”).

The Application covers a single site in Clashnessie Bay, Sutherland. The farm comprises 16 ring cages set out in two rows of eight. The Application proposes that a total of 14 ADD units (eight Ace Aquatec US3 units and 6 Ace Aquatec RT1 units) would be spaced evenly around the perimeter of the cage group. It is proposed that the ADDs would be activated when fish are present on site, seal presence is known to occur on site and seal activity is evident around the site. The ADDs proposed for use have asynchronous controls which prevent multiple units sounding simultaneously. The Application also describes circumstances that would result in the ADDs being deactivated including the site being fallow, no seal interaction evident, cetacean presence in immediate area of the farm and lack of efficacy in preventing seal interaction with the farm.

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

1. There is a licensable purpose;
2. There is no satisfactory alternative; and
3. 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. An opinion document, [on the issues associated with the proximity of seals to farmed fish](#) (12 August 2022) provided by the Scottish Animal Welfare Council (“SAWC”) in response to a request from Marine Scotland has also been considered. The

advice provided and the consultation representation received, are 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 contains little specific information in regard to damage that has been inflicted as a result of seals or how the use of ADDs would prevent it. It notes that damage has taken the form of direct injury to fish, the need to cull injured livestock, sublethal effects and damage to equipment. However no specific detail or quantification is provided in terms of the number of fish lost/culled or specific damage to equipment. The Application also states that lethal and sublethal impacts are being experienced earlier than during the previous two cycles when ADDs were in use. However, again no detail is provided.

The applicant cites an MSc thesis (K. Whyte, 2015) which concluded that Ace Aquatec devices resulted in an average 70% reduction in direct fish mortalities. It has not been possible to review this document and it is uncertain if it is in the public domain, therefore its conclusions have not been considered during our determination.

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. The Scottish Ministers acknowledge the lack of peer reviewed literature regarding the Ace Aquatec device and ADDs in general but without more detailed supporting information it is not 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 supporting evidence that demonstrates the effectiveness 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

The Application states that the purpose of ADD use is to deter seal interaction with livestock and that they form part of a suite of mitigation measures. These include regular removal of fallen stock, low stocking densities tensioned high-density polyethylene nets and top nets. The Application notes that these measures are complimentary rather than alternative because ADDs reduce the presence of seals in the vicinity of cages which in turn results in a reduction in sub-lethal effects due to stress and flight behaviour. There is however a lack of detail in regard to how these current measures operate (e.g. there is no detail on frequency of removal of dead stock). The Application contains no consideration of any additional methods of seal deterrence or exclusion.

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*

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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 a consideration or analysis of alternative predator control methods. Advice from Marine Scotland Science ("MSS") contains specific advice in this regard.

The Scottish Ministers acknowledge the SAWC opinion document and also recognise 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 has 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

NatureScot noted the lack of independent evidence but advised that a detrimental impact on the favourable conservation status of EPS was unlikely due to the scale of the predicted noise output. 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 response and advice attached.

Both NatureScot and MSS note that separate risk assessments have been undertaken for each type of device and advise that a single risk assessment should have been carried out to reflect a realistic or worst case scenario.

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.

The Scottish Ministers acknowledge receipt of your email and attached document on the evidence of seal impact at the Clashnessie Bay site on 17th March 2023. Please note that this newly provided information has not been taken into consideration as part of the present application process. However, we note that the newly provided document appears to offer information related to the licensable purpose test but no further information in regard to the satisfactory alternative test; therefore, in any event, it would not rectify the failure of the Application to satisfy all three tests.

It is for you to decide if you wish to submit any further application for a licence to disturb EPS as a result of ADD use at any of your sites, but if you do, the Scottish Ministers advise that you give full consideration to all the consultation responses and advice provided.

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 the Clashnessie Bay site operated by Loch Duart 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