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E: DirectorMarineScotland@gov.scot

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Your ref: Email sent to CEU@gov.scot 14 December 2020 20:15

23 February 2021

Dear [Redacted]

Marine Scotland has given consideration to the complaint, submitted by you on the 14 December 2020 and followed up on 5 January 2021, and I wish to thank you for raising this issue.

The complaint relates to the publication of applications for licences granted under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (the 'Habitats Regulations') by the appropriate authority, which in this case is the Scottish Ministers, with Marine Scotland acting on their behalf.

Your complaint requests Marine Scotland to enforce regulation 39(2) of the Habitats Regulations and ban the use of acoustic deterrent devices (ADDs) at fish farms. Your complaint further claims that Marine Scotland is in breach of the Nolan Principles of Public Life and the principles of the Aarhus Convention, as they relate to public participation.

MS-LOT administers the licensing function for activities in the Scottish marine area, on behalf of Scottish Ministers, in accordance with the Habitats Regulations, and your complaint correctly asserts that MS-LOT does indeed put certain information in relation to 'European Protected Species' (EPS) licensing in the public domain, in particular in relation to projects falling under the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the 'EIA Regulations'). Such information is routinely posted online on the [Marine Scotland Information](#) site at the completion of the determination process. There is no statutory requirement to do so, and Marine Scotland publicises such information in the spirit of openness and transparency.

Having considered your request for publication of applications, we will now be placing all EPS licences and applications in the public domain after a determination has been made, in line with the Nolan Principles of Public Life.

With regard to the question of adding a process of public consultation for each individual application, this is not a statutory requirement and would introduce a material change to current regulatory processes with implications for EPS licensing more generally, bearing in



mind that Marine Scotland is not the only regulator which processes EPS licences. We are aware, however, that NatureScot, as a terrestrial EPS regulator, undertakes periodic consultations to inform their policies underpinning EPS licensing for different species and we are considering whether these practices could be applied in the longer term.

Furthermore, although Marine Scotland has not yet received any full EPS applications which would allow us to make an assessment and come to a determination, we have published details of the types of assessment and consideration of satisfactory alternatives on our website and you have provided us, through your communication of 18 January 2021, with extensive comments for our consideration on various technical aspects related to ADD use and the Habitats Regulations.

On your query in relation to research, Crown Estate Scotland, in partnership with Marine Scotland, commissioned research to investigate non-lethal measures for addressing seal predation at fish farms and river fisheries. The aim of this project is to undertake a literature review of available non-lethal options for controlling seal predation on salmon in rivers and in deterring seals from aquaculture farms, with the purpose of identifying measures that could be used at fish farms and river fisheries to address the challenge of seal predation either now or following further research and development. This project is currently in the review phase and will complete in the first quarter of 2021.

I am aware that you wrote to us with additional questions on 18 January 2020. We are considering that letter as a request under the Environmental Information Regulations and will respond within the deadlines required by those regulations.

Yours sincerely,



Annabel Turpie
Director, Marine Scotland