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Senior Investigation Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

██████████
By e-mail: ██████████

08 February 2023

Subject: Response to Representation Received - Environmental Standards Scotland
Case Reference IESS.23.003

Dear ██████████,

Thank you for the representation you submitted to Environmental Standards Scotland (ESS) on 11 January 2023. I can confirm that I have considered the points you have made in your representation, which I have understood as follows:

- The main focus is the sustainable use of natural resources (protected species) in relation to licensing under Section 16 of the Wildlife and Countryside Act 1981 (“the WCA 1981”), especially that which is culturally related.
- When determining licensing applications under Section 16 of the WCA 1981, NatureScot’s sole focus is on “other satisfactory solutions” and “alternatives” without a clear conservation objective. NatureScot have repeatedly refused licence applications for sustainable use of a natural resource by offering an alternative that may not address the specific issue.
- NatureScot also appear to ignore their statutory duty under the Nature Conservation (Scotland) Act 2004 which directs them to “have regard” to the United Nations Convention of Biological Diversity (CBD), one of its founding principles is “sustainable use” being positive to conservation. A convention that the new Scottish Government’s draft Biodiversity Strategy 2045 is heavily focused on.
- The outcome sought is for NatureScot to recognise that sustainable use of natural resources is positive to conservation and that they have no statutory power to refuse it without a conservation objective. Once the conservation objective is established it can be used to explain the proportionality of a decision and how any decision is compliant with the Scottish Regulators Strategic Code of Practice.

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- You have already raised your concerns with Naturescot and the Scottish Public Services Ombusman (SPSO) however both organisations have ceased communications after recommending you pursue the judicial review route.

Having considered all of the information you have submitted, it is apparent that the 'issue' within your representation has been generated from the responses you have received to the various license applications you have submitted over the last 14 years.

As I explained in my response to your previous representation, the requirement placed upon NatureScot and other regulators under the licencing provisions of the WCA 1981 (Section 16) is to consider licence applications received in accordance with their assessment criteria; whilst recognising and applying their balancing duties and proportionality principle before making their final decision. From my research and evidence received Naturescot have, to my mind, provided justification of their determination of licence decisions and therefore appear to be executing their statutory duties as intended. Whilst I acknowledge and accept your genuinely held belief that NatureScot are wrong in their assessments, in my view your recent representation essentially amounts to disagreement with the balancing factors used by NatureScot in determining your various license applications.

As noted in my previous response to you, ESS is not an appeal body for individual regulatory decisions and so we cannot reconsider decision making on individual decisions or applications, irrespective of how many of your applications have been refused. In terms of the issues you have with NatureScot's decision making, the relevant oversight body is the Scottish Public Services Ombudsman, whom I note has already considered your case and referred you to judicial review.

I appreciate that you may be disappointed with my decision, but I would again like to thank you for your time in submitting your representation to ESS and speaking with me. Lastly, if you have any queries or require further clarification on any of the above, please do not hesitate to contact me at the above e-mail address.

Yours sincerely



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