

# Decision Notice

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## **Decision 063/2017: Salmon and Trout Conservation Scotland and Scottish Ministers**

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### **Control of sea lice on fish farms: failure to respond within statutory timescales**

Reference No: 201700329

Decision Date: 02 May 2017



Scottish Information  
Commissioner

## Summary

On 2 December 2016, the Scottish Ministers (the Ministers) were asked for information relating to the control of sea lice on fish farms. This decision finds that the Ministers failed to comply with the requirement for review within the timescale set down by the Environmental Information (Scotland) Regulations 2004 (the EIRs).

## Background

Date	Action
2 December 2016	S&TCS made an information request to the Ministers.
5 January 2017	The Ministers responded to the information request.
10 January 2017	S&TCS wrote to the Ministers requiring a review of their decision.
	S&TCS did not receive a response to its requirement for review.
17 February 2017	S&TCS wrote to the Commissioner's Office, stating that it was dissatisfied with the Minister's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
13 March 2017	The Ministers were notified in writing that an application had been received from S&TCS and were invited to comment on the application.
21 March 2017	The Commissioner received submissions from the Ministers. These submissions are considered below.

## Commissioner's analysis and findings

1. S&TCS specifically referred to the EIRs in their request and all subsequent correspondence and the Ministers responded in terms of the EIRs. Having considered the terms of the request, the Commissioner is satisfied that any information caught by it would be environmental information, as defined in regulation 2(1) of the EIRs. In the circumstances, the Commissioner will consider the Ministers' handling of the request solely in terms of the EIRs.
2. When contacted by the Commissioner, the Ministers acknowledged that they had failed to provide a response to S&TCS's requirement for review. They explained that significant delays in responding to the requirement for review were attributable to inadequate staff cover for reviews during overlapping seasonal and annual leave periods.
3. The Ministers notified the Commissioner that a review outcome was issued to S&TCS on 1 March 2017. A copy was provided to the Commissioner.
4. Regulation 16(4) of the EIRs gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.

5. It is a matter of fact that the Ministers did not provide a response to S&TCS's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with regulation 16(4) of the EIRs.
6. As the Ministers responded to S&TCS's requirement for review on 1 March 2017, the Commissioner does not require them to take any further action in relation to S&TCS's application.
7. The Commissioner recommends that the Ministers consider whether it would be appropriate to apologise to S&TCS for their failure to comply.
8. The Commissioner notes that the Ministers have provided an undertaking that the directorate in question (Marine Scotland) will ensure adequate staffing cover in the future.

## Decision

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The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by S&TCS. In particular, the Ministers failed to respond to S&TCS's requirement for review within the timescale laid down by regulation 16(4) of the EIRs.

The Commissioner does not require the Ministers to take any action in respect of this failure, in response to S&TCS's application, given that they have now issued a response.

## Appeal

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Should either S&TCS or the Scottish Ministers wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**02 May 2017**

**Scottish Information Commissioner**

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