



Scottish Government
Riaghaltas na h-Alba
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marinescotland
science

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enquiries@gov.scot

18 September 2018

Dear [REDACTED]

Thank you for your letter of 1 August in which you raised a number of concerns regarding the release of information relating to the publication of photographs of diseased farmed salmon from aquaculture sites in Scotland. This followed a freedom of information request (Fol/18/01141) and your concerns expand to the further release of similar images. I apologise for the delay in responding.

In addition to addressing and replying to the points you have raised I have also attached an Annex to this communication giving a more detailed description of some of the legislative responsibilities under which Marine Scotland's Fish Health Inspectorate (FHI) operate.

FHI Regulatory Responsibility

Under Council Directive 2006/88/EC, implemented in Scotland through the Aquatic Animal Health (Scotland) Regulations 2009 (the 2009 Regulations), it is a legal requirement for the Competent Authority (CA)¹ to implement surveillance aimed at detecting listed diseases or increased mortality. To support this function there is a requirement for the CA to undertake effective disease investigation and reporting of disease, emerging disease or unexplained mortality without delay. All authorised Aquaculture Production Businesses (under the 2009 Regulations) must comply with any surveillance requirement imposed by the CA.

As a part of this surveillance, where unexplained mortality or animals demonstrating clinical signs of disease are observed, aquatic animals can be examined and sampled. Case notes, samples, results, copied records and photographic images can be taken and are maintained as a record of the surveillance inspection.

This record is retained to demonstrate that Council Directive 2006/88/EC and Regulation (EC) No 882/2004 have been appropriately applied and to demonstrate compliance during any internal audits or European Union Commission inspections and audits which may occur.

¹ in this regard the FHI operate on behalf of Scottish Ministers as part of the CA function
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Case information (including notes, results, photographs and records) is also maintained as a data resource with regards to epidemiological analysis and modelling, particularly with regard to emerging diseases. This facilitates in developing and implementing appropriate surveillance strategies for the CA, the development of efficient regulatory regimes and appropriate contingency plans and useful advice and information for the Scottish aquaculture industry.

In relation to the specific images associated with Fol/18/01141, which relate to The Scottish Salmon Company, all of the information has been obtained through statutory surveillance i.e. inspections and activities driven by the requirements of activities under 2006/88/EC.

We have been advised that photographs are a reasonable part of any investigation undertaken in accordance with the terms of the regulations and are treated as a part of the case record.

Obligations under Fol

As you will be very aware, as a directorate within Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively.

With regard to this particular case, we did consider the request for information in great detail, and proactively sought the views of stakeholders, both within Scottish Government and externally. We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies. In this case, no clear exception applied to the requested information. As such, we are required to release the information. This would be our likely position for any future requests for similar information.

It is important to recognise that the public interest can only be considered if an exception applies. If an exception does apply, we then consider whether the public interest lies in the disclosure of the information or in upholding the exception and withholding the information. No exception applied to the information in relation to this particular case.

We recognise the concerns around the potential use of images out of context. As you will be aware, we did make efforts to ensure that appropriate context was provided along with the images released. In common with other Scottish public authorities, we cannot consider the purposes to which requested information may be put. We are only able to consider the request on its own merits, and if any exceptions may or may not apply. We will of course continue to consult with stakeholders with regards to any future requests for information.

Your Request to Discuss Issues Further

I note your clients request for a meeting to discuss best practice for future visits. It would greatly help us if you could clearly specify your concerns regarding the same and detail the points for discussion. We can then consider the best way forward and ensure appropriate members of staff are available to attend any meeting as required. Once we have received further feedback we can then discuss possible dates to meet.

Regards

██████████

Annex

Council Directive 2006/88/EC Article 10 (1) requires Member States to ensure a risk-based animal health surveillance scheme is applied to all farms and mollusc farming areas, as appropriate for the type of production. Article 10 (2) requires the risk base surveillance scheme to be aimed at the detection of:

- (a) any increased mortality in all farms and mollusc farming areas as appropriate for the type of production; and
- (b) the diseases listed in Part II of Annex IV, in farms and mollusc farming areas where species susceptible to those diseases are present.

Article 10 (3) states that this surveillance shall apply without prejudice to the sampling and surveillance carried out in accordance with Chapter V or Article 49(3), Article 50(4) and Article 52.

Article 49 states that to obtain disease free status the conditions laid down in Part I of Annex V must be complied with. As stated in Part I of Annex V basic biosecurity measures conditions must have been in place continuously for at least a period of ten years before the date of application. Annex V, Part I, point 1.2 states the basic biosecurity measures should consist of:

- (a) the disease is compulsorily notifiable to the competent authority, including notification of suspicion;
- (b) an early detection system is in place throughout the Member State, enabling the competent authority to undertake effective disease investigation and reporting, and ensuring in particular -
 - (i) the rapid recognition of any clinical signs consistent with the suspicion of a disease, emerging disease, or unexplained mortality in farms or molluscs farming areas and in the wild;
 - (ii) the rapid communication of the event to the competent authority with the aim to activating diagnostic investigation with minimum delay.

Annex V, Part I, point 1.3 states the early detection system referred to in point 1.2(b) shall include at least the following:

- (c) access by the competent authority to laboratories with the facilities for diagnosing and differentiating listed and emerging diseases.

In order to meet the requirements of Council Directive 2006/88/EC an aquaculture production business must be authorised to operate under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (2009 Regulations). It is a condition of an authorisation that the business must follow good biosecurity practice and comply with any surveillance requirement imposed by the competent authority.

To enable an appointed inspector the powers to enforce the 2009 Regulations and ensure compliance with Council Directive 2006/88/EC, powers are provided for in Part 6 of the 2009 Regulations.

Regulation 35(1) states an inspector may, on producing some duly authenticated document showing the inspector's authority if required, enter and inspect any land or premises at any reasonable time for the purposes of administering and enforcing these Regulations.

Regulation 36 states, where an inspector exercises the power conferred by regulation 35, the inspector may-

- (a) search the land or premises for any item, including any aquatic animal or water;
- (b) examine anything that is:
 - (i) on the land or premises;
 - (ii) attached or otherwise forms part of the land or premises.

Regulation 37 states, for the purposes of administering or enforcing these Regulations, an inspector may require any person-

- (a) to produce any document or record that is in that person's possession or control;
- (b) to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

Regulation 38 states that it applies where an inspector exercises the powers conferred by regulation 36 or 37. It states an inspector may-

- (2) (a) seize, detain or remove any item which is on the land or premises;
 - (b) take copies of or extracts from any document or record found on the land or premises.
- (3) The power conferred in (2)(a) shall be construed as including power to take and examine samples of any aquatic animal or water.

Regulation 38(6) states the powers conferred by this regulation may only be exercised-

- (a) for the purposes of determining whether an offence under these regulations has been committed, or
- (b) in relation to an item which an inspector reasonably believes to be evidence of the commission of an offence under these Regulations.

Whilst Regulation 38(7) states any item seized by an inspector may be disposed of as the competent authority thinks fit.

6th July 2018

Dear [REDACTED]
Marine Scotland - Science

Dear [REDACTED]

I am writing as follow up to the FOI request by Mr. [REDACTED] and the release of materials to the individual on June 15, 2018, by Marine Scotland (MS). Your justification for releasing photos of dead or euthanized salmon taken by MS staff during a scheduled fish health surveillance visit at various salmon farm locations can be summarised as: *"The public interest in disclosure is outweighed by the public interest in upholding [the materials requested]."*

As expected, the materials and the contextual statements provided by MS were forwarded as an "exclusive" to one online media outlet, *The Ferret*, receiving the headline "Horror photos of farmed salmon spark legal threat". The social media comments following the story urged that consumers *"Don't buy farmed fish"* and that the photos *"Put you off eating salmon"*. As you are aware, it is rare that today's reader delves below the shock and horror headlines.

I feel that these two statements communicated via social media are the best examples of why public interest is not well-served by releasing these photos to a member of the public not familiar with salmon, farming, or salmon health. More to the point: the risk of people turning away from a healthy food such as salmon as a reaction to irresponsible use of photos for the sole purpose of creating fear in the consumer, is a risk to public health. The benefits of eating oily fish like salmon are well documented, as are the concerns to one's health by not including fish in their weekly diet plan.

I ask you to consider this position for future FOI requests that may create unnecessary confusion or fear about consuming healthy Scottish seafood.

In addition, I would like to propose a solution that would negate the need to satisfy future similar requests. That is, collaborate with industry and its fish health professionals to provide an online learning portal for an audience wanting to learn about ocean health. Farm-raised Atlantic salmon is just one fish species in our marine ecosystem, and a database of health challenges to seafood can be identified and contextualised for an interested audience. It is essentially building a current and reader-friendly log of finfish and crustacean diseases on webpages already provided at <http://www.gov.scot/Topics/marine/Fish-Shellfish/aquaculture/diseases>. With this database kept current and relevant, there is no need to share similar photos that are already available online, to individuals that have no fish health expertise.

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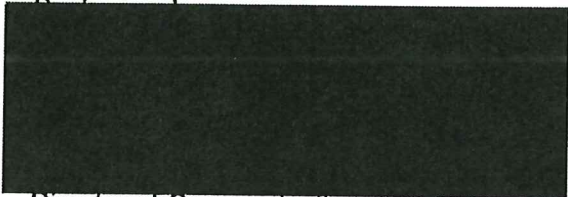
POSTAL

NAME [REDACTED]
EMAIL [REDACTED]@marineharvest.com

WEB
<http://marineharvest.com>

At a very minimum, any photos released by MS should include pertinent information water-marked directly on the photo, thus not allowing the photos to be published without context.

If you would like to chat about my concerns and suggested solutions, I am available at the contact below.



Director of Communication and Business Development

Marine Harvest Scotland

marineharvest.com



[Redacted]

From: [Redacted] (MARLAB)
Sent: 09 August 2018 17:23
To: Cabinet Secretary for the Rural Economy
Cc: Cabinet Secretary for the Environment, Climate Change and Land Reform; Minister for Rural Affairs and the Natural Environment; Director of Marine Scotland Mailbox; Palmer MR (Mike) [Redacted]
 [Redacted] Communications Rural Economy & Environment (MARLAB); [Redacted]
Subject: Freedom of Information – Fol/18/01783 – proposed release information concerning the publication of photographs

Dear [Redacted]

The Cabinet Secretary will wish to be aware of the following Fol request and our proposed response to the same.

The Cabinet Secretary will recall recent Fol requests relating to photographs of diseased farmed salmon. This request (Fol/18/01783) concerns information relating to the publication of photographs associated with the response to Fol/18/01141, and includes:

- details of how the industry stakeholders were consulted prior to the release of the information
- details of how the companies affected were made aware of the release date of information and publication
- information relating to correspondence (e.g. emails and letters) with salmon farming companies, the RSPCA, SSPCA, Government officials and any other parties

Attached is our draft response letter along with documentation proposed for release. This includes several internal and external communications regarding the potential release of these images. There are communications with industry stakeholders, as well as policy colleagues within Scottish Government, including the Fol unit.

The Cabinet Secretary will wish to be aware that we have fully explored the requirement to publish correspondence from stakeholder legal representatives. We have determined that legal privilege is only between a lawyer and their client. As the Scottish Government aren't the client, legal privilege cannot apply to the advice from the stakeholders solicitors in this case.

We have consulted with the Fol unit concerning the response we propose. We have also informed relevant industry stakeholders. SpAds have already approved the draft responses. Lines will be developed and agreed with Communications colleagues.

Regards

[Redacted]



Fol-18-01783 draft letter.docx... INFORMATION PROPOSED FOR ...INFORMATION PROPOSED FOR ...

[Redacted]

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Fax: +44 (0)1224 295620
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w. <http://www.scotland.gov.uk/marinescotland>

[REDACTED] (MARLAB)

From: [REDACTED] (MARLAB)
Sent: 09 August 2018 16:07
To: [REDACTED]
Cc: [REDACTED] (MARLAB); [REDACTED]
Subject: RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests
Attachments: Emails relating to TSSC.DOCX

Dear [REDACTED]

In response to your email from Wednesday please find the attached.

Many thanks,

[REDACTED]

Marine Scotland – Science
Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB
Tel: [REDACTED]
S/B: +44 (0)1224 295620
Mob: [REDACTED]
Fax: +44 (0)1224 295620
e: [REDACTED]@gov.scot
w: <http://www.scotland.gov.uk/marinescotland>

From: [REDACTED]@scottishsalmon.com]
Sent: 07 August 2018 10:52
To: [REDACTED] (MARLAB)
Cc: [REDACTED] (MARLAB); [REDACTED]
Subject: Re: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Dear [REDACTED]

Thank you for your mail. Please can you provide copy of all communications that you intend to release, including the reductions of personal data. Can you also let us know when this release will take place

Regards

[REDACTED]

On 7 Aug 2018, at 10:35, [REDACTED]@gov.scot" <[REDACTED]@gov.scot> wrote:

Dea [REDACTED]

Just for your awareness and following on from my email on 13 July, in relation to the request covering:

information relating to the publication of photos of diseased farmed salmon (FoI/18/01141) - including any correspondence (e.g. emails and letters) with salmon farming companies

20

[REDACTED] (MARLAB)

From: [REDACTED] (MARLAB)
Sent: 07 August 2018 13:36
To: [REDACTED] (MARLAB)
Subject: RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Yes. Let's see

Maybe I should hold off the SpAds communication until we have heard back from him? Or at least until close today?

[REDACTED]

[REDACTED]

Marine Scotland – Science
Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB
S/B: +44 (0)131 244 2500
Fax: +44 (0)1224 295620
e: [REDACTED]@gov.scot
w: <http://www.scotland.gov.uk/marinescotland>

From: [REDACTED] (MARLAB)
Sent: 07 August 2018 13:17
To: [REDACTED] (MARLAB)
Subject: RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Hi [REDACTED] – will see what he comes back with, but advice from the FOI Unit was clear on this that legal privilege does not apply to anything that was sent to us from solicitors that aren't acting for us..

[REDACTED]

From: [REDACTED] [mailto:[REDACTED]@scottishseafarms.com]
Sent: 07 August 2018 13:09
To: [REDACTED] (MARLAB)
Cc: [REDACTED] (MARLAB)
Subject: RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Dear [REDACTED]

Thank you for the notification of the material that is proposed for release to the FOI request. As some of the information refers to individual persons outside of our company providing privileged legal advice and therefore not subject for disclosure we will respond as soon as possible, within today.

Best regards,

[REDACTED]

From: [redacted]@gov.scot [redacted]@gov.scot>
Sent: 07 August 2018 10:52
To: [redacted]@scottishseafarms.com>
Cc: [redacted]@gov.scot
Subject: Fw: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. If in doubt please forward to ITSUPPORT@scottishseafarms.com

Dear [redacted]

Just for your awareness and following on from my email on 13 July, in relation to the request covering:

information relating to the publication of photos of diseased farmed salmon (FoI/18/01141) - including any correspondence (e.g. emails and letters) with salmon farming companies

I'm writing to advise that the attached communications (as an example of the email exchanges between us) will be released in reply to the request. Appropriate redactions will be applied to all personal information including the names of individuals involved.

The request is overdue, and it is our intention to reply to it as soon as possible.

Many thanks.

Kind regards,
[redacted]

Marine Scotland – Science
Scottish Government Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB
S/P: +44 (0)1224 244 2500
[redacted]
Fax: +44 (0)1224 295620
e: [redacted]@gov.scot
w: <http://www.scotland.gov.uk/marinescotland>

From: [redacted] (MARLAB)
Sent: 13 July 2018 12:12
To: [redacted]@marineharvest.com; Jhesketh-laird@scottishsalmon.co.uk;
[redacted]@scottishsalmon.com; [redacted]@scottishsalmon.com; [redacted]@griegseafood.com;
[redacted]@cookeaqua.com; [redacted]@scottishseafarms.com;
sonja@lochduart.com
Cc: MS FishHealth (MS.FishHealth@gov.scot); [redacted] (MARLAB); [redacted]
Subject: RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Dear [redacted]

Many thanks for your communication which I have received and will reply to in due course.

All

Please note that Marine Scotland has recently received several further FoI requests which we are in the process of dealing with. The areas they include cover:

- Copies of photos of Scottish farmed salmon and Scottish salmon farms during 2018 & 2016 – this is a follow up to the request for photos of diseased salmon
- Copies of photos of farmed salmon (dead and alive) following treatment with the Thermolicer, Hydrolicer, Optilicer and other mechanical treatments since 1 January 2016
- Information on the numbers of mortalities on salmon farms since 1 January 2018, including details of the mortality reporting thresholds
- Information on disposal of farmed salmon via landfill, incineration, bio-gas and other disposal methods since 1 January 2018
- Information on any reports (*made by the FHI*) to the Animal and Plant Health Agency in relation to farmed salmon
- Information on mortalities and diseases at smolt salmon farms (freshwater and marine) during 2018

We are in the process of identifying relevant information which we hold in relation to these requests. Where such information relates to your business interest then I will be in contact with you individually regarding the same.

In addition to the requests listed above we have also received a request under the Environmental Information (Scotland) Regulations 2004 (EIRs) for information relating to the publication of photos of diseased farmed salmon (FoI/18/01141) - including any correspondence (e.g. emails and letters) with salmon farming companies.

You have an interest in the information which has been requested because you were one of the companies consulted about release of these photographs, and your communication with us on this matter falls within the scope of the request. Therefore, I am writing to ask you for your views on whether this information should be disclosed, before we make a decision on the request. Please note that this consultation is a courtesy, not a statutory obligation, and you do not have a veto on disclosure of the information. Under the terms of the EIRs, the decision on whether or not to release the information is for the Scottish Government alone. However, we will take account of your views.

I should also explain that we can withhold information only if an exception under the EIRs applies to that information and the public interest in disclosure is not outweighed by the public interest in upholding the exception. You can find detailed information about the EIRs on our website at:

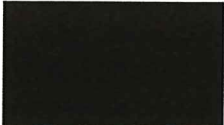
<http://www.scotland.gov.uk/about/foi> or on the Scottish Information Commissioner's website at:

<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>

In order to ensure that we meet our statutory duty to respond to the request within 20 working days of receiving it, I must ask for your views by 23 July.

Please be aware that I shall be out of the office next week but shall return on 23 July. If you wish for your communications to be considered before my return please copy them to our Duty Inspector through the Fish Health mailbox - MS.FishHealth@gov.scot

With best regards,


Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101| 375, Victoria Road | Aberdeen AB11 9DB

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[REDACTED]
Fax: +44 (0)1224 295620

e: [REDACTED]@gov.scot

w: <http://www.scotland.gov.uk/marinescotland>

From: [REDACTED]@marineharvest.com]

Sent: 09 July 2018 09:35

To: [REDACTED] (MARLAB)

Cc: Ihesketh-laird@scottishsalmon.co.uk; [REDACTED] (MARLAB); [REDACTED] (MARLAB);

[REDACTED]@scottishsalmon.com; [REDACTED]@scottishsalmon.com;

[REDACTED]@ariegseafood.com; [REDACTED]@cookeaquac.com;

[REDACTED]@scottishseafarms.com; [REDACTED]@lochduart.com

Subject: RE: FOI/18/01141 - Request for photographs of diseased salmon

Dear [REDACTED]

Please find attached letter from our [REDACTED] with regards to the FOI above.
Please could you include Ian on emails relating to this and any future FOI's.

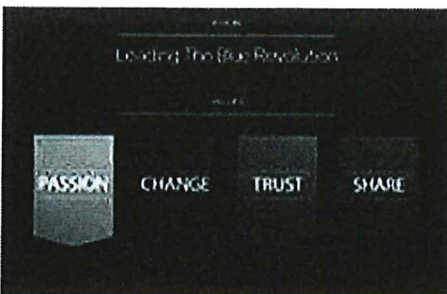
Regards

[REDACTED]
[REDACTED]
MARINE HARVEST SCOTLAND LTD

MAIL: [REDACTED]@marineharvest.com

WEB: www.marinharvest.com

OFFICE: Stob Ban House
Glen Nevis Business Park
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PH33 6RX



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21 December 2018

Dear Stakeholder

Move Towards Active Publication of Fish Health Inspectorate Information from January 2019

As you will be aware, Marine Scotland's Fish Health Inspectorate (FHI) receive regular requests for information relating to their operational activities and practices. As a Directorate within Scottish Government, Marine Scotland have a legal obligation to comply with Freedom of Information legislation¹.

Since 2013, the FHI have implemented an active publication plan relating to case information following activities undertaken with respect to site visits for aquatic animal health surveillance, sea lice inspection and containment inspections. Active publication emerged following regular requests for this type of information and a recognition that a presumption towards proactively releasing the same was an appropriate step forward.

Active publication has allowed a uniform and consistent approach to the release of this type of information and applies to all authorised and registered sites. Publication is undertaken on a quarterly basis, three months in arrears. The initiative supports the ethos of Freedom of Information legislation in terms of developing publication plans. This approach also meets the Scottish Government principles of openness, transparency and accountability in terms of the work we do.

Additional Information to be Published

Recently we have identified several additional types of information that are regularly requested and released under Freedom of Information legislation. As a result, Marine Scotland has concluded that widening the scope of active publication, for the reasons specified above, would be beneficial. These areas include:

¹ This includes the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004

- 1) Photographs taken as part of FHI case information.
- 2) Sea lice information obtained through the voluntary reporting regime.
- 3) Mortality information obtained through the voluntary reporting regime.

Photographs

Photographs taken with respect to site visits for aquatic animal health surveillance, sea lice inspection and containment inspection purposes will be released as part of the case information and fall within the existing publication plan covering the same. Therefore, photographs will be released on a quarterly basis, three months in arrears. This process will start from the 3rd quarter of 2018 (July to September) which will be published in January 2019. Appropriate context to the images will be provided through the case information and any additional text as deemed necessary.

Sea Lice and Mortality Information – applicable to salmonid farms only

Sea lice and mortality information, provided to Marine Scotland's FHI through the voluntary reporting regimes, will be published monthly, one month in arrears starting with data from 2019 onwards (therefore, the first publication will be in early March 2019).

As a reminder, the voluntary reporting regime associated with sea lice applies to marine salmonid farms. The voluntary reporting regime associated with mortality applies to all salmonid sites.

Attached alongside this letter is an annex (Annex 1) indicating what the data may look like from a published perspective.

Presently, we receive information concerning sea lice and mortality through various channels, including letter, email and telephone. I would be obliged if, going forwards, information could be submitted by email using the attached Excel templates - one for sea lice (Annex 2) and one for mortalities (Annex 3). At present these are in draft format and when finalised will be made available on-line. Adopting this method helps to reduce the risk of errors associated with the information provided when recording, transcribing and then publishing the same.

Maintaining a written record from your own perspective will also be beneficial for your awareness of forthcoming publications. The FHI can always make you aware of future publications of mortality and sea lice information before they occur, but it is hoped that adopting the suggested approach will reduce the need for this.

The approach being adopted follows on from your own industry initiatives undertaken earlier this year publishing site specific data and information relating to sea lice and mortalities, and commitments made in Scotland's 10 Year Farmed Fish Health Framework to lead in information sharing and transparency. The Framework activities includes a review of Scotland's farmed fish sea lice compliance policy, introduced in 2017, which we expect to conclude by spring 2019.

Should you have any questions, queries or comments on the above or the attached documentation then please do not hesitate to contact me.

Yours faithfully

██████████



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██████████
Marine Harvest (Scotland) Ltd

By email

5 September 2018

Dear ██████████

Thank you for your letter of 6 July 2018, in which you raised a number of concerns regarding the release of information relating to the publication of photographs of diseased farmed salmon from aquaculture sites in Scotland following a freedom of information request (Fol/18/01141). I apologise for the delay in responding.

I note your specific comments regarding the public interest in releasing this information. I also acknowledge the concerns that you raise regarding statements on social media and the potential impact that this may have upon your business interests.

As you will be very aware, as a directorate within Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively.

With regard to this particular enquiry, we did consider the request for information in great detail, and proactively sought the views of stakeholders, both within Scottish Government and externally. We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies. In this case, no clear exception applied to the requested information. As such, we are required to the release the information.

It is important to recognise that the public interest can only be considered if an exception applies. If an exception does apply, we then consider whether the public interest lies in the disclosure of the information or in upholding the exception and withholding the information. No exception applied to the information in relation to this particular case.

We recognise the concerns around the potential use of images out of context. As you will be aware, we did make efforts to ensure that appropriate context was provided along with the images released. In common with other Scottish public authorities, we cannot consider the purposes to which requested information may be put. We are only able consider the request on its own merits, and if any exceptions may or may not apply. We will of course continue to consult with stakeholders with regards to any future requests for information.

I acknowledge your suggestion for industry and fish health professionals to collaborate and provide an online learning portal regarding ocean health. Perhaps this suggestion could be taken forward through the Farmed Fish Health Working Group. This would seem like a suitable forum to discuss the wider benefits of your proposal. We have advised the Secretariat for the Framework Group, so that this can be conveyed to the appropriate individuals. There is clearly a great deal to be gained through a public facing platform portraying the industry in terms of its activities and its wider environmental, social and economic impact within Scotland.

That said, regardless of any proactive publication of information, freedom of information requests will still be received, seeking additional, associated or specific information held. We have first-hand experience of this within the Fish Health Inspectorate in relation to our active publication of case information relating our programme of aquatic animal health surveillance.

I also note your request for Marine Scotland to watermark photographs with pertinent information. We will give that some consideration although ultimately we need to determine how information is presented in terms of the release of information held in response to any request under Fol or as part of any pro-active publication campaign.

Best regards

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