

Mr Don Staniford  
Global Alliance Against Industrial Aquaculture

By email: [salmonfarmingkills@gmail.com](mailto:salmonfarmingkills@gmail.com)



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Our ref: FoI/12/00995  
10 September 2012

Dear Mr Staniford

### **Response to review for request of original response**

Further to my letter of 14 August, I have now completed my internal review of Marine Scotland's response to your request under the Freedom of Information (Scotland) Act 2012 and the Environmental Information (Scotland) Regulations 2004 (EIRs) for information in relation to data collected via surveys or any other means, and copies of correspondence, briefings and any dealings with the Scottish salmon farming industry since 1<sup>st</sup> January 2010 relating to predator nets at Scottish salmon farms.

Your letter of 10 August 2012 requested an internal review of Marine Scotland's response of 9 August 2012 on the basis that the letter a) it failed to provide a number or give current figures for Scottish salmon farms with predator nets and b) that the response referred to correspondence and information relating to predator nets at Scottish salmon farms but did not provide any documentation.

I have concluded that the original decision should be confirmed, with modifications and that your request was correctly handled in accordance with our procedures and legislative requirements.

I am content that the application of the exemption in section 39(2) of FoI has been properly applied and explained, as has the application of the public interest test. The exemption under section 39(2) is essentially a technical provision. It creates an exemption from disclosure under FOISA where information is environmental information as defined in the EIRs. It allows authorities to manage the complex relationship between these two laws, both of which give individuals rights to request environmental information. By using the exemption under section 39(2), an authority can go on to consider whether the information needs to be disclosed solely in terms of the EIRs. The exemption is subject to the public interest test. The application of section 39(2) provides that if the information is subject to one of the exceptions under EIRs, the authority is not obliged to disclose it.

In the course of my review I have found that there was an omission in that while percentages were provided for fish farm sites with anti-predator nets, gained via a survey of applicants for seal licences,

the actual numbers were not provided. The figures requested under part a) of your original request are as follows:-

2010/11 Fish Farm Survey – farms with predator nets

28 fish farms out of 142 responses (20%)

(The basis of the percentage quoted in the written answer given by Richard Lochhead on Friday, March 04, 2011 - S3W-39451)

2011/12 Fish Farm Survey – farms with predator nets

36 fish farms out of 175 responses (20%)

Additionally, I have considered the release of further information on the use of predator nets on Scottish salmon farms from the 2010/11 and 2011/12 surveys of applicants requesting seal licences. I have concluded that a summary of the anti-predator net surveys data can be released and a summary of the data is now attached together with a copy of the electronic survey question asked in relation to the use of anti-predator nets. This questionnaire extract relates to the 2011/12 survey (with the extra question on reasons why anti-predator nets are not used). The 2010/11 questionnaire no longer exists. However, I am of the view that the locations of farms that utilise anti-predator nets should not be released for the reasons below.

In relation to part b) the Scottish Government has not had any contact with the industry specifically on predator nets. The definition of anti-predator nets provided by the industry on 6 September 2011, and referred to in Ian Walker's reply, e.g. 'large mesh external nets' resulted from a general exercise to clarify definitions to be used in the 2011/12 survey.

In relation to the second part of your original request, apart from the information now provided in this letter, I agree with the original decision, with respect to identifying the location of the farms with predator nets, that an exception applies under regulation 10(5)(a) and 10(5)(g) where a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially public safety or the protection of the environment to which the information relates

I have reapplied the public interest test as required under EIRs and in all the circumstances of the case, considered if the public interest in disclosing the locational information outweighs the public interest in applying the exception. I have found that, on balance, the public interest lies in favour of upholding the exception. I have determined this on the basis that there is concern that by publishing the information it may fall into the hands of people who would abuse that knowledge to the detriment of the protection of individuals or of the environment to which the information relates, e.g. endanger the safety of on site personnel or potential criminal damage.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. You can contact the Commissioner at:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

**DAVID ALISON**

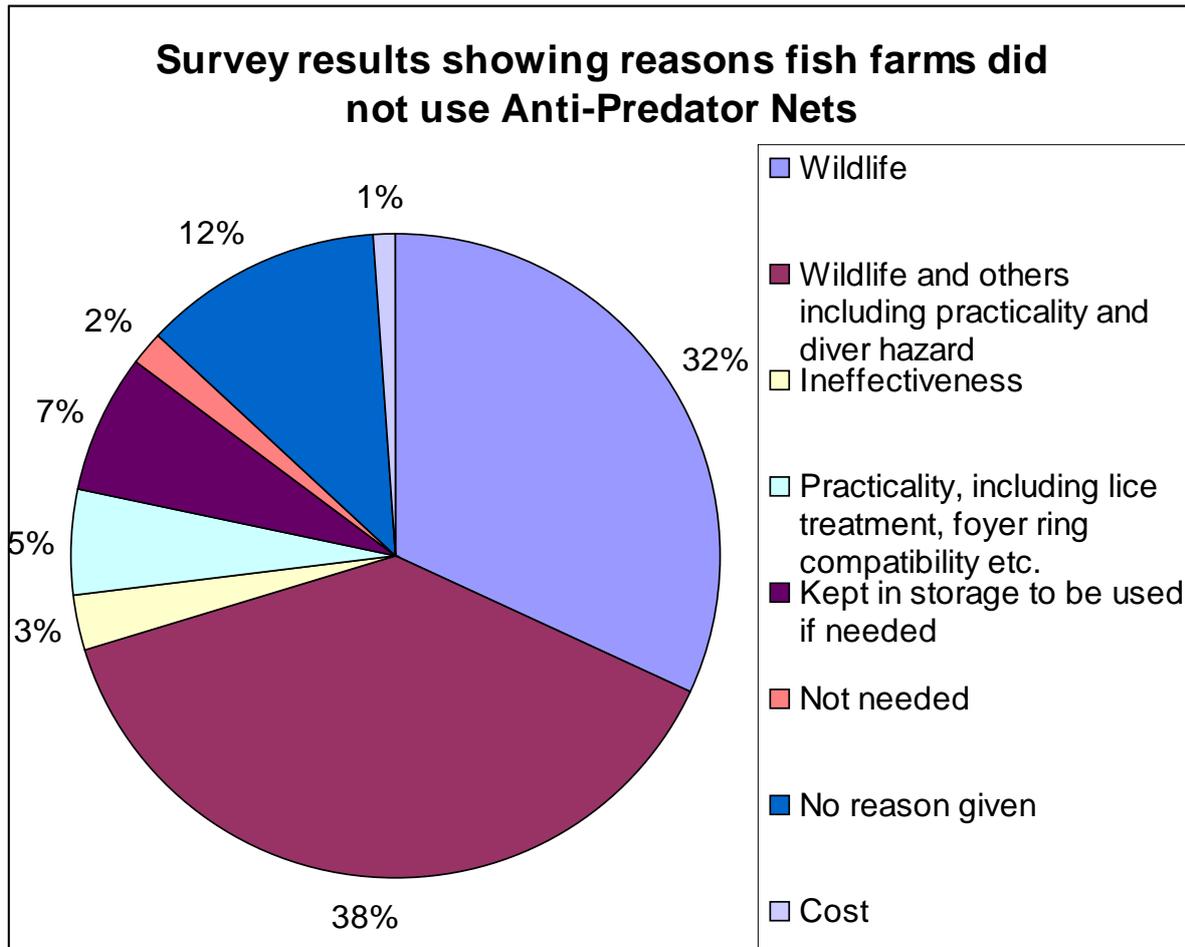
Performance Policy Manager  
Marine Scotland  
Performance, Aquaculture and Recreational Fisheries  
Area 1B (North)  
Victoria Quay  
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### 2010/11 Survey - Anti-Predator Nets

A total of 20% of fish farms have anti-predator nets (28 out of 142 responses). 19 of these rated the effectiveness of these nets between 1 (ineffective) and 5 (very effective) with majority of these (42%) rating them as moderately effective.

### 2011/12 Survey - Anti-Predator Nets

A total of 13% of fish farms actively use anti-predator nets and a further 7% have anti-predator nets in storage to use if they have a particular problem making 20% in total (36 out of 175 responses). A number of reasons were offered for not using such nets but the most significant by far at 70% was related either solely or partly to possible impacts on wildlife.



No information on was provided on types, models, manufacturers or length of time in use.

36 rated the effectiveness of these nets between 1 (ineffective) and 5 (very effective) with majority of these (70%) rating them as moderately effective.

### Note

The survey results showing reasons fish farms did not use anti-predator nets or information on types, models, manufacturers or length of time in use was requested in the 2010/11 survey.