

From: Don Staniford [<mailto:salmonfarmingkills@gmail.com>]
Sent: 13 September 2012 09:10
To: 'enquiries@itspublicknowledge.info'
Subject: FoI appeal: Predator Nets at Scottish Salmon Farms

Please consider this an appeal relating to Marine Scotland's refusal to name the salmon farming companies with predator nets (20% of the industry according to Marine Scotland" since " disclosure would, or would be likely to, prejudice substantially public safety or the protection of the environment to which the information relates" (FoI/12/00995).

The attached letter from David Allison (10 September) includes:

"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."

This is manifestly unreasonable. In fact, there is a huge public relations benefit to naming the 20% of Scottish salmon farming companies who do employ predator nets (or keep them in storage for use).

Moreover, in view of a breach of the US Marine Mammal Protection Act and a potential ban on imports of Scottish farmed salmon to the US market there is a significant market advantage in publicising the use of predator nets. Those companies who do have predator nets deserve to be raised and praised.

Consumers, especially those who buy farmed salmon according to animal welfare schemes such as the RSPCA's 'Freedom Food' scheme (which will soon certify 80% of Scottish salmon farms), have a right to know which salmon farm sites are adopting best practice in relation to predator control. Failure to disclose the names of the sites serves only to protect the companies failing to adopt best practice and resorting as a first resort to lethal predator control. Disclosure is therefore clearly in the public interest.

I have also copied in Julie Frew who is dealing with another appeal on naming companies killing seals and the case: Marine Scotland – 201201193. My email of 18th August details reasons in favour of naming the companies. A similar argument applies in this case. I would obviously be happy to expand on the reasons too.

Please find enclosed below the correspondence dating from the original FOI filed on 12th July 2012. The attached relates to Marine Scotland's final review.

Please provide a receipt for this appeal.

Thanks,

Don

From: David.Alison@scotland.gsi.gov.uk [<mailto:David.Alison@scotland.gsi.gov.uk>]
Sent: 10 September 2012 14:42
To: salmonfarmingkills@gmail.com
Subject: REVIEW: FoI/12/00995: Predator Nets at Scottish Salmon Farms

Dear Mr Staniford

Further to my holding response of 6 September, Please now find attached my Review Response letter, and enclosure, dated 10 September 2012.

<<Fol 12 00995 Review Response 10 09 2012.doc>> <<extract questionnaire.pdf>>

DAVID ALISON

Performance Policy Manager

Performance, Aquaculture and Recreational Fisheries

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Mr Don Staniford
Global Alliance Against Industrial Aquaculture

By email: salmonfarmingkills@gmail.com



□

Our ref: Fol/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 1st 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

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

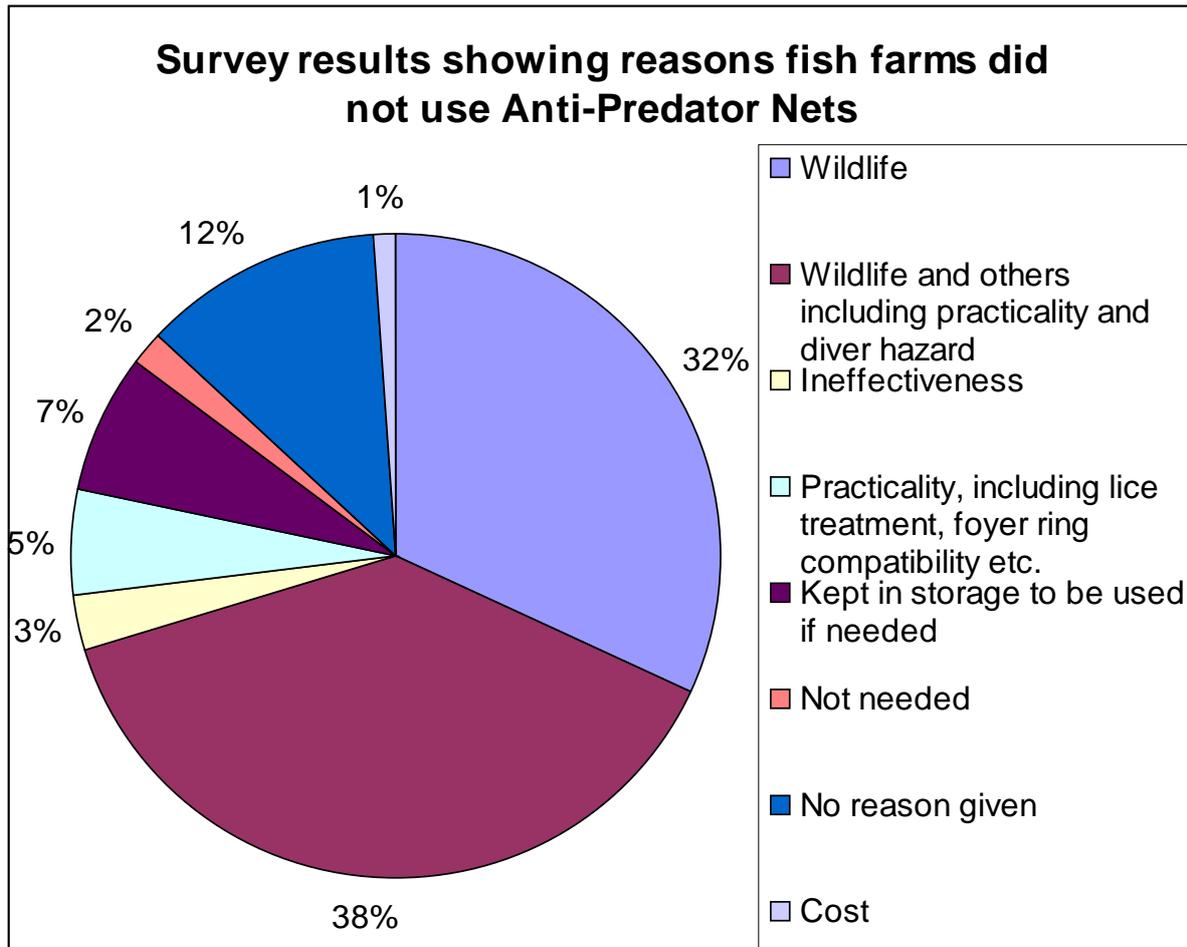
Performance, Aquaculture and Recreational Fisheries
Area 1B (North)
Victoria Quay
EH6 6QQ

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.

From: David.Alison@scotland.gsi.gov.uk [<mailto:David.Alison@scotland.gsi.gov.uk>]
Sent: 06 September 2012 11:47
To: salmonfarmingkills@gmail.com
Subject: Review: FoI/12/00995: Predator Nets at Salmon Farms

Dear Mr Staniford,

REVIEW: FoI/12/00995: PREDATOR NETS AT SALMON FARMS

I refer to my letter of 14 August 2012 about your request for review of our response to your request under the Environmental Information (Scotland) Regulations 2004 (EIRs). You requested information on predator nets on Scottish farms in relation to data collected via surveys or any other means (since January 2010), and copies of correspondence, briefings and any dealings with the Scottish salmon farming industry on predator nets since 1st January 2010.

Under regulation 5(2)(a) of the EIRs, our response to your review request is due on 7 September 2012. Unfortunately, it is taking longer than expected to carry out the review because of the need to review survey data in relation to predator nets for requested period. I apologise for the delay and hope to be able to send you my decision shortly.

Yours sincerely

DAVID ALISON

Performance Policy Manager

Performance, Aquaculture and Recreational Fisheries

marinescotland

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

From: David.Alison@scotland.gsi.gov.uk [<mailto:David.Alison@scotland.gsi.gov.uk>]
Sent: 14 August 2012 15:00

To: salmonfarmingkills@gmail.com

Subject:

Mr Staniford

Please find attached my acknowledgement of your request for an internal review of Fol case Fol/12/00995 as you requested in your e-mail of 10 August 2012 to Graeme Dickson, Director General Enterprise, Environment & Digital. Your request was passed to Director, Marine Scotland for action.

<<Fol 12 00995 Acknowledgement of Request for Review 14 08 2012.doc>>

DAVID ALISON

Performance Policy Manager

Performance, Aquaculture and Recreational Fisheries

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo le gun fhiosd', bu choir cur às dhan phost-d agus

lethbhreac sam bith air an t-siostam agaibh, leig fios chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

From: Don Staniford [<mailto:salmonfarmingkills@gmail.com>]
Sent: 10 August 2012 08:36
To: 'graeme.dickson@scotland.gsi.gov.uk'; 'ceu@scotland.gsi.gov.uk'
Cc: 'Andrew.Kent@scotland.gsi.gov.uk'; 'Ian.Walker@scotland.gsi.gov.uk'
Subject: RE: FOI - Predator nets at salmon farms

Graeme,

Please consider this a request for a formal review of a FOI filed on 12 July – and replied to by Ian Walker on 9 August (correspondence enclosed below).

The reasons to request a review are as follows.

Under part a) of my FOI request I asked for: "The number and % of Scottish salmon farms with predator nets (please give a current figure and any other data collected via surveys or any other means since 1st January 2010)"

Mr. Walker failed to provide a number or give current figures. His response only gave a %. Please give numbers and figures.

Under part b) I asked for: "Correspondence, briefings and any dealings with the Scottish salmon farming industry on predator nets (since 1st January 2010)"

Mr. Walker refers to correspondence and information relating to the above but does not provide any documentation.

He then argues: "By releasing details of the individual fish farm site responses to the survey those sites may become targets for action. This could possibly lead to criminal damage and endanger the safety of individuals employed on those sites. We therefore will not be releasing information which would identify the specific sites which have no anti-predator nets."

This is illogical and ridiculous especially when he admits that 80% of salmon farms in Scotland do NOT have anti-predator nets. If there's say 300 active salmon farm sites in Scotland that's over 200 salmon farms without anti-predators. This is hardly an exclusive group. Nor is there any evidence or history of people targeting salmon farms. His reasons for refusal are baseless.

Please therefore overturn his refusal to provide the information.

Please provide a receipt for this request for a review.

Thanks,

Don

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From: lan.Walker@scotland.gsi.gov.uk [mailto:lan.Walker@scotland.gsi.gov.uk]
Sent: 09 August 2012 12:49
To: salmonfarmingkills@gmail.com
Cc: Andrew.Kent@scotland.gsi.gov.uk
Subject: RE: FOI - Predator nets at salmon farms

Dear Mr Staniford

Thank you for your e-mail request of 12 July 2012 for information under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 about seal licensing, as below.

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are therefore applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA. As the exemption is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information under FOISA outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

Almost all fish farms seeking a seal licence already employ at least one and many a number of non-lethal measures. The non-lethal measure that is generally accepted to be most effective against seals is tensioned nets and almost all fish farms have such nets installed. In addition to this, many fish farms have acoustic deterrents, seal blinds and a fifth anti-predator nets. There are a range of views on the effectiveness of these other measures but none have entirely eliminated the risk of seal predation.

(a) 20% of the fish farm sites that applied for seal licences had anti-predator nets. In respect of those sites without such nets, 70% of sites that applied for licences reported that they were unable to use anti-predator nets primarily because of risks posed to other wildlife (otters, seabirds and cetaceans) from the use of such nets. This is the primary reason for the limited use of such nets, which are cheap compared to acoustic deterrents. Indeed Shetland Islands Council specifically recommends that anti-predator nets only be used in fish farms where net tensioning is not possible.

(b) Marine Scotland holds information on dealings with the industry in the period specified in respect of anti-predator nets as follows:-

In late 2010 Marine Scotland asked applicants for seal licences to complete a survey, which asked whether or not they had anti-predator nets on their fish farm site. This produced the information published in the Parliamentary reply of 4 March 2011 to question S3W-39451 to which you refer.

On 6 September 2011, Marine Scotland received from the industry a definition of anti-predator nets for use in the next survey which was as follows:-
Anti-predator nets - large mesh external nets.

In late 2011, Marine Scotland again asked applicants for seal licences to complete a survey, which asked whether or not they had anti-predator nets (as per the industry definition) on their fish farm site and on their effectiveness. In addition, Marine Scotland sought information from those not using anti-predator nets about the reasons for this. This produced the information included under (a) above. In addition, it showed that the majority of sites using such nets rated their effectiveness as moderate (3 in a scale from 1 ineffective to 5 very effective).

We endeavour to provide information whenever possible. However, in this instance an exception under regulation 10(5)(a) and 10(5)(g) of the EIRs applies to some of the information requested. These Regulations provide for refusing a request to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially public safety or prejudice substantially the protection of the environment to which the information relates. By releasing details of the individual fish farm site responses to the survey those sites may become targets for action. This could possibly lead to criminal damage and endanger the safety of individuals employed on those sites. We therefore will not be releasing information which would identify the specific sites which have no anti-predator nets.

As the exception is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there is some public interest in release because of the desire to know what impact a company is having on seals or the wider environment this is outweighed by the public interest in ensuring property and individuals are not put at risk.

If you are unhappy with this response to your request, you may request that we undertake an internal review, by writing to Graeme Dickson, Director-General Enterprise, Environment and Digital, GW 10, St Andrews House, Edinburgh EH1 3DG. Your request should explain why you wish a review to be carried out, and should be made within 40 working days of receipt of this e-mail, and we will reply within 20 working days of receipt. If you are not happy with the result of the review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

Yours sincerely

Ian			Walker
Marine			Scotland
Marine	Planning	&	Policy
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Victoria			Quay
Edinburgh			
EH6			6QQ
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0131	244		7613
ian.walker@scotland.gsi.gov.uk			

From: Don Staniford [<mailto:salmonfarmingkills@gmail.com>]

Sent: 12 July 2012 07:14

To: Central Enquiry Unit

Cc: Kent A (Andrew); MacKintosh F (Fiona); Campbell M (Morag) (MARLAB); Walker IW (Ian)

Subject: FOI - Predator nets at salmon farms

Please provide information on predator nets on salmon farms – including:

a) The number and % of Scottish salmon farms with predator nets (please give a current figure and any other data collected via surveys or any other means since 1st January 2010)

Please note that the [Shetland News](#) reported in March 2011: "A government survey showed that 80 per cent of salmon farms in Scotland do not have anti predator nets". Apparently this was based on a written answer given in the Scottish Parliament by Scottish Government Minister Richard Lochhead on Friday, March 04, 2011.

b) Correspondence, briefings and any dealings with the Scottish salmon farming industry on predator nets (since 1st January 2010)

Please consider this a request for information under the relevant Freedom of Information and Environmental Information Regulations including both the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (as well as any other new or other regulations which may be appropriate).

Please provide this information electronically via email.

Please acknowledge receipt of this FOI request.

Many thanks and I look forward to a response shortly.

Don

Don Staniford
Global Alliance Against Industrial Aquaculture

