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Our File No: 26736.001
April 4, 2008

Office of the Information
& Privacy Commissioner
PO Box 9038, Stn Prov Govt
3rd Floor - 756 Fort Street
Victoria, BC V8W 9A4

Attn: Registrar of Inquiries, Carole Shave

RE: OIPC File No: F07-33524

Please find attached the following:

- 1) Submission for Marine Harvest Canada Inc. with Letter of Understanding
- 2) Affidavit of Diane Morrison
- 3) CD with the above noted documents.

Kindly acknowledge receipt of these documents by endorsing the enclosed copy of this letter.

Yours very truly,

TEES KIDDLE SPENCER

Per:

DAVID J. F. TEES
direct email: djftees@tkslaw.com
DJT:tg
cc:client

Delivery of a true copy hereof admitted
this,.... day of19..... A.D.
.....
Solicitor for.....

LETTER OF UNDERSTANDING REGARDING FISH DISEASE
REPORTING AND PROVINCIAL FISH HEALTH DATABASE

AMONG:

The Ministry of Agriculture, Food and Fisheries

("BCMAFF")

AND:

The British Columbia Salmon Farmers Association

("BCSFA")

AS OF:

January 23, 2001

This Letter of Understanding has been developed in recognition of the commitment of BCMAFF and BCSFA to the implementation of the provincial Salmon Aquaculture Policy (the "Policy"), which is in keeping with the recommendations of the 1997 Environmental Assessment Review of aquaculture.

As part of the fish health component of the Policy, the Province stated that a comprehensive database will be developed to improve the quality and availability of health information for cultured salmon stocks. The Province will publish an annual report to improve public access to, and communication of, aggregated fish health information.

1. Purpose of Letter of Understanding

The purpose of this Letter of Understanding is to document how information will be reported from all freshwater hatchery facilities and marine fish farm sites ("Fish Culture Facilities") to the fish health database (the "Database") and from the Database to BCMAFF. The Database is being developed by the BCSFA as an 8-month pilot project with funding assistance from the Office of the Commissioner for Aquaculture Development (OCAD) for technical development to June 2001. This LOU will also document the framework for the BCMAFF's program for fish health surveillance of the industry fish culture facilities and auditing of records for consistency with the fish health information reported in quarterly reports to BCMAFF from the Database.

2. Database Structure and Fish Health Reporting

Background:

The BCSFA will develop the Database to house information from all Fish Culture Facilities. The BCSFA will develop the framework for reporting information to the Database system. The BCSFA will ensure individual company data confidentiality by providing a Nondisclosure agreement between itself and the industry Database participants and by providing strict security and encryption protocols in the Database. In this way ownership of the Database and the aggregate industry information will belong to the BCSFA.

The Database will be a Web enabled system in which the Internet provides a wide area network and "on-line" access for authorized users from multiple geographic locations. The system will be structured with restricted access and a series of "firewalls" to maintain individual company confidentiality.

3. Information Provided to the Database

Fish Culture Facilities will provide the Database site-by-site information on inventories and percentage mortality broken down by findings attributed to cause. Inventory data will be used to calculate the total percent mortality and the percentage of mortality by finding. The Fish Culture Facilities will also provide specific information on infectious diseases and the various disease(s) which have a confirmed veterinary diagnosis. Individual Company information is proprietary business information and it will be kept strictly confidential to the BCSFA Database. However, amalgamated information on specific confirmed diagnoses and rates of mortality will be used toward the BCMAFF quarterly reporting requirements.

4. Reporting to BCMAFF

Based on information reported to the Database, the BCSFA and/or its agents will provide quarterly amalgamated reports on the health of cultured salmon to BCMAFF. The database will summarize the above health information quarterly and amalgamate it by zone. The zones chosen for reporting are the fish health zones established by the federal Department of Fisheries and Oceans (DFO) and are based on watersheds for stocking purposes. These zones will also be used for the proposed Fisheries and Oceans wild fish surveillance program making it easier for future inclusion of this information in the Database. Reporting based on zone has been established to protect the confidentiality of the clients and proprietary information. The summary health information will be compiled in the Database and reported by the BCSFA or their agents quarterly per zone to the provincial Chief Veterinarian.

It is anticipated that building the Database structure will take six months with completion anticipated by June 2001. This will be followed by a one-year testing and evaluation period to analyze the functioning of the Database. At least four large industry companies and several of the public hatchery facilities have agreed to provide fish health information to test the Database. There will be no public reporting of the Database findings during the one-year evaluation period. At the end of the one-year evaluation period (June 2002), the BCSFA will provide a final report to the Province reviewing the performance of the database system and agreement reached with BCMAFF on the quarterly reporting format. This one-year evaluation period is contingent on a six month interim program review (December 2001) by the BCSFA to BCMAFF to determine if an additional six months of review and non-reporting is required.

5. BCMAFF Auditing and Surveillance Program

The BCMAFF Provincial Fish Health Veterinarian will also conduct an on-site audit of and an active surveillance program to verify the accuracy of data provided to BCMAFF from the BCSFA's fish health Database. This program will be structured to sample fish at randomly selected farms within specified fish health zones (as above).

The BCMAFF auditing and surveillance program will be a multi-stage sampling system. The unit of concern will be the Fish Culture Facility, with the selection of sites being weighted to reflect the percentage of hatcheries or farms in that zone. The information will provide a "snapshot" of the reasons for loss of the stocks in that particular zone and can be compared to the reported quarterly information on the causes of mortality findings and the confirmed veterinary diagnoses provided from the Database.

Subsequent to completion of the Database and during the one-year testing phase of the pilot project, BCMAFF Fish Health veterinarian or his/her designate will conduct on site visits that will include a Fish Culture Facility record check to ensure the Fish Culture Facilities. The information will be checked for consistency with the quarterly reports for that zone. If discrepancies are found, follow-up with the individual company will occur if required to determine reason for the variation in reporting.

6. Regulatory Basis for Reporting

BCMAFF will establish a mandatory fish disease reporting scheme based on discussions with the BCSFA, participants and public fish culture facilities and on information gathered through the Database during the evaluation period. This will be completed subsequent to the end of the one-year evaluation of the Database pilot project. The following is a breakdown of the types of infectious disease information that may be captured by the Database and will provide clarification on regulatory roles and responsibilities.

Exotic Diseases: Responsibility for management and control of Exotic Diseases and diseases of significance from a trade perspective for Canada fall under the regulatory responsibility of the Department of Fisheries and Oceans (DFO), with joint jurisdiction

for fish health in aquaculture operations shared with the Provinces. There are no clear guidelines currently established for reporting Exotic Diseases; however DFO is undertaking a regulatory review and legislative amendments are anticipated. Using agricultural regulation as a model, Exotic Diseases would be reported directly to DFO. DFO recognizes that to do this they must first establish standards to assure reliability of diagnostic information. This will be part of the National Aquatic Animal Health Program. Any finding of an exotic disease recognized as Notifiable to the Office International des Epizooties (OIE), the recognized international authority for animal health must be reported directly to DFO. The List of Notifiable diseases includes Infectious Hematopoietic Necrosis Virus (IHNV), *Oncorhynchus Masou* Virus (OMV), Viral Hemorrhagic Septicemia (VHS)- European Strain, Epizootic Hematopoietic Necrosis Virus (EHNV) or Spring Viremia of Carp (SVC).

New Emerging Pathogens: Information on New Emerging Pathogens¹ would be routinely captured by the Database in the quarter during which they occurred. However, where there is an economic or biologically significant pathogen or disease detected this requires direct and timely reporting to BCMAFF. Criteria need to be developed in conjunction with BCMAFF, BCSFA, participants and public fish culture facilities to establish when and how diseases of economic or biological significance must be reported to BCMAFF in a more timely manner than through the Database. Newly discovered agents that are determined to be Exotic Diseases should be reported immediately and directly by the Fish Culture Facilities Company to DFO.

Endemic Diseases: There are many commonly recognized diseases in aquaculture. Fish Culture Facilities will voluntarily report these to the Database based on the confirmed diagnosis of a veterinarian or fish health professional. When Endemic Diseases cause significant mortality or are of economic importance to the industry, a mechanism for direct reporting to BCMAFF must be defined. Significant mortality will have to be more precisely defined based on discussions with BCMAFF, BCSFA, participants, public fish culture facilities and the veterinary practitioners in the industry.

7. Cost of Building and Housing the Database

BCMAFF has agreed to contribute \$70,000 to the BCSFA to assist with the structuring and building of the Database. This funding will be used to allow for the continuation of the pilot project beyond June 2001. This will be provided to the BCSFA in a contribution agreement. The BCSFA has a confidential Technical Requirements document outlining the components of the Database. The BCSFA will issue a Request for Proposal for selection of competitive bids from software developers based on the scope of work outlined in the Technical Requirements document.

¹ New Emerging Pathogens/Disease - agents not previously recognised that are determined to have a significant economic or biological impact and may represent a risk for wild and/or cultured fish stocks.

8. Reporting Information from the Pilot Project

BCMAFF and the BCSFA agree to a period for critical evaluation and assessment of the Database as outlined in Section 4. It is estimated that structuring the Database will take approximately six months; hence the term of the pilot project evaluation and review will be one year from the completion date. Information gathered through the auditing and surveillance program will also be confidential with no public reporting of the findings for the same time period.



Bud Graham
Assistant Deputy Minister
Ministry of Agriculture, Food, & Fisheries
BC Fisheries

Odd Grydeland
President
British Columbia Salmon Farmers Association

**In the Matter of a Request for Review between
Tbuck Suzuki Environmental Foundation (“applicant”)
And
The Ministry of Agriculture and Lands (“public body”)
And
Third Parties**

AFFIDAVIT


I, Diane Morrison of 124 -1334 Island Hwy, Campbell River British Columbia, MAKE OATH AND SWEAR AS FOLLOWS:

1. I am a Veterinarian employed by Marine Harvest Canada Inc and as such have personal knowledge of the facts and matters herein after referred to, save and accept where stated to be made on information in belief and where so stated I verily believe such facts to be true.
2. I hold a Doctor of Veterinary Medicine degree (DVM) from the University of Guelph which was granted in 1992.
3. I have continuously practiced in the aquaculture industry as a Doctor of Veterinary Medicine since 1992.
4. I am a licensed Veterinarian pursuant to the legislation of the Province of British Columbia and a member of the British Columbia Veterinary Medical Association.
5. I have been employed with Marine Harvest Canada Inc. since June of 2000.
6. Annexed is Exhibit “A” to this my Affidavit is a copy of the Marine Harvest Canada Inc., Submission for OPIC File No. FO733524 dated March 18, 2008.

7. In my capacity as a Veterinarian, I participated in discussions surrounding the creation of the Letter of Understanding January 31, 2001 and which Letter of Understanding is annexed as Appendix "A" to Submission of Marine Harvest Canada Inc., dated March 18, 2008.

8. From my personal knowledge direct through my employment and through review of documents available to me in my employment with Marine Harvest Canada Inc., I verily believe the factual content and assertions in of Exhibit "A" to be true and accurate.

SWORN BEFORE ME at the City of)
Campbell River, British Columbia, this)
4TH day of April, 2008)


-----)
A Commissioner for taking Affidavits)
in British Columbia)
)

DAVID J. F. TEES
BARRISTER & SOLICITOR
200 - 1260 SHOPPERS ROW
CAMPBELL RIVER, B.C. V9W 2C8


-----)
DIANE MORRISON)

March 18, 2008

In the Matter of a Request for Review between
Tbuck Suzuki Environmental Foundation ("applicant")

And

The Ministry of Agriculture and Lands ("public body")

And

Third Parties

This is Exhibit " A " referred to in the
affidavit of Diane Morrison
sworn before me at Campbell River in the
Province of British Columbia, this 2nd day
of APRIL 2008

A Commissioner for taking Affidavits
within British Columbia
A Notary Public in and for the Province
of British Columbia

History of data collection:

1. Marine Harvest Canada Inc. objects to the release of information requested in the application on the basis that information was provided to the Government on the understanding it would remain confidential and upon the further basis that the release of the information would cause commercial harm.
2. The provincial government in keeping with the recommendations of the 1997 Environmental Assessment Review (SAR) of aquaculture implemented the Salmon Aquaculture Policy. The fish health component of the Policy required the development of a comprehensive database that would improve the quality and availability of health information for cultured salmon stocks. Aggregate information would be submitted to BCMAL on a quarterly basis. Quarterly results would be posted on BCMAL's website and an annual report would be published. The goal was to improve public access to, and communication of, aggregate fish health information.
3. In January 2001 the British Columbia Ministry of Agriculture, Food and Fisheries (now BCMAL)

and the British Columbia Salmon Farmers Association (BCSFA) signed a Letter of Understanding (see Appendix "A") to document how information would be reported from freshwater hatchery facilities and marine fish farm sites. The Database was to be developed and owned by BCFSA. BCSFA would ensure individual company data confidentiality by providing a Nondisclosure agreement between itself and the industry Database participants and by providing strict security and encryption protocols in the Database. In this way, ownership of the Database and the aggregate industry information would belong to BCSFA. Individual Company information is proprietary business information and would be kept strictly confidential to the BCSFA Database. Amalgamated information on specific confirmed diagnoses and rates of mortality would be used toward the BCMAL quarterly reporting requirements.

4. Based on information reported to the BCSFA Database, the BCFSA and/or its agents would provide quarterly amalgamated reports on the health of cultured salmon to BCMAL. The BCFSA Database would summarize health information quarterly and amalgamate it by reporting zone. Reporting based on zones was established to protect the confidentiality of the clients and individual company proprietary information. The summary health information was compiled in the BCFSA Database and reported by the BCSFA or their agents, quarterly per zone, to the provincial Chief Veterinarian.
5. The BCMAL Provincial Fish Health Veterinarian would also conduct on-site audits and an active surveillance program to verify the accuracy of data provided to BCMAL from the BCSFA's Database. The BCMAL Fish Health veterinarian or his/her designate would conduct on-site visits that would include a Fish Culture Facility record check. The information would be checked for consistency with the quarterly reports for that zone. If discrepancies were found,

follow-up with the individual company would occur to determine the reason for the variation in reporting.

6. The information collected during audit and surveillance visits provides a 'snapshot' of the health status on the site. This 'snapshot' represents the status on the farm, on the day of the audit or surveillance visit. There is neither history nor future with this 'snapshot'. It is one data point, which is of little value from a management perspective and impossible to interpret.

a) For example: A BCMAL sea lice audit visit on Feb 10th. The sea lice count confirms that the average number of motile sea lice is above 3.0. This information would be recorded and reported in the BCMAL database. As per the BCMAL Sea Lice Action Plan (SLAP), all farms must have less than 3.0 motiles average/fish by March 1st. What would not be captured was the fact that a sea lice treatment was to begin on the site in the next 3 days. This treatment would reduce the average number of motile lice and ensure the site was in compliance with SLAP before March 1st. If an individual had access to this site specific 'snapshot' information they would be concerned that the site was not in compliance and that juvenile pink salmon were being placed at risk, when this is not the case.

b) For example: A fish health surveillance visit takes place on October 10th. The mortality is higher than normal and the majority of the fish are classified as 'fresh' by the farm staff and BCMAL Fish Health staff. The company's veterinarian had been informed of increased mortality one week previously and had visited the site and taken diagnostic samples. The results from these samples were still pending. The mortality classification

and increased level, taken in isolation of the history, could be interpreted as a serious fish health, i.e. infectious disease, event at that site. In this example, two days after the BCMAL visit the company received the diagnostic results and they revealed that the mortality was due to an environmental event, not disease or fish pathogen.

Information without any context is impossible to interpret.

7. BCMAL developed a Database which was set-up in parallel to the BCSFA's Database and was seen to be needed by BCMAL for arm-length validation of the data submitted by the BCSFA's Database. Sites visited as part of the provincial audit and surveillance program were assigned a code by the BCMAL Database. The code was to ensure confidentiality of the information collected during the visit. The Master List on the BCMAL Database is the only way to trace the site code to the specific site location. This attempt to maintain confidentiality of data collected during BCMAL Fish Health staff visits to private farms shows the government's intent to maintain confidentiality of data.

8. The Databases development, collection of data, release of amalgamated data for quarterly reports and the provincial auditing and surveillance programs were developed between the BCSFA's member companies and BCMAL to address a public concern of the 1997 SAR that there was 'insufficient access, understanding and knowledge of the fish health status of cultured salmon stocks'. Both parties have worked cooperatively to address these concerns. Both parties were aware of the need to maintain confidentiality of proprietary business information while moving forward with intent of good will and transparency

Expectation of Confidentiality:

9. The Letter of Understanding (LOU) signed in January 2001, between BCMAL and BCSFA shows how the two parties worked co-operatively to ensure confidentiality of data. The LOU outlined how the data would be housed and owned by BCSFA, therefore making it inaccessible to Freedom of Information requests. This was upheld in June 2004 when information requested in AFF04.41 point 2 was denied.
10. In addition, quarterly data provided to BCMAL would be amalgamated by health zones. The zones were chosen from existing federal Department of Fisheries and Oceans (DFO) zones, based on watersheds for stocking purposes. These zones would also be used for proposed DFO wild fish surveillance program. Reporting based on zone was established to protect the confidentiality of the clients and proprietary information.
11. Sites visited during a provincial audit and/or surveillance visit were assigned a random code, which could not be traced back to the specific site without the Master List from the provincial Database. All paperwork and samples arriving on and leaving sites only make reference to the assigned code, no reference to the specific site name, location or personnel is ever documented. This approach implied that the site specific information collected during the visit would be held in confidence.
12. Information and data captured in BCFSA's Database and submitted to BCMAL on a quarterly basis and/or collected by the BCMAL Fish Health Staff are not legally required to be released. There are no regulations or laws which require the individual companies to submit or to allow BCMAL Fish Health Staff access to this information. Together the industry and BCMAL

worked cooperatively to address the concerns raised during the 1997 Salmon Aquaculture Review. Paramount to this cooperation was an understanding of the need to maintain confidentiality of data from individual companies.

13. Public concern that the quantity, quality and availability of health information for cultured salmon stocks has been and continues to be addressed. BCMAL reports quarterly on the health status and sea lice data and also publishes an annual review of the data which compares the current data to previous years. These reports show clearly that the health of the cultured salmon is good and is being well managed. The reports also show good compliance with the Provincial Sea Lice Action Plan. During the out migration period sea lice numbers on the farms are below the required 3.0 motile sea lice/fish and the number of sea lice treatments in British Columbia is low. It is unclear how release of site specific data would address this public concern any more clearly.

Commercial Harm:

Release of the information described as OPNC File No.:F07-33524; P.B. File Nos.:292-301AFF-04-041; 292-30/AFF-04-042 would cause Marine Harvest Canada significant commercial harm.

Section 21(1)(b) Freedom of Information and Protection of Privacy Act (FOIPPA)

14. The site specific information supplied to BCMAL during on-site audit and surveillance visit was supplied with the implicit understanding that the information would be held in confidence and that proprietary business information would not be released. An additional part of this understanding is the maintenance of veterinary confidentiality (Veterinarian/Client/Patient

Relationship, BCVMA Code of Ethics). All site specific data is collected by BCMAL veterinarians or his/her designates and all diagnostic tests are run at the BCMAL Animal Health Center in Abbotsford, which is a veterinary laboratory. As such, all data and diagnostic results should be protected by veterinary confidentiality. Loss of confidence in the veterinary relationships would lead to a loss of transparency and an industry reluctance to seek BCMAL assistance.

Section 21(1)(c)(i) FOIPPA

15. Release of the information would significantly harm Marine Harvest Canada's competitive position and interfere with our negotiating position in the following manner:
 - a) Release of site specific therapeutic information, as captured during Fish Health Surveillance on-site visits, would be used by competitors to time harvesting of their fish when Marine Harvest Canada fish are not available for harvest, due to withdrawal clearance time following treatments. This could result in the competitor receiving a higher selling price.
 - b) Marine Harvest Canada has proprietary sea lice management strategies which result in a lower cost of production due to reduced treatment costs. If the site specific therapeutic information is released, competitors would have access to this information and could adopt Marine Harvest Canada's strategy, reducing our competitive advantage.
 - c) Release of site specific information would allow competitors to estimate Marine Harvest

Canada production (inventory and average weight). This information could be used by competitors to harvest fish which are outside the average weight of the Marine Harvest Canada fish. The competitor would receive a premium selling price, placing Marine Harvest Canada at a competitive disadvantage.

- c) Release of site specific information could affect potential sale of broodstock, eggs, fry and/or smolts. As explained earlier, the data collected is a 'snapshot' only and therefore open to misinterpretation. Mortality and health information could be easily misinterpreted by potential buyers and although the data could be explained, it would be enough to prevent potential buyers from contacting Marine Harvest Canada in the first place

Section 21(1)(c)(ii) FOIPPA

- 16. Release of the information would result in Marine Harvest Canada no longer supplying the information to BCMAL. As explained earlier, there are currently no regulations or laws which require Marine Harvest Canada to release the information gathered by BCMAL veterinarians or his/her designates during their on-site visits. This information is released with the best of intentions by Marine Harvest Canada to help address public concerns of the 1997 SAR. Paramount to the continued release of the site specific information is the maintenance of confidentiality of business proprietary information.

Section 21(1)(c)(iii) FOIPPA

- 17. Release of the information would result in undue financial loss for Marine Harvest Canada in the

following manner:

- a) Site specific fish health and sea lice information used out of context and misinterpreted could, and has been used in the past to bring pressure to bear on regulating authorities. This pressure resulted in Marine Harvest Canada having to move one site, twice. The cost to Marine Harvest Canada of this move was \$1.0 million. Release of the site specific fish health and sea lice information would only escalate this type of pressure and subsequent cost to Marine Harvest Canada.

- b) Marine Harvest is a publicly traded company on the Oslo Stock Exchange and as such, corporate reputation is very important in maintaining share price and shareholder loyalty. Buyers of Marine Harvest Canada salmon have been the targets of campaigns which attempt to taint the corporate reputation of Marine Harvest Canada and convince buyers and consumers to stop purchasing Marine Harvest Canada salmon. Release of the site specific fish health and sea lice information would result in more of these types of attacks. Information would be used out of context and misinterpreted, with the end result that Marine Harvest Canada's reputation could be tarnished and sale volumes reduced.

For the forgoing reasons, Marine Harvest Canada Inc. opposes this application for release of data and database as set out in the subject requests.