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Don Staniford
Scottish Salmon Watch
salmonfarmingkills@gmail.com

Your ref: 202000058631
Our ref: Well Boats & Salmon Farms Since 1 October 2018
31 August 2020

Dear Don Staniford,

REQUEST UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)

Thank you for your request dated 8 July 2020 under the relevant FOI and Environmental Information regulations.

Your request:

"Please provide information on well boats and salmon farms since 1 October 2018.

- Please include data on chemical use including Azamethiphos, Deltamethrin, Hydrogen Peroxide, Emamectin benzoate, Imidacloprid (BMK08/Ectosan) and any other chemicals, medicines, antibiotics and anti-parasitocides which may be used via well boats.

- Please include any discussions relating to the input, sharing and publication of well boat data on chemical use by salmon farms via 'Scotland's Aquaculture' and SEPA's 'Scottish Pollutant Release Inventory' (this would include dialogue with salmon farmers, chemical companies and government agencies).

- Please include copies of any well boat licences issued since 1 October 2018.

- Please provide information on well boat bio-security, cleaning, mort disposal, diseases and chemical waste discharges in relation to salmon farming (including information relating to how and where the wastes, effluents and mortalities are discharged, transported and disposed of).

- Please include any information relating to the transfer of licensing/regulatory powers for well boats from the Scottish Government (Marine Scotland) to SEPA including Cabinet Briefings, emails, letters and any other information.

Scottish Salmon Watch is interested in why the transfer of licensing from Marine Scotland to SEPA is taking so long and why well boat data on chemical use by salmon farms is not posted publicly in a more speedy manner."

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 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.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information 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.

Response to your request

1. The completed 2018 Discharge Returns have already been provided to you under the following EIRs request which you made in 2019: FoI/19/02442 released on 18 November 2019. Our response to this request was published on our website last year: <https://www.gov.scot/publications/?publicationTypes=foi-eir-release&page=1/>

Under regulation 6(1)(b) of the EIRs, we do not have to give you information which is already publicly available and easily accessible to you in another form or format.

We do not yet hold completed Discharge Returns for 2019 or 2020.

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because of an exception under regulation 10(4)(a) (information not held) of the EIRs applies to that information. The reasons why this exception applies is explained in the Annex to this letter.

The Discharge Returns for 2019 should be completed by the end of September 2020. The Discharge Returns for 2020 should be completed within the first half of 2021.

The annual Discharge Return data is published each year by the Scottish Environment Protection Agency (SEPA). The 'Scottish Pollutant Release Inventory' (SPRI) 2019 will be published on 29 September 2020 at 09:30.

SPRI publishes on the SEPA website in detail, and on the Scotland's Environment (SE) website in a more summarised version. A link to the published data is provided below and are published by site, by industry code and by pollutant:

<https://www2.sepa.org.uk/spria/Search/ByIndustry/Criteria.aspx>

Searching by 7(b)(i) and 7(b)(ii) emissions to water will bring up each site's return (not detailed, and the pollutants are not split by source so wellboat data is not specifically identifiable). The Results Summary tab has totals for the sector for the year. There's also a "csv" icon at the bottom of the page with the full data for the reporting code in for that year – again just total mass emissions by pollutant for each site, and also a "pdf" icon which has totals on.

2. (i) The wellboat returns data is not currently published on Scotland's Aquaculture Website. We do not hold any information relating to discussions of wellboat data on chemical use by salmon farms via 'Scotland's Aquaculture' or any information held of Scottish Government dialogue with chemical companies on this point.

While our aim is to provide information whenever possible, in this instance we are unable to provide the information you have requested because of an exception under regulation 10(4)(a) (information not held) of the EIRs applies to that information. The reasons why this exception applies is explained in the Annex to this letter.

(ii) I enclose a redacted electronic copy of some of the information you have requested. In this instance we are unable to provide some of the information you have requested because an exception under regulation 11(2) (personal information of a third party) of the EIRs applies to that information. The reasons why that exception applies are explained in the Annex to this letter.

3. The information you have requested regarding any well boat licences issued since 1 October 2018 is available from <http://marine.gov.scot/>. All licences are now routinely published.

Under regulation 6(1)(b) of the EIRs, we do not have to give you information which is already publicly available and easily accessible to you in another form or format.

4. (i) Some of the information you have requested relates to the activities and operations undertaken by Marine Scotland's Fish Health Inspectorate (FHI), most notably, within the areas of site specific chemical use through well boats operations, information on well boat biosecurity, cleaning, mortality disposal and disease. Where information is held in relation to these areas, and it relates to the aquatic animal health surveillance programme, it is made publicly available through the proactive publication of FHI information. In addition to the FHI case information, you may also find some information of relevance through mortality reports and sea lice information which is also proactively published: <https://www.gov.scot/collections/publication-of-fish-health-inspectorate-information/>

The FHI also hold some information in relation to well boat disinfection associated with dead fish transfers to Northern Ireland for processing. Where these movements involve un-eviscerated fish, they must be accompanied by a health certificate and part of the process in issuing this involves confirming that the transport vehicle has been cleaned and disinfected prior to its use. This includes details of the steps involved in cleaning and disinfection, confirming the areas and equipment on the boat where this has been applied, as well as the detergents and disinfectants used and their concentration and contact times.

Similar information, relating to vehicle disinfection (including well boats where applicable) can also be inspected as part of the health certification process for exports and imports of live aquatic animals. Although copies of this information are not retained it forms an important part of the process, along with physical inspection where possible, to allow health certification to be undertaken. Satisfactory completion of the same is documented through the health certificate, along with the FHI case sheet in relation to exports.

In addition to the above, you may also find some information in relation to well boats and the relevant sections of your request on the Scottish Government website by conducting appropriate searches under the publication: <https://www.gov.scot/publications/>

The industry's Code of Good Practice for Scottish Finfish Aquaculture also contains information which is relevant to your request, which you may find useful: <http://thecodeofgoodpractice.co.uk/>

Under regulation 6(1)(b) of the EIRs, we do not have to give you information which is already publicly available and easily accessible to you in another form or format.

(ii) Marine licences in respect of wellboat discharges permit the discharge of sea lice treatment effluents in accordance with the conditions in the relevant licences and only at the fish farm site specified in the licence. Such marine licences issued by MS-LOT, including those issued since 1 October 2018, have been published at: <http://marine.gov.scot/>

Under regulation 6(1)(b) of the EIRs, we do not have to give you information which is already publicly available and easily accessible to you in another form or format.

5. (i) I enclose redacted electronic copies of some of the information you have requested. In this instance we are unable to provide some of the information you have requested because an exception under regulation 11(2) (personal information of a third party) of the EIRs applies to that information. The reasons why that exception applies are explained in the Annex to this letter.

Four of the items enclosed, titled 14, 15, 17 & 18, are redacted copies of internal briefing notes for four meetings held by the Aquaculture Industry Leadership Group (AILG). The information contained in the Annexes A, B and C of each item is already publicly available under the following links:

<https://aquaculture.scot/wp-content/uploads/2019/09/Aquaculture-ILG-Agenda-Meeting-10.pdf>

<https://aquaculture.scot/wp-content/uploads/2019/09/Aquaculture-ILG-Agenda-and-Actions-for-Meeting-9-final.pdf>

<https://aquaculture.scot/wp-content/uploads/2019/09/Aquaculture-ILG-Agenda-and-Actions-for-Meeting-8-final.pdf>

<https://aquaculture.scot/wp-content/uploads/2019/05/Aquaculture-ILG-Agenda-and-Actions-for-Meeting-7-final.pdf>

<https://aquaculture.scot/wp-content/uploads/2018/06/Aquaculture-ILG-Agenda-and-Actions-for-Meeting-6.pdf>

Under regulation 6(1)(b) of the EIRs, we do not have to give you information which is already publicly available and easily accessible to you in another form or format.

(ii) While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because exceptions under regulation 10(4)(d) (material in the course of completion), regulation 10(4)(e) (internal communications) and regulation 10(5)(d) (confidentiality of proceedings) of the EIRs applies to that information. The reasons why these exceptions apply are explained in the Annex to this letter.

Your right to request a review

If you are unhappy with this response to your EIRs request, you may ask us to carry out an internal review of the response, by writing to The Director of Marine Scotland, Area 1B South, Victoria Quay, The Shore, Edinburgh, EH6 6QQ or by emailing: Directormarinescotland@gov.scot

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:
<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

1. An exception under regulation 10(4)(a) (information not held) of the EIRs applies to some of the information you have requested

Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government does not hold the information you have requested regarding Discharge Returns for 2019 & 2020.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have 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 may be some public interest in the Discharge Returns, clearly we cannot provide information which we do not hold.

2. (i) An exception under regulation 10(4)(a) (information not held) of the EIRs applies to some of the information you have requested

Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government does not hold the information you have requested relating to discussions of wellboat data on chemical use by salmon farms via 'Scotland's Aquaculture' and dialogue with chemical companies or salmon farmers.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances

of this case, we have 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 may be some public interest in discussions the Scottish Government has had regarding wellboat data on chemical use by salmon farms via 'Scotland's Aquaculture' Aquaculture' and dialogue with chemical companies or salmon farmers, clearly we cannot provide information which we do not hold.

2. (ii) & 5. (i) An exception under regulation 11(2) (personal information of a third party) of the EIRs applies to some of the information you have requested

Regulation 11(2) – To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.

An exception under regulation 11(2) of the EIRs (personal information of a third party) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018.

This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

5. (ii) An exception under regulation 10(4)(d) (Material in course of completion, unfinished documents or incomplete data) of the EIRs applies to some of the information you have requested

The exception under regulation 10(4)(d) of the EIRs (material in course of completion, unfinished documents or incomplete data) applies to some of the information you have requested because it is material still in the course of completion.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have 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.

We recognise that there is some public interest in release as part of open, transparent and accountable government. However, this is outweighed by the public interest in ensuring that unfinished or incomplete information which is still being worked on or is under active consideration is not disclosed when it might misinform the public or give a misleading impression of the Government's view or position on the matter to which the information relates.

The intention on the basis of the current Parliamentary timescales is that the finalised Order will come into force in November 2020.

5. (ii) An exception under regulation 10(4)(e) (internal communications) of the EIRs applies to some of the information you have requested

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to some of the information you have requested because it is internal communication between Scottish Government Ministers and/or officials about an amendment to the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011, which is required in order to transfer responsibility for the authorisation of discharges of chemical treatment residues to the water environment via a well boat from marine licensing to CAR licensing.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have 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. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions.

This means that Ministers and officials need to be able to consider all available options and to debate these rigorously, to fully understand their possible implementations. Their candour in doing so will be affected by their assessment of whether the discussions on the amendment to the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

5. (ii) An exception under regulation 10(5)(d) (Confidentiality of proceedings) of the EIRs applies to some of the information you have requested

An exception under regulation 10(5)(d) of the EIRs (Confidentiality of proceedings) applies to some of the information you have requested because it is internal legal advice and disclosure would breach legal professional privilege.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have 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. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

Yours sincerely

Kate Webb

Business Casework Officer - Licensing Operations Team - Marine Planning & Policy