

T: +44 (0)131 244 2500 F: +44 (0)1224 295511
marinescotland@gov.scot

Don Staniford by email

Our ref: Fol/19/02133

15 October 2019

Dear Mr Staniford

Thank you for your request dated 16 September 2019 under the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Your request

You asked for 'information since 1 June 2018 in relation to photos of farmed salmon - over and above photos already disclosed via FOI' to include

- photos obtained via FHI inspections, unannounced site visits, email correspondence with salmon farming companies, whistleblowers & vets and other sources
- correspondence, emails, letters, Cabinet Briefings, press briefings and other information relating to photos including the non-disclosure and non-publication of photos
- any legal correspondence with lawyers acting for salmon farming companies - over and above the information already provided

Further, you asked for an explanation as to 'why photos of diseased farmed salmon are absent from much of the FHI case information'. This does not fall under the scope of a request for information as such, but this query will be dealt with within this response.

Response to your request

Please find attached relevant information to your request. This includes communications within Marine Scotland and Scottish Government as well as communications between Marine Scotland and external stakeholders concerning the publication and release of photographs. Those communications relate to both responses to requests for information

and active publication associated with Marine Scotland's Fish Health Inspectorate's (FHI) case information and aquatic animal health surveillance.

With reference to one of the communications made by Marine Scotland Science comprising of a letter and annex of information dated 18 September 2018, this was issued to an email communication received from CMS Cameron McKenna Nabarro Olswang LLP on 1 August 2018.

In addition I have identified photographs associated with three further diagnostic cases from 2018, those being: 20180214; 20180216; 20180219. These cases were not completed at the point of receipt of the last request for 'general photographs' (Fol/18/01782) and were undertaken prior to the commencement of active publication, starting from the third quarter of 2018. Please view these photos within the context of the case information which has already been published (see link below), along with the context provided within Annex 2 of this letter.

I have also included a photograph received from an external party concerning a well boat operating in Orkney in June 2018 and issues surrounding containment of fish.

In addition, photographs and information relating to the release and publication of photographs, provided through previous responses to requests for information, including – Fol/18/02235; Fol/18/01869; Fol/18/01783; Fol/18/01782; Fol/18/01141 and Fol/18/00662 are available through the published responses on the Scottish Government website:

<https://www.gov.scot/publications/>

From July 2018 onwards, active publication of photographs taken as part of the FHI aquatic animal health surveillance programme has been undertaken. You can find this information on the Scottish Government website:

<https://www2.gov.scot/Topics/marine/Fish-Shellfish/FHI/CaseInformation>

While we provide information where possible, in this case an exception under regulation 11(2) (personal data) applies to some of the information requested. The reasons why this exception applies are explained in Annex 1 to this letter.

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.

Redactions have also been applied to a small amount of information which is not considered to be within the scope of this request.

Photographs and FHI case information

Your request asked for an explanation as to 'why photos of diseased farmed salmon are absent from much of the FHI case information'. Photographs are taken as they are a useful tool to support site inspections and provide further evidence of observations made. In the case of sick and moribund fish, photographs may be taken to support any differential diagnosis offered through diagnostic sampling. It may not be necessary to take photographs in many cases and there is no statutory requirement to do so. The decision on collecting photographic images is one for the inspector to make at the time of the visit with consideration of any benefit they may add to the case being conducted.

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:

Graham Black
Director Marine Scotland
Scottish Government
Area 1B South
Victoria Quay
Edinburgh
EH6 6QQ

Email: 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>.

Yours sincerely,

Neil Purvis

ANNEX 1 - REASONS FOR NOT PROVIDING INFORMATION

An exceptions applies

An exception under regulation 11(2) of the EIRs (personal information) applies to some of the information requested because it is personal data 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.

ANNEX 2 – CONTEXT WITH RESPECT TO DIAGNOSTIC CASES

With respect to photographs of fish removed for investigation, observation and sampling the majority of these show fish which have been removed and euthanised for post mortem analysis and investigative testing by the FHI.

Photographs are taken as they are a useful tool in the analytical process and it is important to view these photographs in context. The photographs attached have been taken as part of the Fish Health Inspectorate's risk based surveillance programme. The case information, which should be considered as specific context to these images, is actively published on the Scottish Government web site:

<https://www2.gov.scot/Topics/marine/Fish-Shellfish/FHI/CaseInformation>

In the wild, the reproductive strategy of fish, particularly salmon, is to produce a large number of offspring with the aim that a proportion will survive to adulthood. Fish are subject to a number of pressures in the environment, particularly naturally present pathogens and other environmental parameters, with farmed fish being no exception. It can therefore be expected that some fish will experience challenges to good health. Those fish which have been removed by the FHI represent a very small proportion of the total number of fish on an aquaculture site (for example 5 fish from sites holding between 250,000 to 1.8 million fish). The images attached do not represent fish which present any direct human health concerns and are not a representation of the entire fish population on any specific site.

In many cases the actions undertaken by Marine Scotland's Fish Health Inspectorate offer support to on-going investigations conducted by the farm veterinarian and in-house animal health professionals.

