

Scottish Salmon Watch, 24 October 2019

**EXPOSED: Photo Disclosures Opens Floodgates to More Diseased & Deformed Scottish Salmon**



- Scottish Government ignore legal threats from Mowi, Scottish Sea Farms & The Scottish Salmon Company
- Photos of diseased Scottish salmon now published monthly to comply with European & FOI law (with special thanks to [The Ferret](#))



Photos: Scottish salmon from Mowi's Stulaigh Island farm in Loch Eynort

Last month Scottish Salmon Watch filed a Freedom of Information (FOI) request for information relating to photos of farmed salmon. Last week (15 October 2019) the Scottish Government disclosed damning documents (see Appendix 1 and [posted by the Scottish Government online here on 18 October](#)).

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PUBLICATION - FOI/EIR RELEASE

# Further information requested on photos of farmed salmon: EIR release

Published: **18 Oct 2019**  
Directorate: [Marine Scotland Directorate](#)  
Part of: [Marine and fisheries, Public sector](#)

Information request and response under the Environmental Information (Scotland) Regulations 2004.

**FOI reference:** FOI/19/02133  
**Date received:** 16 Sep 2019  
**Date responded:** 15 Oct 2019

#### Information requested

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.

#### About FOI

The Scottish Government is committed to publishing all information released in response to Freedom of Information requests. View all FOI responses at <http://www.gov.scot/foi-responses>.



[FOI-19-02133 - Information Released 1](#)  
19 page PDF | 7.9 MB

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[FOI-19-02133 - Information Released 4 - Case number 20180214](#)  
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2 page PDF | 59.5 kB

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[FOI-19-02133 - Information Released 6 - Case number 20180219](#)  
7 page PDF | 1.1 MB

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The FOI disclosure provides a fascinating insight into how Scottish Government official and salmon farming companies (including their lawyers) desperately attempted to block publication of damning photos of diseased farmed salmon but were ultimately undone by FOI laws and EU laws which forced disclosure.

**Key points sourced from the [documents disclosed via FOI-19-02133 on 15 October 2019](#):**

A [Cabinet Secretary briefing dated 9 August 2018](#) included: "The Cabinet Secretary will recall recent FoI requests relating to photographs of diseased farmed salmon...The Cabinet Secretary will wish to be aware that we have fully explored the requirement to publish correspondence from stakeholder legal representatives."

"Regarding your comments about correspondence with your lawyer being subject to legal privilege, this only applies to communications between a lawyer and their client," [explained an anonymous Scottish Government \[name redacted\] to Scottish Sea Farms \(SSF\) on 10 August 2018](#). "As the Scottish Government are not the client here, legal privilege cannot apply to the communications from SSF solicitors. As you will know, the legislation requires that we operate with a strong presumption in favour of the release of information and that any exceptions must be applied restrictively....I understand that you may be unwilling to engage so frankly with us on any future requests, and I am sorry to hear this. We value your input, and often will only be able to withhold information that may damage the interests of SSF by considering evidence that only you are able to provide."

In a [letter to Marine Scotland dated 6 July 2018](#), Marine Harvest's Director of Communications and Business Development (Ian Roberts) objected to further disclosures claiming that "the risk of people turning away from a healthy food such as salmon as a reaction to irresponsible use of photos for the sole purpose of creating fear in the consumer, is a risk to public health".

A [letter in reply to Marine Harvest from the Scottish Government dated 5 September 2018](#) pointed out:

"As you will be very aware, as a directorate within the Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations, including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRS). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively....We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies."

Documents disclosed [included emails between anonymous Scottish Government officials](#) debating whether photographs could be deleted. An email dated 18 September 2018 referred to "a question over the validity of us retaining photographs" and stated that "we need to be sure that it is within our right to retain case information for eternity {by being published online}".

"I think the reasoning in the response to [Redacted] of Cameron McKenna solicitors operating on behalf of The Scottish Salmon Company (attached) had established that the

information gathered during our inspections is retained to primarily demonstrate that the legislation is implemented effectively, should we be subject to audit by the Commission or internally," [wrote \[name redacted\] from the Scottish Government in an email dated 19 September 2018](#). "There may be a question on how long this should be retained but this would depend on the timeframe that an audit would require information from."

A letter [from the Scottish Government to lawyers representing The Scottish Salmon Company dated 18 September 2018](#) included: "Under Council Directive 2006/88/EC, implemented in Scotland through the Aquatic Animal Health (Scotland) Regulations 2009 (the 2009 Regulations), it is a legal requirement for the Competent Authority (CA) to implement surveillance aimed at detecting listed disease or increased mortality. To support this function there is a requirement for the CA to undertake effective disease investigation and reporting of disease, emerging disease or unexplained mortality without delay. All authorised Aquaculture Production Businesses (under the 2009 Regulations) must comply with any surveillance requirement imposed by the CA. As part of this surveillance, where unexplained mortality or animals demonstrating clinical signs of disease are observed, aquatic animals can be examined and sampled. Case notes, samples, results, copied records and photographic images can be taken and are maintained as a record of the surveillance inspection. This record is retained to demonstrate that [Council Directive 2006/88/EC](#) and [Regulation \(EC\) No 882/2004](#) have been appropriately applied and to demonstrate compliance during any internal audits or European Union Commission inspections and audits which may occur."

A [letter to stakeholders from the Scottish Government dated 21 December 2018](#) referred to "widening the scope of active publication" including photographs to be published via the Fish Health Inspectorate's 'Case Information' starting in January 2019.

A [letter from Marine Scotland to stakeholders dated 8 March 2019](#) explained changes to how information is [published online via Fish Health Inspectorate 'Case Information'](#) and referred to the "significant interest from third parties". "The approach facilitates further in dealing with Freedom of Information requests and in meeting the Scottish Government principles of openness and accountability," explained the letter.



**Photo: Escaping farmed salmon from a well boat in Orkney**

The Scottish Government's [letter in reply to FOI-19-02133 dated 15 October 2019](#) explained:

"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".



**Photo: Loch Duart salmon from Lochmaddy**

A more comprehensive summary is in Appendix 2.

Photos [published last week \(15 October 2019\) via the Scottish Government's Fish Health Inspectorate](#) include gruesome images from an unannounced inspection of The Scottish Salmon Company's salmon farm at Maaey in the Outer Hebrides in June 2019 where the fish were diagnosed with peritonitis and Cardiomyopathy potentially associated with Salmonid Alphavirus (the causative agent of Pancreas Disease) and tested positive for Infectious Pancreatic Necrosis virus and *Aeromonas sp* (Furunculosis).



Another [Fish Health Inspectorate case report published on 15 October 2019](#) details disease problems at The Scottish Salmon Company's Maragay Mor salmon farm in the Outer Hebrides (testing revealed epitheliocystis suggestive of Amoebic Gill Disease, Infectious Pancreatic Necrosis virus, *Aeromonas sp*, splenic and hepatic necrosis, tissue alterations resembling pancreas disease which was confirmed by the presence of Salmonid Alphavirus).



Read more via [Maaney Day for The Scottish Salmon Company](#)

"Gruesome photographic evidence blows out of the water the industry's marketing claims that Scottish salmon is healthy, responsibly sourced and welfare friendly," said [Don Staniford, Director of Scottish Salmon Watch](#).



"In the face of desperate legal threats from lawyers acting for salmon farming companies the Scottish Government has thankfully stood up for Freedom of Information and followed

European law. Consumers now have regular monthly updates detailing infectious diseases, pathogens, viruses, parasitic lice and mass mortalities often graphically illustrated with damning photos. If people took the time to delve into the murky world of Scottish salmon farming then they would not touch Scottish salmon with a barge pole. No wonder salmon farming companies fought to prevent the public disclosure of photos. The very real fear now is that following Brexit the Scottish Government will revert to protecting the [foreign-owned salmon farming industry](#) from public scrutiny and water down FOI laws."



Contact: Don Staniford: 07771 541826 ([salmonfarmingkills@gmail.com](mailto:salmonfarmingkills@gmail.com))

### Background:

In June 2018, [The Ferret published gruesome photos of diseased Scottish salmon](#) obtained by Scottish Salmon Watch [via FOI from the Scottish Government](#).



Read more via:

[Horror photos of farmed salmon spark legal threat](#)

[EXPOSED: Gruesome Photos of Deformed & Diseased Scottish Salmon](#)

[Hard Evidence: Photos of Diseased & Deformed Scottish Salmon \(June 2018\)](#)

[Legal Complaint Vs Breaches of Animal Health & Welfare \(Scotland\) Act](#)

Fol-18-01141

Sorted by name



2015-0336-photos.pdf



2015-0373-photos.pdf



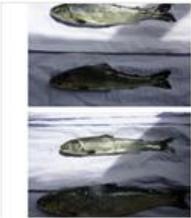
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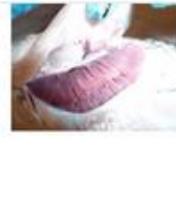
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**"The site was inspected following a report from the operator of increased mortality levels at the site due to amoebic gill disease over the previous couple of months. Mortality levels for the site had reached 11.3% for August and 12.9% for September... All of the fish had severe lice damage to their heads"**

**Fish Farm: Raineach, East Loch Tarbert, Harris**

Company: Marine Harvest  
 Problems: amoebic gill disease, lice  
 Fish health inspection: five fish sampled on 4 October 2016  
 Case number: 2016-0449



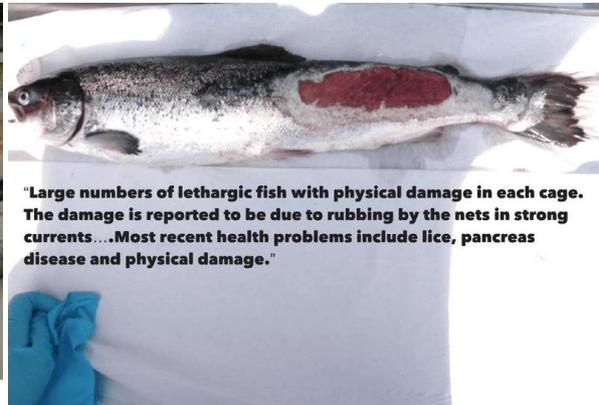
**Fish Farm: Meall Mhor, Loch Fyne**

Company: Scottish Salmon Company  
 Problems: unknown  
 Fish health inspection: unknown  
 Case number: 2018-0113



**Fish Farm: Groatay, Sound of Harris**

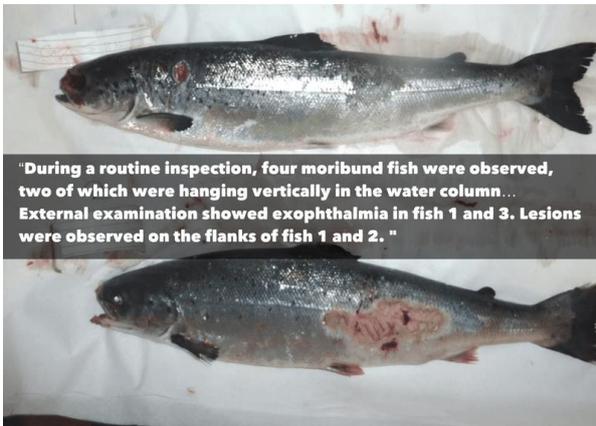
Company: Marine Harvest  
 Problems: unknown  
 Fish health inspection: unknown (report due July 2018)  
 Case number: 2018-0111



**"Large numbers of lethargic fish with physical damage in each cage. The damage is reported to be due to rubbing by the nets in strong currents... Most recent health problems include lice, pancreas disease and physical damage."**

**Fish Farm: Armady**

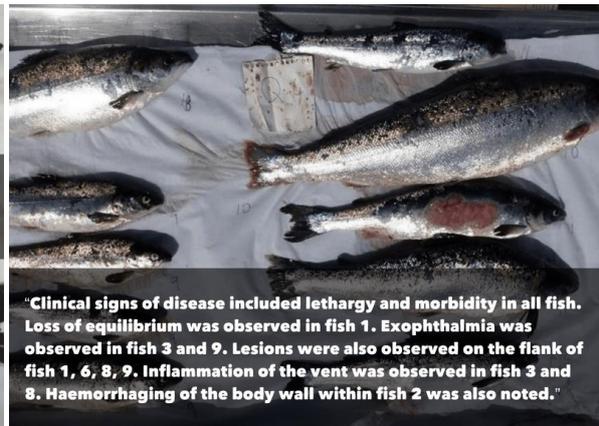
Company: Marine Harvest  
 Problems: pancreas disease, lice, physical damage  
 Fish health inspection: five fish sampled on 15 September 2015  
 Case number: 2015-0336



**"During a routine inspection, four moribund fish were observed, two of which were hanging vertically in the water column... External examination showed exophthalmia in fish 1 and 3. Lesions were observed on the flanks of fish 1 and 2."**

**Fish Farm: Kishorn B, Loch Kishorn**

Company: Scottish Sea Farms  
 Problems: amoebic gill disease, lice  
 Fish health inspection: four fish sampled on 15 February 2017  
 Case number: 2017-0028



**"Clinical signs of disease included lethargy and morbidity in all fish. Loss of equilibrium was observed in fish 1. Exophthalmia was observed in fish 3 and 9. Lesions were also observed on the flank of fish 1, 6, 8, 9. Inflammation of the vent was observed in fish 3 and 8. Haemorrhaging of the body wall within fish 2 was also noted."**

**Fish Farm: Gorsten, Loch Linnhe**

Company: Marine Harvest  
 Problems: Bacterial kidney disease  
 Fish health inspection: 10 fish sampled on 14 May 2016  
 Case number: 2016-0187



In August 2018, [The Ferret revealed](#) that lawyers acting for salmon farming companies threatened legal action against the disclosure of the photos but the Scottish Government published anyway.



Read more via:

[Salmon firms bid to block diseased photos](#)

[REVEALED: Legal Threats to Prevent Publication of Damning Photographs](#)

[FOI Dossier: Photographs of Diseased & Deformed Scottish Salmon - Scottish Government](#)

[FOI disclosure despite legal threats from Scottish Sea Farms & The Scottish Salmon Company](#)

Scottish Salmon Watch obtained further shocking photos via FOI from the Scottish Government in August 2018 and [September 2018](#).



Read more via:

[Hard Evidence: Photos of Diseased & Deformed Scottish Salmon \(August 2018\)](#)

[FOI Disclosure 18-02235: Photos of Scottish Sea Farms](#)

[FOI Disclosure 18-01782: Photos of The Scottish Salmon Company and others](#)

## Fol 18 02235

Sorted by name



2013-0520 Crooie.pdf



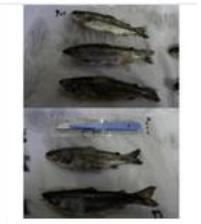
2014-0003 Slocka Ronas...  
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2014-0054 Loch Spelve  
A.pdf



2014-0162 Scallastle.pdf



2014-0432 Loch  
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2014-0552 Shuna.pdf



2015-0026 Kishorn B.pdf



2015-0046 Nevis B.pdf



2015-0052 Kishorn B.pdf

## Fol 18 01782

Sorted by name



2016-0098-photos-Sgian...  
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art.pdf



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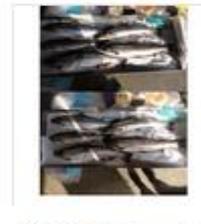
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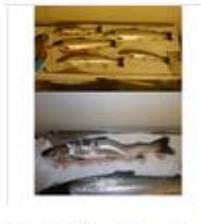
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2016-0590-photos- Uye...  
Isle.pdf



2018-0078-photos- Tarb...  
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2018-0113-photos- Mea...  
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Since Q3 2018 ([published online in January 2019](#)) the Scottish Government has [published photos of diseased Scottish salmon via the Fish Health Inspectorate 'Case Information'](#) which is updated monthly. Photos of inspections in August 2019 were [posted on 15 October 2019](#) - including at Mowi's Linnhe salmon farm at Ardgour which experienced mortality rates of over 50% due to Cardiomyopathy Syndrome, Pastuerella skyensis and Pancreas Disease.



Mortality Records	
1. Mortality records available for inspection?	<input type="checkbox"/> Y
2. How are mortalities disposed of?	Whole fish - Dundas Chemicals
If other detail:	
3. Mortality records complete and correctly entered?	<input type="checkbox"/> Y
4. Recent mortality (last 4 wks):	w/b 08/07/19 - 375 (0.23%) w/b 15/07/19 - 1073 (0.49%), w/b 22/07/19 - 4257 (2.64%), w/b 29/07/19 - 29,795 (14.39%)
5. Evidence of recent increased/atypical mortalities?	<input type="checkbox"/> Y
If yes, facility nos/no mortality per facility/no stock per facility/reason:	CMS, Pasturella skyensis, PD: Worst affected cages - 4 (55% mortality last 4 weeks prior to harvesting out), 9 (49% mortality last 4 weeks prior to harvesting out) and 23 (32% mortality last 4 weeks prior to harvesting out)
6. Any other peaks in mortality during period checked?	<input type="checkbox"/> N
If yes, detail:	
7. Have increased (unexplained) mortalities been reported to vet or FHI?	<input type="checkbox"/> Y
If yes, detail action:	Reported to FHI, Site harvesting out.
8. Have 'mortality events' been reported to FHI? If no, add MRT case and enter on mortality events sheet.	<input type="checkbox"/> Y

Read more via [Revealed: Mowi's Nightmare in Loch Linnhe - 55% Mortality & Infectious Diseases](#)

When Scottish Salmon Watch [visited Mowi's Linnhe salmon farm at Ardgour in July 2019](#) it was in the process of harvesting out diseased salmon - so rapidly it seems that it [breached Health & Safety regulations](#).



In September 2019, [the Fish Health Inspectorate published photos of Mowi's lice-infested, "blind", "physically damaged" and "anorexic" salmon from their farm off the Isle of Rum.](#)



In August 2019, the Fish Health Inspectorate [published photos of Mowi's salmon from their Kingairloch farm in Loch Linnhe](#) - detailing [Cardiomyopathy Syndrome](#), [Pasteurella](#)

[skyensis](#), multifocal hepatic necrosis, [Salmonid Alphavirus](#), anorexia, lesions, haemorrhaging and deformed hearts.



F5 Lesion



In May 2019, the Fish Health Inspectorate [published photos from Grieg Seafood's salmon farm at North Papa in Shetland.](#)



According to the [FHI report](#), physical damage was "attributed to a recent Optilicer treatment" and the farmed salmon have been dosed on antibiotics to treat Winter sores. The inspection report detailed positive tests for Infectious Pancreatic Necrosis virus, *Aeromonas salmonicida* and *Paranucleospora theridon*. Exophthalmia is [referred to as pop-eye](#) and is a condition [linked to Cardiomyopathy Syndrome](#).



2019-0135 North Papa – Fish 2 exophthalmia

In April 2019, the Fish Health Inspectorate [published photos of The Scottish Salmon Company's severely damaged salmon farmed at Strondoir Bay in Loch Fyne](#).



Additional comments:

F1 matured male in poor condition, fins very damaged. Damage to the head and snout. 18 lice of different stages observed. F2 with damage to the eyes and some damage to the snout. F3 damage to fins and head. Matured male. F4 dorsal fin reduced to cartilage, caudal fins severely damaged. Damage to snout. F5 mature male in general good condition. Some fin damage but not significant. Damage to snout.



When Scottish Salmon Watch [visited The Scottish Salmon Company's salmon farm at Strondoir Bay in May 2019](#) the disease ridden farmed salmon was stomach-churning.



[Photos from a Fish Health Inspectorate visit to The Scottish Salmon Company's salmon farm at Portree in February 2019](#) showed "visible damage to the heads of fish", skeletal muscle necrosis, dermatitis, lesions "likely associated with mechanical damage", anorexia, bilateral exophthalmia, petechial haemorrhaging, salmon gill poxvirus, *Neoparamoeba perurans* (the causative agent of Amoebic Gill Disease), *Paranculeospora theridon*, *Vibrio spp*, *Photobacterium sp* and Infectious Pancreatic Necrosis virus.



Fish 4 lesion



Read more via:

[Scottish Government rejects industry pleas on sick salmon photos](#)

[Welfare Abuse at Scottish salmon farms - Why No Legal Enforcement or Prosecutions?](#)

[The Severely Damaged Scottish Salmon Company - For Sale Now!](#)

[Meet Pop-Eye the Scottish Salmon - Tortured by an Optilicer!](#)

[Mowi's Welfare Nightmare on Rum - "blind", "physical damage", "anorexic" & over 40,000 dead fish!](#)

[Cardiac Disease Arrests Mowi in Kingairloch](#)

[Mmmm Blind Scottish Salmon with Boils Anyone?](#)

In March 2019, Scottish Salmon Watch [published a summary of case information reported by the Fish Health Inspectorate during 2018.](#)



[The Sorry State of Scottish Salmon Farming in 2018](#)  
[New Report: "The State of Scottish Salmon Farming in 2018"](#)  
[Victory for Freedom of Information](#)

In January 2019, the Fish Health Inspectorate [published photos of lice-infested salmon from The Scottish Salmon Company's farm at Vuia Mor.](#)





The [Fish Health Inspectorate report detailed](#) "high lice loads", "widespread gill circulatory disturbances", "physical damage" with positive tests for Infectious Pancreatic Necrosis virus, Salmonid alphavirus, Salmon Gill Poxvirus, *Neoparamoeba perurans* (Amoebic Gill Disease) and Anaemia.

In January 2019, the Fish Health Inspectorate [published photos of disease-ridden salmon from Scottish Sea Farms at Lismore.](#)



*Candidatus* Branchiomonas cysticola

Fish Number	Endogenous control Cp value	Cp Values			Reported Result (PCR)
F1	22.21	22.60	22.63	22.65	POSITIVE
F2	21.83	20.91	20.91	20.98	POSITIVE
F3	22.04	21.80	21.73	21.78	POSITIVE
F4	20.48	19.35	19.85	20.35	POSITIVE
F5	20.96	20.62	21.06	20.25	POSITIVE

*Candidatus* Piscichlamydia slamonis

Fish Number	Endogenous control Cp value	Cp Values			Reported Result (PCR)
F1	22.21	36.32	35.88	36.38	POSITIVE
F2	21.83	34.42	34.19	34.75	POSITIVE
F3	22.04	35.88	35.76	36.20	POSITIVE
F4	20.48	33.51	33.61	33.13	POSITIVE
F5	20.96	34.24	34.82	34.32	POSITIVE

Salmon gill poxvirus (SGPV)

Fish Number	Endogenous control Cp value	Cp Values			Reported Result (PCR)
F1	22.52	32.28	32.04	32.09	POSITIVE
F2	21.95	25.45	25.51	25.51	POSITIVE
F3	22.37	29.58	29.51	29.54	POSITIVE
F4	21.56	26.26	26.11	26.15	POSITIVE
F5	21.66	30.77	30.96	30.99	POSITIVE

An [inspection by the Fish Health Inspectorate in November 2018](#) (not published until April 2019) detailed disease problems at Mowi's salmon farm at Gorsten in Loch Linne.



**BUSINESS NO** FB0119  
**SITE NO** FS0237  
**INSPECTOR** [REDACTED]

**DATE OF VISIT** 27/11/2018  
**SITE NAME** Gorsten  
**CASE NO** 20180642

### **Section 1: Summary**

The above site was inspected following a report from Mowi Scotland (formerly known as Marine Harvest) of a recent increase in mortalities. On inspection of the site, a small number of fish appeared lethargic. Five lethargic fish were removed for examination and subsequent diagnostic sampling.

Histopathology examination revealed mild systemic granulomatous inflammation with features resembling *Pasteurella skyensis*-like infection. This was confirmed by the isolation of *Pasteurella skyensis* in bacteriology. Mild multifocal hepatic necrosis, splenic necrosis and peritonitis likely associated with vaccine administration were also noted.

Internally the hearts of fish 2 and 4 were pale/anaemic. Petechial haemorrhaging was evident on the livers of fish 1, 2 and 3 as well as on the pyloric caeca of fish 1 and 2. Haemorrhaging was also evident on the swim bladder of fish 1, 2, 3 and 4. Fluid was also present in the heart cavity of fish 1, 2 and 4.



When Scottish Salmon Watch [visited Mowi's salmon farm at Gorsten in Loch Linnhe in November 2018](#) there was a skip load of diseased fish.



In May 2019, [Mowi Scotland's Health Manager predicted](#) "it may be a painful September and October for the salmon industry in Scotland" for Amoebic Gill Disease in particular.

In July 2019, Scottish Salmon Watch [delivered a 44,000 petition on behalf of SumOfUs calling on Marine Scotland to conduct immediate unannounced inspections of salmon farms.](#)

+SumOfUs Fighting for people over profits

**Sign the petition**

**TO: Marine Scotland**  
Conduct immediate, unannounced on-the-spot inspections of all Scottish salmon farms to assess fish welfare.

44,000 signatures  
6,000 SIGNATURES UNTIL 50K

Stop salmon from suffering. Investigate Scottish fish farms right now!

Email Address

Full name

Country  
United Kingdom

Next week (31 October), Scottish Salmon Watch is [co-ordinating a Halloween 'Frankenfish' protest outside Mowi's factory on the Isle of Skye.](#)



Read more via:

['Frankenfish' Halloween Protest \(31 October\) - Beware of the Nightmare of Scottish Salmon!](#)

[Update: Mortalities & Disease Decimating Scottish Salmon](#)

[It's Like a Bad Mowi \(Deja Vu After Marine Harvest Horror Show\)!](#)

[Video Nasty: Thermolicer - the Heated Torture Chamber for Scottish Salmon](#)

## Appendix 1: FOI request & FOI reply

### FOI filed by Scottish Salmon Watch on 16 September 2019

From: **Don Staniford** <[salmonfarmingkills@gmail.com](mailto:salmonfarmingkills@gmail.com)>  
Date: Mon, Sep 16, 2019 at 6:57 PM  
Subject: FOI re. photos from FHI Case Information; emails and other details re. photos since June 2018  
To: <[ceu@scotland.gsi.gov.uk](mailto:ceu@scotland.gsi.gov.uk)>  
Cc: <[Neil.Purvis@gov.scot](mailto:Neil.Purvis@gov.scot)>, <[Helen.McGregor@gov.scot](mailto:Helen.McGregor@gov.scot)>

Please provide information since 1 June 2018 in relation to photos of farmed salmon - over and above photos already disclosed via FOI:

[EXPOSED: Gruesome Photos of Deformed & Diseased Scottish Salmon](#)

[Horror photos of farmed salmon spark legal threat](#)

[Hard Evidence: Photos of Diseased & Deformed Scottish Salmon](#)

Please include photos obtained via FHI inspections, unannounced site visits, email correspondence with salmon farming companies, whistleblowers & vets and other sources.

Please include correspondence, emails, letters, Cabinet Briefings, press briefings and other information relating to photos including the non-disclosure and non-publication of photos.

Please include any legal correspondence with lawyers acting for salmon farming companies - over and above the information already provided: [Salmon firms bid to block diseased photos](#)

Please explain why photos of diseased farmed salmon are absent from much of the FHI case information. For example, the FHI Case Information for April 2019 includes this reference to the Scottish Salmon Company's site at Gometra:

#### Additional Case Information:

Escape event 06/11/2018 (MSe061118SAL1) no fish thought to have escaped at time of event. Count carried out during grading on 25/03/2019, numbers came back the same as expected showing no loss. All nets changed to hdpe nets.

Strategic AGD treatment using H2O2 carried out 22/02/19. Pen 3 and 7 had increased mortality post treatment due to physical damage, net bagged during crowding for treatment. Bad scaling and rubbing as fish were burrowing down into the net during treatment led to lesions after treatment. Mortalities have gradually decreased since time of event and are below reporting threshold.

Fish sampled for VMD showed no signs of ill health externally and internally. No sea lice were visible.

Risk based inspection brought forward following report from company of the increased mortalities late February due to physical damage.

p17 via <https://www2.gov.scot/Resource/0054/00547495.pdf>

But where are the photos?

The FHI Case Information for June 2019 for The Scottish Salmon Company's Aird salmon farm also does not include photos (from p94 via <https://www2.gov.scot/Resource/0054/00548048.pdf>).

In fact, the inclusion of photos relating to salmon farm inspections appears to have become the exception not the norm. For example, during 2019 photos were published for Mowi's Kingairloch and Rum salmon farms:

- [Cardiac Disease Arrests Mowi in Kingairloch](#)
- [Mowi's Welfare Nightmare on Rum - "blind", "physical damage", "anorexic" & over 40,000 dead fish!](#)

Please therefore provide information relating to photos of farmed salmon since 1 June 2018.

Please provide a receipt for this FOI request.

Please provide the information electronically.

Please consider this a FOI request under the relevant FOI and Environmental Information regulations.

Thanks,

Don

### **FOI reply from the Scottish Government dated 15 October 2019**

From: <Neil.Purvis@gov.scot>

Date: Tue, Oct 15, 2019 at 9:08 PM

Subject: RE: FOI re. photos from FHI Case Information; emails and other details re. photos since June 2018

To: <salmonfarmingkills@gmail.com>

Dear Don

In response to your request of 16 September 2019, please find the attached reply.

Regards,

Neil

**Neil Purvis**

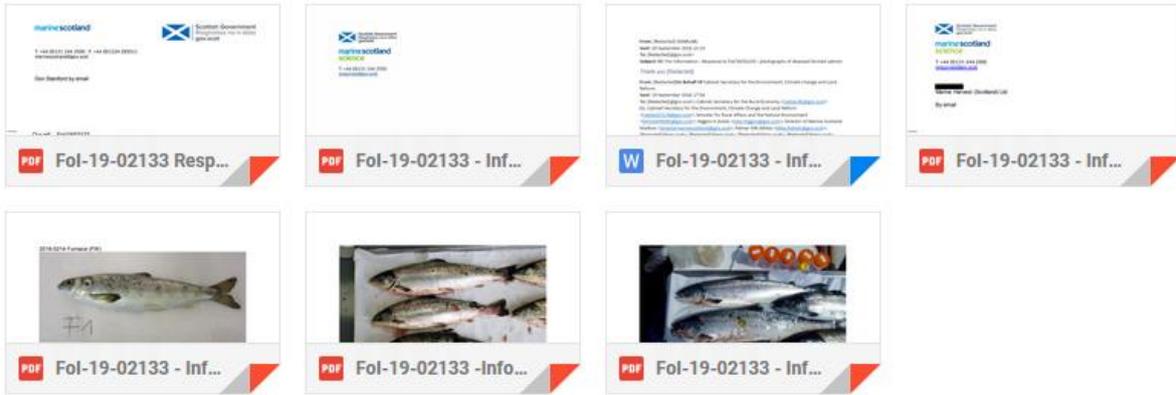
Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101| 375, Victoria Road | Aberdeen AB11 9DB

Tel: +44 (0)131 244 3287

S/B: +44 (0)131 244 2500  
Mob:+44 (0)777 5818 281  
Fax: +44 (0)1224 295620  
e: [neil.purvis@gov.scot](mailto:neil.purvis@gov.scot)  
w: <http://www.scotland.gov.uk/marinescotland>

#### 7 Attachments



[Fol-19-02133 Response letter.pdf \(270K\)](#)

[Fol-19-02133 - Information to release 1.pdf \(7,849K\)](#)

[Fol-19-02133 - Information to release 2.docx \(68K\)](#)

[Fol-19-02133 - Information to release 3.pdf \(59K\)](#)

[Fol-19-02133 - Information to release 4 - case n... \(1,441K\)](#)

[Fol-19-02133 -Information to release 5 - case n... \(1,214K\)](#)

[Fol-19-02133 - Information to release 6 - case n... \(1,052K\)](#)

[Download October 2019 FoI-19-02133 Response letter to SSW FOI](#)

[Download October 2019 FoI-19-02133 - Information to release 1](#)

[Download October 2019 FoI-19-02133 - Information to release 2](#)

[Download October 2019 FoI-19-02133 - Information to release 3](#)

[Download October 2019 FoI-19-02133 - Information to release 4 - case number 20180214](#)

[Download October 2019 FoI-19-02133 - Information to release 5 - case number 20180216-1](#)

[Download October 2019 FoI-19-02133 - Information to release 6 - case number 20180219](#)

**FOI reply letter dated 15 October 2018 ([Download October 2019 FoI-19-02133 Response letter to SSW FOI](#)):**

marinescotland



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

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](mailto: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

FOI Disclosure #1 ([Download October 2019 FoI-19-02133 - Information to release 1](#)):

Includes (in chronological order):



6<sup>th</sup> July 2018

Dear [REDACTED]  
Marine Scotland - Science

Dear [REDACTED]

I am writing as follow up to the FOI request by Mr. [REDACTED] and the release of materials to the individual on June 15, 2018, by Marine Scotland (MS). Your justification for releasing photos of dead or euthanized salmon taken by MS staff during a scheduled fish health surveillance visit at various salmon farm locations can be summarised as: *"The public interest in disclosure is outweighed by the public interest in upholding [the materials requested]."*

As expected, the materials and the contextual statements provided by MS were forwarded as an "exclusive" to one online media outlet, *The Ferret*, receiving the headline "Horror photos of farmed salmon spark legal threat". The social media comments following the story urged that consumers *"Don't buy farmed fish"* and that the photos *"Put you off eating salmon"*. As you are aware, it is rare that today's reader delves below the shock and horror headlines.

I feel that these two statements communicated via social media are the best examples of why public interest is not well-served by releasing these photos to a member of the public not familiar with salmon, farming, or salmon health. More to the point: the risk of people turning away from a healthy food such as salmon as a reaction to irresponsible use of photos for the sole purpose of creating fear in the consumer, is a risk to public health. The benefits of eating oily fish like salmon are well documented, as are the concerns to one's health by not including fish in their weekly diet plan.

I ask you to consider this position for future FOI requests that may create unnecessary confusion or fear about consuming healthy Scottish seafood.

In addition, I would like to propose a solution that would negate the need to satisfy future similar requests. That is, collaborate with industry and its fish health professionals to provide an online learning portal for an audience wanting to learn about ocean health. Farm-raised Atlantic salmon is just one fish species in our marine ecosystem, and a database of health challenges to seafood can be identified and contextualised for an interested audience. It is essentially building a current and reader-friendly log of finfish and crustacean diseases on webpages already provided at <http://www.gov.scot/Topics/marine/Fish-Shellfish/aquaculture/diseases>. With this database kept current and relevant, there is no need to share similar photos that are already available online, to individuals that have no fish health expertise.

Registered in Scotland No. 138843  
Registered Office,  
1st Floor, Admiralty Park  
Admiralty Road,

OFFICE  
Stob Ban House  
Glen Nevis Business Park  
Fort William  
PH33 6RX

[REDACTED] Far  
[REDACTED] @marineharvest.com

At a very minimum, any photos released by MS should include pertinent information water-marked directly on the photo, thus not allowing the photos to be published without context.

If you would like to chat about my concerns and suggested solutions, I am available at the contact below.



Director of Communication and Business Development  
**Marine Harvest Scotland**  
[REDACTED] [arineharvest.com](http://marineharvest.com)

**From:** [REDACTED]@marineharvest.com]  
**Sent:** 09 July 2018 09:35  
**To:** [REDACTED] (MARLAB)  
**Cc:** lhasketh-laird@scottishsalmon.co.uk; [REDACTED] (MARLAB); [REDACTED] (MARLAB);  
[REDACTED]@scottishsalmon.com; [REDACTED]@scottishsalmon.com;  
[REDACTED]@griegseafood.com; [REDACTED]@cookeaqu.com;  
[REDACTED]@scottishseafarms.com; [REDACTED]@lochduart.com

**Subject:** RE: FoI/18/01141 - Request for photographs of diseased salmon

Dear [REDACTED]

Please find attached letter from our [REDACTED] with regards to the FOI above.  
Please could you include Ian on emails relating to this and any future FOI's.

Regards

[REDACTED]  
MARINE HARVEST SCOTLAND LTD

MAIL: [REDACTED]@marineharvest.com  
WEB: [www.marineharvest.com](http://www.marineharvest.com)

OFFICE: Stob Ban House  
Glen Nevis Business Park  
Fort William  
PH33 GRX



From: [REDACTED]@gov.scot [REDACTED]@gov.scot>  
Sent: 07 August 2018 10:52  
To: [REDACTED]@scottishseafarms.com>  
Cc: [REDACTED]@gov.scot  
Subject: FW: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. If in doubt please forward to [ITSUPPORT@scottishseafarms.com](mailto:ITSUPPORT@scottishseafarms.com)

Dear [REDACTED]

Just for your awareness and following on from my email on 13 July, in relation to the request covering:

*information relating to the publication of photos of diseased farmed salmon (FoI/18/01141) - including any correspondence (e.g. emails and letters) with salmon farming companies*

I'm writing to advise that the attached communications (as an example of the email exchanges between us) will be released in reply to the request. Appropriate redactions will be applied to all personal information including the names of individuals involved.

The request is overdue, and it is our intention to reply to it as soon as possible.

Many thanks.

Kind regards,  
[REDACTED]

[REDACTED]  
Marine Scotland – Science  
Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB  
[REDACTED]  
[REDACTED]  
Tel: 01224 295620  
e: [REDACTED]@gov.scot  
w: <http://www.scotland.gov.uk/marinescotland>

**From:** [REDACTED] (MARLAB)  
**Sent:** 07 August 2018 13:17  
**To:** [REDACTED] (MARLAB)  
**Subject:** RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Hi [REDACTED] – will see what he comes back with, but advice from the FOI Unit was clear on this that legal privilege does not apply to anything that was sent to us from solicitors that aren't acting for us..

[REDACTED]

**From:** [REDACTED] (MARLAB)  
**Sent:** 09 August 2018 17:23  
**To:** Cabinet Secretary for the Rural Economy  
**Cc:** Cabinet Secretary for the Environment, Climate Change and Land Reform; Minister for Rural Affairs and the Natural Environment; Director of Marine Scotland Mailbox; Palmer MR (Mike) [REDACTED]  
[REDACTED] Communications Rural Economy & Environment (MARLAB); [REDACTED]  
**Subject:** Freedom of Information – Fol/18/01783 – proposed release information concerning the publication of photographs

Dear [REDACTED]

The Cabinet Secretary will wish to be aware of the following Fol request and our proposed response to the same.

The Cabinet Secretary will recall recent Fol requests relating to photographs of diseased farmed salmon. This request (Fol/18/01783) concerns information relating to the publication of photographs associated with the response to Fol/18/01141, and includes:

- details of how the industry stakeholders were consulted prior to the release of the information
- details of how the companies affected were made aware of the release date of information and publication
- information relating to correspondence (e.g. emails and letters) with salmon farming companies, the RSPCA, SSPCA, Government officials and any other parties

Attached is our draft response letter along with documentation proposed for release. This includes several internal and external communications regarding the potential release of these images. There are communications with industry stakeholders, as well as policy colleagues within Scottish Government, including the Fol unit.

The Cabinet Secretary will wish to be aware that we have fully explored the requirement to publish correspondence from stakeholder legal representatives. We have determined that legal privilege is only between a lawyer and their client. As the Scottish Government aren't the client, legal privilege cannot apply to the advice from the stakeholders solicitors in this case.

We have consulted with the Fol unit concerning the response we propose. We have also informed relevant industry stakeholders. SpAds have already approved the draft responses. Lines will be developed and agreed with Communications colleagues.

Regards,

[REDACTED]  
    
Fol-18-01783 draft INFORMATION INFORMATION  
letter.docx... PROPOSED FOR ...PROPOSED FOR ...

[REDACTED]  
Marine Scotland – Science  
Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB  
S/B: +44 (0)131 244 2500

██████████  
Marine Harvest (Scotland) Ltd

By email

5 September 2018

Dear ██████████

Thank you for your letter of 6 July 2018, in which you raised a number of concerns regarding the release of information relating to the publication of photographs of diseased farmed salmon from aquaculture sites in Scotland following a freedom of information request (Fol18/01141). I apologise for the delay in responding.

I note your specific comments regarding the public interest in releasing this information. I also acknowledge the concerns that you raise regarding statements on social media and the potential impact that this may have upon your business interests.

As you will be very aware, as a directorate within Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively.

With regard to this particular enquiry, we did consider the request for information in great detail, and proactively sought the views of stakeholders, both within Scottish Government and externally. We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies. In this case, no clear exception applied to the requested information. As such, we are required to release the information.

It is important to recognise that the public interest can only be considered if an exception applies. If an exception does apply, we then consider whether the public interest lies in the disclosure of the information or in upholding the exception and withholding the information. No exception applied to the information in relation to this particular case.

We recognise the concerns around the potential use of images out of context. As you will be aware, we did make efforts to ensure that appropriate context was provided along with the images released. In common with other Scottish public authorities, we cannot consider the purposes to which requested information may be put. We are only able consider the request on its own merits, and if any exceptions may or may not apply. We will of course continue to consult with stakeholders with regards to any future requests for information.

I acknowledge your suggestion for industry and fish health professionals to collaborate and provide an online learning portal regarding ocean health. Perhaps this suggestion could be taken forward through the Farmed Fish Health Working Group. This would seem like a suitable forum to discuss the wider benefits of your proposal. We have advised the Secretariat for the Framework Group, so that this can be conveyed to the appropriate individuals. There is clearly a great deal to be gained through a public facing platform portraying the industry in terms of its activities and its wider environmental, social and economic impact within Scotland.

That said, regardless of any proactive publication of information, freedom of information requests will still be received, seeking additional, associated or specific information held. We have first-hand experience of this within the Fish Health Inspectorate in relation to our active publication of case information relating our programme of aquatic animal health surveillance.

I also note your request for Marine Scotland to watermark photographs with pertinent information. We will give that some consideration although ultimately we need to determine how information is presented in terms of the release of information held in response to any request under Fol or as part of any pro-active publication campaign.

Best regards

██████████

18 September 2018

Dear [REDACTED]

Thank you for your letter of 1 August in which you raised a number of concerns regarding the release of information relating to the publication of photographs of diseased farmed salmon from aquaculture sites in Scotland. This followed a freedom of information request (Fol/18/01141) and your concerns expand to the further release of similar images. I apologise for the delay in responding.

In addition to addressing and replying to the points you have raised I have also attached an Annex to this communication giving a more detailed description of some of the legislative responsibilities under which Marine Scotland's Fish Health Inspectorate (FHI) operate.

#### **FHI Regulatory Responsibility**

Under Council Directive 2006/88/EC, implemented in Scotland through the Aquatic Animal Health (Scotland) Regulations 2009 (the 2009 Regulations), it is a legal requirement for the Competent Authority (CA)<sup>1</sup> to implement surveillance aimed at detecting listed diseases or increased mortality. To support this function there is a requirement for the CA to undertake effective disease investigation and reporting of disease, emerging disease or unexplained mortality without delay. All authorised Aquaculture Production Businesses (under the 2009 Regulations) must comply with any surveillance requirement imposed by the CA.

As a part of this surveillance, where unexplained mortality or animals demonstrating clinical signs of disease are observed, aquatic animals can be examined and sampled. Case notes, samples, results, copied records and photographic images can be taken and are maintained as a record of the surveillance inspection.

This record is retained to demonstrate that Council Directive 2006/88/EC and Regulation (EC) No 882/2004 have been appropriately applied and to demonstrate compliance during any internal audits or European Union Commission inspections and audits which may occur.

<sup>1</sup> in this regard the FHI operate on behalf of Scottish Ministers as part of the CA function  
Marine Laboratory, PO Box 101, 375 Victoria Road,  
Aberdeen AB11 9DB

Case information (including notes, results, photographs and records) is also maintained as a data resource with regards to epidemiological analysis and modelling, particularly with regard to emerging diseases. This facilitates in developing and implementing appropriate surveillance strategies for the CA, the development of efficient regulatory regimes and appropriate contingency plans and useful advice and information for the Scottish aquaculture industry.

In relation to the specific images associated with Fol/18/01141, which relate to The Scottish Salmon Company, all of the information has been obtained through statutory surveillance i.e. inspections and activities driven by the requirements of activities under 2006/88/EC.

We have been advised that photographs are a reasonable part of any investigation undertaken in accordance with the terms of the regulations and are treated as a part of the case record.

#### **Obligations under Fol**

As you will be very aware, as a directorate within Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively.

With regard to this particular case, we did consider the request for information in great detail, and proactively sought the views of stakeholders, both within Scottish Government and externally. We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies. In this case, no clear exception applied to the requested information. As such, we are required to release the information. This would be our likely position for any future requests for similar information.

It is important to recognise that the public interest can only be considered if an exception applies. If an exception does apply, we then consider whether the public interest lies in the disclosure of the information or in upholding the exception and withholding the information. No exception applied to the information in relation to this particular case.

We recognise the concerns around the potential use of images out of context. As you will be aware, we did make efforts to ensure that appropriate context was provided along with the images released. In common with other Scottish public authorities, we cannot consider the purposes to which requested information may be put. We are only able consider the request on its own merits, and if any exceptions may or may not apply. We will of course continue to consult with stakeholders with regards to any future requests for information.

#### **Your Request to Discuss Issues Further**

I note your clients request for a meeting to discuss best practice for future visits. It would greatly help us if you could clearly specify your concerns regarding the same and detail the points for discussion. We can then consider the best way forward and ensure appropriate members of staff are available to attend any meeting as required. Once we have received further feedback we can then discuss possible dates to meet.

Regards

██████████

## Annex

Council Directive 2006/88/EC Article 10 (1) requires Member States to ensure a risk-based animal health surveillance scheme is applied to all farms and mollusc farming areas, as appropriate for the type of production. Article 10 (2) requires the risk base surveillance scheme to be aimed at the detection of:

- (a) any increased mortality in all farms and mollusc farming areas as appropriate for the type of production; and
- (b) the diseases listed in Part II of Annex IV, in farms and mollusc farming areas where species susceptible to those diseases are present.

Article 10 (3) states that this surveillance shall apply without prejudice to the sampling and surveillance carried out in accordance with Chapter V or Article 49(3), Article 50(4) and Article 52.

Article 49 states that to obtain disease free status the conditions laid down in Part I of Annex V must be complied with. As stated in Part I of Annex V basic biosecurity measures conditions must have been in place continuously for at least a period of ten years before the date of application. Annex V, Part I, point 1.2 states the basic biosecurity measures should consist of:

- (a) the disease is compulsorily notifiable to the competent authority, including notification of suspicion;
- (b) an early detection system is in place throughout the Member State, enabling the competent authority to undertake effective disease investigation and reporting, and ensuring in particular -
  - (i) the rapid recognition of any clinical signs consistent with the suspicion of a disease, emerging disease, or unexplained mortality in farms or molluscs farming areas and in the wild;
  - (ii) the rapid communication of the event to the competent authority with the aim to activating diagnostic investigation with minimum delay.

Annex V, Part I, point 1.3 states the early detection system referred to in point 1.2(b) shall include at least the following:

- (c) access by the competent authority to laboratories with the facilities for diagnosing and differentiating listed and emerging diseases.

In order to meet the requirements of Council Directive 2006/88/EC an aquaculture production business must be authorised to operate under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (2009 Regulations). It is a condition of an authorisation that the business must follow good biosecurity practice and comply with any surveillance requirement imposed by the competent authority.

To enable an appointed inspector the powers to enforce the 2009 Regulations and ensure compliance with Council Directive 2006/88/EC, powers are provided for in Part 6 of the 2009 Regulations.

Regulation 35(1) states an inspector may, on producing some duly authenticated document showing the inspector's authority if required, enter and inspect any land or premises at any reasonable time for the purposes of administering and enforcing these Regulations.

Regulation 36 states, where an inspector exercises the power conferred by regulation 35, the inspector may-

- (a) search the land or premises for any item, including any aquatic animal or water;
- (b) examine anything that is:
  - (i) on the land or premises;
  - (ii) attached or otherwise forms part of the land or premises.

Regulation 37 states, for the purposes of administering or enforcing these Regulations, an inspector may require any person-

- (a) to produce any document or record that is in that person's possession or control;
- (b) to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

Regulation 38 states that it applies where an inspector exercises the powers conferred by regulation 36 or 37. It states an inspector may-

- (2) (a) seize, detain or remove any item which is on the land or premises;
  - (b) take copies of or extracts from any document or record found on the land or premises.
- (3) The power conferred in (2)(a) shall be construed as including power to take and examine samples of any aquatic animal or water.

Regulation 38(6) states the powers conferred by this regulation may only be exercised-

- (a) for the purposes of determining whether an offence under these regulations has been committed, or
- (b) in relation to an item which an inspector reasonably believes to be evidence of the commission of an offence under these Regulations.

Whilst Regulation 38(7) states any item seized by an inspector may be disposed of as the competent authority thinks fit.

21 December 2018

Dear Stakeholder

**Move Towards Active Publication of Fish Health Inspectorate Information from January 2019**

As you will be aware, Marine Scotland's Fish Health Inspectorate (FHI) receive regular requests for information relating to their operational activities and practices. As a Directorate within Scottish Government, Marine Scotland have a legal obligation to comply with Freedom of Information legislation<sup>1</sup>.

Since 2013, the FHI have implemented an active publication plan relating to case information following activities undertaken with respect to site visits for aquatic animal health surveillance, sea lice inspection and containment inspections. Active publication emerged following regular requests for this type of information and a recognition that a presumption towards proactively releasing the same was an appropriate step forward.

Active publication has allowed a uniform and consistent approach to the release of this type of information and applies to all authorised and registered sites. Publication is undertaken on a quarterly basis, three months in arrears. The initiative supports the ethos of Freedom of Information legislation in terms of developing publication plans. This approach also meets the Scottish Government principles of openness, transparency and accountability in terms of the work we do.

**Additional Information to be Published**

Recently we have identified several additional types of information that are regularly requested and released under Freedom of Information legislation. As a result, Marine Scotland has concluded that widening the scope of active publication, for the reasons specified above, would be beneficial. These areas include:

---

<sup>1</sup> This includes the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004  
Marine Laboratory, PO Box 101, 375 Victoria Road,  
Aberdeen AB11 9DB



- 1) Photographs taken as part of FHI case information.
- 2) Sea lice information obtained through the voluntary reporting regime.
- 3) Mortality information obtained through the voluntary reporting regime.

#### **Photographs**

Photographs taken with respect to site visits for aquatic animal health surveillance, sea lice inspection and containment inspection purposes will be released as part of the case information and fall within the existing publication plan covering the same. Therefore, photographs will be released on a quarterly basis, three months in arrears. This process will start from the 3<sup>rd</sup> quarter of 2018 (July to September) which will be published in January 2019. Appropriate context to the images will be provided through the case information and any additional text as deemed necessary.

#### **Sea Lice and Mortality Information – applicable to salmonid farms only**

Sea lice and mortality information, provided to Marine Scotland's FHI through the voluntary reporting regimes, will be published monthly, one month in arrears starting with data from 2019 onwards (therefore, the first publication will be in early March 2019).

As a reminder, the voluntary reporting regime associated with sea lice applies to marine salmonid farms. The voluntary reporting regime associated with mortality applies to all salmonid sites.

Attached alongside this letter is an annex (Annex 1) indicating what the data may look like from a published perspective.

Presently, we receive information concerning sea lice and mortality through various channels, including letter, email and telephone. I would be obliged if, going forwards, information could be submitted by email using the attached Excel templates - one for sea lice (Annex 2) and one for mortalities (Annex 3). At present these are in draft format and when finalised will be made available on-line. Adopting this method helps to reduce the risk of errors associated with the information provided when recording, transcribing and then publishing the same.

Maintaining a written record from your own perspective will also be beneficial for your awareness of forthcoming publications. The FHI can always make you aware of future publications of mortality and sea lice information before they occur, but it is hoped that adopting the suggested approach will reduce the need for this.

The approach being adopted follows on from your own industry initiatives undertaken earlier this year publishing site specific data and information relating to sea lice and mortalities, and commitments made in Scotland's 10 Year Farmed Fish Health Framework to lead in information sharing and transparency. The Framework activities includes a review of Scotland's farmed fish sea lice compliance policy, introduced in 2017, which we expect to conclude by spring 2019.

Should you have any questions, queries or comments on the above or the attached documentation then please do not hesitate to contact me.

Yours faithfully

██████████



[Photo taken in June 2018 of a well boat in Orkney]

**FOI Disclosure #2 ([Download October 2019 FoI-19-02133 - Information to release 2](#)):**

**From:** [Redacted]@marineharvest.com]

**Sent:** 09 July 2018 09:35

**To:** [Redacted] (MARLAB)

**Cc:** [Jhesketh-laird@scottishsalmon.co.uk](mailto:Jhesketh-laird@scottishsalmon.co.uk); [Redacted] SG staff; [Redacted]@marineharvest.com; [Redacted]@scottishsalmon.com; [Redacted]@scottishsalmon.com; [Redacted]@griegseafood.com; [Redacted]@cookeaqua.com; [Redacted]

@marineharvest.com; [Redacted]@scottishseafarms.com; [Redacted]@lochduart.com

**Subject:** RE: FoI/18/01141 - Request for photographs of diseased salmon

Dear [Redacted]

Please find attached letter from our director of communications, Ian Roberts, with regards to the FOI above.

Please could you include Ian on emails relating to this and any future FOI's.

Regards

[Redacted]

[Redacted]

MARINE HARVEST SCOTLAND LTD

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MOBILE: [Redacted]  
MAIL [Redacted][@marineharvest.com](mailto:[Redacted]@marineharvest.com)  
WEB: [www.marineharvest.com](http://www.marineharvest.com)

---

OFFICE: Stob Ban House  
Glen Nevis Business Park  
Fort William  
PH33 6RX

---

**From:** [Redacted] (MARLAB)  
**Sent:** 13 July 2018 12:12  
**To:** [Redacted][@marineharvest.com](mailto:[Redacted]@marineharvest.com); [Redacted][@marineharvest.com](mailto:[Redacted]@marineharvest.com)'; [Jhesketh-laird@scottishsalmon.co.uk](mailto:Jhesketh-laird@scottishsalmon.co.uk); [\[Redacted\]@scottishsalmon.com](mailto:[Redacted]@scottishsalmon.com); [\[Redacted\]@scottishsalmon.com](mailto:[Redacted]@scottishsalmon.com); [\[Redacted\]@griegseafood.com](mailto:[Redacted]@griegseafood.com); [\[Redacted\]@cookeaqua.com](mailto:[Redacted]@cookeaqua.com); [Redacted][@marineharvest.com](mailto:[Redacted]@marineharvest.com); [Redacted][@marineharvest.com](mailto:[Redacted]@marineharvest.com); [Redacted][@marineharvest.com](mailto:[Redacted]@marineharvest.com); [\[Redacted\]@scottishseafarms.com](mailto:[Redacted]@scottishseafarms.com); [\[Redacted\]@lochduart.com](mailto:[Redacted]@lochduart.com)  
**Cc:** MS FishHealth ([MS.FishHealth@gov.scot](mailto:MS.FishHealth@gov.scot)); [Redacted][@gov.scot](mailto:[Redacted]@gov.scot); [Redacted] (MARLAB); [Redacted] (MARLAB)  
**Subject:** RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Dear [Redacted]

Many thanks for your communication which I have received and will reply to in due course.

All

Please note that Marine Scotland has recently received several further FoI requests which we are in the process of dealing with. The areas they include cover:

- Copies of photos of Scottish farmed salmon and Scottish salmon farms during 2018 & 2016 – this is a follow up to the request for photos of diseased salmon
- Copies of photos of farmed salmon (dead and alive) following treatment with the Thermolicer, Hydrolicer, Optilicer and other mechanical treatments since 1 January 2016
- Information on the numbers of mortalities on salmon farms since 1 January 2018, including details of the mortality reporting thresholds
- Information on disposal of farmed salmon via landfill, incineration, bio-gas and other disposal methods since 1 January 2018
- Information on any reports (*made by the FHI*) to the Animal and Plant Health Agency in relation to farmed salmon
- Information on mortalities and diseases at smolt salmon farms (freshwater and marine) during 2018

We are in the process of identifying relevant information which we hold in relation to these requests. Where such information relates to your business interest then I will be in contact with you individually regarding the same.

In addition to the requests listed above we have also received a request under the Environmental Information (Scotland) Regulations 2004 (EIRs) for information relating to the publication of photos of diseased farmed salmon (FoI/18/01141) - including any correspondence (e.g. emails and letters) with salmon farming companies.

You have an interest in the information which has been requested because you were one of the companies consulted about release of these photographs, and your communication with us on this matter falls within the scope of the request. Therefore, I am writing to ask you for your views on whether this information should be disclosed, before we make a decision on the request. Please note that this consultation is a courtesy, not a statutory obligation, and you do not have a veto on disclosure of the information. Under the terms of the EIRs, the decision on whether or not to release the information is for the Scottish Government alone. However, we will take account of your views.

I should also explain that we can withhold information only if an exception under the EIRs applies to that information and the public interest in disclosure is not outweighed by the public interest in upholding the exception. You can find detailed information about the EIRs on our website at: <http://www.scotland.gov.uk/about/foi> or on the Scottish Information Commissioner's website at: <http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>

In order to ensure that we meet our statutory duty to respond to the request within 20 working days of receiving it, I must ask for your views by 23 July.

Please be aware that I shall be out of the office next week but shall return on 23 July. If you wish for your communications to be considered before my return please copy them to our Duty Inspector through the Fish Health mailbox - [MS.FishHealth@gov.scot](mailto:MS.FishHealth@gov.scot)

With best regards,

[Redacted]

**[Redacted]**

Marine Scotland – Science  
Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB  
[Redacted]  
w: <http://www.scotland.gov.uk/marinescotland>

**From:** [Redacted][@scottishseafarms.com](mailto:[Redacted]@scottishseafarms.com)]

**Sent:** 07 August 2018 14:29

**To:** [Redacted] (MARLAB)

**Cc:** [Redacted] (MARLAB)

**Subject:** RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Dear [Redacted],

We consider that the new request should be considered under FOISA and not the EIRs. We believe that Marine Scotland should withhold the information under S30(b) of FOISA. That allows an exemption to be applied by MS where disclosure would inhibit substantially the free and frank exchange of views. SSF provided frank views in order to assist MS with its deliberations and we and others would be less likely to do so in future if information were to be disclosed.

Should this approach not be accepted we consider the email exchange with our lawyer to be exempt because of legal privilege, therefore only correspondence between myself as our company contact

with Marine Scotland to be included. In addition redaction of individual names we consider job title to be identifiable to individuals as such we understand Marine Scotland should redact job title working address and contact details in order to protect our personnel.

Best regards,

[Redacted]

**From:** [Redacted](MARLAB)

**Sent:** 09 August 2018 17:23

**To:** Cabinet Secretary for the Rural Economy

**Cc:** Cabinet Secretary for the Environment, Climate Change and Land Reform; Minister for Rural Affairs and the Natural Environment; Director of Marine Scotland Mailbox; Palmer MR (Mike); [Redacted] (MARLAB); [Redacted]@gov.scot; [Redacted] (MARLAB); [Redacted] (MARLAB); [Redacted] (MARLAB); [Redacted]@gov.scot; [Redacted]@gov.scot; Communications Rural Economy & Environment; Higgins K (Kate); [Redacted]@gov.scot; [Redacted] (MARLAB); [Redacted]@gov.scot; [Redacted]@gov.scot; [Redacted]@gov.scot

**Subject:** Freedom of Information – FoI/18/01783 – proposed release information concerning the publication of photographs

Dear [Redacted]

The Cabinet Secretary will wish to be aware of the following FoI request and our proposed response to the same.

The Cabinet Secretary will recall recent FoI requests relating to photographs of diseased farmed salmon. This request (FoI/18/01783) concerns information relating to the publication of photographs associated with the response to FoI/18/01141, and includes:

- details of how the industry stakeholders were consulted prior to the release of the information
- details of how the companies affected were made aware of the release date of information and publication
- information relating to correspondence (e.g. emails and letters) with salmon farming companies, the RSPCA, SSPCA, Government officials and any other parties

Attached is our draft response letter along with documentation proposed for release. This includes several internal and external communications regarding the potential release of these images. There are communications with industry stakeholders, as well as policy colleagues within Scottish Government, including the FoI unit.

The Cabinet Secretary will wish to be aware that we have fully explored the requirement to publish correspondence from stakeholder legal representatives. We have determined that legal privilege is only between a lawyer and their client. As the Scottish Government aren't the client, legal privilege cannot apply to the advice from the stakeholders solicitors in this case.

We have consulted with the FoI unit concerning the response we propose. We have also informed relevant industry stakeholders. SpAds have already approved the draft responses. Lines will be developed and agreed with Communications colleagues.

Regards,

[Redacted]

<< File: FoI-18-01783 draft letter.docx >> << File: INFORMATION PROPOSED FOR RELEASE - names redacted documents numbered.docx >> << File: INFORMATION PROPOSED FOR RELEASE - 060\_email attachment - evidence\_arguments from SSF.pdf >>

**[Redacted]**

Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB

[Redacted]

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

**From:** [Redacted]@gov.scot

**Sent:** 10 August 2018 09:58

**To:** [Redacted] (MARLAB)

**Subject:** RE: Freedom of Information – FoI/18/01783 – proposed release information concerning the publication of photographs

Good morning [Redacted]

Was this released yesterday? I was at the SSPO office yesterday and [Redacted] is at SAIC today. I can pick up assisting with comms/ lines today

Cheers

[Redacted]

**From:** [Redacted] (MARLAB)

**Sent:** 10 August 2018 14:16

**To:** [Redacted]@scottishseafarms.com>

**Cc:** [Redacted] (MARLAB)

**Subject:** RE: FoI/18/01141 - Request for photographs of diseased salmon - Further FoI requests

Dear [Redacted]

The information that has been requested here is discussions about the release/publication of environmental information so falls under the definition of environmental information as defined by the legislation. Therefore, we have to deal with the request under the EIRs.

Regarding your comments about correspondence with your lawyer being subject to legal privilege, this only applies to communications between a lawyer and their client. As the Scottish Government are not the client here, legal privilege cannot apply to the communications from SSF solicitors.

As you will know, the legislation requires that we operate with a strong presumption in favour of the release of information and that any exceptions must be applied restrictively. We are also required to consider documents on a line-by-line basis and not withhold documents in their entirety if exceptions only apply to parts of documents. We have been through all the information relevant to

this request on that basis, and do not consider that we can apply any exception that will allow us to withhold any part of the communications with SSF.

I understand that you may be unwilling to engage so frankly with us on any future requests, and I am sorry to hear this. We value your input, and often will only be able to withhold information that may damage the interests of SSF by considering evidence that only you are able to provide. I hope that we are still able to have these useful discussions in relation to any future requests.

We agree with your position on job titles if these will identify individuals and will redact these before the information is released.

Regards,  
[Redacted]

**[Redacted]**

Marine Scotland – Science  
Scottish Government | Marine Laboratory, PO Box 101| 375, Victoria Road | Aberdeen AB11 9DB  
[Redacted]

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

**From:** [Redacted] (MARLAB)

**Sent:** 29 August 2018 17:27

**To:** [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted](MARLAB) [Redacted]@gov.scot>

**Cc:** [Redacted](MARLAB) [Redacted]@gov.scot>; [Redacted](MARLAB) [Redacted]@gov.scot>

**Subject:** FW: Fol/18/01141 - Request for photographs of diseased salmon

[Redacted]

You may recall a communication from Marine Harvest's [Redacted], in relation to the Fol / publication of photographs of diseased farmed salmon.

This was received at the beginning of July and [Redacted] indicated he would be happy to contribute to a reply.

Please find the attached draft, with thanks to [Redacted] for considerable input.

Grateful for any input and particularly in relation to the reference to the Farmed Fish Health WG.

Apologies that this reply will be so late, although we did address much / some of this in previous stakeholder communications on the issue.

Thanks  
[Redacted]

**From:** [Redacted] (MARLAB)

**Sent:** 04 September 2018 16:31

**To:** 'Julie Hesketh-Laird' <jhesketh-laird@scottishsalmon.co.uk>

**Cc:** [Redacted]@scottishsalmon.co.uk>; [Redacted]@scottishsalmon.co.uk>;

[Redacted]@scottishsalmon.co.uk>; [Redacted] (MARLAB) [Redacted]@gov.scot>

**Subject:** RE: Fol/18/01141 - Request for photographs of diseased salmon - Further Fol requests

Dear Julie

I wanted to inform you that our reply to the Fol request for information concerning the release of photographs of diseased farmed salmon was subject to a review as requested by the applicant. As part of that review process the application of redaction was considered and it was concluded that your name should be released (as had been our original intention) in connection with the documentation sent to you as referred in the email below.

Best regards,

[Redacted]

**[Redacted]**

Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101| 375, Victoria Road | Aberdeen AB11 9DB

[Redacted]

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

**From:** Purvis N (Neil) (MARLAB)

**Sent:** 18 September 2018 15:33

**To:** : [Redacted]@gov.scot>; Cabinet Secretary for the Rural Economy <CabSecRE@gov.scot>

Cc: Cabinet Secretary for the Environment, Climate Change and Land Reform

<CabSecECCLR@gov.scot>; Minister for Rural Affairs and the Natural Environment

<MinisterRANE@gov.scot>; Higgins K (Kate) <Kate.Higgins@gov.scot>; Director of Marine Scotland

Mailbox <Directormarinescotland@gov.scot>; Palmer MR (Mike) <Mike.Palmer@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; Fol SpAds PO <Fol.SpAdsPO@gov.scot><[Fol.SpAdsPO@gov.scot](mailto:Fol.SpAdsPO@gov.scot)>

**Subject:** For Information - Response to Fol/18/02235 - photographs of diseased farmed salmon

**PS** Cabinet Secretary for Rural Economy and Connectivity

Please be aware of the attached response to an Fol request (Fol/18/02235) concerning photographs of diseased farmed salmon relating to fish farm sites operated by Scottish Sea Farms which will be released tomorrow – Wednesday 19 September.

The minister will be aware of previous Fol requests concerning the release and publication of similar images (Fol/18/01141; Fol/18/01869 and Fol/18/01782). This further request from [Redacted] relates to Scottish Sea Farms only and involves the

release of some 34 photographs relating to 9 fish farm inspections conducted by the Fish Health Inspectorate between 1 January 2013 and 31 December 2015. This response is consequent to previous requests which the SpAds and Ministers have approved.

The photographs can be accessed through the following web link:

<https://www.dropbox.com/sh/tcuk52i6qrpuw59/AABpH6fWZlodht51xTVSJxCXa?dl=0>

Lines developed for the original enquiry remain valid in the event of further enquiries.

Best regards,

[Redacted]

Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB

**From:** [Redacted] **On Behalf Of** Cabinet Secretary for the Rural Economy

**Sent:** 19 September 2018 16:19

**To:** [Redacted]@gov.scot>; Cabinet Secretary for the Rural Economy <[CabSecRE@gov.scot](mailto:CabSecRE@gov.scot)>

**Cc:** Cabinet Secretary for the Environment, Climate Change and Land Reform

<[CabSecECCLR@gov.scot](mailto:CabSecECCLR@gov.scot)>; Minister for Rural Affairs and the Natural Environment

<[MinisterRANE@gov.scot](mailto:MinisterRANE@gov.scot)>; Higgins K (Kate) <[Kate.Higgins@gov.scot](mailto:Kate.Higgins@gov.scot)>; Director of Marine Scotland

Mailbox <[Directormarinescotland@gov.scot](mailto:Directormarinescotland@gov.scot)>; Palmer MR (Mike) <[Mike.Palmer@gov.scot](mailto:Mike.Palmer@gov.scot)>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; Fol SpAds PO <[Fol.SpAdsPO@gov.scot](mailto:Fol.SpAdsPO@gov.scot)><[Fol.SpAdsPO@gov.scot](mailto:Fol.SpAdsPO@gov.scot)>; Fol SpAds

PO <[Fol.SpAdsPO@gov.scot](mailto:Fol.SpAdsPO@gov.scot)>

**Subject:** RE: For Information - Response to Fol/18/02235 - photographs of diseased farmed salmon

[Redacted],

Mr Ewing has noted for his awareness.

Thanks,

[Redacted]

[Redacted]

Cabinet Secretary for Rural Economy

[CabsecRE@gov.scot](mailto:CabsecRE@gov.scot)

0131 244 [Redacted]

Please check our [Ministerial Preferences](#)

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Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

**From:** [Redacted] **On Behalf Of** Cabinet Secretary for the Environment, Climate Change and Land Reform

**Sent:** 19 September 2018 17:56

**To:** [Redacted]@gov.scot>; Cabinet Secretary for the Rural Economy <[CabSecRE@gov.scot](mailto:CabSecRE@gov.scot)>

**Cc:** Cabinet Secretary for the Environment, Climate Change and Land Reform

<[CabSecECCLR@gov.scot](mailto:CabSecECCLR@gov.scot)>; Minister for Rural Affairs and the Natural Environment

<[MinisterRANE@gov.scot](mailto:MinisterRANE@gov.scot)>; Higgins K (Kate) <[Kate.Higgins@gov.scot](mailto:Kate.Higgins@gov.scot)>; Director of Marine Scotland Mailbox <[Directormarinescotland@gov.scot](mailto:Directormarinescotland@gov.scot)>; Palmer MR (Mike) <[Mike.Palmer@gov.scot](mailto:Mike.Palmer@gov.scot)>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>;

[Redacted]@gov.scot>; Fol SpAds PO <[Fol.SpAdsPO@gov.scot](mailto:Fol.SpAdsPO@gov.scot)>

**Subject:** RE: For Information - Response to Fol/18/02235 - photographs of diseased farmed salmon

[Redacted]

Ms Cunningham has noted for her interests.

Thanks.

[Redacted]

[Redacted]@gov.scot | [Redacted] | Tel: 0131 244 [Redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

**From:** [Redacted] **On Behalf Of** [Redacted] (MARLAB)

**Sent:** 18 September 2018 15:59

**To:** [Redacted] Sent to SG staff

**Subject:** FW: Information publication and retention

**When:** 05 October 2018 14:30-15:30 (UTC+00:00) Dublin, Edinburgh, Lisbon, London.

**Where:** Marine Lab TBC

Hi [Redacted]

I will be at the ASSG conference so can't make this meeting date. I was pressed by Kate Higgins today regarding publication of sea lice and mortality information. I am aware that [Redacted] has another sea lice information request from [Redacted]. It would be good if we can get the sea lice and mortality publication plan in order before this Fol is due? We really need to get this off the ground as quickly as possible now. Not least because the FFHWG will meet soon and the industry have met their publication actions.

More widely I think it would be worth inviting someone from the Data Protection and Information Assets team with regards to advice on GDPR ( if applicable). There remains a question over the validity of us retaining photographs. We know we can take them and they are useful for diagnostics. But when the case is closed and there is no chance of a listed disease/ enforcement action becoming necessary, what is the purpose of keeping them. If we are moving to position which includes the publication of the photos I think we need to have to an a4 summary which reasons our position for Ministers OR gives them the choice where we go with this. We need to be sure that it is within our right to retain case information for eternity { by being published online}

I don't have a particular contact but the team has an inbox [dpa@gov.scot](mailto:dpa@gov.scot)

Cheers

[Redacted]

**From:** [Redacted] (MARLAB)

**Sent:** 19 September 2018 08:40

**To:** [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>

**Subject:** RE: Information publication and retention

All

Could someone let me know what is the question on validity of retention of photos with respect to GDPR. I thought this had all been looked into?

The point is taken regarding the need to progress with the sea lice and mort reporting that FHI hold. This can be progressed as I thought we had agreed to publish this having established that this is not data for scientific purposes but leads the FHI in their work.

Progressing the wider policy on retention is important and urgent – hence the meeting.

Regards

[Redacted]

**From:** [Redacted]@gov.scot>

**Sent:** 19 September 2018 10:06

**To:** [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>

**Subject:** RE: Information publication and retention

Hi [Redacted],

I think the reasoning in the response to [Redacted] of Cameron McKenna solicitors operating on behalf of The Scottish Salmon Company (attached) had established that the information gathered during our inspections is retained to primarily demonstrate that the legislation is implemented effectively, should we be subject to audit by the Commission or internally. There may be a question on how long this should be retained but this would depend on the timeframe that an audit would require information from.

Cheers  
[Redacted]

**From:** [Redacted] (MARLAB)  
**Sent:** 08 March 2019 14:30  
**To:** [Redacted] (MARLAB)  
**Subject:** Active Publication of Fish Health Inspectorate Information

Dear Stakeholder

### **Update on Active Publication of Fish Health Inspectorate Information**

I am writing as a follow up to my previous communication of 21 December 2018, letter attached for your reference. This concerned future plans within Marine Scotland's Fish Health Inspectorate (FHI) for further active publication of information.

I can advise you that, as of Wednesday 6 March 2019, sea lice and mortality information provided to the FHI through the reporting regimes has now been published. The information published includes sea lice information up to week 4 of 2019 and mortality information reported up until to the end of January 2019 and can be located here:

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

Going forwards, future publications will be made on a monthly basis, one month in arrears.

The web pages also contains copies of the notification forms which can be used to report mortality events and sea lice counts, where relevant. We would be obliged if you could use these forms for future notifications to help ensure a uniform approach and improved traceability of the information provided.

### **Changes to case information publication**

We will also be changing the frequency of publication of case information including photographs (where relevant). Presently case information involves the publishing of closed (completed) cases on a quarterly basis, three months in arrears. From April 2019 closed cases will be published monthly, one month in arrears. Therefore the

start of April will see the publication of relevant cases from January and February 2019.

The change aligns the three areas of information (cases, mortality and sea lice) into the same timescale for publication – monthly, one month in arrears. As you are aware these areas receive significant interest from third parties. The approach facilitates further in dealing with Freedom of Information requests and in meeting the Scottish Government principles of openness and accountability.

If you have any queries regarding this then please do contact me.

With best regards,

[Redacted]

**[Redacted]**

Marine Scotland – Science

Scottish Government | Marine Laboratory, PO Box 101 | 375, Victoria Road | Aberdeen AB11 9DB

[Redacted]

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

**FOI Disclosure #3 ([Download October 2019 FoI-19-02133 - Information to release 3](#)):**

[Note that this same letter was included in release 1)

██████████  
Marine Harvest (Scotland) Ltd

By email

5 September 2018

Dear ██████████

Thank you for your letter of 6 July 2018, in which you raised a number of concerns regarding the release of information relating to the publication of photographs of diseased farmed salmon from aquaculture sites in Scotland following a freedom of information request (Fol18/01141). I apologise for the delay in responding.

I note your specific comments regarding the public interest in releasing this information. I also acknowledge the concerns that you raise regarding statements on social media and the potential impact that this may have upon your business interests.

As you will be very aware, as a directorate within Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively.

With regard to this particular enquiry, we did consider the request for information in great detail, and proactively sought the views of stakeholders, both within Scottish Government and externally. We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies. In this case, no clear exception applied to the requested information. As such, we are required to release the information.

It is important to recognise that the public interest can only be considered if an exception applies. If an exception does apply, we then consider whether the public interest lies in the disclosure of the information or in upholding the exception and withholding the information. No exception applied to the information in relation to this particular case.

We recognise the concerns around the potential use of images out of context. As you will be aware, we did make efforts to ensure that appropriate context was provided along with the images released. In common with other Scottish public authorities, we cannot consider the purposes to which requested information may be put. We are only able consider the request on its own merits, and if any exceptions may or may not apply. We will of course continue to consult with stakeholders with regards to any future requests for information.

I acknowledge your suggestion for industry and fish health professionals to collaborate and provide an online learning portal regarding ocean health. Perhaps this suggestion could be taken forward through the Farmed Fish Health Working Group. This would seem like a suitable forum to discuss the wider benefits of your proposal. We have advised the Secretariat for the Framework Group, so that this can be conveyed to the appropriate individuals. There is clearly a great deal to be gained through a public facing platform portraying the industry in terms of its activities and its wider environmental, social and economic impact within Scotland.

That said, regardless of any proactive publication of information, freedom of information requests will still be received, seeking additional, associated or specific information held. We have first-hand experience of this within the Fish Health Inspectorate in relation to our active publication of case information relating our programme of aquatic animal health surveillance.

I also note your request for Marine Scotland to watermark photographs with pertinent information. We will give that some consideration although ultimately we need to determine how information is presented in terms of the release of information held in response to any request under FoI or as part of any pro-active publication campaign.

Best regards

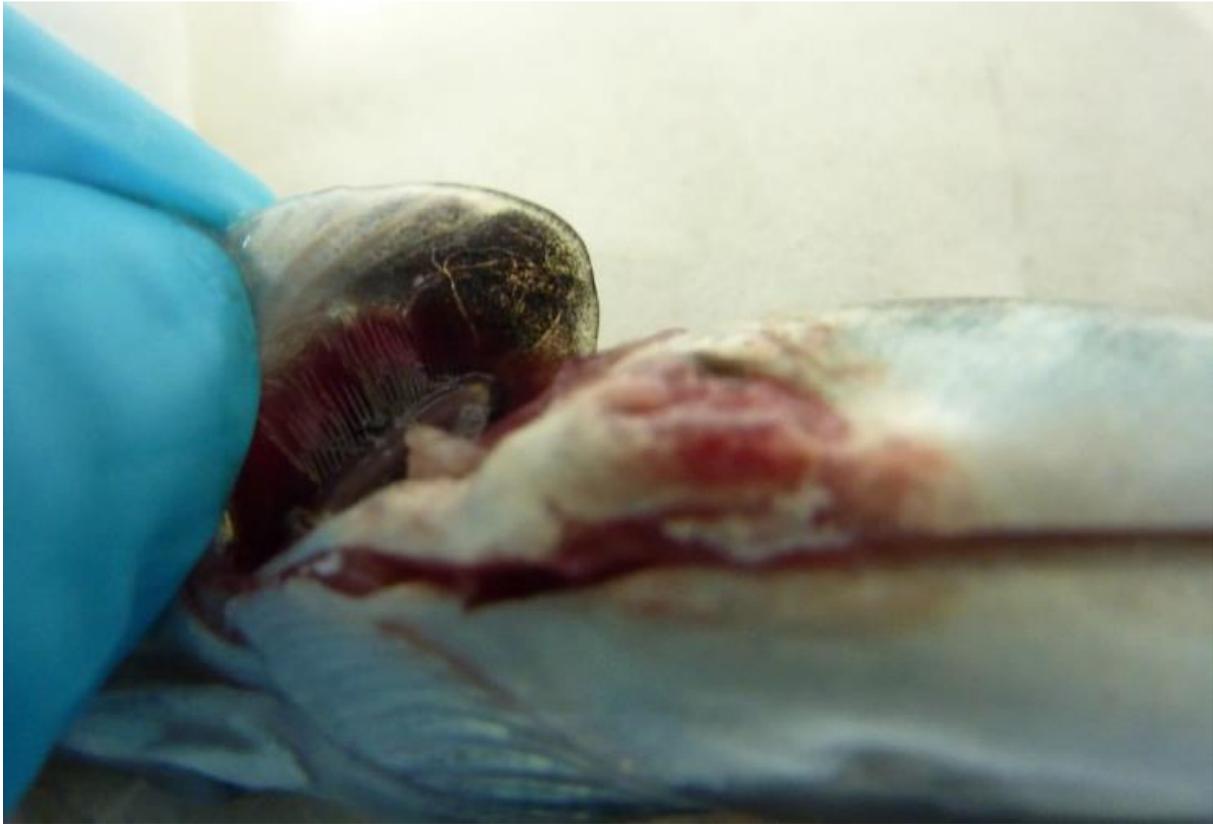
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**FOI Disclosure #4 ([Download October 2019 FoI-19-02133 - Information to release 4 - case number 20180214](#)):**

2018-0214 Furnace (FW)







Note that this case - 2018-0214 - relates to Cooke Aquaculture's Furnace hatchery on Loch Fyne. The [FHI Case Information for May 2018](#) (report starts at p237) details:

██████████  
Cooke Aquaculture (Freshwater) Ltd  
Crowness Road  
Hatston Kirkwall  
Orkney  
KW15 1RG  
██████████

## FISH HEALTH INSPECTORATE VISIT REPORT

### SUMMARY FOR INFORMATION OF SITE OPERATOR

<b>BUSINESS No</b>	FB0235	<b>DATE OF VISIT</b>	31/05/2018
<b>SITE No</b>	FS0339	<b>SITE NAME</b>	Furnace (FW)
<b>INSPECTOR</b>	Svenja Elwenn	<b>CASE No</b>	20180214

#### Section 1: Summary

The site was visited due to the notification of a mortality event on site. Five lethargic and moribund fish were removed for sampling from the worst affected tanks.

Histopathology examination revealed moderate, multifocal to diffuse, skeletal red muscle myositis and mild skeletal white muscle degeneration, mild cardiomyofibre degeneration and loss of pancreatic acinar tissue with minimal inflammatory response. These are some features resembling the pancreas disease (PD) condition. QPCR testing confirmed salmonid alphavirus (SAV), the causative agent of PD and genotype identification determined subtype I from the partial sequencing of E2 gene.

## **Section 2: Case Detail**

### **Observations**

The above site was attended by the Fish Health Inspectorate following the notification of a mortality event on 29 May 2018. The business suspected an outbreak of infectious pancreatic necrosis (IPN) was the cause of the increased mortality. Measures were taken to raise the water temperature to 21 °C for 48 hours to combat the suspected IPN outbreak. Mortality on the site for week 21 was 2.16% and 11.67% for week 22, the week of the visit. Mortalities in the week following the inspection fell to 0.55% for the site. At the time of the visit mortalities were elevated on site C, but particularly high on site A and five fish were collected from the three tanks stocked on site A. Large numbers of lethargic, dead and dying fish were observed in the screened outflow basin of each of the three tanks and five moribund and lethargic fish were removed for diagnostic sampling.

R09

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Website - [www.gov.scot/Topics/marine/science](http://www.gov.scot/Topics/marine/science)

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Externally, F3 showed some haemorrhaging to the base of the pectoral fin and had flared opercula. The gills appeared zoned in all five fish. Internally, bloody ascites were observed in F1 and F5. Petechial haemorrhaging on the liver and the pyloric caeca was observed in F4 and F5, with F4 also showing a darker than normal liver colour. Yellow pseudo faeces were present in F2-F3, with no food present in the guts of F1, F4-F5. The kidney appeared slightly grey in F1 and F5.

**FOI Disclosure #5 ([Download October 2019 FoI-19-02133 - Information to release 5 - case number 20180216-1](#)):**



F4 – F5





Note that this case - 2018-0216 - relates to [Mowi's Stulaigh Island salmon farm in Loch Eynort](#). The [FHI Case Information for June 2018](#) (report starts at p251) details:

Case No:	2018-0216	Date of visit:	05/06/2018			
Time spent on site:	6 hours	Main Inspector:	JET			
Site No:	FS1259	Site Name:	Stulaigh			
Business No:	FB0119	Business Name:	Marine Harvest (Scotland) Ltd			
Case Types:	1 ECI	2 CNI	3 SLI	4 VMD	5 DIA	6
Water Temp (°C):	10.1	Thermometer No:	T147	FHI 045 completed		
Observations:	Region:	WI	Water type:	S	CoGP MA	None
Dead/weak/abnormally behaving fish present?	<input checked="" type="checkbox"/>	If yes, see additional information/clinical score sheet.				
Clinical signs of disease observed?	<input checked="" type="checkbox"/>	If yes, see additional information/clinical score sheet.				
Gross pathology observed?	<input checked="" type="checkbox"/>	If yes, see additional information/clinical score sheet.				
Diagnostic samples taken?	<input checked="" type="checkbox"/>					

**Additional Case Information:**

In-feed Florfenicol treatment administered to lumpfish to treat bacterial infection. No treatment records held for salmon, which may ingest medicated feed.

Unable to feed on consecutive days due to poor weather on site. Prescription stated 15 days administration  
Lumpfish feed is delivered through mechanical feeders attached to side of cage, feed pellets significantly smaller in size compared to salmon feed. During inspection of site did not observe any salmon feeding on lumpfish pellets.  
Lethargic fish with lesions observed in cage 1, removed 5 for diagnostic sampling.  
Fish sampled for VMD appeared healthy.

### Results of Surveillance

1. Has any animal health surveillance been carried out by, or on behalf of, the business?
2. If yes, are results available for inspection?
3. Any significant results?

	Y
	Y
	Y

If yes, detail (if not detailed under recent disease problems).

Early signs of PGD in salmon, bacterial infection in lumpfish (granulomas in kidney).

Records checked between:

31/05/2016 - 05/06/2018

### Additional comments:

All fish sampled had internal adhesions

**marine scotland**  
**science**



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

Marine Harvest (Scotland) Ltd  
Stob Ban House  
Glen Nevis Business Park  
Fort William  
PH33 6RX

## FISH HEALTH INSPECTORATE VISIT REPORT

### SUMMARY FOR INFORMATION OF SITE OPERATOR

<b>BUSINESS NO</b>	FB0119	<b>DATE OF VISIT</b>	05/06/2018
<b>SITE NO</b>	FS1259	<b>SITE NAME</b>	Stulaigh
<b>INSPECTOR</b>	Joe Triscott	<b>CASE NO</b>	20180216

### Section 1: Summary

During a routine inspection of the above site, a number of moribund Atlantic salmon with lesions were observed in one cage. Five moribund fish were removed for further examination and subsequent diagnostic sampling.

Histopathology examination revealed skin lesions with high numbers of mixed bacteria and mild skeletal muscle necrosis, which may be associated with physical damage. Some circulatory disturbances were noted in the gills of all five fish and three showed some epitheliocystis like structures.

*Vibrio* spp., *Tenacibaculum dicentrarchi* and *Moritella viscosa* were isolated. The level of growth was significant however the purity would not suggest these bacteria to be the primary source of morbidity.

## **Section 2: Case Detail**

### **Observations**

During a routine inspection, a number of moribund Atlantic salmon were observed in one cage, two of which were hanging vertically in the water column. A number of the fish were also observed to have lesions. Five moribund fish were removed for further examination and subsequent diagnostic sampling.

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Tel - 0131 244 3498 Fax - 0131 244 0944 Email - [ms.fishhealth@gov.scot](mailto:ms.fishhealth@gov.scot)  
Website - [www.gov.scot/Topics/marine/science](http://www.gov.scot/Topics/marine/science)

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Recent mortality numbers had been relatively low across the site, however cage 1 had seen an increase in mortality following grading. The losses were attributed to physical damage. The lumpfish stocked on site had recently been treated with antibiotics for a suspected *Vibrio* infection.

External examination of the fish sampled showed lesions present on the flanks of fish 2-5.

Internal examination showed enlarged spleens in fish 1, 3 and 4. The liver of fish 5 appeared slightly darkened and yellow pseudo-faeces were present in the gut of all five fish.

**FOI Disclosure #6 ([Download October 2019 FoI-19-02133 - Information to release 6 - case number 20180219](#)):**



F1- F3





F4 - F5





Note that this case - 2018-0219 - relates to Loch Duart's Lochmaddy salmon farm. The [FHI Case Information for June 2018](#) (report starts at p298) details:

Case No:	2018-0219	Date of visit:	06/06/2018			
Time spent on site:	4 hours	Main Inspector:	JET			
Site No:	FS0853	Site Name:	Lochmaddy			
Business No:	FB0398	Business Name:	Loch Duart Ltd			
Case Types:	1 REP	2 DIA	3	4	5	6
Water Temp (°C):	10	Thermometer No:	T147	FHI 045 completed		
Observations:	Region:	WI	Water type:	S	CoGP MA	W-12
Dead/weak/abnormally behaving fish present?	<input checked="" type="checkbox"/>	If yes, see additional information/clinical score sheet.				
Clinical signs of disease observed?	<input checked="" type="checkbox"/>	If yes, see additional information/clinical score sheet.				
Gross pathology observed?	<input checked="" type="checkbox"/>	If yes, see additional information/clinical score sheet.				
Diagnostic samples taken?	<input checked="" type="checkbox"/>					

**Additional comments:**

All fish sampled had internal adhesions



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

Loch Duart Ltd  
Badcall Salmon House  
Scourie, Lairg  
Sutherland  
IV27 4TH

## FISH HEALTH INSPECTORATE VISIT REPORT

### SUMMARY FOR INFORMATION OF SITE OPERATOR

**BUSINESS NO** FB0398  
**SITE NO** FS0853  
**INSPECTOR** Joe Triscott

**DATE OF VISIT** 06/06/2018  
**SITE NAME** Lochmaddy  
**CASE NO** 20180219

#### Section 1: Summary

The above site was inspected, following a report from the company to the fish health inspectorate of a recent increase in mortality, attributed to pancreas disease (PD). During the inspection of the site, a number of lethargic Atlantic salmon were observed in two cages. Five fish were removed for further examination and subsequent diagnostic sampling.

Histopathology examination revealed marked proliferative gill pathology in one fish, cardiomyopathy in another fish and moderate vascular gill damage in all fish.

*Vibrio splendidus* was isolated however the level and purity of this bacterium would not suggest it would be a primary source of current fish morbidity.

## **Section 2: Case Detail**

### **Observations**

The above site was inspected, following a report from the company to the fish health inspectorate of a recent increase in mortality.

During the inspection of the site a number of lethargic Atlantic salmon were observed in two cages. Five fish were removed for further examination and subsequent diagnostic sampling.

Mortality on the site had reached 1.76 % during week 19, 0.58% in week 20 and 1.09% in week 21. PD was first confirmed on site in February 2018 and has been confirmed in subsequent tests

R09

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Website - [www.gov.scot/Topics/marine/science](http://www.gov.scot/Topics/marine/science)

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carried out. PD is thought to be the cause of the recent increased mortality. Fish on site were graded during week 21 and mortality had dropped to 0.32% at the time of the inspection.

External examination showed fish 1 and 4 to be slightly anorexic. Fish 3 had a shortened opercula and distended abdomen.

Internal examination showed the liver of fish 1 and 5 to be slightly darkened. Fish 1, 4 and 5 had enlarged spleens and there was a lack of fat on pyloric caeca of fish 2-4. Yellow pseudo faeces were observed in the gut of fish 1, 3 and 4.

## **Appendix 2:**

**Key points sourced from the [documents disclosed via FOI-19-02133 on 15 October 2019](#):**

### **1) Deletion of Photos?:**

An anonymous (name redacted) Scottish Government official suggested that photos may be deleted after an audit by the [European] Commission:

"I think the reasoning in the response to [Redacted] of Cameron McKenna solicitors operating on behalf of The Scottish Salmon Company (attached) had established that the information gathered during our inspections is retained to primarily demonstrate that the legislation is implemented effectively, should we be subject to audit by the Commission or internally," wrote [name redacted] from the Scottish Government in an email dated 19 September 2018. "There may be a question on how long this should be retained but this would depend on the timeframe that an audit would require information from."

This email replied to another email dated 19 September 2018 from an anonymous Scottish Government official stressing that a "wider policy on retention is important and urgent":

"Could someone let me know what is the question on validity of retention of photos with respect to GDPR. I thought this had all been looked into? The point is taken regarding the need to progress with the sea lice and mort reporting that FHI hold. This can be progressed as I thought we had agreed to publish this having established that this is not data for scientific purposes but leads the FHI in their work. Progressing the wider policy on retention is important and urgent – hence the meeting."

An email dated 18 September 2018 from another anonymous Scottish Government official referred to "a question over the validity of us retaining photographs" and stated that "we need to be sure that it is within our right to retain case information for eternity {by being published online}":

"More widely I think it would be worth inviting someone from the Data Protection and Information Assets team with regards to advice on GDPR ( if applicable). There remains a question over the validity of us retaining photographs. We know we can take them and they are useful for diagnostics. But when the case is closed and there is no chance of a listed disease/ enforcement action becoming necessary, what is the purpose of keeping them. If we are moving to position which includes the publication of the photos I think we need to have to an a4 summary which reasons our position for Ministers OR gives them the choice where we go with this. We need to be sure that it is within our right to retain case information for eternity { by being published online }."

## **2) Objections to disclosure by Scottish Sea Farms, The Scottish Salmon Company & Marine Harvest (Mowi):**

Scottish Sea Farms was not happy that information (or photos) were disclosed but the Scottish Government were forced to disclose unwanted information:

"Regarding your comments about correspondence with your lawyer being subject to legal privilege, this only applies to communications between a lawyer and their client," explained an anonymous Scottish Government [name redacted] to Scottish Sea Farms (SSF) on 10 August 2018. "As the Scottish Government are not the client here, legal privilege cannot apply to the communications from SSF solicitors. As you will know, the legislation requires that we operate with a strong presumption in favour of the release of information and that any exceptions must be applied restrictively. We are also required to consider documents on a line-by-line basis and not withhold documents in their entirety if exceptions only apply to parts of documents. We have been through all the information relevant to this request on that basis, and do not consider that we can apply any exception that will allow us to withhold any part of the communications with SSF. I understand that you may be unwilling to engage so frankly with us on any future requests, and I am sorry to hear this. We value your input, and often will only be able to withhold information that may damage the interests of SSF by considering evidence that only you are able to provide. I hope that we are still able to have these useful discussions in relation to any future requests."

Lawyers acting for The Scottish Salmon Company also raised objections and requested a meeting (presumably to block further disclosures of photos).

In a [letter to Marine Scotland dated 6 July 2018](#), Marine Harvest's Director of Communications and Business Development (Ian Roberts) objected to further disclosures

(citing The Ferret's "shock and horror headlines") claiming that "the risk of people turning away from a healthy food such as salmon as a reaction to irresponsible use of photos for the sole purpose of creating fear in the consumer, is a risk to public health".



6<sup>th</sup> July 2018

Dear [REDACTED]  
Marine Scotland - Science

Dear [REDACTED]

I am writing as follow up to the FOI request by Mr. [REDACTED] and the release of materials to the individual on June 15, 2018, by Marine Scotland (MS). Your justification for releasing photos of dead or euthanized salmon taken by MS staff during a scheduled fish health surveillance visit at various salmon farm locations can be summarised as: *"The public interest in disclosure is outweighed by the public interest in upholding [the materials requested]."*

As expected, the materials and the contextual statements provided by MS were forwarded as an "exclusive" to one online media outlet, *The Ferret*, receiving the headline "Horror photos of farmed salmon spark legal threat". The social media comments following the story urged that consumers *"Don't buy farmed fish"* and that the photos *"Put you off eating salmon"*. As you are aware, it is rare that today's reader delves below the shock and horror headlines.

A [letter in reply to Marine Harvest from the Scottish Government dated 5 September 2018](#) included:

I note your specific comments regarding the public interest in releasing this information. I also acknowledge the concerns that you raise regarding statements on social media and the potential impact that this may have upon your business interests.

As you will be very aware, as a directorate within Scottish Government, Marine Scotland must comply with the provisions of the freedom of information regulations including the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The legislation sets out that there is a strong presumption in favour of the release of information, and that any exceptions or exemptions to the release of information must be applied restrictively.

With regard to this particular enquiry, we did consider the request for information in great detail, and proactively sought the views of stakeholders, both within Scottish Government and externally. We can only withhold information or parts of information, if one of the limited and restrictive exceptions under the EIRs applies. In this case, no clear exception applied to the requested information. As such, we are required to release the information.

It is important to recognise that the public interest can only be considered if an exception applies. If an exception does apply, we then consider whether the public interest lies in the disclosure of the information or in upholding the exception and withholding the information. No exception applied to the information in relation to this particular case.

### **3) Changes to publication of photos came into effect in 2019:**

A [letter from Marine Scotland to stakeholders dated 8 March 2019](#) explained changes to how information is [published online](#) and referred to the "significant interest from third parties":

#### **Changes to case information publication**

We will also be changing the frequency of publication of case information including photographs (where relevant). Presently case information involves the publishing of closed (completed) cases on a quarterly basis, three months in arrears. From April 2019 closed cases will be published monthly, one month in arrears. Therefore the start of April will see the publication of relevant cases from January and February 2019.

The change aligns the three areas of information (cases, mortality and sea lice) into the same timescale for publication – monthly, one month in arrears. As you are aware these areas receive significant interest from third parties. The approach facilitates further in dealing with Freedom of Information requests and in meeting the Scottish Government principles of openness and accountability.

A [letter to stakeholders from the Scottish Government dated 21 December 2018](#) referred to "widening the scope of active publication" - including:

- 1) Photographs taken as part of FHI case information.
- 2) Sea lice information obtained through the voluntary reporting regime.
- 3) Mortality information obtained through the voluntary reporting regime.

### **Photographs**

Photographs taken with respect to site visits for aquatic animal health surveillance, sea lice inspection and containment inspection purposes will be released as part of the case information and fall within the existing publication plan covering the same. Therefore, photographs will be released on a quarterly basis, three months in arrears. This process will start from the 3<sup>rd</sup> quarter of 2018 (July to September) which will be published in January 2019. Appropriate context to the images will be provided through the case information and any additional text as deemed necessary.

### **4) The Scottish Government is being forced to follow EU law:**

Despite objections from salmon farmers and their legal representatives, the Scottish Government explained that they are following the law by reporting on diseases and mortalities. A letter [from the Scottish Government to lawyers representing The Scottish Salmon Company dated 18 September 2018](#) included:

#### **FHI Regulatory Responsibility**

Under Council Directive 2006/88/EC, implemented in Scotland through the Aquatic Animal Health (Scotland) Regulations 2009 (the 2009 Regulations), it is a legal requirement for the Competent Authority (CA)<sup>1</sup> to implement surveillance aimed at detecting listed diseases or increased mortality. To support this function there is a requirement for the CA to undertake effective disease investigation and reporting of disease, emerging disease or unexplained mortality without delay. All authorised Aquaculture Production Businesses (under the 2009 Regulations) must comply with any surveillance requirement imposed by the CA.

As a part of this surveillance, where unexplained mortality or animals demonstrating clinical signs of disease are observed, aquatic animals can be examined and sampled. Case notes, samples, results, copied records and photographic images can be taken and are maintained as a record of the surveillance inspection.

This record is retained to demonstrate that Council Directive 2006/88/EC and Regulation (EC) No 882/2004 have been appropriately applied and to demonstrate compliance during any internal audits or European Union Commission inspections and audits which may occur.

### **5) The Cabinet Secretary for the Rural Economy (Fergus Ewing) was briefed that the Scottish Government had "fully explored" (and exhausted) the requirement to publish correspondence from lawyers acting for salmon farming companies:**

A [Cabinet Secretary briefing dated 9 August 2018](#) included:

**Subject:**

Freedom of Information – Fol/18/01783 – proposed release information concerning the publication of photographs

Dear [REDACTED]

The Cabinet Secretary will wish to be aware of the following Fol request and our proposed response to the same.

The Cabinet Secretary will recall recent Fol requests relating to photographs of diseased farmed salmon. This request (Fol/18/01783) concerns information relating to the publication of photographs associated with the response to Fol/18/01141, and includes:

- details of how the industry stakeholders were consulted prior to the release of the information
- details of how the companies affected were made aware of the release date of information and publication
- information relating to correspondence (e.g. emails and letters) with salmon farming companies, the RSPCA, SSPCA, Government officials and any other parties

Attached is our draft response letter along with documentation proposed for release. This includes several internal and external communications regarding the potential release of these images. There are communications with industry stakeholders, as well as policy colleagues within Scottish Government, including the Fol unit.

The Cabinet Secretary will wish to be aware that we have fully explored the requirement to publish correspondence from stakeholder legal representatives. We have determined that legal privilege is only between a lawyer and their client. As the Scottish Government aren't the client, legal privilege cannot apply to the advice from the stakeholders solicitors in this case.

**6) A photograph disclosed via the FOI reply details farmed salmon escaping from a well boat in Orkney in June 2018:**



Online via: [EXPOSED: Photo Disclosures Opens Floodgates to More Diseased & Deformed Scottish Salmon](#)