

T : We are working from home due to Covid-19 so please contact us by email
E : ms.bod@gov.scot

Don Staniford
Scottish Salmon Watch
salmonfarmingkills@gmail.com

Your ref: 202100155371

Our ref: Illegal killing of seals & breaches of Seal Licences by salmon farms since 1 January 2018
1 April 2021

Dear Don Staniford ,

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

Thank you for your request made by email dated 11 February 2021.

Your request

You asked:

“Please provide information on the illegal killing of seals and breaches of Seal Licences by salmon farmers since 1 January 2018.

This new FOI request requests the "Wildlife Crime intelligence held by the Scottish Government" since 1st January 2018 in relation to seals killed by salmon farms. Scottish Salmon Watch has also filed a FOI request with Police Scotland.

In particular, please include any information relating to seals killed by Grieg Seafood in Loch Dunvegan. A Tweet on 8 February 2021 (replying to a Tweet on 18 January 2021) included a photo of a harbour seal with a bullet wound to the head on the shore of Loch Dunvegan:

...

Tweet via: https://mobile.twitter.com/toms2_ann/status/1358778107616985088

FOI-2020-00118346 also included a letter sent by Marine Scotland to Scottish Sea Farms in Shetland dated 14 January 2021 - including:

...

Online in full via <https://donstaniford.typepad.com/files/pdf-55-scottish-sea-farms-outwith-their-licence-14-jan-2021.pdf>

It appears that there may be missing documentation pertaining to this case - either refused or omitted via FOI-2020-00118346.

In any case, this FOI requests information on this case (and any others) up to today's date and may therefore include a reply from Scottish Sea Farms.

Please also include information on "seal licence misdemeanours" even if they were not actioned and resulted only in a verbal warning. Note that the Scottish Government's FOI disclosure on 1 February 2021 (FOI-2020-00118346) included:

...

Online via <https://donstaniford.typepad.com/files/pdf-59-mowi-misdemeanours-will-not-be-actioned-april-2020.pdf>

Finally, please also include any reaction and reference to the reward offered by Animal Concern - as reported by The Ferret earlier this month via: [£5,000 reward offered for information on illegal shooting of seals](#)

In conclusion, please provide information on the illegal killing of seals and breaches of Seal Licences by salmon farmers since 1 January 2018.

If the Scottish Government refuses to provide specific information, please provide generic data on the number of cases reported to Police Scotland's Wildlife Crime Unit and the number of seal licence breaches and "misdemeanours" by salmon farming companies.

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

Response to your request for a review

Within your email dated 11 February 2021, you have also requested a review of parts of a previous environmental information request you made, case reference number 202000118346. I make reference to the following two points in your email:

1. "Please also provide the report to Police Scotland's Wildlife Crime Unit cited in the following email disclosed via FOI-2020-00118346 on 1 February 2021" ... "Scottish Salmon Watch believes this report - and any other correspondence not already disclosed - should have been disclosed via FOI-2020-00118346."
2. "FOI-2020-00118346 also included a letter sent by Marine Scotland to Scottish Sea Farms in

Shetland dated 14 January 2021 – including” ... “It appears that there may be missing documentation pertaining to this case - either refused or omitted via FOI-2020-00118346.”

I can confirm that both of the points above have been handled separately as a review request, carried out by an independent review officer, under case reference number 202100154178. Our review response was provided to you by email on 23 March 2021 and will be published on the Scottish Government web site in due course at the following link: [Publications - gov.scot \(www.gov.scot\)](https://www.gov.scot/Publications-2021-03-23)

Response to your request for information

As the information you have requested is ‘environmental information’ for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39 (2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

1. Please provide information on the illegal killing of seals and breaches of Seal Licences by salmon farmers since 1 January 2018.

a. While our aim is to provide information whenever possible, in this instance the Scottish Government does not hold any information on seals killed illegally between 1 January 2018 and 11 February 2021 inclusive. Therefore we are refusing part of your request under the exception at regulation 10(4)(a) of the EIRs. The reason why that exception applies is explained in the Annex to this letter.

b. Please find a table below providing the information you have requested regarding breaches of Seal Licences by salmon farmers between 1 January 2018 and 11 February 2021 inclusive:

	Late Q1 Reports – Licence condition 5	Late Q2 Reports – Licence condition 5	Late Q3 Reports – Licence condition 5	Late Q4 Reports – Licence condition 5	Late 48 Reports – Licence condition 4
01 Jan 2018 to 11 Feb 2021	10	1	10	11	32

The Licences relevant to this request are those that authorise the killing of seals to prevent serious damage to fisheries or fish farms in Scotland. Within the date period specified by you, Marine Scotland (MS) hold information about only two licence conditions that have been breached by various salmon farms. The table above provides the number of breaches of each of the two licence conditions detailed below:

(i) Licence condition 4 - The Licensee must report any killings, and takings, of seals to the Licensing

Authority within 48 hours of the seal being killed or, as the case may be, taken.

(ii) Licence condition 5 - The Licensee must submit a quarterly report to the Licensing Authority within 10 days of the end of each quarterly period (the terms "quarterly report" and "quarterly period" have the meanings given in section 113(2) and (3) of the Act, respectively) . If no seals have been killed a nil return must be submitted.

2. This new FOI request requests the "Wildlife Crime intelligence held by the Scottish Government" since 1st January 2018 in relation to seals killed by salmon farms.

If the Scottish Government refuses to provide specific information, please provide generic data on the number of cases reported to Police Scotland's Wildlife Crime Unit and the number of seal licence breaches and "misdemeanours" by salmon farming companies.

I enclose a copy of some of the information you requested.

a. Some of the information (a copy of Marine Scotland Intelligence Report (MSIR) # 3005055) has already been released to you in our review response issued to you on 23 March 2021 under case reference number 202100154178. 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.

b. Copies of 13 redacted Marine Scotland Intelligence Reports within the scope of this request have been provided to you. While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because an exception under regulation 11(2) (personal information of a third party) of the EIRs applies to that information. The reason why that exception applies is explained in the Annex to this letter.

Of the total 14 Marine Scotland Intelligence Reports provided to you to date: (i) 5 have been passed to Police Scotland, and (ii) 2 have been passed to the National Wildlife Crime Unit.

MSIR 3004074 - Police Scotland
MSIR 3004110 - Police Scotland
MSIR 3004123 - Police Scotland
MSIR 3004491 - National Wildlife Crime Unit
MSIR 3004783 - Police Scotland
MSIR 3005055 - Police Scotland and National Wildlife Crime unit

c. the number of seal licence breaches, which would include any "misdemeanours" by salmon farming companies, has been provided to you under point 1b of our response above.

3. In particular, please include any information relating to seals killed by Grieg Seafood in Loch Dunvegan.

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. Therefore we are refusing your request under the exception at regulation 10(4)(a) of the EIRs. The reasons why that exception applies are explained in the Annex to this letter.

4. FOI-202000118346 also included a letter sent by Marine Scotland to Scottish Sea Farms in Shetland dated 14 January 2021 and so our response may therefore include a reply from Scottish Sea Farms.

This point has already been dealt with in our response to you under case reference 202100154178 dated 23 March 2021. This case was a review requested by you on 10 February 2021 – a review of our response to a previous environmental information request provided to you dated 1 February 2021 under case reference 202000118346. Our response will be published on the Scottish Government web site in due course at the following link: [Publications - gov.scot \(www.gov.scot\)](http://Publications.gov.scot).

5. Please also include information on "seal licence misdemeanours" even if they were not actioned and resulted only in a verbal warning.

Any "misdemeanour" would be a breach of seal licence and so this has been covered by point 1b of our response above.

6. Finally, please also include any reaction and reference to the reward offered by Animal Concern - as reported by The Ferret earlier this month via: [£5,000 reward offered for information on illegal shooting of seals](#)

I enclose a copy of some of the information you requested. While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because exceptions under regulation 11(2) (personal information of a third party) and regulation 10(4)(e) (internal communications) of the EIRs applies to that information. The reasons why these exceptions apply are explained in the Annex to this letter.

Your right to request a review

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

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

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

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

The Scottish Government does not have the information

Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government

does not have the information you have requested because we do not hold any information on the following points:

- (i) seals killed by Grieg Seafood in Loch Dunvegan.
- (ii) seals killed illegally or unreported since 1 January 2018.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception.

While we recognise that there may be some public interest in information we hold relating to the two points listed above, clearly we cannot provide information which we do not hold.

Exceptions apply

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

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

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

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

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

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to some of the information you have requested because it is internal communication about press lines.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide free and frank advice and views to Ministers in press lines.

It is clearly in the public interest that Ministers can properly answer Parliamentary questions, provide sound information to Parliament (to which they are accountable), and robustly defend the Government's policies and decisions. They need full and candid advice from officials to enable them to do so. Premature disclosure of this type of information could lead to a reduction in the

comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

Yours sincerely

Business and Operational Delivery Section
Marine Scotland Licensing Operations Team

