**Decision of the Commissioner for Environmental Information**

**on an appeal made under article 12(5) of the European Communities**

**(Access to Information on the Environment) Regulations 2007 to 2014**

**(the AIE Regulations)**

**Case CEI/15/0013**

**Date of decision: 9** June2016

**Appellant:** Billy Smyth, Chairman, Galway Bay Against Salmon Cages

**Public Authority**: The Marine Institute, 80 Harcourt Street, Dublin 2 (the Institute)

**Third Party**: Marine Harvest Ireland Limited (Marine Harvest)

**Issue:** Whether the Marine Institute was justified in refusing a request for information about disease at a licensed fish-farm

**Summary of Commissioner's Decision:** The Commissioner found that refusal under articles 8(a)(ii) and 9(1)(c) was not justified having regard to article 10(3) of the AIE Regulations. Accordingly, the Commissioner annulled the Institute’s decision and required it to make the withheld environmental information available to the appellant.

**Right of Appeal:** A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

**Background**

On 17 February 2015 the appellant, acting as Chairman of ‘Galway Bay Against Salmon Cages’, submitted an AIE request to the Institute, saying that: “Marine Harvest, in their stock market report for the 4th quarter 2014, state that ‘there were 2 sites (salmon farms) diagnosed with Pancreas Disease (PD) in the fourth quarter of 2014. Reduced survival due to PD was reported in Ireland in the period’. As the Marine Institute is the authority that fish diseases must be reported to, I request the following information:

1. What sites were affected with PD in Ireland in 2014?

2. How many fish mortalities were there at these 2 sites?

3. Were the fish that survived treated or culled?”

I understand that the second question in the AIE request should be understood as a request for information showing how many fish mortalities were due to PD, site by site, in 2014.

The appellant received no response by 16 March 2015. According to article 10(7) of the AIE Regulations, a decision to refuse the request is deemed to have been made on the date of expiry of a one month period, which was 16 March 2015 in this case.

The Institute replied to the appellant on 24 March 2015, saying that there had been a delay in responding to the request because it had not been sent directly to its Freedom of Information contact office. It acknowledged holding information on the occurrence of PD at a single Marine Harvest site during the first half of 2014, but denied holding any other relevant information. It refused the request on the ground of article 8(a)(ii) of the AIE Regulations, because disclosure would adversely affect the interests of the supplier of the information.

The Institute also informed the appellant that “in general, fish that survive PD are not culled. No medicines/chemicals are used as a consequence of a disease-diagnosis. Management of a disease outbreak is dealt with by maximising animal welfare—e.g. the animals are handled as little as possible and stress factors are kept to a minimum”.

The appellant requested an internal review of the decision. The Institute reviewed the decision and replied on 29 April 2015, affirming its decision to refuse the request. Refusal was said to be justified on the grounds of articles 8(a)(ii) and article 9(1)(c), because disclosure would adversely affect commercial or industrial confidentiality. The Institute also set out its reasons for concluding that the public interest favoured refusal, most notably because of the public interest in fish-farm operators continuing to voluntarily provide information on non-listed diseases.

The appellant appealed to my Office on 15 May 2015. I regret the delay which occurred in dealing with this case. The delay arose due to a shortage of resources at my Office which has since been addressed.

**Scope of Review**

Under article 12(5) of the AIE Regulations, my role is to review the Institute’s internal review decision to refuse the request.

In conducting this review, I took account of the submissions made by the appellant, by the Institute and by Marine Harvest. I had regard to: the 2013 Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations; Directive 2003/4/EC, upon which the AIE Regulations are based; the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and *The Aarhus Convention—An Implementation Guide* (Second edition, June 2014)(the Aarhus Guide).

**Relevant AIE provisions**

Article 8(a)(ii) provides (subject to article 10(3)) that a public authority shall not make available environmental information where disclosure of the information would adversely affect the interests of any person who, voluntarily and without being under, or capable of being put under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information.

Article 9(1)(c) provides (subject to article 10(3)) that a public authority may refuse to make available environmental information where disclosure of the information would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest.

Article 10(3) provides that a public authority shall consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal.

**The Institute’s position**

The Institute submitted that Ireland has a disease-free status with regard to diseases listed in Part II of Annex IV to Council Directive 2006/88EC (which, it says, regulates the fish-farming industry). Such diseases are known as “listed diseases”. PD is a non-listed disease.

The Institute submitted that Directive 2006/88EC creates no legal onus on a fish-farm operator to report any case of a non-listed disease to the competent national authority. It submitted that operators are obliged to report the suspicion of, or presence of, a listed disease and to investigate increased mortality to rule out the presence of a listed disease.

The Institute acknowledges that Directive 2006/88EC requires that “for a disease not subject to Community measures, but which is of local importance, the aquaculture industry should , with the assistance of the competent authorities of Member States, take more responsibility for preventing the introduction of, or controlling, such diseases through self-regulation and ... codes of practice”. I understand that PD is such a disease. The Institute submitted that the relevant code of practice in Ireland consists of a *Code of Practice* and an accompanying *Farmed Salmonid Health Handbook*.

The Institute submitted that, while it is not mandatory in Ireland to carry out testing other than where a listed disease is suspected/ confirmed or where “increased mortality” remains unexplained after investigation, additional testing is carried out in Irish fish-farms as a voluntary measure.

The Institute submitted that refusal to provide access to the withheld information is justified on the grounds of article 8(a)(ii) and 9(1)(c), even after applying a public interest test.

**The Institute’s argument for refusal under article 8(a)(ii)**

The Institute maintains that the withheld information was provided voluntarily by Marine Harvest, which refused to consent to disclosure because it would adversely affect its interests on the basis of commercial confidentiality.

**The Institute’s argument for refusal under article 9(1)(c)**

The Institute submitted that the withheld information is confidential in nature: it said that there was an express understanding that the communication was for a restricted purpose. The Institute submitted that such information is subject to an equitable duty of confidence that is recognised in Irish law, and cited my predecessor’s acceptance of this proposition in her decision in case CEI/08/0001(Hill of Allen Action Group and Kildare County Council). The Institute also submitted that Marine Harvest informed it that “site specific health and mortality information is commercially sensitive in situations where they share the water body with other users”.

**The Institute’s public interest test**

The Institute recognised that there may be a public interest in having access to information about the presence of disease on a salmon farm in a given waterbody. Against this, it listed the following considerations:

1. Animal diseases are a normal occurrence in the farming of terrestrial and aquatic animals.

2. There are no public health issues linked to the presence of diseases that occur in farmed fish in Ireland: those diseases are not communicable to humans.

3. Any mortalities which occurred were handled in accordance with the Animal By-Products Regulations and there were therefore no environmental concerns in relation to the disposal of carcasses.

4. If the information at issue were to be released, it might result in negative consequences for the operator, and the industry would be very reluctant to provide (and “it is likely that they will not provide”) voluntary information in the future. If this were to occur the Institute would not have a full picture of the health status of the industry and would be less able to monitor changes in fish disease status.

In light of the above considerations, the Institute concluded that the public interest in the industry continuing to voluntarily provide information on non-listed diseases outweighed the public interest in disclosure.

**The Appellant’s position**

In a submission to my Office, the appellant set out his reason for believing that the Institute was not justified in refusing his request. He did not challenge the Institute’s assertion that it held information relating to a single site only.

He submitted that the Institute’s assertion that the information at issue had been voluntarily supplied “may not be true” because “fish-farm operators are obliged under article 26 of Council Directive 2006/88/EC to notify the competent authority about the occurrence of high fish mortalities”. Furthermore, he argued, operators will not know whether any increased mortality is due to a listed disease until test results are available.

The appellant argued that refusal cannot be justified on the ground of commercial confidentiality because the third party, in its stock market report for the 4th quarter of 2014 stated that “there was 2 sites (salmon farms) diagnosed with Pancreas Disease (PD) in the fourth quarter of 2014” and that “reduced survival due to PD was reported in Ireland in the period”. He argued that since the information he seeks “would have caused the most damage” on the stock market, “there is no justifiable reason to refuse” to tell him where those sites were.

The appellant referred to the public interest reasons advanced by the Institute as justification for refusal. In relation to the Institute’s statement that “all of the aquatic diseases present in Ireland, whilst capable of causing mortalities in aquatic animals under certain conditions, do not cause any public health concerns”, the appellant submitted that “this is exactly what was said about BSE in cattle and we all know how that turned out”. He submitted that there has been little or no research into the transfer of PD from fish to humans, and that therefore the Institute cannot say that such transfer has not occurred or will not occur. He also argued that since the Institute said that affected fish are not culled, this means that salmon which have had PD, or been in contact with PD, are sold into the human food chain and the public should know this.

In response to the Institute’s statement that dead fish were “handled in accordance with the Animal By-products Regulations and there are therefore no environmental concerns in relation to disposal of carcasses”, the appellant says that he “would love to take their word for this” but cannot. He cited instances of diseased salmon being buried in bogs and referred to a *Prime Time* TV programme covering such events which was he said was broadcasted in September 2013. Moreover, he provided my Office with photographs of dead fish lying on a seashore. He said these were salmon carcasses found dumped on Spiddal Beach in May 2015. He also stated that “a small number of rogue inshore fishermen have been illegally using farmed salmon carcasses as bait”. For these reasons, he maintains that it is disingenuous for the Institute to say that there are no environmental concerns.

The appellant said that the Institute is prioritising the profits of the fish-farming industry over the health and safety interests of the public. He argued that if the Institute is relying on fish-farm operators to voluntarily provide it with information on fish-diseases, this would suggest that the Institute is not carrying out mandatory inspections as required by article 10 of Directive 2006/88/EC.

**Marine Harvest’s position**

Marine Harvest made a submission to my Office in which it set out its “disease surveillance, investigation and reporting” obligations and the requirements of its “fish health authorisation” from the Institute. It confirmed that it had voluntarily provided the information to the Institute and maintained that there was no legal obligation on the company to do so. It had not consented to disclosure because the information is commercially sensitive and could be supplied to competitors. It added that “historically, Marine Harvest Ireland has supplied fish-health information to the Marine Institute to promote and assist with ongoing research in relation to fish epidemiology in Ireland. This includes the incidence of non-listed diseases or health conditions such as PD in this case”.

**Analysis and Findings**

**Preliminary considerations**

I note that the appellant has not argued that his request relates to information on emissions into the environment and I satisfied that it does not.

I am satisfied that information on disease in fish-farms is environmental information because it is information on fish-farming, which is an activity which affects or is likely to affect elements of the environment (for example; landscape). It is also environmental information because it is information on the state of a component of biodiversity, in that it is information on the presence, at a given place and time, of the salmonid alphavirus, which causes PD.

My investigator noted that while information held by the Institute relates to an incidence of PD at a Marine Harvest site in the first half of 2014, the company’s stock market report cited PD occurrences at two of its Irish sites in late 2014. My investigator asked Marine Harvest about this, and was told that the company did not report incidences of PD arising in the last quarter of 2014 to the Institute. In light of this clarification, I accept the Institute’s assurance that it holds a single record within the scope of the request.

The AIE request was quite specific: it sought answers to three questions. I examined the record held by the Institute in light of the three questions and found that it: identifies the affected site; does not say how many fish died as a result of the outbreak; and does not say whether the surviving fish were treated or culled. In other words, the only information within the scope of the request which is held by the Institute and denied to the appellant is the information in the record which identifies the location of the PD outbreak in the first half of 2014. This location or address is “the withheld information” which is at issue in this review.

**Analysis of the argument for justification of refusal by article 8(a)(ii)**

I am satisfied that the withheld information was provided by a third party which had not consented to its release. In order for refusal to be justified on this ground, it would be necessary in the first instance to establish that Marine Harvest was not under, or capable of being put under, a legal obligation to supply the information to the Institute.

Operators of fish-farms in Ireland are required to hold an aquaculture licence issued by the Minister for Agriculture, Food and the Marine and a fish health authorisation (FHA) issued by the Marine Institute. In addition, they must comply with the regulations which transposed Directive 2006/88/EC into Irish law. I therefore examined these instruments with a view to establishing if Marine Harvest was under, or capable of being put under, a legal obligation to supply the information to the Institute.

Obligations under Directive 2006/88/EC and its transposing regulations

Directive 2006/88/EC is transposed into Irish law by the European Communities (Health of Aquaculture Animals and Products) Regulations 2008 (Statutory Instrument No. 261 of 2008) (the Aquaculture Regulations). Regulation 9(1) of the Aquaculture Regulations provides that a person who, by reason of an examination, laboratory test result or otherwise, is aware or suspects (or should reasonably be aware or suspect) that an aquacultural animal on a premises is or may be affected by a listed disease, shall immediately notify the Marine Institute. The Institute confirmed to my Office that it had no reason to regard this case as involving either a suspected or confirmed incidence of a listed disease, and I accept that.

Similarly, Regulation 9(1) provides that a person who is aware of or who should reasonably be aware or suspect that there is an increased level of fish mortality on a premises shall immediately notify the Marine Institute. The expression “increased mortality” is defined in Directive 2006/88EC as meaning “unexplained mortalities significantly above the level of what is considered to be normal for the farm or mollusc farming area in question under the prevailing conditions. What is considered to be increased mortality shall be decided in cooperation between the farmer and the competent authority”. “Unexplained” in this context means unexplained by a veterinary practitioner following investigation. In other words, it is not the case that Directive 2006/88EC or the Aquaculture Regulations require fish farm operators to immediately report dead fish. The Institute confirmed to my Office that it did not regard this case as an incidence of unexplained increased mortality, and I accept that.

From the above, I am satisfied that Marine Harvest was not under an obligation to supply the withheld information to the Institute as a result of any provision of Directive 2006/88EC or the Aquaculture Regulations.

I next considered if Marine Harvest was capable of being put under such an obligation. Regulation 17(1) of the Aquaculture Regulations provides that a person shall not operate a fish farm except under and in accordance with an authorisation (“fish health authorisation”) and it proceeds to provide that the Institute may grant FHAs. My investigator checked the register of FHAs published on the Institute’s website and it shows that Marine Harvest holds an FHA for the site in question. I have no reason to doubt that it also held an FHA for that site when the AIE request was made. An application for an FHA must be accompanied by a Fish Health Management Plan. The Institute’s website provides a template plan. Under “Record Keeping – Mortality Records”, the template plan says:

We retain mortality records which will be made available during site inspections. At a minimum, these records will contain the following information:

 *Date Dead Fish removed*

 *Total No. of fish removed*

 *Number of fish in pond / cage from which dead fish were removed*

 *Observations/ Comments*

Regulation 17(6) of the Aquaculture Regulations provides that “the holder of a fish health authorisation shall make such returns to the Marine Institute as the Marine Institute may require”. I take it that “returns” refers to records which the holder of the FHA is obliged to keep.

In light of this, I am satisfied that Marine Harvest was obliged to monitor the health of its fish and to keep records of suspected outbreaks of disease. I expect that such records would include information on any disease diagnosis received from a veterinary practitioner. I conclude that if the Institute had asked Marine Harvest for a return of any records it held (if any) on incidences of PD in salmon in 2014, Marine Harvest would have been obliged by Regulation 17(6) to supply the information which it held.

Obligations under the Aquaculture Licence

For completeness, I considered whether Marine Harvest was under (or capable of being put under) a legal obligation to supply the withheld information to the Institute by a condition in its aquaculture licence. The operative licence (provided to my Office by the Department of the Marine) contained the following condition 3(e)(ii):

“The Licensee shall notify the Department of the Marine and Natural Resources and the Fish Health Unit of the Marine Institute within 24 hours of the appearance or suspected appearance of **any disease** in the licensed areas of the Licensee or of any abnormal losses or mortalities in the said licensed areas and shall carry out any instructions issued by the Department….” (with emphasis in bold added)

At face value, this appears to oblige Marine Harvest to report the suspected appearance of **any** disease to the Institute within 24 hours, regardless of whether the company had identified the disease and regardless of whether there had been any fish-mortality.

My investigator put it to the Institute that it appeared that Marine Harvest was obliged by its licence to report the appearance of any disease, including PD, despite not having the same obligation under the Aquaculture Regulations.

The Institute responded with a submission which argued that this licence condition was, in effect, over-ridden by the Aquaculture Regulations. The Institute referred to Regulation 43(2) of the Aquaculture Regulations, which provides that:

“if there is a conflict between—

(a) a condition on an aquaculture licence and a condition on a fish health authorisation, the fish health authorisation prevails, or

(b) between the Aquaculture Acts and these Regulations, these Regulations prevail.

The Institute submitted that this means that where the reporting obligations under the Aquaculture Regulations differ from those in the licence, the provisions in the Regulations prevail. My investigator put it to the Institute that there is no necessary “conflict” where it is possible for an operator to meet their obligations arising from both the licence and the Aquaculture Regulations. The Institute argued that “conflict” ought to be understood in this context as including different reporting obligations. The Institute’s argument relies on the well-established principle that EU law is to be interpreted purposively, in order to give effect to the legislative intention. The argument was prepared by a member of staff said to have been heavily involved in the transposition of Directive 2006/88/EC. She maintains that, when the Aquaculture Regulations were being drafted, Regulation 43 was included to avoid confusion between the existing licences and the new Regulations. She maintains that the drafting intent was that fish-farm operators in Ireland would be subject to the same obligations as would apply to operators in other Member States. By way of background, she explained that animal diseases are a normal occurrence in the farming of terrestrial and aquatic animals. When Directive 2006/88/EC was being drafted, the EU realised that if all mortality had to be reported competent authorities would be snowed under with reports of diseases which they could do little about and this would seriously detract from their ability to prepare for, and deal with, outbreaks of listed diseases. The Institute explained that, in the course of transposing the Directive into the Irish Regulations which would apply alongside the existing aquaculture licences:

“We couldn’t have the licence saying that any increased mortality which occurred on site had to be reported within 24 hours and the new Regulations saying something different, hence the new Statutory Instrument took precedence”.

For this reason, the Institute believes that “conflict” in this context should not be given its normal meaning. My investigator challenged this argument by asking if it would not be open to Ireland to introduce more extensive licensing obligations than those required by the Directive. The Institute responding by saying that Ireland could not unilaterally introduce additional controls “which might affect trade with other Member States” without EU approval.

Conclusion on article 8(a)(ii)

I am not convinced that a national obligation to report a known incidence of PD would have any potential to affect trade with other Member States and no argument to this effect has been put forward. However, if I accept the Institute’s argument at its highest, it would follow that the obligation to report “any disease” (a licence condition) and the obligation to make returns as required to the Institute (a requirement of the Aquaculture Regulations) would be “in conflict”. The effect of Regulation 43(a) of the Aquaculture Regulations is that, in these circumstances, the FHA prevails. Therefore the obligation to supply the information in a return, if requested, would stand. Accordingly, Marine Harvest would be capable of being put under a legal obligation to supply the withheld information to the Institute as a return.

I am satisfied that the noun “return” in Regulation 17(6) of the Aquaculture Regulations means “report” in this context. The Institute appears to be of the view that obligations to make returns can only apply where there is an obligation to hold such records as part of compliance monitoring. According to this argument, since an operator is not obliged to test for PD, it is not obliged to keep records of PD. I disagree with this interpretation. It is clear that operators must monitor the health of their stock, and refer concerns where appropriate to veterinary practitioners. Marine Harvest told my investigator that: "the obligation to investigate the cause of mortality with the objective to rule out the presence of a listed disease already exists for our industry and is not a new requirement". When a diagnosis of PD is confirmed, that information should be recorded. Furthermore, it is clear that mortality must be recorded under the operator’s Fish Health Management Plan. I am therefore satisfied that, although operators are not specifically obliged to conduct surveillance for PD (as a non-listed disease), they are obliged to monitor fish health, and any records that they hold on PD may properly be the subject of a request for a return by the Institute.

In conclusion on this point, I find that refusal of the AIE request on the ground of article 8(a)(ii) was not justified.

**Analysis of the argument for justification of refusal by article 9(1)(c)**

Refusal may be justified under article 9(1)(c) (subject to a public interest test) where disclosure would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest.

I accept that the withheld information is held by the Institute subject to a common-law equitable duty of confidence to protect Marine Harvest’s legitimate economic interests.

The locations of Marine Harvest’s ten seawater fish- farms in Ireland are public knowledge, freely available on Marine Harvest’s website. I accept that disclosure of the location of the site which experienced an occurrence of PD in the first half of 2014 would constitute the loss of confidentiality of that information.

I am satisfied from the above that the minimum requirements of article 9(1)(c) are met in this case, and therefore refusal could be justified on this ground unless the public interest in disclosure outweighs the interest served by refusal.

Article 10(3) requires the public interest served by disclosure to be weighed against the interests served by refusal. Arguments advanced in favour of refusal included one put forward by Marine Harvest concerning its own interests, and a public interest argument advanced by the Institute.

I note that Marine Harvest did not provide details of any specifically feared consequences of disclosure, other than to say that the withheld information is commercially sensitive and could be provided to competitors. I note that the fact that there were incidences of PD at some sites operated by Marine Harvest in Ireland in 2014 is public knowledge: what is not public knowledge (as far as I know) is the identification of those sites. I take into account the passage of time. It is my view that whatever adverse commercial effects might have resulted from disclosure of the information in 2014 are likely to be very much less serious in 2016. I also note that information which would identify the site of an outbreak of PD is unremarkable in some respects. A leaflet published by the Institute (entitled “Aquaplan Disease Information Leaflet- Pancreatic Disease”) says that “PD is the most significant single infectious disease affecting salmon farming in Ireland and was first diagnosed here in 1984”. It adds that it is now “a significant economic disease for the salmon industry in Ireland, Scotland and Norway”. The Institute informed my Office that the disease is “widespread in Ireland”. In this context, it is difficult to see that the company’s interest would be significantly adversely affected by disclosure of information which identifies which of the company’s Irish fish-farms experienced the outbreak in the first half of 2014.

In considering what weight to give to harm which might result from disclosure, I take into account the fact that Marine Harvest (as is evident from its website) prides itself on producing healthy high-quality food in an environmentally sustainable way. It is clear from its website that that the company values its public reputation as a trustworthy food-producer. It is fair to say, therefore, that the company has an interest in building or retaining public trust. In my view, such trust is enhanced by transparency and openness. I take the view that whatever negative effects might result to the company’s interests vis-à-vis its competitors would be offset to some extent by its interest in building public trust being served by disclosure.

Taking all of the above into account, I conclude that, due to the context, nature and age of the information at issue, and due to the unspecified nature of the likely effects of disclosure, I give a low weighting to the private interests served by refusal.

The Institute put forward a public interest argument in favour of refusal. It expressed concern that disclosure could lead to lower rates of voluntary provision of information by fish-farm operators in the future. The Institute said that if disclosure in this case were to lead to operators not volunteering to supply information on non-listed diseases, the Institute would “not have a full picture of the health status of the Irish industry and will therefore be less able to monitor changes in disease status”.

There are two problems with this argument. The first is the fact that the Aquaculture Regulations oblige the holders of fish-health authorisations to make such returns to the Institute as it may require. Viewed in this light, the Institute is not reliant on the voluntary supply of information. The second problem is that the facts of this case show that the Institute does not currently obtain a “full picture” from the industry. In this case the Institute received one report of an occurrence of PD from the first half of 2014 and none from later that year. In contrast, Marine Harvest reported two PD incidences in the last quarter of that year to its shareholders but not to the Institute. For these reasons I find that the “loss of the full picture” argument is unsupported by the facts.

Turning now to the public interest in disclosure, it is important to note that the purpose of the AIE regime is reflected in Recital (1) of the Preamble to the AIE Directive, which states:-

"Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, t a better environment."

I am satisfied that there is a public interest in fish-farming being open to scrutiny, and that this interest cannot be dismissed as being fully met by the regulatory process. Members of the public are entitled to scrutinise both the fish-farming industry and the performance of regulatory bodies. As Commissioner for Environmental Information, I have no view on the safety or sustainability of ocean-based salmon farms. However, I am satisfied that there is a strong public interest in access to environmental information on fish-farming and its associated issues, real or perceived. Even allowing for the Institute’s assurance that there is no link between PD in fish and human health, there is significant public interest in access to information on the health of the marine environment, quite apart from human health considerations. Furthermore, while I found that any harm which disclosure might cause to Marine Harvest’s interests is likely to have been lessened by the passage of time, I do not regard the public interest in disclosure as having similarly lessened since 2014, because the potential for the scientific or analytical relevance of the information remains undiminished.

The Aarhus Guide (at page 90) cites a statement from the Aarhus Convention Compliance Committee finding on communication ACCC/C/2007/21, that:

“In situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure”.

On balance, I find that there is a strong public interest in disclosure in this case, and that this interest outweighs the interests served by refusal. Accordingly, I find that the refusal is not justified by article 9(1)(c).

**Decision**

In accordance with article 12(5) of the AIE Regulations, I have reviewed the Institute’s decision. I find that refusal was not justified by the reasons given.

Accordingly, under the power given to me by article 12(5)(c) of the AIE Regulations, I annul the Institute’s internal review decision and require the Institute to make the withheld environmental information available to the appellant.

**Appeal to the High Court**

A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

**Peter Tyndall**  
**Commissioner for Environmental Information**  
9 June 2016