

Follow-up inquiry into salmon farming in Scotland

Letter from Corin Smith, 14 June 2024

Reference: FHI evidence, sea lice prosecutions

Enclosures: (2)

Dear Committee members,

I watched the FHI testimony at the salmon farming inquiry evidence session with some concern.

The claim that no salmon farming companies have been prosecuted in relation to sea lice management appeared to be intended to imply that this meant the industry was performing well in terms of sea lice management. Further, that the changes to sea lice reporting since the last inquiry (Fish Farming Businesses (Reporting)(Scotland) Order 2020) had created a more stringent sea lice management environment that, in turn, had led to reductions of sea lice being emitted by salmon farms.

There is no scientific or legal basis for this implication and the FHI/Marine Directorate knows this, have stated it plainly to me (see below and attached) and they should have been clear with the committee.

Under the existing framework of legislation, reporting and enforcement there is, objectively, absolutely no prospect or policy intent to prosecute salmon farmers for high sea lice levels on salmon farms. Neither the legislation nor the enforcement regime could enable that to happen. This is why there have been no prosecutions, not because of industry improvements.

Having previously worked as Director of Insight/Analysis for FTSE/NASDAQ technology companies, being acutely aware of the need for robust data to drive insight and policy, I compiled a detailed report in 2021 that directly challenged the Marine Directorate on the numerical weaknesses in the changes to the sea lice reporting regime resulting from the Fish Farming Businesses (Reporting)(Scotland) Order 2020. They replied with the following:

"It may be helpful to clarify that the purpose of current sea lice policy and legislation is to ensure that the Scottish aquaculture industry demonstrates that satisfactory measures are in place for the prevention, control and reduction of sea lice on farm sites, in accordance with the Aquaculture and Fisheries (Scotland) Act 2007, and to assist the Fish Health Inspectorate in enforcing that obligation. The purpose of the Fish Farming Businesses (Reporting)(Scotland) Order 2020 introduced in March, is to provide FHI with information to support better understanding of sea lice levels on farms and therefore help determine if those satisfactory measures are in

place. The policy and legislation are designed to support management of sea lice within farms, not to provide data for scientific purposes, estimate total number of sea lice per farm or to address wild fish issues;"

To be clear here, the only requirement of the current Act that salmon farming corporations have to show compliance with is that:

1. satisfactory measures are in place for the prevention, control and reduction of sea lice on farm sites

There is no legal requirement that sea lice data is objectively accurate, or that specific sea lice levels have to be achieved. The requirement of the Act ("*satisfactory measures are in place for the prevention, control and reduction of sea lice on farm sites*") is so wooly in legal terms, that compliance could be achieved simply by reporting up and down arrows. Salmon farming companies achieve compliance simply by showing that they recognise sea lice exist and take some measures to manage them. Thresholds for action and what is done, is entirely at their discretion.

FHI/MD recognise that the reporting regime resulting from the Fish Farming Businesses (Reporting)(Scotland) Order 2020 does not produce data that could be used for scientific purposes, let alone meeting a threshold for use in a legal prosecution. This (as I pointed out at length in my report) is because sea lice numbers on salmon farms (for the purpose of complying with the Fish Farming Businesses (Reporting)(Scotland) Order 2020) can be estimated on salmon farms by any method the operator chooses and can be changed whenever they want. Every salmon farm site could, and does, count sea lice any way they choose. There is no standardisation and a sea lice count of 6.0 on one site will mean something very different to a count of 6.0 on another site, or compared to previous years.

This is the flaw in the Fish Farming Businesses (Reporting)(Scotland) Order 2020 that I pointed out to FHI/MD. However, the collection of robust, standardised data that could be used for legal prosecution is not (was not ever) the policy intent of the Order, because it is not required in order to achieve compliance with the overarching Act. The FHI/MD will not place any additional burden on salmon farming corporations beyond that which is required to meet the requirements of the Aquaculture and Fisheries (Scotland) Act 2007.

"demonstrates that satisfactory measures are in place for the prevention, control and reduction of sea lice on farm sites, in accordance with the Aquaculture and Fisheries (Scotland) Act 2007"

To put it all in a more real world setting. Consider sea lice levels on salmon farms as if they were speed limits on our roads. If so:

- Motorists would determine how fast they are going by any means they like and could change they way the choose to measure speed any time they like
- They would be required to report themselves for breaches of speed limits and be required to provide the only evidence available for their own prosecution

- We would have no independent body (police force) checking speed using standardised and calibrated methods for measuring speed
- We would have no speed limits actually defined in primary legislation

This is why there have been no prosecutions of salmon farming corporation in relation to sea lice:

- There is no legislation which creates a prosecutable offence in relation to high sea lice levels
- Even if there were, the enforcement regime relies on the offender to self report
- The data being used to measure sea lice levels is not robust(standardised) enough that it could be used for peer reviewed scientific or statistical study, let alone used in a prosecution.

There is no legal or scientific basis for the FHI/MD stating that the legislative framework is more robust and/or that sea lice emissions have declined since the last inquiry.