

COR/2019/03251

October 30, 2019

Commissioner Michael Harvey
Office of the Information and Privacy Commissioner
Sir Brian Dunfield Building
3rd Floor, 2 Canada Drive
P.O. Box 13004, Station "A"
St. John's, NL A1B 3V8
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Dear Commissioner Harvey:

In recent weeks, I have been publicly challenged on my application of the **Access to Information Protection of Privacy Act** (ATIPPA, 2015) as guidance when proactively disclosing information. Under my time as Minister, Fisheries and Land Resources, I strive to place all disclosures, including corporate information, through an ATIPPA lens when making such calls, even when not directly required by ATIPPA.

Proactive disclosure has been my objective. My most recent proactive disclosure was of a mass broiler chicken mortality event October 25 at a farm under contract to Country Ribbon Chicken. To the best of our knowledge, this is the first time in modern history that the Government of Newfoundland and Labrador has proactively disclosed such an event in the 40 plus year history of government controlled production and regulation of a supply managed commodity. It is one of very few times such an event was ever publicly disclosed in Canada.

With that said, my department – more specifically the former Department of Fisheries and Aquaculture – had made a conscientious decision not to proactively disclose any mass mortality events related to farmed Atlantic salmon aquaculture operations in all such incidences in the past.

I have never been comfortable with this and, in September of 2017, announced a full review of aquaculture regulations and policies including that of pro-active disclosure requirements of aquaculture operations. Work progressed well with draft policies circulated within government for review and then to industry stakeholders in September of 2019. Included in this package of reforms was a requirement of proactive, self-disclosure within 24 hours by industry of escapes, quarantine and depopulation orders

and directives. The amended policy requires public reporting of the detection of federally reportable diseases, escapes, incident events, quarantine and depopulation orders and directives.

During the course of this process, we encouraged companies to abide by voluntary disclosure of significant events while the new policies were being formally implemented. The public record shows that during the summer of 2019, aquaculture companies posted confirmed infectious disease events prior to being required as a condition of license or policy, both of which came into effect in September of 2019. For further clarity, these requirements will be placed into regulation by February 2020.

The most recent event, however, was different in that it was not immediately clear to FLR the cause or causes of the mass mortality - was it a fish disease event or an environmentally induced mass mortality or any other cause? The company informed us that this was an environmental event and not a disease event and therefore in the company's opinion outside of what would be expected for disclosure. It was FLR's role to investigate, to take an informed position and, if any violations of the Aquaculture Act had been made, to consider any sanctions required or appropriate for non-compliance. Through the course of investigation, which included direct communication with the operator, the company had ten licenses suspended.

The pre-existing practice of the department was not to proactively disclose. There were no specific authorities established directing me to disclose. And there were potential legal risks that had been previously noted that guided previous Ministers' decision making in this regard. Recognizing that this was not acceptable to me, I presented a path to proactive disclosure that mitigated all of the above.

With that said, I am familiar with the mandatory exceptions and apply them appropriately. Recently, questions have arisen from the media, the general public and other parties regarding my use of discretionary exceptions. In particular, my application of section 31 (1) (a) which states "The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to interfere with or harm a law enforcement matter."

As Minister of a public body, it is within my authority and my duty to apply any applicable legislation as a guidance tool when making a decision. FLR has always, and will continue to, apply ATIPPA when releasing information proactively and through information requests.

In the instance of the recent aquaculture mass mortality event on the South Coast of Newfoundland, upon notification from the company involved, I consulted with the Department's Manager of Information Services and was provided the advice that any information surrounding the referenced event could not be released until such time that

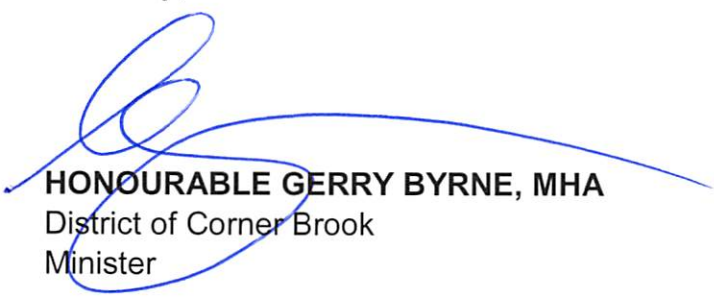
the Department's internal investigations had been concluded. This advice was provided based on the fact that at the time of initial report, FLR Aquatic Animal Health division had not confirmed the cause of the event and upon conclusion of Aquatic Animal Health's investigation, a penalty or sanction could have been issued under the **Aquaculture Act**. The investigation is not complete and no final report has been concluded as more sites were reported by the company on October 11, 2019.

On September 23, 2019 the FFAW went public with details of the South Coast aquaculture mass mortality. It was at this time that the issue was publically discussed. Once the issue had become a matter of public discussion, I believe I was compelled to release details that I was aware of regarding the mass mortality event to answer public questions.

Earlier this week, the Manager of Information Services sought guidance from your office. In consultation with one of your Senior Analysts, it was reconfirmed that as Minister, I can apply any piece of legislation as guidance for decision making, including for proactive information release, where disclosure is not directly dealt with by ATIPPA.

I offer this for your information and review.

Sincerely,



HONOURABLE GERRY BYRNE, MHA
District of Corner Brook
Minister

Information Note
Department of Fisheries and Land Resources

Title: Proactive Disclosure of Aquaculture Events

Issue: An examination of past proactive disclosure on aquaculture events (ISAv and other significant events) prior to the launch of The Way Forward in September, 2017 which announced a full review of aquaculture policies and procedures. This information note was requested by the Minister of Fisheries and Land Resources.

Background and Current Status:

- ISAv is a mandatory Reportable Disease to the Canadian Food Inspection Agency (CFIA) but is not a human health concern by contact or consumption. When a federally Reportable Disease, ISAv, is detected by any person, company or laboratory it must be reported to the CFIA under the *Health of Animals Act*.
- Prior to June, 2012 Newfoundland and Labrador had tested negative for Infectious Salmon Anaemia (ISAv). The Department of Fisheries and Land Resources (FLR) (former Department of Fisheries and Aquaculture) regularly tested salmon at aquaculture facilities for disease.
- FLR has a comprehensive pathogen specific active surveillance program. As noted in the attached table, between June 19, 2012 and January 29, 2014 there were six aquaculture marine cage sites that tested positive for pathogenic ISAv. Depopulation occurs when pathogenic ISAv is confirmed. Companies may remove animals based on a suspect finding, as a proactive measure. All six marine cage sites were depopulated through rendering, in Burgeo, utilizing the Barry Group Inc. seiners. Approximately 3 million salmon were rendered during this period.
- Communication of ISAv events has proven to be challenging, due to notification on the CFIA website. The CFIA will report a single detection on the website, without considering clinical signs or confirmatory testing. The CFIA report on their website 6 – 8 weeks after the initial detection and they do not provide details such as site or company. The website also includes non-pathogenic detections that are not known to cause clinical disease and do not require regulatory action. This creates situations where the media and the public confuse old or non-pathogenic events with perceived new pathogenic ISAv events.
- There was no proactive reporting of the ISAv events by the department between 2012 and 2014 (see attached table). There was a superchill event in 2014 – which would not have been reported to the CFIA because there was no reportable disease. This event was not proactively publicly reported by the department at that time.
- Newfoundland and Labrador was negative for pathogenic ISAv from January 2014 until October 2017.
- In September 2017, the Government of Newfoundland and Labrador committed to review all policies and procedures related to aquaculture.

Analysis:

- In accordance with The Way Forward commitment, policies and procedures were drafted, including a specific reference to mandatory reporting of reportable disease

events, and shared with industry and Indigenous stakeholders in August 2019. The final policy and procedures were released during the Newfoundland and Labrador Aquaculture Industry Association's annual conference in September 2019.

- On September 3 2019, FLR was advised by Northern Harvest Sea Farms of a mass mortality event at six Northern Harvest Sea Farms sites due to environmental circumstances.
- Policies and procedures released on September 24, 2019 included public reporting requirements for reportable disease events, but did not include public reporting requirements for mass mortalities.
- To ensure public reporting of mass mortality events or any other potential aquaculture incident event, the public reporting policy was amended to reflect mandatory public reporting for any incident event that may cause or, under slightly different circumstances, would cause abnormal mortality, harm or imminent threat to farmed fish, marine installation, or structure or vessel on a licensed finfish aquaculture site. This policy was implemented on October 10, 2019.
- During summer of 2018, while the policy and procedures review was ongoing, the Minister of FLR communicated an expectation that all companies disclose to the public a reportable disease. This was further articulated in a letter to Marine Harvest Atlantic Canada, in August 2018 by the Assistant Deputy Minister, Fisheries and Aquaculture.
- Compliance with this direction was evidenced in July and October 2018 and ISAv reportable disease was publicly disclosed by the companies on the Newfoundland Aquaculture Industry Association's website and again in December 2018 through a proactive media release.

Action Being Taken:

- Proactive disclosure by companies is now required for all incident events including reportable disease detection and mass mortality.

Prepared/Approved by: Dr. D. Whelan/R. Walsh/L. Companion

Ministerial Approval:



October 30, 2019

Thank you for this information

Prior to June 19, 2012 – Newfoundland and Labrador was negative for Infectious Salmon Anaemia virus (ISAv).

Date	Event	Company and Site	Number of Species Affected	Date Event Reported to Department	Date of CFIA Confirmation	Date FLR Proactively Disclosed to the Public
June 19, 2012	ISAv	<ul style="list-style-type: none"> Gray Aqua Group Butter Cove site 	<ul style="list-style-type: none"> Approximately 450,000 fish Depopulation by rendering 	<ul style="list-style-type: none"> Detection reported to FLR on June 19, 2012 	<ul style="list-style-type: none"> CFIA confirmed July 6 2012 	<ul style="list-style-type: none"> No public disclosure
November 26, 2012	ISAv	<ul style="list-style-type: none"> Cold Ocean Salmon Pot Harbour site 	<ul style="list-style-type: none"> Approximately 360,000 fish Depopulation by rendering 	<ul style="list-style-type: none"> Detection reported to FLR on November 26, 2012 	<ul style="list-style-type: none"> CFIA confirmed December 17, 2012 	<ul style="list-style-type: none"> No public disclosure
May 17, 2013	ISAv	<ul style="list-style-type: none"> Gray Aqua Group Goblin Bay site 	<ul style="list-style-type: none"> Approximately 850,000 fish Depopulation by rendering 	<ul style="list-style-type: none"> Detection reported to FLR on May 17, 2013 	<ul style="list-style-type: none"> CFIA confirmed June 5, 2013 	<ul style="list-style-type: none"> No public disclosure
June 26, 2013	ISAv	<ul style="list-style-type: none"> Gray Aqua Group Pass My Can site 	<ul style="list-style-type: none"> Approximately 656,000 fish Depopulation by rendering 	<ul style="list-style-type: none"> Detection reported to FLR on June 26, 2013 	<ul style="list-style-type: none"> CFIA confirmed July 4, 2013 	<ul style="list-style-type: none"> No public disclosure
June 26, 2013	ISAv	<ul style="list-style-type: none"> Cold Ocean Salmon Manuel Arm site 	<ul style="list-style-type: none"> Approximately 406,000 fish Depopulation by rendering 	<ul style="list-style-type: none"> Detection reported to FLR on June 26, 2013 	<ul style="list-style-type: none"> CFIA confirmed July 4, 2013 	<ul style="list-style-type: none"> No public disclosure
October 23, 2013	ISAv	<ul style="list-style-type: none"> Cold Ocean Salmon Sugarloaf site 	<ul style="list-style-type: none"> Approximately 461,000 fish Depopulation by rendering 	<ul style="list-style-type: none"> Detection reported to FLR on October 23, 2013 	<ul style="list-style-type: none"> CFIA confirmed November 7, 2013 	<ul style="list-style-type: none"> No public disclosure

Date	Event	Company and Site	Number of Species Affected	Date Event Reported to Department	Date of CFIA Confirmation	Date FLR Proactively Disclosed to the Public
May 6, 2014	Superchill	<ul style="list-style-type: none"> Northern Harvest Sea Farms; Gray Aqua Group and Cold Ocean Salmon Fortune Bay and Harbour Breton Bay 	<ul style="list-style-type: none"> 2,000 MT fish Depopulation by rendering 1,039,141 total reported fish mortalities 	<ul style="list-style-type: none"> Local fishers advised the Provincial Government (SNL and former FLR) of dead salmon at a local beach and lobster gear Reported to FLR by Service NL on May 6, 2014 FLR staff visited Harbour Breton on May 7, 2014 Depopulation efforts took several weeks to complete using seiners 	N/A	<ul style="list-style-type: none"> No public disclosure