



Aqua Fresh Fish the home of *Celtic Barramundi*®

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Donaghmore,
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Re: Independent Aquaculture Licensing Review - Public Consultation 2017

Submission on behalf of:

Aqua Fresh Fish Ltd.

AquaFarm Systems Ltd.

Adrian Flynn



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1. Background information:

Having researched the current and potential growth for aquaculture, Aqua Fresh Fish was set up in 2005 with the purpose of becoming a major EU supplier of seafood to the EU and world markets. The distinction of our company is that production was to be exclusively in land based Recirculation Aquaculture Systems (RAS). Aqua Fresh Fish Ltd. is a sister company of AquaFarm Systems Ltd. which was set up in 2004 to supply and build land based facilities.

AquaFarm Systems Ltd. invested significant time and resources in setting up an Aqua Fresh Fish Ltd. site to be a Pilot Project to demonstrate land based RAS technology, grow a new species to Ireland Australian Barramundi, and to train up staff in seafood production in RAS and operating and maintenance of RAS (which are very specialised skills worldwide) under the supervision of world-class experts; The strategy was that staff could then progress on to be Managers of subsequent facilities.

At the outset it was very evident that we were not welcome with this strategy and the Aquaculture industry in Ireland had all the hallmarks of a closed shop, particularly for RAS production and new species like Barramundi. It would appear that Public Servants, particularly, but not exclusively in BIM, were determined to sabotage this initiative.

In addition, the current licensing administration was due to be decentralised to Cork and BIM was to follow. It would appear BIM did not want the administration of licenses in Cork to be successful as they did not want to decentralise to Cork themselves. The outgoing licensing staff were obstructive and the incoming staff had no knowledge of aquaculture and were equally obstructive.

It took 6.5 years to approve our license, however, the CZMD put a clause on the license that it could not be transferred to anyone else for 3 years. So we had to wait 9.5 years and invest €1.5 million before we had a license that could potentially be used. I believe it is a possibility that this clause which only came about for our project was an infringement on the constitutional property rights of the company, and Adrian Flynn the license holder.



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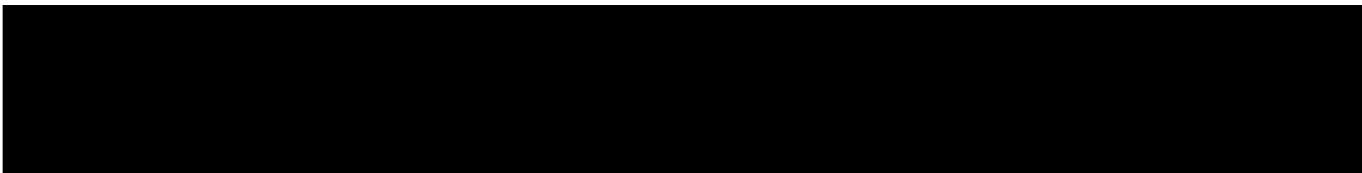
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We were approved for a 6 year license despite the fact that “Government Policy” was that licenses should be granted for a minimum of 20 years to provide security of tenure and equity to the applicants, however, the 6 year license could not be used for the first 3 years as a condition of CZMD.

The CZMD will say it did not take 6.5 years to process our license, they will say we submitted a second license application some 2.5 years after the first application. The truth of the matter is that on request we submitted further information, on an official license application form as advised to do so by IFA officer [REDACTED]. We submitted no other supporting documentation that would have to accompany a valid license application and no fee for a license application. However, CZMD insisted we submitted a new application and the consultation process, which had already been completed at this time, started all over again. At this stage I’m of the view that there is a strong possibility that what is going on in this process is illegality, specifically designed to put us out of business.

I had previously been asked by BIM to reduce the number of species on my application to one, which I complied with, but the CZMD said I made a change to my application and put it through the consultation process again. It would appear what happened is that I was been messed about by different actors to the licensing system and went through the consultation process on a number of occasions.

At the end of the 6.5 years the CZMD then told me my application which was accepted as a valid application according to them on two occasions, was not in fact a valid application!! I now believe what is going on in this industry is complete and utter criminality perpetrated by public servants who are paid by the taxpayer, but they are trying to put taxpayers out of business.



I (Adrian Flynn) was totally committed to this project and worked my ass off for almost a decade trying to get this project to fruition. I employed people with a PhD, a Master’s Degree in Engineering and an MBA to help put all the plans in place. I took out several loans and remortgaged my home on several occasions to keep the project alive, but I was banging my head against a brick wall, as the Public Servants who control the industry did not want the project to happen. As a result of my



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endeavours, I have been tied up in Court proceedings for the past 5 years due to unpaid alleged debts. In total I have not been able to earn a living for almost 12 years due to my commitment to this project. My family's life has been ripped apart since 2004 when I decided to get involved in land-based aquaculture due to the actions of extremely divisive public servants. I mention these things as I believe this are issues which need to be investigated and taken into consideration when looking at a new solution to the licensing procedures and, to put a human story to just one Aquaculture License Application can have on a citizen of this country.

We went through a Public consultation process for planning permission, a Public consultation process for a discharge license, a Public consultation process for an aquaculture license, a Statutory consultation process for a discharge license and it would appear multiple Statutory consultation processes for an aquaculture license. In all of these processes NO MEMBER OF THE GENERAL PUBLIC raised any objection of any description to what we were proposing to do. However, Inland Fisheries Ireland did raise an objection which we dealt with. [REDACTED]

2. Land-based aquaculture licenses to be administered by land-based planning authorities

Licensing is a huge issue in the aquaculture industry in Ireland.

It would appear to me that the licensing process was largely developed with sea based farming in mind.

It is my submission, that licensing for land-based systems should be done by local County Councils and approved at the same time as the approval of planning permission and a discharge license for a development.

The current process is sequential in that an applicant has to apply sequentially for:

1. Planning permission then,
2. A discharge license and then,



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3. An aquaculture license.

This three phased sequential process adds a huge amount of time and cost to progress a land-based project.

It is the case that there is a public consultation process for planning permission and for a discharge license.

In my view, the public consultation for the aquaculture license (and foreshore license if it is a land-based system on the shore) could occur in parallel to the public consultation process for planning permission and the public consultation process for the discharge license to streamline the process.

There is also a statutory consultation process for at least the discharge license application, which involves most of the parties that are involved in the statutory consultation process for the approval of an aquaculture license.

It is my submission that a small change in the law could let the local County Council's process the land-based aquaculture license application in parallel with the application for planning permission and at the same time in parallel with the application for a discharge license.

By including any organisation that are a statutory consultee in the aquaculture license application and are not currently in the statutory consultation process for the discharge license in that process, the consultation process for an aquaculture license can be done at the same time as the consultation for the discharge license by the local County Council. This would lead to huge efficiencies, do away with a duplication of processes, save costs for the State and all the organisations involved and, save time and money for project promoters and contribute to applications being approved in a timely manner.

However, it may be possible to come up with a system that does away with the statutory consultation process altogether as it appears to involve organisations with competing agendas and this is where all the issues arise.

Would it not be simpler to give the licensing authority the appropriate personnel that they can make a decision on their own without having to involve something like 22 organisations, some of which have competing agendas and are only too happy to hold up the whole licensing process. All the local County Councils could administer the application process for land-based licenses and forward the aquaculture



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license part of the application to be approved by technical staff in CZMD at the same time, and within the same statutory timeframe as the processing of planning permission and discharge licenses. However, statutory time limits would have to be added to the legislation for a discharge license, the same as the time limits in the planning and development act.

If land-based systems were to be approved at a local county council level, there needs to be a definitive time put on the approval process for a discharge license and the aquaculture license in Statute. If public servants are not compelled to make a decision in a given time by Statute, they will not make the decision. This is a hugely important point as if you do not put a definitive timescale on the parallel approval process in legislation, you will end up with another unworkable situation.

The planning and development act 2000 has got statutory time limits in which planning has to be approved, but I do not think there is a limit for a discharge license, this needs to be implemented. It would be a relatively easy process to amend legislation to accomplish these changes.

The Planning Process was improved to include statutory time limits for when new information is sought and statutory limits for any request for further information requested and a statutory time limit for when approval should happen. These statutory time limits were introduced as local planning suffered with the same issue as the aquaculture licensing process is suffering from, in that public servants were not compelled to make decisions in a given time period so they dragged it out indefinitely.

The approval of licenses for land-based systems should be a very easy decision to make. They are just a building that discharges water. They are seen globally as the most environmentally friendly method of fish farming and pose little or no threat to the environment. While the systems are complex, from my experience, Public sector staff have no technical expertise in how these systems are engineered anyway.

3. No need for detailed system plans for approval of license for a land-based system

- a. System suppliers who supply systems all over the world tell me that in no other country do they have to provide detailed plans of every aspect of the system design to apply for an aquaculture license.



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- b. The Irish authorities are using the need for full detailed plans as a tactic to hold up projects for months or even years.
- c. One of the reasons you would not do a detailed design at license application stage is that technology might change between applying for a license and actually building a farm. Particularly in Ireland's case which it might take 4 – 7 years to get a license.
- d. In other EU countries as far as I'm aware, they only have to provide a concept layout with the dimensions of the building and possibly the tanks and biofilter and discharge pipes. They do not have to do detailed oxygen pipe layout and electrical layout etc at license application stage.
- e. Generally systems are supplied by people with a lot of experience in what they are doing. The systems are designed to production parameters with the quality of discharge water a key metric in the design. If the discharge from the system does not comply with your discharge license, the plant would have to make adjustments or close. No reputable system supplier is going to design a system that does not comply with discharge limits as it would effect their business reputation.
- f. The other issue is if detailed design is done at license application stage and it takes 4 – 7 years to approve the license, and technology develops in the 4 – 7 years, the technology provider may very well say they will not implement the old outdated plans, so the project would have to be redesigned and a new application put forward with the new technology
- g. If the detailed system design is done at license application stage a promoter is then tied to that one supplier which puts them in a position that they can increase the price so project cost could easily double..

4. No restriction on license to say license is void if planning is changed

- a. The license authorities put a clause to say they are approving the aquaculture license under the current planning permission and it is not permitted to change the planning or your license will be void.



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- b. This is a serious clause to put in a license as If I want to change my planning permission to add on a storage facility, or to add a new production facility to increase production for a license I have production capacity for, technically I'm changing my planning permission and my license is void.... this practice has to stop.
- c. It may be a case that a business expands after a few years and adds a processing facility for example. Technically this would be a change to the old planning permission and would invalidate the current aquaculture license for no good reason at all. This clause simply limits the businesses capacity to develop in the way any other business would develop. It may also be the case that the CZMD are interfering with the companies property rights as if the planning permission is approved legitimately through the proper legal process, why should that make an aquaculture license void. The CZMD have no jurisdiction or expertise in planning approval.
- d. Licenses should be approved on a black box method where we know the dimension of the building, we know the tank and biofilter layout and dimensions, we know the inlet water pipes the outlet water pipes, we know the amount of daily discharge and the parameters of the water chemistry that have to be abided by.... there is no need to know the exact detailed design of what goes on inside the building. The main point of interest is the discharge water.
- e. If you can't keep within your discharge parameters then you would have to cut back your production or innovate with your discharge to bring it within the required parameters.

5. Minimum period for a license should be 20 years

There was a recommendation in the 2006 Strategy document *Steering a New Course* that the minimum period an aquaculture license should be issued for was 20 years. This recommendation was made on the basis that businesses had to have security of tenure and, the license could act as security for the banks. This document was accepted by the Government as Government Policy.



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In my experience, Public Servants ignore “Government Policy” and make their own rules. [REDACTED]

6. Statutory time limits imposed for each step of the application process, particularly for land-based facilities.

Time periods need to be imposed for each step of the process in Statute or else public servants will not adhere to them.

1. A statutory time limit for the requesting of further information.
2. A statutory time limit for requesting any further new information.
3. A statutory time limit for the consultation process to begin and end.
4. A statutory regulation to have the Public consultation and the Statutory consultation process occur in parallel.
5. A statutory time limit for the application to go to an ALAC meeting
6. A statutory limit for the Department to put forward a recommendation to the Minister.
7. In the Planning and Development Act the penalty for the State not complying with the statutory limits was that the application would be automatically approved. It is absolutely essential that there is a stiff penalty for non compliance of the State with the statutory limits set in legislation or else they will not be followed.

In the 2006 Strategy Document, *Steering a New Course*, it was a recommendation that the time limit of 3 months be enacted without delay. However, over a decade later and this section has still not been enacted.

7. Separate process for the renewal of a license.

It is madness that you go through the same process to renew your license as for applying for a new license. The aquaculture site has already been approved and monitored for the whole period of operation of the license, renewal should be a relatively straight forward process as there should be scientific data available from the site for the entire period of the previous license. A renewal should be able to be approved in weeks.



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8. Transparent online administration system for license applications

I put forward the submission that there should be an online system for monitoring licenses in the consultation for the last European Fisheries Fund in 2006, but nothing was done about implementing them. Every County Council in the country has an online system for planning and these could easily be adopted for use for aquaculture licenses.

The online system should be set up in accordance with the statutory process with a record when application was submitted. When the application has been submitted, it should be accepted or rejected as a valid application within a week.

Once the application has been accepted as a valid application in the system, the system should automatically populated screens and fields with data based on the statutory time limits i.e. further information to be requested by xx/xx/xx, This field should not be allowed to be amended by staff, it should be a protected field automatically populated by an algorithm based on the statutory time limits.

When further information is received, this date should be input to the system and publically available the system would then populate the screens and fields with for example “clarification of further information to be requested by xx/xx/xx”, again a protected field which cannot be amended by staff and automatically populated.

When clarification of further information is received this should be input into the system and further fields should be updated, for example, “parallel consultation to begin (as soon as clarification of further information is accepted) on xx/xx/xx and end on xx/xx/xx”, again a protected field which cannot be amended by staff and is automatically populated by algorithm based on the statutory time limits. Other fields that could be populated at this time would also be “to be sent to the Minister for decision by xx/xx/xx” and “to be decided by the Minister by xx/xx/xx”

Setting statutory time limits for the approval of land based systems, especially RAS facilities should not be a big issue and be easily achievable in a short space of time. Sea based applications might be a bit more unpredictable. However, the State should not be penalising environmentally friendly land-



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based production in an attempt to promote sea based farming. Land-based farming has a far bigger potential to expand and is far more acceptable to Environmental NGO's as well as the general population.

There should be a pre-determined annual list of dates when the ALAC meetings take place.

The legislation should stipulate the applications only go to an ALAC meeting once within a statutory time limit, or do away with this process and let County Councils process the land-based aquaculture applications.

The legislation should stipulate that the application should only go to statutory consultation once (if this process is not scrapped) in the new process. This consultation is **commenced** within a statutory time period and **completed** within a statutory time period.

Applicants should be automatically notified that their application should go to the ALAC meeting on xx/xx/xxxx as part of legislation when any request for further information has been satisfied.

Applicants should be automatically notified of the outcome of the ALAC meeting, if this process is retained in the new structure.

9. All submissions from consultees or so called technical partners should be publicly available to the applicant

All submissions should be public. [REDACTED]

[REDACTED] This is against EU law. All applicants should have the possibility of viewing their file and know about any comments/submissions that are made by any party about their application. The fact that submissions were made about my license that I was not aware of, destroyed our whole project and I believe it was quite deliberate to conceal very important information from us.

The existing legislation was written to be transparent and let the applicant address any submissions made by the public or the statutory consultees. However, the CZMD take the view that they are entitled to have a separate file of information received from their technical partners as internal discussion which is not what the legislation was designed to do. After going through this license application process it appears to me that Public servants are a law unto themselves and can disregard the law when it suits them to deliberately sabotage people's businesses.



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10. Aquaculture licenses for all species to be approved on a biomass basis

Aquaculture licenses should be approved on a biomass figure for all species, not just for salmonoids.

I put this forward in the last consultation process for the European Fisheries Fund in 2006

[REDACTED] and to benefit Marine Harvest whom are opposed to land-based production as it would compromise their business model, but biomass production licenses for sea cage farming would help them increase their production.

RAS facilities are designed on a biomass basis which dictates the amount of feed that goes into the system as they can measure the effect that amount of feed will have on the water quality and what size of biofilter is needed to treat the amount of feed put into the system.

Basing an application on production, as in weight of fish harvested is not appropriate for land-based RAS facilities. If there was a technical issue or a mortality event, or a seed supply issue you might lose a lot of production, so estimating production is guesswork. However, calculating the maximum amount of biomass that will be in the system at any one time can be scientifically calculated and the system designed to cope with the maximum biomass.

11. License holders should have ability to lease license and projects should still qualify for grant aid

License holders should be able to lease their license to an Operating Company and the project should still be eligible for grant aid, the criteria should be that the site is licensed, not the operating company. The State should not be interfering in business and compelling them to adopt particular business structures that BIM want them to conform to. BIM and the Department changed criteria for approving licenses and for approving grant aid so as I could not lease my license to an Operating Company. They did this after I informed them of my plans. In doing so, they insured my license was useless for the first 3 years of a six year license and I could not qualify for grant aid.

They then decided the corporate structure I was planning to adopt was a good thing and decided they would lease a deep sea license and changed the criteria after my 3 years was up.



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The property that a project is on should be able to be leased from a property company to an Operational company and still be eligible for grant aid. Again BIM and the Department are introducing criteria to stop people of availing of efficient business structures; this is not the function of the State. I believe the criteria that BIM and the department are introducing are to try and force some operators into partnership with other businesses. Again they are interfering in business and are acting like Dictators.

a. License should be able to be in an Intellectual Property Company

It is a perfectly acceptable corporate structure to adopt to keep your Intellectual Property (license) in a separate IP company. It is also perfectly legitimate to keep your physical property in a property company and lease it to an operating company. BIM and the Department should not be discriminating against companies who adopt a corporate structure like this.

12. Amending Section 13 of the 1997 Act

While previous BIM plans say it is not possible to put time scales for a determination of a license; I had previously put forward at an IFA meeting at which the Director of Aquaculture for BIM attended that section 13 could be amended as follows:

- f. License applications outside a Natura 2000 area will be approved within 3 months
- g. License applications for land-based RAS will be approved within 3 months
- h. Licenses applications for Natura 2000 bays which have been assessed will be approved in 3 months.

If the authorities have not made a decision in 3 months, the license will automatically be approved.

The phrase **may be approved** should not be used as that is not mandatory. The automatic approval above is the same as in the Planning and Development Act. If you don't compel public servants to make a decision within a given time, they will drag it out forever and abuse the process for people they don't like and want to put out of business. That is what is happening in Ireland, the Department and BIM are manipulating the licensing process to put



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people out of business and to force people into partnerships... stripping people of their assets and depriving them of their Human Right to work and participate in an occupation of their choice.

The authorities always put forward the licensing issue is the Natura 2000 areas. However, this is not true. The problem is the State through public servants is depriving people of the right to make a living. Depriving them of their constitutional rights. There should be no issue in approving licences for land-based RAS facilities. While the legislation is extremely bad, part of the problem is the people who are behind the licensing system and not solely the legislation.