

2017

Aquaculture Licensing Review  
AFMD Submission to Review Process



Aquaculture and Foreshore  
Management Division  
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# Aquaculture Licensing Review

## AFMD Submission to Review Process

### Introduction

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1. This Submission is forwarded to the Aquaculture Review Group in response to a request for same from the Group. The text is designed to assist the Review Group to (1) form an understanding of the Licensing System as it currently operates (2) inform the Review Group of the perspective of AFMD on the shortcomings of the current system, and (3) convey to the Review Group the perspective of AFMD on the future possibilities for the Licensing System and the best means of addressing immediate and future challenges and opportunities for the System.
  
2. It is important from the outset to give consideration as to what constitutes the licensing “system”. The applicable legislation determines the scope of the “system”. On this basis as well as the knock on resource and logistical obligations which flow from the legislation, the licensing system includes:
  - Pre-application scoping correspondence from applicants
  - Initial licensing applications and Determinations
  - Applications for licence renewals
  - Applications for renewal and review of licences (at time of renewal)
  - Applications for the assignment of licences to third parties
  - Monitoring and compliance process which impacts on the renewal/review and possible assignment of licences
  - Applications for licence review during licence tenure
  - The process for revoking licences

The licensing system incorporates the above elements and it is not possible to satisfactorily separate one from the other for reasons of:

- Legislation
- Resource allocation
- Stakeholder expectations

## 2.1 Legislation

All applications are considered by the Department under the provisions of the 1997 Fisheries (Amendment) Act, the 1933 Foreshore Act (where applicable) and relevant EU legislation. Regulation 3(1) of the Aquaculture (Licence application) Regulations, 1998 (SI No. 236 of 1998) states, inter alia, **'application means an application to the Minister for an aquaculture licence or a trial licence or for a review or renewal of an aquaculture licence'**

The 'review or renewal' of an aquaculture licence leads directly into the monitoring and compliance regime. In addition, the **'current shortcomings and bottlenecks'** relate in the most part to licence **renewals**.

It has long been clear that the legislation currently governing the aquaculture licensing system is unfit for purpose for a wide range of reasons. [REDACTED]

[REDACTED] Not surprisingly, environmental interest groups and industry representatives also consider the legislation inadequate, although for different reasons. It is the strong view of AFMD for reasons outlined elsewhere in this Submission that an entirely new aquaculture Act is urgently needed to take account of the scientific, technical, commercial and environmental challenges and opportunities facing the industry.

## 2.2 Resource Allocation

The staffing complement of AFMD is currently 35 of which 7 are job sharers of one form or another. The complement includes two longstanding vacancies at HEO level as well as others. The grade profile of the Division is a legacy of an earlier time when aquaculture licensing was significantly less complex than it is today. For example, a recent exercise by the Division focused on a licence issued in 2002 and renewed in 2015. It was estimated that it took approximately 50 staff hours to process the licence in 2002 and at least 250 hours to renew the licence in 2015. All staff, of necessity, deal with a wide range of licensing issues and all too frequently high profile post-licensing issues must be dealt with as a priority to the detriment of work on the processing of applications.

Industry representatives are of the strong view that the Division is too active on the regulatory side and have expressed this view openly at recent meetings including those with the Minister and Secretary General. The industry complaints usually take the form of pointing to what is perceived as the Division's lack of understanding of their problems etc. On the other hand, environmental NGOs have persistently complained that the regulatory regime is too light or non-existent. Notwithstanding the focus on the licensing backlog, the financial, legal and reputational risks that attach to the Department's licensing remit are far heavier. In accordance with best practice, risk assessment determines resource allocation by the Division's

management and on that basis most resources go towards monitoring and compliance either directly or indirectly.

### 2.3 Stakeholder Expectations

There is a high level of interest group density in the area of aquaculture licensing. The legislation identifies a wide range of statutory consultees but, beyond this, interest groups include industry representatives, various State agencies, local authorities, harbour groups, environmental groups, representatives of other industries associated with foreshore e.g. tourism, angling, ad hoc coalitions of coastal residents and/or coalitions of aquaculture operators. Most of these groups have welcomed the proposed Review. All of them can be expected to seek to influence its outcome and, given the very different agendas of these groups, it is inevitable that some of them will be disappointed.

Managing the expectations of the various interest groups is a key challenge. With the exception of industry representatives, almost all stakeholder concerns relate to monitoring and compliance. As indicated in this Submission it is considered that a fundamental well informed dialog needs to be initiated between all stakeholders including, crucially, the general public on the desirability or otherwise of an indigenous aquaculture industry and the best means of achieving this.

3. AFMD's Submission to the review is set out in three broad sections. These sections are as follows:
  - i. Forming an understanding of the Licensing System as it currently operates;
  - ii. Informing the Review Group of the perspective of AFMD on the shortcomings of the current system;
  - iii. Conveying to the Review Group the perspective of AFMD on the future possibilities for the Licensing System and the best means of addressing immediate and future challenges and opportunities for the System.
  
4. The analysis and suggestions set out in this Submission are not new. The Division has brought forward detailed proposals for reform of the licensing system in 2014, 2015 and 2016. As might be expected, this Submission reflects developments up to the end of 2016. However, for the most part, the analysis, recommendations and conclusions have all been made available over the last 3 years. Where circumstances permit the Division has initiated internal reforms including but not limited to new licence templates, revised application forms and guidance notes etc. These are working well and have contributed substantially to reducing the licensing backlog. As will be seen however, full reform of the system requires critical inputs

from elements outside the control of the licensing Division – hence the proposals put forward over the last 3 years.

5. Finally, as this Submission will show reform of the licensing system will not give rise to significantly increased licensed capacity within the Industry. What it will do, is regularise and consolidate aquaculture activity which is essential going forward.





# Section 1

## Forming an understanding of the Licensing System as it currently operates

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### 1. Legislation

An aquaculture licence is required by law for the cultivation of finfish, shellfish and certain marine plants such as seaweed. Some aquaculture takes place on land but the vast majority of aquaculture activity takes place in the marine environment on the foreshore. In Ireland almost all foreshore is in public ownership and aquaculture activity therefore requires both an aquaculture licence to conduct operations and a companion foreshore licence to lawfully occupy the area of foreshore in question. Even in the rare case of private foreshore an aquaculture licence is required to engage in aquaculture activity.

2. The Foreshore is measured from the high water mark out to 12 nautical miles (22 kilometres) and is approximately 39,000 square kilometres in overall size. It is roughly equal in size to just over 50% of the land area of the State. However, the areas suitable for aquaculture represent a small fraction of the foreshore and, in the case of finfish cultivation, are exclusively on the western seaboard.

3. The Department considers all applications for aquaculture licences in accordance with the following legislation:

- Fisheries (Amendment) Act 1997
- Foreshore Act 1933
- EU Habitats Directive of 92/43/EEC
- EU Birds Directive 79/409/EEC
- Consolidated Environmental Impact Assessment Directives 2011/92/EU
- Aarhus Convention

4. The licensing process involves consultation with a wide range of scientific and technical advisers as well as various Statutory Consultees. The legislation also provides for a period of public consultation. In addition to the above legislation the Department must adhere to a wide range of regulatory requirements and other legislation which impact on the licensing process such as the Appropriate Assessment process and the Public Participation Directive.
5. The Public Participation Directive (Aarhus Convention) has emerged as a crucial factor in the roll out of the licensing system as it applies to individual cases. The key aim of this Directive is to grant the general public specific rights regarding access to information in governmental decision-making processes on matters concerning the local, national and trans-boundary environment. The applicability of the Directive is continuously evolving and its application to any operating environment is challenging for all public sector bodies.

## 6. Types of Aquaculture Licences

There are 3 broad types of aquaculture licence applications. These are:

- applications for finfish or shellfish cultivation in the marine environment (approximately 94% of applications);
- applications for land based aquaculture activity (approximately 5% of applications);
- applications for aquatic plant cultivation – mainly seaweed (approximately 1% of applications).

Within this typology there are a number of subsections including applications for the cultivation of multiple species in the one production area (multitrophic aquaculture). A small number of licences for research purposes are in place.

## 7. Appropriate Assessment

The set of procedures known as ‘Appropriate Assessment’ arose from a European Court of Justice (ECJ) case against Ireland in 2007. The ECJ declared in case C418/04 that, by failing to take all the measures necessary to comply with Article 6(3) of Directive 92/43 ( Habitats Directive) in respect of authorisation of aquaculture programmes, Ireland had failed to fulfil its obligations under that Directive.

The EU Habitats and the EU Birds Directive led to the designation of certain bays by the National Parks and Wildlife Service as ‘Special Areas of Conservation’ and/or ‘Special Protection Areas’ for birds. These are known as ‘NATURA’ sites

and most aquaculture takes place within them, or adjacent to them. In the negotiations to address the ECJ judgement the Department agreed a process with the EU Commission and NPWS which would govern the State's processing of aquaculture licence applications. This became known as 'Appropriate Assessment' and includes the following steps:

- Data collection in relevant bays
- Detailed analysis of the raw data collected
- Setting of 'Conservation Objectives' by NPWS in respect of each site
- Carrying out 'Appropriate Assessments' by the Marine Institute of aquaculture/fishery activities against the detailed conservative objectives set
- Determination of licences by the Minister on the basis of the 'Appropriate Assessment' and other relevant factors.

In broad descriptive terms it is possible to state that the "Appropriate Assessment" (AA) phase of the application process represents the first major environmental challenge or hurdle for any licence application. The AA process is therefore an essential precursor to the further consideration of most aquaculture licence applications. The AA process is managed in the main by the Marine Institute via environmental/scientific contractors commissioned by the Institute to carry out the necessary field work and desk analysis. Experience has shown that predictable timelines for completion of AAs are not realistic for a variety of reasons including the "seasonality" involved particularly in the case of birds. The AA must be agreed by the National Parks and Wildlife Service before it can be adopted by the Department.

## **8. Licence Application Processing Procedures**

The licence consideration process, following completion of the AA for a given bay, has been estimated to take **43 to 81 weeks**. The following table sets out a broad timeframe for processing licence applications. It will be seen that timelines are inserted at "Step 5" which occurs following receipt of AAs. It must also be noted that the indicative timelines do not relate to finfish licence applications in respect of which an Environmental Impact Statement (EIS) is mandatory and can require a lengthy timeline for completion by the operator.

As will be seen the table presumes that the Environmental Impact Assessment (EIA) screening results in a decision not to require an EIS. It must be emphasised that there is no presumption of this outcome in the process itself and it is possible that an EIS will be required in a particular case.

## Timeframe for Processing (Shellfish) Licence Applications

STEPS	DESCRIPTION OF PROCESS	INDICATIVE TIMELINES
Step 1	Aquaculture licence application received and dated	
Step 2	The application form is checked in AFMD to determine if the proposed area is located within a 'Natura 2000' site - if so, an Appropriate Assessment (AA) needs to be carried out	
Step 3	Appropriate Assessment carried out, which involves: <ul style="list-style-type: none"> <li>Detailed analysis of raw data collected (this is substantially complete in all bays)</li> <li>The setting of Conservation Objectives by the National Parks and Wildlife Service (NPWS)</li> <li>Preparation of shape files by AFMD, in conjunction with Engineering Division and BIM (including profiling of aquaculture activity in the relevant Natura site) to allow the Marine Institute to spatially overlap the aquaculture activity over the protected habitats in the Natura site</li> <li>AA carried out by the Marine Institute</li> </ul>	
Step 4	The AA is circulated to NPWS for their views	6-12 weeks
Step 5	An Environmental Impact Assessment (EIA) screening is carried out by the EIA Screening Group (consisting of officials from AFMD, MED, MI and BIM) on all licence applications to ensure compliance with EU Environmental Directives	Timeframe depends on the no. of applications to be processed – 4-10 weeks
Step 6	Submission to Minister on requirement for Environmental Impact Statement (EIS) for each application	Timeframe depends on the no. of applications to be processed – 3-6 weeks
Step 7	Submission of set of policy recommendations for entire bay or Natura site for Ministerial approval	3-6 weeks
Step 8	All applications accompanied by the AA and EIA screening (or EIS) are sent to Statutory Consultees	10-13 weeks (includes 6 week statutory consultation period and forwarding of any comments received to the Applicant, who has 3 weeks to respond to any issues raised)
Step 9	All applications accompanied by the AA and EIA screening (or EIS) are sent to Public consultation - allowing members of the	Runs parallel to Step 8

	public to comment	
Step10	An AA Conclusion Statement is finalised, taking account of observations received, and indicating how the bay will be licensed in accordance with Natura requirements	3-8 weeks (further scientific advice may be required in the context of issues raised at Statutory/Public Consultation phase)
Step 11	All information received is evaluated by Department Officials and scientific and technical advisers as required. Individual recommendations are prepared and sent for Ministerial approval	3-8 weeks depending on the size of the bay. The process will be delayed further should archaeological issues emerge in the relevant bay
Step 12	Ministerial Decision to either grant or refuse the application	2-5 weeks
Step 13	Publication of Ministerial Decision and the reasons for such determinations are placed on the Department's website	1-2 weeks
Step 14	Decision may be appealed to the Aquaculture Licences Appeals Board (ALAB) - the independent appeals body	4 weeks
Step 15	If no appeal, issue of Foreshore Licence for signing by Applicant	2-5 weeks
Step 16	Preparation of Aquaculture Licence and forwarding with Foreshore Licence for signing and sealing in Minister's Office	2-6 weeks

## 9. Contributors to Licensing Process

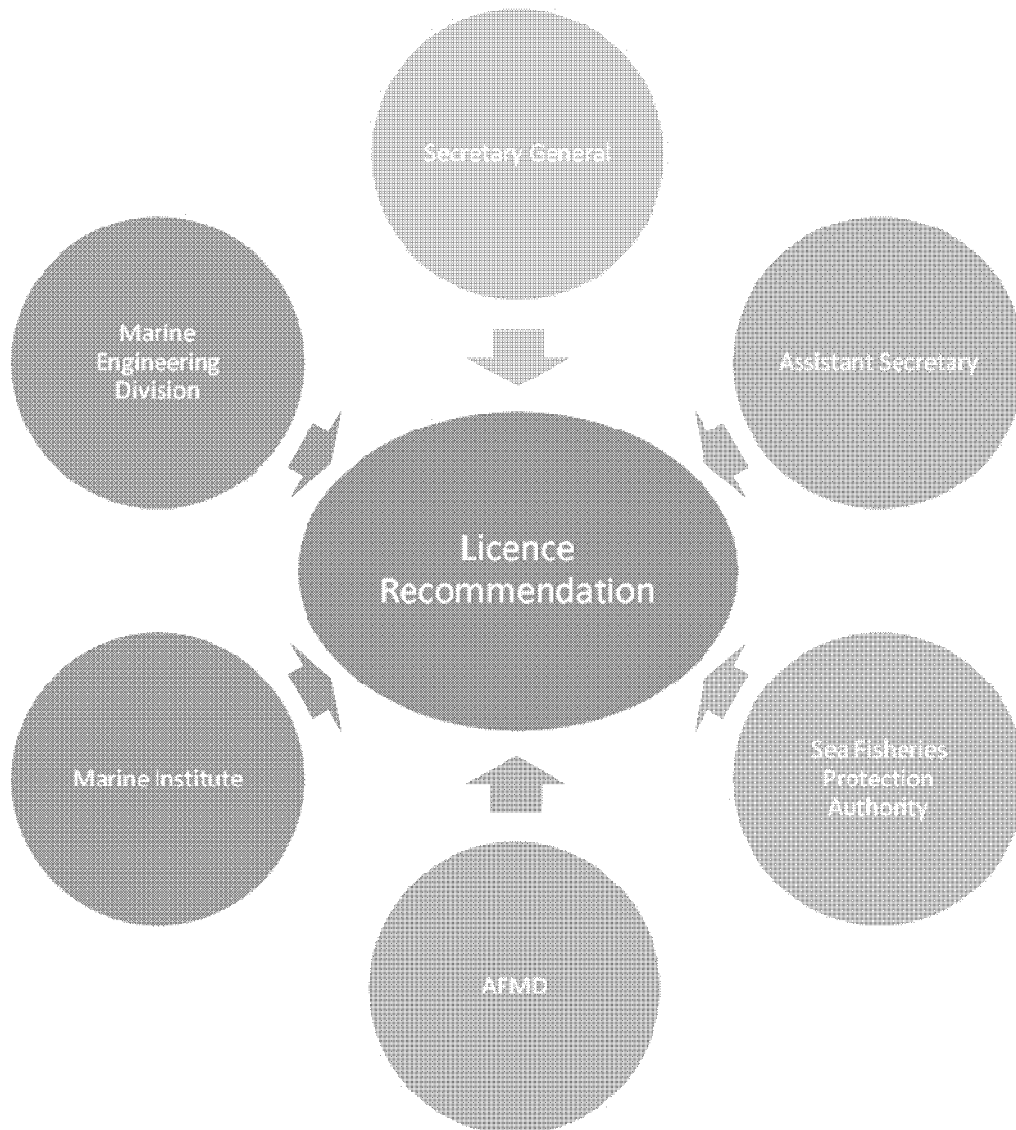
In addition to Statutory Consultees set out in the applicable legislation, the public consultation phase of the licensing process affords the public at large the opportunity to submit observations in respect of any aquaculture licence under consideration by the Minister. It is common for the "public consultation phase" to result in receipt by the Department of observations not only from individual members of the public but also from a wide variety of Interest Groups including industry representatives, various State agencies, local authorities, harbour groups, environmental groups, representatives of other industries associated with foreshore e.g. tourism, angling etc., ad hoc coalitions of coastal residents and or coalitions of aquaculture operators. The proliferation of social media has facilitated the emergence of "pop up" campaign groups either supporting or more typically objecting to aquaculture development.

## **10. “Framers” of licence recommendations to Minister**

As well as the contributors to the licensing process outlined above, special importance must be attached to the framers of the submission which ultimately goes to the Minister for determination. These “Framers” all function under the aegis of the Department of Agriculture, Food and the Marine. They are all bound by the provisions of the applicable legislation and in some cases such as the Marine Institute they are also cited in the legislation as statutory consultees. In essence these “Framers” are charged with the responsibility of advising the Minister on the scientific, technical, legislative and public policy aspects of every application. The considerations and observations of these “Framers” are reflected in the submission to the Minister and crucially in the recommendation that goes to the Minister from his/her officials. These “Framers” are as follows:

- Sea Fisheries Protection Authority (where applicable)
- Marine Institute
- Marine Engineering Division
- Aquaculture and Foreshore Management Division
- Assistant Secretary General
- Secretary General (where appropriate)

## “Framers” of licence recommendations to the Minister



It is useful to consider briefly the contribution which each of these “Framers” makes to the process.

### Sea Fisheries Protection Authority (SFPA)

Mission of SFPA is:

***“The Sea Fisheries Protection Authority is committed to the effective and fair regulation of the sea fishing and seafood sectors that fall within our mandate. This means all fishing vessels operating within Ireland’s 200 nautical mile limit, Irish fishing vessels wherever they operate, and all seafood produced in Ireland wherever it is marketed.”***

(Source: SFPA Website)

In the context of aquaculture the role of the SFPA includes the following:

- Food Safety/ Water quality assessment of licence applications
- Designation of appropriate areas for aquaculture
- Classification of Shellfish harvesting areas
- Issue of Gatherers Certificates for Shellfish harvesting
- Implementation of Shellfish sampling programme
- Taking of regular microbiological and biotoxin samples
- Liaison with DAFM on out of range residue results on Finfish sites.

### **Marine Institute (MI)**

The Marine Institute was set up under the Marine Institute Act, 1991:

*“to undertake, to coordinate, to promote and to assist in marine research and development and to provide such services related to research and development, that in the opinion of the Institute, will promote economic development and create employment and protect the marine environment.”*

(Source: MI Website)

In the context of aquaculture the role of the MI includes the following:

- Scientific assessment of licence applications
- Operation of Single Bay Management scheme
- Operation of sea lice monitoring and control programme
- Operation of fish movement and fish health programme
- Benthic monitoring
- Operation of Appropriate Assessments in respect of Natura areas
- Participation in Environmental Impact Assessment process
- Advice to Department on all scientific aspects of aquaculture
- Specific advice on individual licence applications.

### **Marine Engineering Division (MED)**

#### ***Mission of Division:***

***To support and manage the sustainable use and development of Ireland’s aqua/marine territory through:***

- ***Delivery of an effective and efficient aquaculture licence monitoring, surveillance and inspection programme including examination and evaluation of applications, maintaining and updating mapping records and databases***
- ***Ensuring the efficient operational management of the Department’s 6 Fishery Harbour Centres.***
- ***Develop and implementation of the Fishery Harbour, Marine and Coastal Infrastructure Capital Programme.***



- **Advise the Minister and other Marine Divisions where engineering and harbour operational advice is sought.**
- **Contribute to the overall management of the Marine Portfolio of the Department.**  
(Source: MED Business Plan)

In the context of aquaculture the role of MED includes the following:

- Informal advice to the Department and applicants in advance of receiving formal licence applications
- Technical assessment of licence applications
- Scheduled inspection of aquaculture operations
- On request inspections of aquaculture operations
- Advice to AFMD on all technical/engineering aspects of aquaculture licensing
- Specific advice on individual applications
- Participation in Environmental Impact Assessment process
- Preparation of engineering practice/policy in respect of aquaculture structures
- Assessment of engineering/technical elements of aquaculture operations for compliance purposes.

### **Aquaculture & Foreshore Management Division (AFMD)**

***Mission of the Division: The efficient and effective management of Aquaculture licensing and Foreshore licensing in respect of Aquaculture and Sea Fishery related activities.***  
(Source: AFMD Business Plan)

The core responsibilities of AFMD are:

- Licensing and regulation of Aquaculture in accordance with the Fisheries (Amendment) Act 1997 as amended and applicable EU legislation
- Management of the foreshore through a system of leasing and licensing in respect of Fishery Harbour Centres and aquaculture related issues. All other foreshore licences/leases are the responsibility of the Department of Housing, Planning Community and Local Government (DHPCLG)
- Responsibility under certain EU Environmental Directives.

These responsibilities also engage the Division in extensive policy development work, legislative initiatives and legal matters arising essentially from case work.

In the context of aquaculture the role of the Division is exclusively regulatory. As indicated by its mission statement the role of Aquaculture and Foreshore Management Division (AFMD) is essentially one of managing the implementation of the applicable National and EU legislation. To achieve this, an evidence based approach is taken which may or may not result in the awarding of an aquaculture licence. This relatively

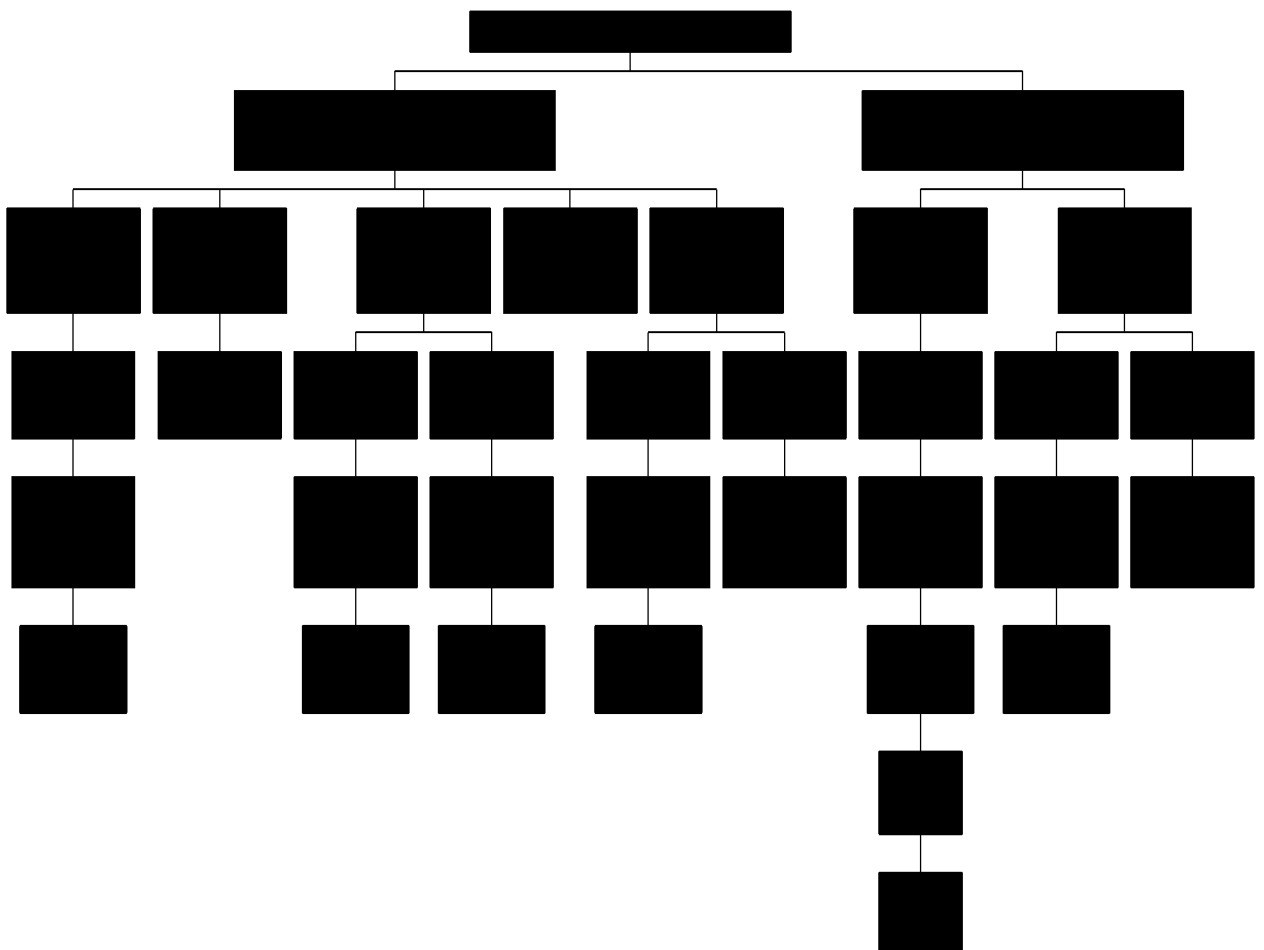
simple paradigm can sometimes be lost in the “push-and pull” of agendas put in play by the multiple stakeholders involved in aquaculture licensing.

Industry representatives can sometimes take the view that the role of the Division is to churn out as many licences as possible with minimum levels of what is often described as “red tape and bureaucracy”. This, somewhat one dimensional approach is often mirrored by other stakeholders who are of the view that AFMD should take a far more critical approach to licence applications than appears to them to be the case at present. From inside the Division it often appears that neither side in the aquaculture debate/argument has adequately informed itself on the role and function of the Division as set out in legislation.

The licensing review affords an opportunity to visit and critique the role and function of aquaculture licensing into the future. This process may serve to stimulate a broad based discussion on aquaculture which acknowledges the legitimate interests of all stakeholders and facilitates the development of an inclusive regulatory process which is evidence based, transparent and time bound.

### Staffing Profile

The staffing profile of the Division is illustrated on the organogram below:-



## **Assistant Secretary General (ASG)**

All recommendations in respect of aquaculture licensing are submitted to the Minister via the ASG who makes a recommendation in each case.

## **Secretary General (SG)**

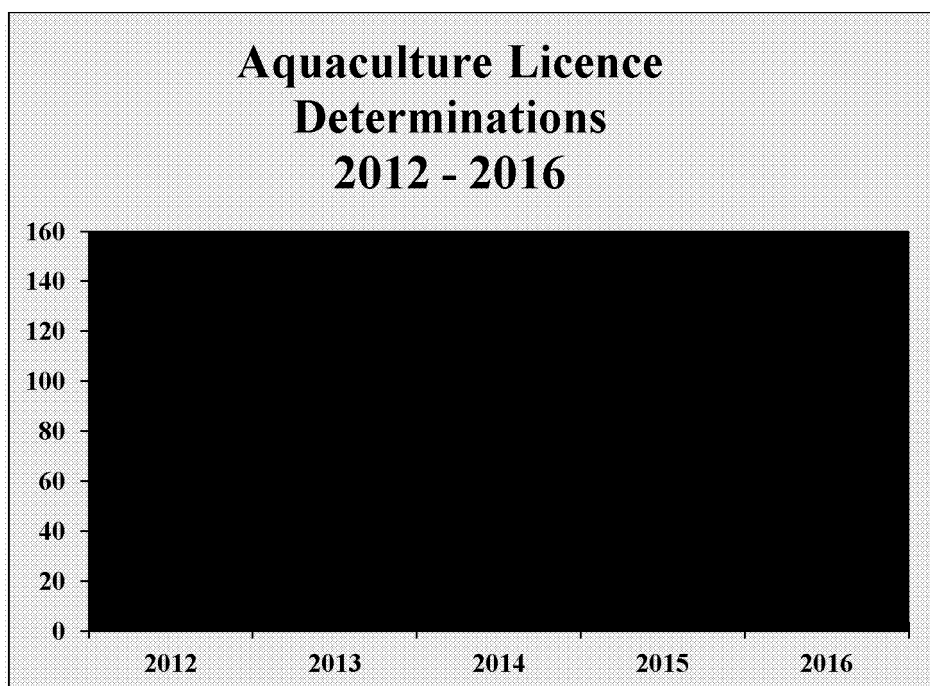
In some instances recommendations in respect of aquaculture licences are referred to the SG for a recommendation to the Minister.

## **Some Key Figures**

The figures set out in the following tables provide a broad overview of the state of licensing and other aquaculture matters. It is important to note that in some cases the numbers change on a daily basis as for example, determinations are made on licences. It must also be stated that the Division's Data Retrieval System is not fit for purpose pending the introduction of appropriate IT resources as set out elsewhere in this Submission.

### **1) Aquaculture Licence Determinations since 2012**

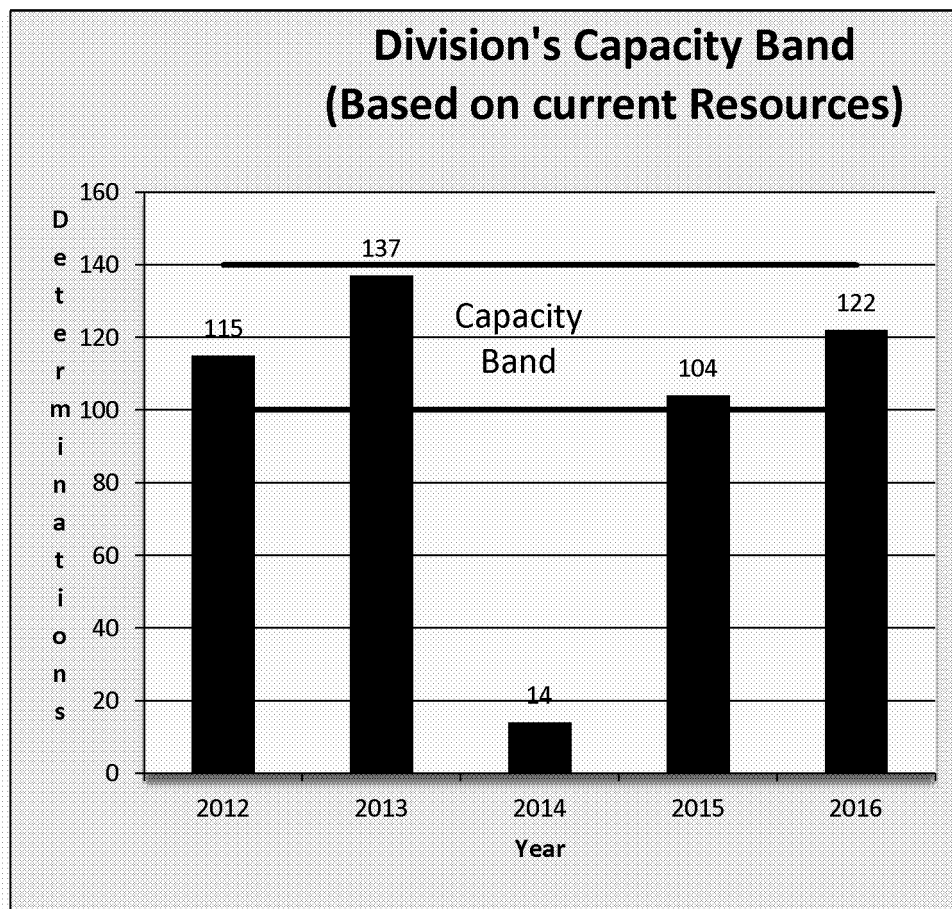
Year	No. of Licence Determinations
2012	115
2013	137
2014	14
2015	104
2016	122
Total	492



## 2) Division's Capacity Band

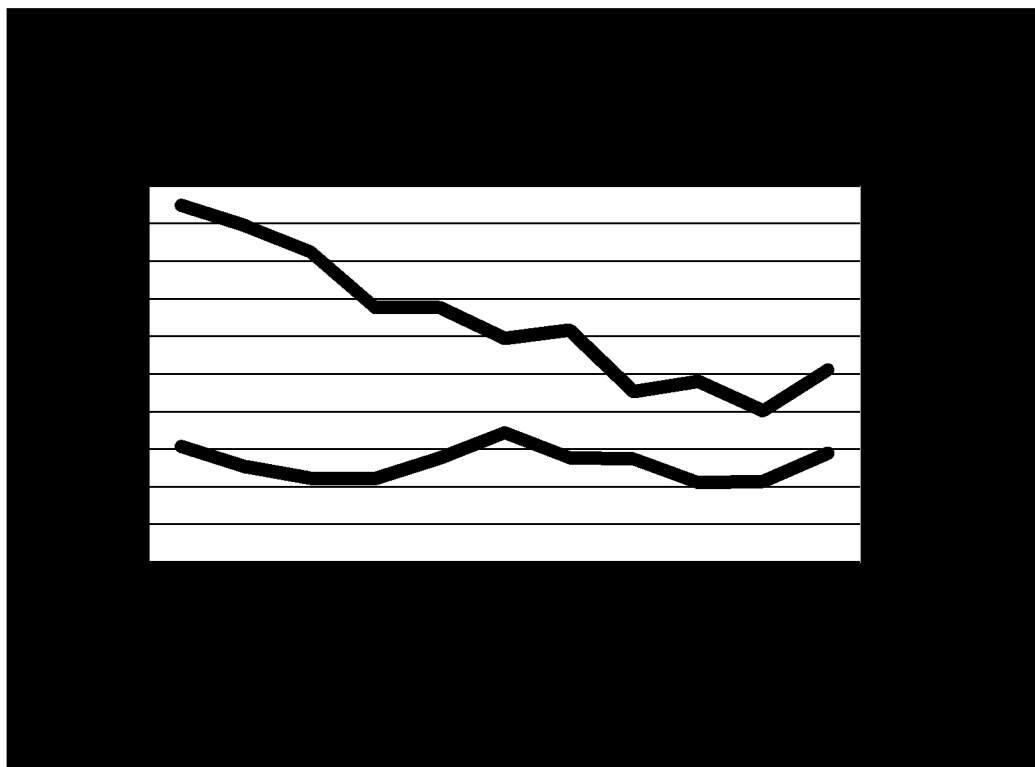
Based on existing legislation and available resources, licence determinations numbering between 100 and 140 per annum seem to be emerging as the current "capacity band" of the Division and by extension the Department. Extending this "capacity band" will require significant short term adjustment to Divisional structures and resources. In addition maintaining momentum will require significant legislative and other changes at a corporate level.

Year	No. of Licence Determinations
2012	115
2013	137
2014	14
2015	104
2016	122
Total	492



### 3) Aquaculture Production 2005 - 2015

Year	Shellfish	Finfish	Total
2005	47454	15384	62838
2006	44696	12726	57422
2007	41266	11238	52504
2008	33887	11119	45006
2009	33865	13842	47707
2010	29744	17216	46960
2011	30843	13942	44785
2012	22718	13723	36441
2013	24044	10586	34630
2014	20105	10742	30847
2015	25579	14491	40070



(Source BIM)

During the period of time covered by the above table available aquaculture licences/consents were at peak levels. In the order of 700 consents were in circulation. These consents can be broken down as follows:

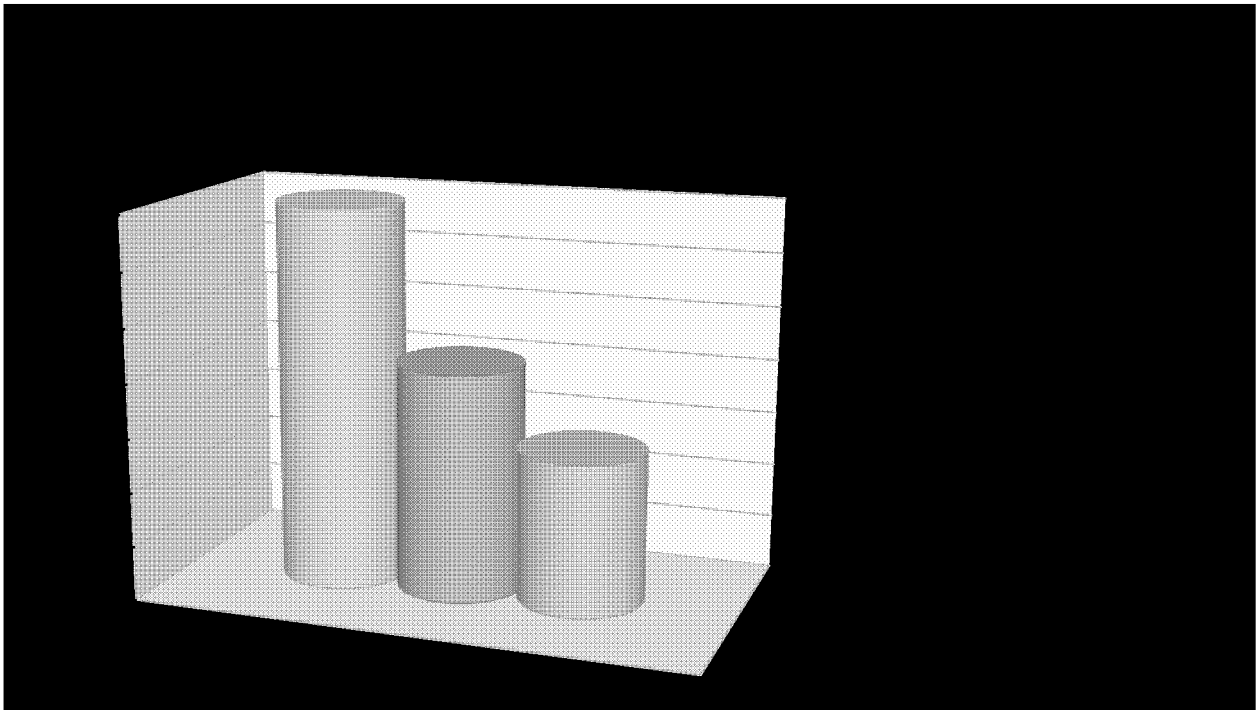
- a) Licences in date;
- b) Operations covered under Section 19(A) 4 of legislation;
- c) New licences issued by the Department.

During the same period, almost no licences were revoked.

Despite this, as the above figures show, overall production declined by 36% over an eleven year period (Shellfish by 46% and Finfish by 6%).

It is reasonable to say therefore, that this decline in production is due to reasons other than licensing.

#### 4) Appropriate Assessments for Bays with Marine Aquaculture



#### 5) Overview of Licence Applications Currently on Hand

<b>Licence Applications Currently on Hand</b>		<b>612</b>
• Marine Finfish	33	
• Marine Shellfish (Including Aquatic Plants)	540	
• Landbased	39	

January 2017

## Section 2

### Informing the Review Group of the perspective of AFMD on the shortcomings of the current system

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1. The need to eliminate the licensing backlog is one of the key challenges currently facing the industry and the State, as Regulator. This challenge is reflected in the Terms of Reference for the review of the licensing system. It is clear that the elimination of the backlog is critically dependent on the Department addressing a number of other challenges which impact on the licensing backlog and which represent a far greater financial, legal and reputational risk for the Department. All of the key challenges are interconnected and a sustainable solution to one or more of these challenges will only be achieved by addressing all. It is the strong view of AFMD that the challenges identified are not, by any means insurmountable.

#### 2. Critical Challenges

The delays experienced to date in achieving determinations have been due to a number of factors, including the following:-

- a) Complexity of licensing system;
- b) Inadequate legislation;
- c) Inadequate data retrieval/IT Systems
- d) Long-standing staffing vacancies;
- e) Management of environmental impacts and spatial planning on aquaculture.
- f) Ongoing negative public perceptions of aquaculture;
- g) Capacity issues for other stakeholders, including technical and scientific advisers;
- h) Evolving underwater archaeological requirements;
- i) Increasing interaction with ALAB;
- j) Increased engagement in issues such as “Single Bay Management” and “Sea Lice Control Management”;

These licensing constraints are described in more detail below:-

### **a) Complexity of licensing system**

The licensing of aquaculture has become increasingly complex primarily due to the significant range of environmental considerations that must be factored in, such as compliance with Birds, Habitats and Environmental Impact Assessment Directives.

All aquaculture applications in “Natura” areas (i.e. covered by Birds/Habitats Directives – which applies to most aquaculture sites) must be appropriately assessed before any licence determinations can be made.

While the “Appropriate Assessment” is carried out by the Marine Institute (MI) on behalf of the Department, significant resources are required from AFMD before and after the assessment process. The first step involves the preparation of “shape files” (including maps, species and production methods etc.) for the MI. This requires the interrogation of all aquaculture files for the relevant “Natura” site and engagement with Marine Engineering Division (MED) in order to produce the appropriate files. Following the assessment process, AFMD must produce a policy document for bays where significant issues arise and an AA “Conclusion Statement” which outlines how it is proposed to licence aquaculture in compliance with the Birds and Habitats Directives. The Division also plays an active role, in conjunction with its scientific and technical advisors, in designing and implementing “Adaptive Management Plans” for some “Natura” areas, for example, Dungarvan Harbour. This requires careful selection of monitoring criteria as well as the identification of management actions in the event of certain results. These activities require, of necessity, the convening of and participation in a plethora of meetings with scientific and technical advisers as well as comprehensive ongoing email and telephone communication.

A key constraint on progress has been, and continues to be, the absence of scientific agreement by NPWS with the AA reports at the time of their submission to the Department by the MI. In essence, key dialogue/negotiations on scientific matters with NPWS have remained open at the time of submission of the AA to the Department. This has necessitated AFMD becoming involved in protracted negotiations/discussions which invariably involve bringing the MI and NPWS together to work out solutions to problems that have arisen as a result of the differing perspectives of the scientists involved.

In addition, AFMD is an integral part of the EIA Screening Group (along with the MI, MED and BIM) which assesses all aquaculture applications, other than those where an Environmental Impact Statement (EIS) is compulsory, to determine whether the activities are likely to have a significant effect on the environment. Each application has to be individually and cumulatively assessed against a range of potential environmental effects. This process is both time and resource intensive.

The licence application determination process must also comply with the requirements of the Public Participation Directive (Aarhus Convention) which has emerged as a crucial factor in the roll-out of the licensing system as it applies to individual cases.



The example that follows provides a useful illustration of how the necessary bureaucracy associated with the licensing process has expanded dramatically in recent years. In 2002, the Division prepared the then standard submission to the Minister recommending the approval of Aquaculture and Foreshore Licences for an operator (company name redacted). The full submission is at “Appendix 1”. As will be seen, the recommendation to approve this renewal was set out on half a page with minimal detail on the consultation process involved. This was a typical submission of the time.

At the time of the subsequent licence renewal, in 2015, the process involved a vastly expanded series of measures and two separate submissions to the Minister (amounting to 8 pages in total, see “Appendices 2 and 3”). It is important to note that in the intervening period, between the above renewals, no major legislative changes occurred. However, in 2007, the European Court of Justice made a judgment against Ireland for failing to fulfil its obligations under the Habitats Directive in respect of the authorisation of aquaculture programmes. This case, in turn, focused the attention of the EU Commission, environmental NGOs and the public generally on the environmental aspects of fish farming (shellfish, as well as finfish). It is fair to say that the increasing complexity arising from the above developments, especially when taken together with the broadening applicability of the Public Participation Directive (Aarhus Convention), has had a dramatic effect on aquaculture licensing. The fact that licence decisions have been subjected to forensic examination by NGOs for procedural flaws, coupled with the failure to update the applicable licensing legislation, means that each licence application is fraught with potential procedural liabilities.

The nature of the work requires, in addition to strategic oversight by managers at PO and APO level, a detailed knowledge of legislation and its interface with day-to-day procedures. This work must be carried out, in the first instance, by HEOs and EOs. The long-standing vacancies within the Division, affecting these grades, are a very significant pressure point which impacts on the Division’s capacity to respond adequately to its operating environment.

To put it at its simplest, there are specific reasons why the backlog does not appear to be diminishing. These include inadequate legislation and data retrieval systems, vastly increased bureaucracy and insufficient staffing resources to respond to the changed dynamics of the operating environment.

#### **b) Inadequate legislation**

The Fisheries (Amendment) Act 1997 has been amended so often at this stage that interpretation of key provisions is not possible in a consistent manner. This is affecting both shellfish and finfish licence applications. There is a risk that one or more licence decisions will fall on the basis of an erroneous interpretation of the legislation at some stage, unless action is taken to address this issue. In essence, the legislation is entirely unfit for purpose, not least because it is open to different interpretation by administrators

and legal advisers. In some instances, the language in the legislation does not even achieve what it purports to do. In such circumstances, the 1997 Fisheries Amendment Act, in its current state, must be considered the single biggest deficiency in the State's aquaculture licensing system.

Some of the defects with Aquaculture/Foreshore legislation are summarised below:

- Language not achieving what it purports to do (for example, a lack of clarity on vires for the removal of structures from the foreshore);
- Definition of 'Application' in Act/SI (and Section 10 reference to EIA regulations) – differing interpretations on the EIS requirement for renewals;
- Large number of amendments to SI 236 of 1998 over the last number of years;
- Dissolved companies – once a company is back on the Companies Registration Office register, its licence can be re-instated;
- Lack of deadline for receipt of renewal applications – applications accepted after the licences expire;
- Legislation does not solve the issue of when the deliberative process can be halted, should technical/scientific findings prove that licences should not be awarded;
- Lack of clarity in Section 68 as to who can request a review of a licence;
- Legislation is silent re. Section 40 – right to appeal to ALAB in case of a renewal;
- Interactions with external legislation (e.g. Fish Health, Water Framework).
- Evolving legal advice on the difference between consents under Section 19(a)(4) and an Aquaculture Licence.
- Dual Licence requirements
- Silence in legislation on how to treat a renewal and review (together)
- Functions with DAFM and DHPCLG after Foreshore Transfer.
- Trial/Research Licences not catered for fully
- Minister may act if no responses from Statutory Consultees
- Conflicting use of word application/licence through SI and Fisheries Act
- Possibility of revoking under S. 19(a)(4) as there is no licence as such to revoke

- Aquaculture Licence can be assigned but Foreshore Licence possibly cannot be assigned.

The above is just a representative sample of the deficiencies in the legislation as identified by AFMD.

It is the strong recommendation of the Division that the Review Group consult with the Department's Legal Services Division to gain an understanding of the critical deficiencies in the current legislation.

### c) Inadequate data retrieval/IT Systems

AFMD inherited a computer system which was designed to process licence applications and collect licence fees (COZAS). However, in practice, the functionality available to the Division on the COZAS system proved to be extremely limited. This has resulted in the Division relying on a combination of standalone spreadsheets for the storing of application and licence information. Most of the application processing has to be done on a manual basis. A new data model is needed to facilitate consistent data retrieval in accordance with business plan requirements. In essence, the IT application will have to be built from concept to completion. The main advantage for the Division in being involved at the inception stage is the control that could be exercised in how the project would be structured, designed and implemented. Nonetheless, creating the IT application from the outset would be very time consuming. A number of options could be considered:

- Limited licensing functionality, but with the ability to provide key management information;
- Full processing of aquaculture licence applications;
- Full processing of aquaculture and foreshore licence applications.

A number of basic steps are already in place. AFMD has already collected client data for the purpose of registering customers on the SAP system. In any event, there is a requirement to take the dependency away from standalone spreadsheets in the short-term, setting the necessary foundations in place for future development.

In addition, AFMD is currently conducting a licensing audit of "legacy" files, which involves the assessment of all licensing files to ascertain the validity of licence applications.

This audit will identify the following:

- (i) The number of defunct sites;
- (ii) The number of applications/renewals for single-site licences;

(iii) The number of applications/renewals for multi-site licences.

The work of the audit involves the following:

- (i) An examination of all licence applications to hand;
- (ii) An assessment/judgement in respect of possible defunct sites;
- (iii) Interaction with applicants and other stakeholders concerning the status of applications (this, in particular, is a resource intensive and lengthy process and has uncertain outcomes).

This “legacy” audit is considered essential to place the Division’s records in relation to licensing on a sound administrative footing especially in anticipation of the proper computerisation of relevant records. One important consequence will be the conclusive verification of applications which currently make up the licensing backlog.

#### **d) Long-standing staffing vacancies**

In addition to the normal licensing procedures, the following additional factors have arisen in order to comply with Habitats, EIA and Public Participation requirements:

- “Shape files” have to be prepared in conjunction with MED to enable the MI to produce its Appropriate Assessments;
- AA “Conclusion Statements” are prepared outlining how “Natura” requirements are accommodated within the licensing process;
- Enhanced engagement with scientific and technical advisors regarding any monitoring required to comply with Birds/Habitats requirements;
- “Adaptive Management Plans” are prepared to address complex environmental issues concerning Birds/Habitats requirements in certain areas;
- Preparation of individual EIA Screening documents and formal Ministerial Determination as to whether Environmental Impact Statements are required;
- Placing of Appropriate Assessments, AA “Conclusion Statements”, Aquaculture Licences and Ministerial Determinations on licensing and on the requirement for EISs on the Department’s website;
- The licensing authority, i.e. AFMD is now required to carry out an Environmental Impact Assessment (EIA) on all aquaculture operations which are accompanied by an EIS. This assessment requires substantial input from scientific and technical advisers, including MED, the MI and BIM, and is a relatively recent necessity arising from EU Directives. AFMD is required to confirm that an EIA has taken place in accordance with applicable legislation.



### **e) Management of environmental impacts and spatial planning on aquaculture**

The environmental impacts of marine aquaculture within the European Union are regulated and managed, at a European level, by a variety of European Commission Directives and International Conventions. These include the Environmental Impact Assessment (EIA) Directive, the Habitats Directive, the Birds Directive and the Water Framework Directive (which supersedes the Dangerous Substances Directive and the Shellfish Growing Waters Directive).

The assessment of environmentally sustainable capacity for aquaculture in coastal areas poses a major challenge, given the range of issues that must be taken into account. The concepts of “carrying capacity” (available resources, particularly food), “assimilative capacity” (recycling capacity of organic matter and nutrients) and “holding capacity” (sustainable production) are emerging as key factors in aquaculture licensing over and above the Appropriate Assessment process.

It is evident that a number of Irish bays are at or near their capacity limits in terms of accommodating further aquaculture. In this context, the Division has requested that BIM produce “Carrying Capacity Studies” in a number of bays. They will attempt to scientifically establish if existing (and proposed) aquaculture would have a detrimental effect on the overall shellfish growth in a bay, due to, for example, a reduction in water flow or a reduction in plankton for the shellfish. These studies will therefore enable improved science-based management decision making processes.

Most marine aquaculture takes place in or adjacent to “Natura” sites (covered by Birds/Habitats Directives). Thus aquaculture, along with other activities, will be permitted on the condition that it does not compromise the integrity and status of these designated areas. However, in cases where aquaculture activity within or adjacent to these protected sites is found likely to adversely affect the Conservation Objectives of these sites, additional restrictions will have to be imposed in accordance with Article 6(3) of the Habitats Directive.

Significant progress has been achieved in aquaculture licensing across a range of bays, notwithstanding the challenges outlined in this Submission. It is clear that as the licensing of bays continues, there will be increases in aquaculture in some bays, but there will be significant reductions in others. The net outturn is likely to be at best a continuance of the overall current level of licensed output rather than any significant production increase. In this regard, production figures from 2005 to 2015 are of interest.

<b>IRISH AQUACULTURE PRODUCTION 2005-2015 VOLUME (tonnes)</b>			
<b>Year</b>	<b>Shellfish</b>	<b>Finfish</b>	<b>Totals</b>
2005	47,454	15,384	62,838
2006	44,696	12,726	57,422
2007	41,266	11,238	52,504
2008	33,887	11,119	45,006
2009	33,865	13,842	47,707
2010	29,744	17,216	46,960
2011	30,843	13,942	44,785
2012	22,718	13,723	36,441
2013	24,044	10,586	34,630
2014	20,105	10,742	30,847
2015	25,579	14,491	40,070

*Source: BIM*

Any strategic assessment of licensing will, of necessity, require some regard to be had to production levels. No SWOT analysis can be completed without a strategic assessment of the capacity of the industry to develop in the medium term.

**f) Ongoing negative public perceptions of aquaculture**

Negative public perceptions in respect of aquaculture are fuelling much of the administrative activity of AFMD. These include Parliamentary Questions, Briefing Notes, FOI/AIE requests, Representations, responses to Press Queries and requests from public representatives for oral briefings/meetings etc.

A general public debate about the merits of aquaculture is needed to balance public perceptions of the industry.

In the absence of an informed public debate on aquaculture clear “policy space” has opened up over time and is filled by multiple views reflecting the high level of interest group density which characterises this industry.

There are a number of learning points to be taken from recent licence application cases. These are as follows:

- The controversy that has surrounded finfish licence applications is spreading to shellfish licence applications in key areas;
- Controversial cases give rise to huge volumes of correspondence and other administration work which slows down the overall licensing process;
- Controversial cases make all Consultees wary of involvement in the process and slow to respond to Departmental requests for observations;
- Social media has facilitated ‘pop-up’ campaigns in respect of particular areas which can result in a surge of objections over a very short period of time;
- The absence of a Communications Strategy in respect of the aquaculture industry has resulted in ‘policy space’ which is filled by non-industry stakeholders including, but not limited to, angling interests, tourism interests, alternative users of the foreshore, environmental groups, and every member of the public who has the capacity and the inclination to go ‘on-line’.

It should be noted that an opinion poll on aquaculture, commissioned by IFA Aquaculture and published in June 2015, presents a relatively benign picture of the public perception of aquaculture. However, having regard to the wording of the questions posed, it would be fair to suggest that the findings indicate a certain level of indifference to aquaculture, rather than a positive disposition to the industry.

**g) Capacity issues for other stakeholders, including technical and scientific advisers**

The level of complexity generated by the measures necessary to regulate aquaculture is placing a major administrative strain not only on AFMD, but also to a lesser degree on other services available to the Division, including the Department’s Marine Engineering and Legal Services Divisions and the Marine Institute. There is a significant workload placed on Marine Engineering Division (MED) in particular, for reasons such as the re-configuration of sites within bays, mapping enhancements and Habitat related issues. Externally, it is clear that the level of interaction is also problematic for NPWS, the Underwater Archaeological Unit of DAHRRGA and other Statutory Consultees.

This level of activity will increase and therefore the administrative burdens and ensuing delays will continue and probably increase. This is a staffing resource issue and is also a result of the legislative difficulties outlined above and the scientific complexities associated with the AA process.

**h) Evolving Underwater archaeological requirements**

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (DAHRRGA) are increasingly requesting that Archaeological Impact Assessments (AIAs) be undertaken



prior to licensing or re-licensing aquaculture activities. There are many instances of such activity occurring within areas of underwater archaeological potential. In these cases, AIAs must be undertaken to assess the impact of aquaculture on the cultural environment. It remains unclear what effect the outcomes of these archaeological surveys will have on the overall licensing process, beyond the immediate delay factor. The Division is working closely with BIM and significant progress has been made to minimise delays arising from this issue. However, it is not possible to predict with certainty whether problems will emerge in those bays still being assessed under the AA process. An additional complication is the number of applications in “National Heritage Areas” (NHAs), for example, Trafrask Bog in Bantry. NHAs, in the first instance, come under the aegis of NPWS and the question of a dual licence requirement arises.

### **i) Increasing interaction with ALAB**

Decisions on licence applications are published and are open to appeal to the independent Aquaculture Licences Appeals Board (ALAB). There has been a significant increase in the number of appeals to ALAB, due to the higher numbers of licence determinations amongst other factors.

For instance, in 2015, the Minister made a positive determination on the application for an Aquaculture Licence at Shot Head, Bantry Bay. This determination has been the subject of fourteen individual appeals to ALAB. The reasons for these appeals are multi-dimensional and complex, including but not limited to:

- Environmental issues;
- Angling concerns;
- Policy and procedural issues;
- Quality of the application;
- Safety;
- Tourism.

Three of the appellants have requested that the appeals process be dealt with by way of an “Oral Hearing”. ALAB has determined that an Oral Hearing will take place in mid February and the Division is currently preparing material in respect of this.

**j) Increased engagement in issues such as “Single Bay Management” and “Sea Lice Control Management”**

The ongoing increased incidence of sea lice on salmon farms has given rise to multiple queries from the Department of Communications, Climate Action and Environment (DCCA), an increase in the number of Management Cell Meetings and other actions which require detailed input from AFMD. The “Sea Lice Control Protocols” have and continue to be the basis for the State’s management of sea lice. The adequacy of these protocols has been called into question by a number of industry critics in recent years and by the EU Commission which, despite acknowledging that the protocols represent best practice internationally, opened and then re-opened a Pilot Case on sea lice controls and are likely to maintain close engagement with the Department on this issue into the future.

It is considered necessary, in order to stay ahead of criticism of the State’s regulatory procedures on sea lice that the protocols should be reviewed on a regular basis to test their ongoing adequacy both in terms of their scientific elements and their acceptance by the general public.

**Monitoring and Compliance**

The Department’s role in relation to monitoring and compliance is set out in the applicable legislation. However over the last 10 years or so the responsibility attributed to the Department has expanded dramatically for a number of reasons, including the following:

1. Greater focus on key EU legislation
2. The build up of case law resulting in broader interpretations of legislation
3. Evolution of legal thinking on the interpretation of legislation
4. Heightened public awareness and concern about aquaculture operations

There is no doubt that the financial legal and reputational risks that arise for the Department and the State are far greater in a situation where a licence has been issued compared to entirely unauthorised activity by an operator.

As in the case of initial licensing, the “Framers” of licences referred to above play a very significant role in the monitoring and compliance regime.

An examination of the applicable legislation as well as the arrangement entered into with the EU Commission and NPWS place significant burdens on the Department relating to monitoring and compliance of licensed operations.

AFMD has, within the resources available to it, sought to monitor and police compliance with the terms of Aquaculture and Foreshore Licences issued. The legislation currently

does not provide for a suite of sanctions to be used in line with the seriousness of any breach of licence conditions.

Examples of possible non-compliance include the following:-

- Over stocking;
- Unauthorised water abstraction;
- Structures outside licensed area;
- Inadequate or absent lighting;
- Navigational hazards;
- Structures poorly maintained;
- Unauthorised production areas;
- Failure to provide necessary documentation;
- Failure to comply with Fish Health treatment requirements.

As stated elsewhere in this Submission an entirely new Aquaculture Act is needed to deal effectively and efficiently with the above matters.





## Section 3

### **Conveying to the Review Group the perspective of AFMD on the future possibilities for the Licensing System and the best means of addressing immediate and future challenges and opportunities for the System**

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In common with all licensing systems, aquaculture licensing is essentially a constraint on operator behaviour. The parameters of this constraint are set out in the applicable legislation. The aquaculture licensing system is therefore the servant of the legislation and not the servant of any individual group of stakeholders. Frustrating as it can be for many stakeholders, the protection of the overall public interest depends on strict adherence to the applicable legislation.

The Department finds itself in the difficult position of both promoting and policing the industry. This requires an acute sensitivity to the legal, corporate, financial, scientific and technical challenges that arise. As set out in this Submission, public confidence in the regulatory regime is an essential element in the efficient and effective management of the licensing process.

Aquaculture licensing, as indicated above, is primarily concerned with the implementation of regulatory policy by reference to specific applications. Its posture therefore is generally reactive in nature. However, it would be a denial of the obvious to hold the view that licensing does not in fact 'set the weather' for aquaculture development.

An efficient and effective licensing system can be an important tool in the strategic direction of the industry. Having regard to the issues outlined in this Submission, it is suggested that the following actions, if implemented, would greatly assist the ongoing strategic direction of the industry:

- Immediate filling of all outstanding vacancies in AFMD;
- An assessment of optimum staffing levels within the Division having regard to the need to eliminate the backlog as outlined in this Submission;
- Immediate upgrading of the data retrieval system available to the Division;
- Immediate commencement of preparations for the enactment of an entirely new Aquaculture Act. This will involve extensive consultation with stakeholders and is therefore likely to take at least two years to complete;

The Aquaculture and Foreshore Management Division of the Department remains fully committed to the reform of the Licensing System and will be happy to further engage with the Review Group as necessary.

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**ENDS**

## Appendices

### APPENDIX 1

26 March 2002

Ref: [REDACTED]

#### FISHERIES (AMENDMENT) ACT, 1997 (NO. 23)

#### RECOMMENDATION TO RENEW AND ADJUST 10-YEAR FISH CULTURE LICENCE AND FORESHORE LICENCE - [REDACTED]

AIRE STÁIT - FROM [REDACTED]

Your approval is requested, please, for the renewal and adjustment of Fish Culture Licence and Foreshore Licence to [REDACTED], Co. Donegal for the cultivation of oysters on sites ([REDACTED]) on the foreshore in Donegal Bay, Co. Donegal as recommended by the Department's expert advisers. The adjustment in the sites is to take into account an informal agreement that the company made with the local wildlife officers some years ago to protect a seal lie up area. The applicant's aquaculture operation is a well managed one and the farm is kept in a tidy state and has been in the aquaculture business for a long time.

No objections came from any quarter to the proposal which was publicly advertised and the subject of consultation with statutory consultees.

The conditions to the Aquaculture Licence stay the same but condition 5 of the Foreshore Licence is being extended to include the following (in the interests of navigational safety): "A yellow special mark with light and a St. Andrews Cross as topmark shall be placed at each of the six positions marked X on the attached Map and to be visible at all stages of the tide two metres above the water". To secure necessary protection of wildlife and access to the sites an appendix to the Foreshore Licence is attached.

[REDACTED]

## APPENDIX 2

### Recommendation to grant the Renewal of an Aquaculture Licence

██████████, Higher Executive Officer

██████████, Asst. Principal

██████████, Principal Officer

██████████, Asst. Secretary

Rúnaí Aire

#### 1.0 DECISION SOUGHT

The Minister's determination is requested please in relation to the renewal of Aquaculture Licence to ██████████, Co. Donegal for 3 sites in Donegal Bay, Co. Donegal.

#### 2.0 BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Aquaculture Submission) and submission underneath (Foreshore Submission), which refer to the same sites.

The Aquaculture Licence defines the activity that is permitted on a particular site and the Foreshore Licence allows for the occupation of that area of foreshore. The continuing validity of each licence is contingent on the other licence remaining in force.

#### 3.0 APPLICATION FOR AN AQUACULTURE LICENCE

A renewal application for an Aquaculture Licence has been received from the applicant/s referred to at 1.0 above (in conjunction with an application for a Foreshore Licence), for the cultivation of Pacific Oysters using bags and trestles in relation to three sites totalling 3.643 hectares on the foreshore in Donegal Bay, Co. Donegal. (Numbered ██████████ – see **Schedule 1**).



#### 4.0 LEGISLATION

Section 7 of the Fisheries (Amendment) Act 1997 provides that the licensing authority (i.e. Minister, delegated officer or, on appeal, the Aquaculture Licence Appeals Board) may, if satisfied that it is in the public interest to do so, license a person to engage in aquaculture.

#### 5.0 CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, statutory consultees and was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

##### **Technical Consultation**

Engineering Division: No objection to the renewal of this aquaculture licence.

Marine Survey Office: No objection to the renewal of this development.

Sea Fisheries Protection Authority: No objection to this licence renewal.

##### **Statutory Consultation**

Regulation 10 of the Aquaculture (Licence Application) Regulations, 1998 requires certain statutory bodies to be notified of an Aquaculture Licence application.

Comments were received from the following statutory bodies:

DECLG: No objection to the renewal of this licence on technical grounds.

DAHG: Acknowledged the content of the Draft Appropriate Assessment Conclusion Statement prepared by the Licensing Authority for aquaculture activities in Donegal Bay Natura sites. They made some suggestions as to how the clarity of the document could be improved and these have been taken on board. They also noted the potential adverse impact of extensive bottom culture of oysters on the foraging resources of Common Scoter in outer Donegal Bay. There is also reference to the risk of additional licensing of oyster trestles in the Mountcharles-Eddrim Estuary in relation to the Sanderling. It welcomed the survey work, taking place Winter 14/Spring 15, to further inform the interactions of aquaculture on certain listed species. Any decision concerning the awarding of such licences should be informed by an updated assessment incorporating such survey findings. This application is located in Inner Donegal Bay rather than Mountcharles-Eddrim areas and is not impacted by the above concerns.

An Taisce: Questioned the Ministerial determination that an EIS is not required, referring in particular to the cumulative impacts of aquaculture on protected habitats and species not being assessed. However, such an assessment was carried out and documented in the report of the Article 6 Assessment of Aquaculture and Fisheries in Inner Donegal Bay. A cumulative assessment was conducted and was based upon current scientific literature and guidance from NPWS. The impact of current and additional shellfish activities on the

Conservation Features of Interest in the Natura sites in question were considered, for the most part, non-disturbing.

An Taisce also cited the risk of proliferation of non-native species (*C. Gigas*) on habitats as a consequence of their culture in the bay. The Department's scientific advisors are unaware of any instances (anecdotal or scientifically validated) where displacement of the native oyster by the pacific oyster has been proven or documented. The AA outlined the potential risks inherent in the culture of *C. Gigas* and identified a primary mitigating factor (use of triploid seed) which greatly reduces the risk of successful reproduction.

Marine Institute: No objection to the renewal of this licence.

Commissioner of Irish Lights: No objection to the renewal of this licence.

Údarás na Gaeltachta: No objection to the renewal of this aquaculture licence.

### **Public Consultation**

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 28<sup>th</sup> July, 2014. The application and supporting documentation were available for inspection at Donegal Town Garda Station for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were no objections received from the public consultation process.

## **6.0 CRITERIA IN MAKING LICENSING DECISIONS**

The licensing authority, in considering an application, is required by statute to take account, as appropriate, of the following points and also be satisfied that it is in the public interest to license a person to engage in aquaculture:

- (a) the suitability of the place or waters

*Scientific advice is to the effect that the waters are suitable.*

- (b) other beneficial uses of the waters concerned

*Public access to recreational and other activities can be accommodated by this project. Aquaculture appropriately licensed can co-exist with leisure activities.*

- (c) the particular statutory status of the waters  
i) Natura 2000

*The sites are located within a Natura area (i.e. in a Special Area of Conservation and Special Protected Area). An Article 6 Assessment has been carried out in relation to aquaculture activities in Donegal Bay.*

*The Appropriate Assessment concluded that the majority of activities, at current*

*and proposed or likely future scale and frequency of such activity, including the proposed activity at these sites are consistent with the Conservation objectives for the SAC and SPA. A reference was made to the risk of disturbance to the Harbour Seal by increased licensing of inter-tidal oyster trestle culture. Seal numbers within the SAC appear stable and a certain degree of habituation or tolerance has occurred to shellfish aquaculture activities in certain areas. It is likely, given the location of the proposed aquaculture activity, that interaction with known seal (resting) sites will be low. This is concluded on the basis that the resting sites identified are considered of relatively low sensitivity due to the degree of exposure (relatively high) and the low abundance of seals observed at the sites.*

(ii) Shellfish Waters

*The sites are located within Donegal Bay Shellfish Designated Waters.*

*Oysters in these waters currently have a “B” classification.*

- (d) the likely effects on the economy of the area  
*Aquaculture has the potential to provide a range of benefits to the local community such as, attraction of investment capital, development of support services etc.*
- (e) the likely ecological effects on wild fisheries, natural habitats, flora and fauna  
*The Department of Arts, Heritage and the Gaeltacht (DAHD) comments on ecological effects on wild fisheries, natural habitats, flora and fauna are covered under paragraph 5.0 (Consultation and Public Comment). No significant issues arose regarding wild fisheries.*
- (f) the effect on the environment generally
  - (i) *The Minister has already determined that an Environmental Impact Statement is not required for this project (See Declaration in Annex 3).*
  - (ii) *The DAHG have raised no objections to the development from an underwater archaeological perspective.*

## 7.0 RECOMMENDATION

This renewal application for Aquaculture Licences has been subject to a rigorous examination and a positive recommendation is based on the best advice available.

It is recommended that the Minister:

approves the granting of the renewal of 3 Aquaculture Licences (**Annex 1**) to [REDACTED], Co. Donegal for a period of ten (10) years for the purpose of cultivating Pacific Oysters using bags and trestles in accordance with the terms and conditions of the attached draft Aquaculture Licences. As there are 3 sites included in the application, a separate licence will issue in respect of each site.

## 8.0 REASONS FOR DECISION

The Minister for Agriculture, Food and the Marine is required to give public notice of both the licensing determination and the reasons for it. To accommodate this, it is proposed to publish the following on the Department's website, subject to the Minister approving the above recommendation:

“Determination of Aquaculture/Foreshore Licensing application (renewal) – [REDACTED]

*XXXX has applied for further authorisation (renewal) for the cultivation of Pacific Oysters using bags and trestles on the inter-tidal part of the foreshore on 3 sites ([REDACTED] [REDACTED] and [REDACTED]) in Donegal Bay, Co. Donegal.*

*The Minister for Agriculture, Food and the Marine has determined that it is in the public interest to grant the licences sought. In making his determination, the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997 and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with statutory provisions. The following are the reasons and considerations for the Minister's determination to grant the licences sought:-*

- a) Scientific advice is to the effect that the waters are suitable;*
- b) Public access to recreational and other activities can be accommodated by this project;*
- c) The sites are located within a Natura area (i.e. in a Special Area of Conservation and Special Protected Area). An Article 6 Assessment has been carried out in relation to aquaculture activities in Donegal Bay. The Appropriate Assessment concluded that the majority of activities, at current and proposed or likely future scale and frequency of such activity, including the proposed activity at these sites is consistent with the Conservation Objectives for the SAC and SPA;*
- d) The sites are located within Donegal Bay Shellfish Designated Waters;*
- e) The proposed development should have a positive effect on the economy of the local area;*
- f) An EIA screening assessment was carried out and it concluded that the environmental effects from the proposed activity will not be significant;*
- g) There are no effects anticipated on the man-made environment heritage of value in the area;*
- h) No significant effects arise regarding wild fisheries;*
- i) In relation to natural habitat/flora and fauna populations, the Licensing Authority's Appropriate Assessment Conclusion Statement declares that the proposed licensed activities are not likely to have a significant effect on the integrity of Donegal Bay SAC, Donegal Bay SPA and Durnesh Lough SPA.”*

Submitted for approval, please.

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Aquaculture and Foreshore Management Division

13th January 2015

## APPENDIX 3

### Recommendation to grant a Foreshore Licence

██████████, Higher Executive Officer

██████████, Asst. Principal

██████████, Principal Officer

██████████, Asst. Secretary

Rúnaí Aire

#### 1.0 DECISION SOUGHT

The Minister's determination is requested please in relation to the application for 3 Foreshore Licences from ██████████, Co. Donegal for 3 sites in Donegal Bay, Co. Donegal, in which he proposes to conduct aquaculture.

#### 2.0 BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Foreshore Submission) and submission above (Aquaculture Submission), which refer to the same sites.

The Foreshore Licence allows for the occupation of the particular area of foreshore while the Aquaculture Licence defines the activity that is permitted in this area. The continuing validity of each licence is contingent on the other licence remaining in force.

### **3.0 APPLICATION FOR A FORESHORE LICENCE**

An application for a Foreshore Licence has been received from the applicant/s referred to at 1.0 above (in conjunction with an Aquaculture Licence renewal application), relating to the occupation of the foreshore associated with the Aquaculture Licence application which covers 3 sites totalling 3.643 hectares (numbered [REDACTED], [REDACTED] and [REDACTED] – see **Schedule 1**).

### **4.0 LEGISLATION**

Section 3 of the Foreshore Act, 1933 gives power to the Minister to license the use of foreshore, if he is of the opinion that it is in the public interest to do so.

### **5.0 CONSULTATION AND PUBLIC COMMENT**

The application was sent to the Department's technical experts, and was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

This application was also sent to the Department of the Environment, Community and Local Government (DECLG) in accordance with subsection (1B) of Section 3 of the Foreshore Act, 1933, which requires consultation between the Minister for Agriculture, Food and the Marine and the Minister for the Environment, Community and Local Government. Whilst aquaculture legislation requires certain statutory bodies to be notified of an aquaculture application, no other statutory bodies are prescribed consultees under fisheries related foreshore legislation.

Comments from DECLG: There were no objections received from a water quality or foreshore perspective.

#### **Technical Consultation**

Engineering Division: No objection to this development.

Marine Survey Office: No objection to the renewal of this development.

Sea Fisheries Protection Authority: No objection to this licence renewal.

#### **Public Consultation**

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in on 28th July, 2014. The application and supporting documentation were available for inspection at Donegal Town Garda Station for a period of 4 weeks from the date of the publication of the notice in the newspaper.

There were no objections received from the public consultation process.

## 6.0 CRITERIA IN MAKING LICENSING DECISIONS

The Minister, in considering an application for a Foreshore Licence, may, if satisfied that it is in the public interest to do so, grant such a licence.

Section 82 of the Fisheries (Amendment) Act, 1997 stipulates that the Minister, in considering an application for a licence under the Foreshore Acts, which is sought in connection with the carrying on of aquaculture pursuant to an Aquaculture Licence, shall have regard to any decision of the licensing authority in relation to the Aquaculture Licence.

An EIA Screening Assessment was carried out by the EIA Screening Group (comprising of technical experts and Department officials) and it concluded that the environmental effects from the proposed activity will be minimal and not significant and that an Environmental Impact Statement is not required for this project (See **Assessment in Annex 3**).

## 7.0 RECOMMENDATION

It is recommended that the Minister:

approves the granting of 3 Foreshore Licences (**Annex 2**) to [REDACTED], Co. Donegal for 3 sites in Donegal Bay, Co. Donegal for a period of ten (10) years for occupation of the site for the carrying out of aquaculture activities as defined in the Aquaculture Licence, and in accordance with the terms and conditions of the attached draft Foreshore Licence. As there are 3 sites included in the application, a separate licence will issue in respect of each site.

Submitted for approval, please.

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[REDACTED]

Aquaculture and Foreshore Management Division

13th January 2015



