

Independent Review of Aquaculture Licensing

C/O Deirdre Morgan – Secretary to the Independent Review Group

Department of Agriculture, Food and the Marine

National Seafood Centre

Clonakilty, Co. Cork

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A chairde

As per the Minister's invitation and following the terms of reference set out, please find below my observations on the Review of the Aquaculture Licensing process and associated legal framework.

As an overarching comment I believe that a stronger emphasis must be made (i) on environmental and ecological considerations, and (ii) on the views of local communities along the coastline. I would suggest that the awarding of licenses to take over large areas of public strand MUST only be done following a comprehensive Environmental Impact Assessment/Statement (EIA/EIS) which would incorporate some of the concerns outlined above and below.

1. Deliver licence determinations in a timely manner, having regard to international best practice and applicable EU and national law.

The timeline from submission of an application, through to public notification and ultimately decision making stage is far too long and needs to be addressed with very clear/transparent – and drastically reduced - timeframes for each step of the process.

A) Submission of application through to public notification stage

The delay from applications being made to the Department through to public notice being served is causing much annoyance and uncertainty for local communities

Currently, applications from as far back as 2011 are only now having their public notices served. This has meant that there is a lag of approx. 5 years whereby local communities are living in uncertainty regarding whether an application is going to be formally followed up on. The direct impact of this is that local communities are in some cases postponing or abandoning investment decisions in local enterprises – particularly tourism/small fishing enterprises – as they are unwilling to take upon themselves a risk of making an investment which could be severely undermined should an aquaculture license be granted.

I would suggest that if someone puts forward an application to D/AFM they should have a 6-month window to publish the public notification of their application/intentions from the initial date of application being submitted to the Department or else their application is considered to be null and void. This six-month period will give ample time for all of the relevant assessments – most notably environmental assessments - to be undertaken.

By implementing a clear schedule/timeline for the application process means that all parties that may be affected are aware of the timelines involved and can take all the relevant actions/steps in

a timely manner to ensure that the interests of ALL community/coast users are being borne in mind.

B) Public notification through to decision stage

Following public notice being advertised, from the closing date for observations/submissions, there should be a clear deadline of 6-8 weeks max. for a decision to be made. At the minute, local communities – and I suspect the developers - are in limbo awaiting the decision. As reference above, I am aware that the uncertainty is leading to a delay in an investment being made in a local tourism initiative due to concerns that an aquaculture license will be granted.

I am aware of current applications that were originally submitted in 2011/2012, only having their public notice served in late 2016. As mentioned above, this is unacceptable. However, adding further uncertainty is that following the public notification process and submission of observations and submissions, there is no indication of how long both the developer and the local communities affected have to wait before a decision is made. This uncertainty is causing much hardship for all involved and must be addressed.

Setting out clear – and much more concise - timelines for the entire application process will help to alleviate the stresses and uncertainties facing both local communities and developers alike.

C) Awarding of licenses without appropriate checks for relevant licenses/permissions/ability to operate

Regardless of the timelines in question, all efforts must be made to ensure that applications are accompanied by all relevant permissions/facilities required to run a successful operation. Licenses should not be awarded to developers who do not have the required facility (or planning permission yet to be obtained for required facility) to process the aquaculture produce. Failure to have such a regulation means that a developer can be granted a license to grow/harvest oysters on an industrial scale without the required facilities.

All aspects of a proposed enterprise should be considered during the application process (production/processing facilities, access, suitability of site, financing, etc.) to ensure that a situation does not arise where a developer installs a large-scale aquaculture operation without the appropriate back-up/facilities. There has been evidence of such projects where permission has been granted to developers, oyster trestles being laid out on a strand, the enterprise failing due to poor planning and lack of adequate processing facilities and the operation then being shutdown with trestles being left to rust and rot on the shoreline.

2. Support achievement of the actions and priorities of *Food Wise 2025* and the *National Strategic Plan for Sustainable Aquaculture Development*;

While progress towards achievement of the actions/priorities of *Food Wise 2025* may be commended by those in the relevant sectors, these goals should not be pursued at all costs – specifically not to the detriment of the local environment/ecology, and also not to the detriment of other local economic drivers - most notably the tourism industry.

These points would be covered by ensuring that an EIS was carried out for each application.

3. Facilitate enhanced transparency in the licensing process for all stakeholders;

There are real frustrations evident amongst local communities on the lack of transparency – and thus a lack of opportunity to engage - in the entire application process.

Public notification:

Signage - There must be a sign of at least A3 size erected on the nearest recognised regional/local road to allow the local community a fair chance to be notified of the development

Local notices - I would also propose that a notification be served in all local Post Office's within a 10km radius – or if no Post Office present within the 10km radius, the notice to be served in the nearest Post Office branch - of the proposed site. The current process means that compliance with the regulations allows for a notice to be served in a Garda barracks – often not even close to the proposed development site and which will most likely never be viewed by the local community. In rural communities the Post Office network is the hub of social activity and interaction and is likely best-placed to inform rural communities on such proposed developments.

There has been a growing anger amongst local communities in recent years due to the lack of consultation, engagement and consideration of their views in the aquaculture licensing process. This must be addressed as a matter of urgency to avoid further anger/unrest in rural coastal communities.

Again, I would suggest that an EIS be a basic requirement for all aquaculture license applications as this would allow for full community engagement and consideration of all relevant aspects (environmental, community, heritage, etc.).

4. Ensure legally robust licence determinations having regard to EU and national law.

I have very real and significant concerns over the use of “Ministerial determination” when deciding if an EIS is required or not regarding an aquaculture license application.

The aquaculture licensing process MUST make a priority of compliance with ALL relevant EU/National legislation – most notably environmental legislation, habitats Directive, Birds Directive, etc.

This concern is backed up by a recent ruling of the European Court of Justice. As stated in the Department of Arts, Heritage and the Gaeltacht document detailing the “*Judgment of the Court of Justice of the European Union in Case C 418/04 Commission v Ireland ‘The Birds Case’*”, the European Court of Justice – in the context of the Birds Directive found that Ireland “**did not meet the required standard regarding the level of protection being achieved in SPAs**” by – amongst other things – “**not requiring appropriate assessment for certain types of activities including aquaculture.**” This must be addressed to ensure that the unique and pristine environmental and ecological conditions that prevail in coastal communities – such as that in west Donegal – are upheld.

There is a very real and significant concern to be raised over the appropriateness of Minister AFM solely having the ability to offer Ministerial determination over individual applications.

For all aquaculture license applications – or at least at a very minimum all aquaculture license applications in an SAC - an EIS MUST be carried to ensure environmental/ecological characteristics/conditions are upheld.

I would also suggest that the application process/regulations MUST NOT be implemented to favour the developer/industry at all costs as currently appears to be the situation (one must only

look at the fact that the cost of an application is minimal at less than €100, yet the cost of an appeal for a local community is substantially higher).

I sincerely hope that this review identifies and takes on board the views of the many stakeholders – many of whom will not have even been aware of this review – and puts local communities at the heart of the application and awarding processes going forward.

Yours in hope

Ben McGonagle

