



Kilcatherine, Eyeries, County Cork
<http://www.friendsoftheirishenvironment.org>

Independent Aquaculture Licensing Review - Public Consultation 2017

We welcome this unique opportunity to address the Independent Aquaculture Licensing Review Group established by the Minister to review the process of licensing for aquaculture and its associated legal framework.

Friends of the Irish Environment was established in 1997 and seeks to monitor the full implementation of, and assist in the development of, European law and to work for changes in the Irish planning and environmental regulatory regime that will protect the environment and promote sustainable development.

Sustainable development can only be achieved through the transparent implementation of decisions based on the best scientific advice available.

We ask how this can be achieved when the structure of the Department gives controls of all elements of the licence assessment process to its Fisheries Division.

The Department's Engineering Division, the Department's Licensing Division, the Marine Institute and the Sea Fisheries Protection Authority (SFPA) are all controlled by the Fisheries Division of the Department, thus undermining the advisory and regulatory duties of these agencies.

The Marine Institute and the SFPA operate under statute and within the remit of the Department of Agriculture, Food and the Marine. The scientific work of these agencies underpins Department policies on sea fisheries and aquaculture and must be strictly evidence-based. Despite this, the Department has allocated

the responsibility for managing the operating budgets and staffing resources of both of these agencies to its Fisheries/Marine Division, the same division whose primary function is industry development.

This situation has given rise to considerable public concern about the independence of these agencies. This concern is well-founded as, despite the legislation establishing the agencies as independent bodies, the Department's actions in placing the governance and resourcing of these agencies under the control of the Department's Fisheries Division, rather than one of the many non-fisheries Divisions, undermines the independence of these agencies.

It perpetuates a real and perceived conflict of interest and enforces an inadequate separation of functions within the Department. This is an issue of significant public interest.

We ask the Review Group to consider, for example, the issue of overstocking at Marine Harvest sites which has been reported continually and emphatically by the Marine Engineering Division's Fin Fish Farm Inspection Reports from 2012 onward and about which no legal action has been taken by the Department.

These licences are 'dead' and cannot be amended. The company can cite commercial reasons for such overstocking - some of them beneficial on animal welfare grounds as in the extra space per fish required under organic regulations – but any such amendment must require assessments to determine its environmental impact.

The issue of continued and gross overstocking at Marine Harvest's sites in the south west is well documented [See References.] We have examined the Marine Fish Farm Inspection Reports which confirm overstocking at Marine Harvests sites in the south west continue unabated from 2012 to date, in spite of the Marine Engineering Division's explicitly reports and requests for support in enforcing licencing conditions. [Other reports confirmed breaches of marine safety regulations, missing navigation lights and reflectors, cages outside their licensed areas, and ignored warning about the state of the Gerahies installation that may have contributed to the loss of 220,00 fish in February 2014.]

In 2016 the source of the overstocking – the smoult supply from Marine Harvest's site at Lough Alton in County Donegal which supplies the company with 70% of its smoult requirements – was determined to be in repeated and gross breach of its [valid until 2017] licensed capacity. In July 2016 Principle

Officer of the Aquaculture and Foreshore Management submitted for approval a recommendation that the licence be rescinded, providing a detailed and comprehensive summary of the scientific reasons for the recommendation.

As the basis of the facts of the case in relation to the overstocking were not disputed by the company, the Principle Officer concluded 'it could be reasonable be stated that the Company knowingly breached the terms and conditions of its licence to a substantial degree for clear commercial gain.'

In September 2016 the Assistant Secretary General advised against the recommendations of the Principle Officer of the Aquaculture and Foreshore Management Division to rescind the licence for over-stocking. A Ministerial decision to rescind the licence would have a 'disproportionate' commercial impact, he argued.

The Secretary General, upon asking if there was an assessment of the impact of the overstocking on the environment was told by the Assistant Secretary General that not only was there 'no assessment of the impact on the environment', but that the Department was 'not sure we are equipped to carry out such an assessment'. The decision not to prosecute but to extend the licence was thus taken in spite of an admitted lack of any scientific or technical assessment by the Department.

And yet the detailed 30 page report submitted to the Assistant Secretary General summarised in its body text and provided documentation in the tabs showing that Donegal County Council informed the Department that Lough Alton site has been 'been consistently [emphasis in original] in breach of their licence conditions' and 'persistent' requests for an action plan to address the breaches had been met with a refusal by the company who 'cited economic reasons for not implementing the treatment facilities which their current production rates would demand in order to achieve compliance'.

The Executive Scientist at the Council's Central Laboratories had actually pleaded to the Department on 4 May, 2016:

'If there is any mechanism within your aquaculture licence to limit production capacity, which will positively act on compliance, we would welcome such a development.'

In spite of the fact that Condition 1 of the Licences cites compliance with the Effluent Discharge Licence granted by Donegal County as part of this condition and documentary evidence of consistent breaches, the Assistant Secretary General informed the Secretary General 'It is also not clear that there was any impact and none appears to have been noticed/recorded.'

As the Principle Officers Report pointed out, 'the overriding obligation of the Department is to take action according to the obligations set out in the legislation', adding that 'Anything less than this will seriously undermine the States regulatory system in relation to marine aquaculture.'

A licensing system cannot implement its statutory duty when the authority deliberately ignores scientific evidence of the impact of such breaches of conditions when they are provided with it – and which by definition pose a danger to the environment.

Nowhere in his briefing to the Secretary General does the Assistant Secretary General advise of opportunity to control the gross and repeated overstocking throughout Marine Harvest's operations in Ireland by rescinding or enforcing the terms of the licence, in whole or in part.

This decision, characterised by the Principle Officer as 'an important case with potentially significant implications for the company and also for the Department's licensing regime' - was made in spite of the current Minister's predecessor's assurances to the European Commission Deputy Clare Daly of a 'substantial enhancement of the existing regulatory procedures'.

In April 2014 Ireland provided the Commission with a Programme of Measures [POM] indeed to insured compliance with the ECJ case C-418/04. The Department ensured the that 'A dedicated Monitoring and Compliance Unit has been established within the Department to strengthen the adherence to the terms and conditions of all Aquaculture Licences. The Unit brings greater coherence to the existing monitoring system leading to enhanced monitoring and regulatory standards, practices and procedures. A structure for the systematic audit of licence conditions has been put in place. This is a very substantial enhancement of the existing regulatory procedure and supplements all other inspections of sites.'

On June 15, 2015 he informed Deputy Daly in a written Parliamentary reply that 'My Department has identified the issue of possible overstocking, although not

widespread, as a key operational priority over the next twelve months for the Monitoring and Compliance Unit of my Department's Aquaculture Licensing Division.'

Based on the files we have examined and the Department's answers to subsequent Parliamentary Questions tabled by Deputy Daly in recent months, the following conclusions can reasonably be made:

Despite protestations to the contrary, the Department does not, even at the highest level, separate its licence and regulatory role from its industry development role which has acted to the detriment of environmental protection and its statutory role to act in the 'public interest'.

Despite legislation establishing the Sea Fisheries Protection Authority (SFPA) and the Marine Institute as independent agencies, the Department has delegated authority for the operating budgets and staffing resources of these two agencies to its Fisheries Division, whose main function is industry development.

The work of these two agencies is central to the independent regulation of aquaculture through their regulatory and advisory roles. Their work includes:

- scientific assessment of salmon farm licences,
- regulation of fish movements by aquaculture operators,
- operation of the State's sea lice monitoring programme,
- responsibilities under the Residues Directive for food safety
- categorisation of suitable waters for certain aquaculture activities.

The intended actual independence of these two agencies is underscored by their establishment by legislation as independent agencies. However, the delegation by the Department of control of the operating budgets and staffing resources of the agencies to its Fisheries Division instead of one of the many non-fisheries Divisions within the Department has created, by definition, a conflict of interest for both the agencies and the Department. The respective roles of the Fisheries Division and the two agencies mean that the situation cannot be otherwise, and the conflict of interest exists, *a priori*.

These arrangements make the necessary and appropriate checks and balances incumbent on the Department in the exercise of its functions impossible. It undermines the advisory and regulatory role of the two agencies and thwarts the legislative intentions of the Oireachtas.

The procedures applied by the Department are, by definition, compromised. It is not a question of the scientific and technical competence of the agencies involved but rather who controls them.

The conflict of interest that we have outlined in this submission between the role of the Department in assisting the development of the industry and the role of the Department in regulating that industry unless addressed will undermine any attempt by the Minister's to achieve his stated intention in establishing this review to 'ensure legally robust licence determinations' and seek 'a transparent licensing process which complies with all EU and national legal requirements and protects our oceans for future generations.'

*Prepared by Tony Lowes on behalf of Friends of the Irish Environment
9 February 2017*

References:

Lough Alton
Licence T12/93-3

Fin Fish Inspection Report

http://www.friendsoftheirishenvironment.org/images/pdf/MARINE_FISH_FAR_MS_INSPECTIONS_REPORT.pdf

A recent examination of the 2015 -2016 Reports has confirmed the continued overstocking recorded in this Inspection Report

Programme of Measures [POM]

In April 2014 Ireland provided the Commission with a Programme of Measures [POM] indeed to insured compliance with the ECJ case C-418/04 and the closure of the CHAP and PILOT investigations into aspects of salmon farming in Ireland. The POM states: 'A dedicated Monitoring and Compliance Unit has been established within the Department to strengthen the adherence to the terms and conditions of all Aquaculture Licences. The Unit brings greater coherence to

the existing monitoring system leading to enhanced monitoring and regulatory standards, practices and procedures. A structure for the systematic audit of licence conditions has been put in place. This is a very substantial enhancement of the existing regulatory procedure and supplements all other inspections of sites.'