

Marine Harvest Ireland

Submission to the Aquaculture Licence Review Group

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Contents

1. Introduction / Background

- 1.1. The Global Context
- 1.2. The EU Context
- 1.3. The Irish Context
- 1.4. Current Challenges
- 1.5. Our Aspiration for the Industry

2. Licence Application Process

- 2.1. Application Decision Timeframe
- 2.2. Timeframe for Appeal
- 2.3. Requests for Information During the Application Process
- 2.4. Pre-Application Meeting
- 2.5. Identifiable Point of Contact

3. Licence Structure

- 3.1. Licence Tenure
- 3.2. Production Parameter
- 3.3. Licence Format
- 3.4. Updating Licences to Best Available Technology & Practice
- 3.5. Renewals

4. Administration & Resources

- 4.1. Separation of Development & Compliance
- 4.2. Additional Biological Expertise
- 4.3. Resource Allocation
- 4.4. Licence Appeals
- 4.5. Cross-Departmental Policy Direction

5. Inspection & Compliance

- 5.1. Update Protocols
- 5.2. Marine Institute's role in Inspection & Compliance
- 5.3. Proportionate Sanctions
- 5.4. Inspection

6. Implementation of Review Recommendations

- 6.1. The Implementation Imperative
- 6.2. Avoiding New Legislation

7. Summary Recommendations

1. Introduction / Background

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Marine Harvest Ireland (MHI) welcomes Minister Creed's establishment of an independent Aquaculture Licensing Review Group to review the process of licensing for aquaculture and its associated legal framework, in keeping with actions identified in Food Wise 2025 and Ireland's National Strategic Plan for Sustainable Aquaculture Development (NSPSAD) 2015.

MHI welcomes the Minister's statement that: "Our aquaculture sector has enormous potential to sustainably grow its production of seafood to meet the opportunities presented from growing world demand for safe, sustainable seafood. Ireland's NSPSAD aims to sustainably grow our production across all species by 45,000 tonnes. To achieve that ambition, we need to revamp our aquaculture licensing process and its associated legal frameworks, so that an operator can have a decision on an aquaculture licence application within timeframes that compare favourably to our competitors. But any changes must ensure that all stakeholders can participate in a transparent licensing process and have confidence that any licensing decision complies with all EU and national legal requirements and protects our oceans for future generations." ¹

1.1 The Global Context

Over the course of the past 20 years, aquaculture has been the fastest growing food sector globally. According to figures from the EU commission, global aquaculture production has been growing by almost 7% per year.² This demand is being driven by global population growth. It is estimated that an additional 40 million tonnes of seafood will need to be produced per annum by 2030 in order to keep pace with demand.³ The majority of the world's fisheries are currently approaching or above sustainable exploitation limits. As a result, aquaculture must be the source of future global growth within the seafood sector.

1.2 The EU Context

As the communication from the EU Commission on the strategic guidelines for the sustainable development of EU Aquaculture outlines, the available data shows "a growing gap-estimated at 8 million tonnes-between the level of consumption of seafood in the EU and the volume of captures from fisheries."⁴ In response to this deficit, the EU has outlined a number of policy initiatives which are designed to facilitate the development of the sector in the medium to long term. In its strategic guidelines, which are designed to assist Member States in setting their own national aquaculture targets, the EU Commission has identified the need for Member States to simplify their administrative procedures in order to ensure the development and competitiveness of the aquaculture sector.⁵ The EU Commission's Directorate General for Maritime Affairs and Fisheries stated that the guidelines...will help "to promote an industry that is economically, socially and environmentally sustainable and provides consumers with healthy, high-quality seafood".⁶

¹ Press Release, January 3rd 2017, Creed Appoints Independent Aquaculture Licensing Review Group
<https://www.agriculture.gov.ie/press/pressreleases/2016/december/title,104663,en.html>

² European Commission
https://ec.europa.eu/fisheries/cfp/aquaculture_en

³ 2025 Agri-Food Strategy Background Material-Seafood
<https://www.agriculture.gov.ie/2025strategy/>

⁴ Section 1 of the Strategic Guidelines for the sustainable development of EU aquaculture
<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1477555805378&uri=CELEX:52013DC0229>

⁵ Section 3.1 of the Strategic Guidelines for the sustainable development of EU aquaculture
<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1477555805378&uri=CELEX:52013DC0229>

⁶ Commission calls for cooperation to boost sustainable aquaculture in Europe-

1.3 The Irish Context

Over the past eleven years, Irish governments have commissioned seven separate reports which have noted the potential of Ireland's aquaculture industry. Many of them have set ambitious growth targets to develop the sector. These reports include:

- [2006-Steering a new Course: Strategy for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013](#)
- [2006-Sea Change A Marine Knowledge, Research & Innovation Strategy for Ireland 2007-2013](#)
- [2010-Food Harvest 2020](#)
- [2012-Harnessing our Ocean Wealth](#)
- [2015-Foodwise 2025](#)
- [2015-National Strategic Plan for Sustainable Aquaculture Development \(NSPSAD\)](#)
- [2017-Realising our Rural Potential: Action Plan for Rural Development](#)

Little headway has been made in practical terms to action these recommendations, the most pressing of which from our viewpoint is a review of the aquaculture licensing system. In reality, Irish salmon production has fallen from a peak of 24,500 in 2001 to 12,500 tonnes today. It is evident from an examination of the targets outlined within the Food Harvest 2020 report that Ireland to date will fail to meet the growth targets of that report.⁷ Current salmon production figures demonstrate a continued backward trend within what such otherwise be an expanding industry in the context of growing global demand and steady price increases. In the domestic context, an inability to meet growing demand from indigenous processors is driving Irish smoke houses and other value adding processors to import farmed salmon from other countries. Against all international trends, Irish aquaculture is shrinking.

1.4 Current Challenges

Production

At present, the aquaculture industry in Ireland is underperforming as a direct consequence of the inefficiencies within the current licensing system. Ten years ago, Ireland was in a position to produce nearly 25,000 tonnes of farmed salmon. Despite Ireland's farmed salmon industry currently being licensed to produce 35,000 tonnes per annum, the industry is only in a position to produce a third of that volume (some 12,500 tonnes per annum) as a substantial amount of the licences that make up Ireland's 35,000 tonne capacity are no longer fit for purpose due to the outdated wording and other limiting parameters.

Employment

Looking to the Communication from the EU Commission on the strategic guidelines for the sustainable development of EU Aquaculture, it is predicted based on current labour productivity that "each percentage point of current EU consumption produced internally through aquaculture would help create between 3,000 and 4,000 full-time jobs".⁸ As aquaculture predominantly takes place along remote coastal areas, it acts as a vitally important source of employment and economic activity for rural communities. Unfortunately, the lack of development and growth within the aquaculture industry has meant that attracting employment continues to be challenging. Our salmon processing plants are no longer operational across a five day working week let alone on a year round basis.

http://europa.eu/rapid/press-release_IP-13-381_en.htm

⁷ Please see pg. 52 of the Food Harvest 2020 report for the growth targets for 2020-
<https://www.agriculture.gov.ie/media/migration/foodindustrydevelopmenttrademarkets/agri-foodandtheeconomy/foodharvest2020/2020FoodHarvestEng240810.pdf>

⁸ Section 1 of the Strategic Guidelines for the sustainable development of EU aquaculture-
<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1477555805378&uri=CELEX:52013DC0229>

Commercial

85% of Irish salmon is exported to high value markets, mainly as premium organic products. The more value-added a product is, the more reliable its supply must be as it is difficult for customers to substitute alternative product. However, the constraints exerted by the current licensing system on farming capacity is making it increasingly difficult for Irish suppliers to maintain a consistent supply to our international customers which in turn is undermining Ireland's international standing as a reliable salmon supplier and enabling salmon producers in other countries to overtake Irish producers, especially at the premium value added end of the market. The lack of reliability and consistency of Irish salmon supply is working against the efforts of the Department and its agencies in developing value adding in the fisheries sector.

1.5 Our Aspiration for the Industry

As evidenced by the Food Harvest 2020 report, the growth of the aquaculture industry has been hampered due to both licensing and funding difficulties. A reformed licensing structure will enable the Irish aquaculture industry to at least return to the previously achieved level of output of 25,000 tonnes in the medium term with a long term ambition of seeing the industry fulfil its current licenced capacity of 35,000 tonnes.

Marine Harvest Ireland's parent company Marine Harvest ASA has targeted a €22 million investment in our operations in Ireland. We believe that such an investment will generate in the region of 250 direct jobs, in addition to the 290 we currently employ and would facilitate the government in achieving its strategic objectives of building a blue economy. Regretfully, the investment cannot be made in the absence of regulatory certainty.

We believe that if the recommendations outlined within this submission are implemented then the operating environment in Ireland might begin to provide the regulatory certainty necessary for that investment to be made.

If Ireland is to realise its growth potential and achieve its stated aim of increasing aquaculture output to 45,000 tonnes across all species as outlined within the NSPSAD, regulatory changes must be made. We hope the instigation of this review demonstrates a commitment by the State to make the improvements necessary for the sector to achieve the government's growth targets. That requires more than a successful outcome of this review process, it also requires the effective implementation of the recommendations agreed.

2. Licence Application Process

The current licence application process is not responding with the speed required for any business to commit to an investment decision on aquaculture development in Ireland. Issues include;

- the lack of identifiable deadlines for the progress of an application through the approvals process through to a determination,
- an open ended approach to information gathering, and
- difficulty in accessing information on the progress of a licence application.

2.1. Application Decision Timeframe

Marine Harvest's most recent application for an aquaculture licence took seven years to achieve a determination and is still not concluded as it is subject to appeal with ALAB. Marine Harvest began the required stakeholder scoping exercise in July 2009 before lodging an initial application and associated Environmental Impact Study (EIS) with the licensing Authority in June 2011 and a determination was received in September 2015. The application was not in a Natura 2000 area and would not have been impacted by the issues preventing licensing of sites in those areas. It has been appealed and we still await a final decision.

According to guidelines issued by the European Commission for the sustainable development of aquaculture, Member states were invited to reduce the period of time for licensing and additional authorisations necessary to commence business activity to one month by the end of 2015.

Section 13 of the Fisheries Amendment Act, 1997 sets out a four month period to endeavour to determine an application for a licence, once all requirements of the regulations relating to the application had been complied with. Albeit this has not been commenced.

Meanwhile chapter 8 of the National Strategic Plan for Aquaculture Development dealing with aquaculture licensing states that, *"a period of time in the order of 30 weeks is required to finalise licence determinations, after the publication of each Appropriate Assessment Report."*⁹

None of these timelines are formally acknowledged in any documentation from the licensing authority and are certainly not reflective of MHI's experience. Once an application is lodged there are no deadlines imposed on the licensing determination process nor is there any clear path outlined to the applicant.

The publication by the licensing authority of a clear set of timeline steps and an acceptable overall timeframe for a determination are necessary in order to give the application process the transparency and the certainty it requires. This very same recommendation was made by a Government sponsored report in 2006 – *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013*.¹⁰

Recommendation 1 - that the licensing authority publish a clearly defined set of steps assigned to the licence application and determination process with accompanying timeframes to endeavour to meet the four month goal but that guarantees a turnaround from licence application to determination within 12 months.

Currently the aquaculture licensing process holds separate periods of statutory and public consultation, with a requirement for the former to conclude before the latter begins. This requirement seems to be unique to the aquaculture licencing process. Other environmental legislation like the Planning and

⁹ National Strategic Plan for Aquaculture Development, pg. 97

¹⁰ See *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013*, pg. 119

Development Acts expressly allow for notice periods for statutory bodies and the public to run concurrently.

Chapter 8 of the National Strategic Plan for Sustainable Aquaculture Development, which deals with aquaculture licensing, provides a table setting out “*the steps in the licence consideration process*”. It is noted that the steps provided in that table see statutory and public consultation running concurrently.

| | | |
|--------|--|---|
| Step 8 | All applications accompanied by the Appropriate Assessment and EIA pre-screening (or EIS) are sent to Statutory Consultees (this includes NPWS, An Taisce, County Councils, Department of Environment etc) | 9 weeks (incl 6 week consultation period) |
| Step 9 | All applications accompanied by the Appropriate Assessment and EIA pre-screening (or EIS) are sent to Public consultation - allowing members of the public to comment | Runs parallel to Step 8 |

The National Strategic Plan for Sustainable Aquaculture Development, Chapter 8, Aquaculture Licencing, Page 94

Recommendation 2 - that the required notice periods for statutory and public consultation run concurrently.

2.2. Timeframe for Appeal

Given the structure of the aquaculture licensing system in Ireland many applications are appealed to the Aquaculture Licence Appeals Board (ALAB). The efficiency of the appeals process could be improved if the observed the four-month timeframe for determining appeals. If for any reason ALAB is not in a position to meet the four-month timeframe it should issue the applicant with written reasons detailing precisely the circumstances surrounding an extension to this period in addition to outlining a revised date and keeping all parties up to speed on the progress of an appeal.

Recommendation 3 – that the Aquaculture License Appeals Board (ALAB) observe the four-month timeframe for determining appeals. If this is not possible it should issue the applicant with written reasons detailing precisely the circumstances surrounding the need for an extension to this period.

2.3. Requests for Information During the Application Process

The process of information-gathering by the licensing authority seems to be more fragmented, and less efficient, than environmental licensing regimes. It has been MHI’s experience to encounter numerous requests from the licensing authority for additional information to support the licence application.

These additional requests for information significantly extend the timeline for the licence application determination. The consequent delays encountered could have been prevented if the company had clear visibility, in advance, of all the information that was required by the licensing authority in order for it to make its determination on the application.

In a related issue it is sometimes unclear where the responsibility for the aquaculture licensing authority’s brief ends. Often it has required demonstration of licence approval from other State agencies regarding matters that would seem to be outside of the remit of the licensing authority’s consideration i.e. local authority consents in the form of effluent discharge licence and water abstraction licence

MHI recognises that the licensing authority may have a requirement for further information. However, as is the case in other licensing areas, we believe that the licensing authority should only make a second request for further information from an applicant to clarify matters within the applicant's response to the initial request for further information.

Recommendation 4 - that the licencing authority's requests for further information should be limited to two requests and the second should only be necessary to clarify matters arising in the response to the first.

2.4. Pre-Application Meeting

The licence application process can be complex, particularly for any applicant unfamiliar with the system. MHI believes that pre-planning meetings between the licensing authority and the applicant are essential in order for the applicant to seek advice and guidance and for the authority to inform and clarify.

This system operates very successfully across the country as part of the planning process.¹¹ In these scenarios the planning authority advises the applicant of the procedures involved in considering a planning application, including any requirements of the permission regulations etc. The system as a whole is designed to be objective, open and fair. Planners are obliged to explain to potential applicants, the planning authority's policies in relation to particular areas of the county and the considerations taken into account in dealing with particular classes of applications etc.

Planners will advise the person concerned of the issues involved in considering a licence application, including the requirements of the EIS, and should, as far as possible, indicate any particular constraints which may have a bearing on the determination. Such a step would also serve to help the authority manage competing interests for the same or overlapping site locations.

Recommendation 5 – that the licensing authority facilitates a pre-application meeting between itself and the applicant.

2.5. Identifiable Point of Contact

A major point of criticism from industry is the lack of constructive information or feedback from the licencing authority related to the progress of a licence application. No single point of contact with up to date information on the application seems to be available for the applicant providing no visibility on the reason for delays with the application process.

Recommendation 6 – that the licencing authority would assign a specific case officer to each licence application to provide the applicant with a single point of communication and liaison and improve transparency with respect to the progress of a licence application.

¹¹ Section 247 of the Planning & Development Act, 2000 (as amended)

3. Licence Structure

3.1. Licence Tenure

From a commercial perspective, an aquaculture license represents an asset and fundamental "permission to operate" and hence the tenure should be such as to provide regulatory certainty to investors as well as a sufficient planning horizon for operators to prepare viable business plans.

The tenure of operating licences in many other industries are infinite and maintained on the basis of adherence to identifiable parameters with clearly defined scenarios which might trigger a licence revocation. Under the current legislation, aquaculture licenses of a 20 year timeframe are permitted.

This very same recommendation was made by a Government sponsored report in 2006 – *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013*. It recommended that – “aquaculture licences should be extended to a minimum period of 20 years to provide greater security of tenure and so that licences can be used as collateral to raise equity and working capital. This should be done by adopting this policy for new licences being issued and by changing the licence duration as existing licences come up for renewal.”¹²

Recommendation 7 - that Aquaculture licences are provided for a period of at least 20 years with the powers to revoke such a license clearly defined and understood.

3.2. Production Parameter

Most of the aquaculture licences that make up Ireland’s 35,000 licensed aquaculture capacity refer to fish stocking parameters that are out-of-date and contrary to international industry best practice. This makes many of the licences unfit for purpose and goes some way to explaining why the industry is only producing 12,500 tonnes of its 35,000 tonne capacity.

MHI’s existing licences refer to different production parameters ranging from the number of smolts stocked per year to annual harvest tonnage. Neither parameter takes any account of the variable nature of animal husbandry where fish grow and develop to varying degrees over varying timeframes.

Defining the production parameters based on smolt numbers represents a starting point from which results and final tonnage may vary significantly. Adding the parameter of an annual harvested tonnage creates a scenario where fish have to be harvested before maturity or destroyed, neither scenario is commercially or environmentally sustainable. Defining production in terms of annual parameters also takes no account of the varying nature of the rearing cycle which in any scenario will take longer than one year.

To give an example; one existing MHI licence defines the production parameter according to the following smolt input and production levels;

| | Year 1 | Year 2 | Year 3 |
|------------------------------------|---------|---------|---------|
| Maximum Smolt Input | 300,000 | 375,000 | 450,000 |
| Maximum Production (tonnes) | 400 | 500 | 600 |

¹² *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013*, pg. 120

For each of the years outlined in the table the maximum weight the operator would have to harvest the fish at would be 1.33 Kg. This is not a commercial salmon size. The industry norm is a target harvest weight of 4.5 to 5 Kg. This mismatching of smolt numbers with maximum production does not adhere to industry best practice.

International best practice identifies Standing Stock Biomass (SSB) on the site at any point in time as the most appropriate primary regulatory production parameter of an aquaculture licence. It is the biomass present at any time in a site that ultimately determines the effect of the operation on the environment, both in terms of the output (nutrients and organic waste) and the oxygen consumption (carrying capacity of the site) and should replace numbers of smolts stocked per year or tonnes harvested per year.

SSB is the controlling parameter in both Scottish and Norwegian licences and puts the Irish industry on an even footing. With SSB, farmers can manage their fish stock within any growth cycle to suit the requirements of the market, thinning out the stock at intervals to suit market requirements while always adhering to a set SSB. It also allows the operator to cope with unforeseen stock performance and compensate for poor growth by keeping the fish for longer.

The Government sponsored report in 2006 – *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013* made a similar recommendation, “The stocking conditions of all marine salmonid aquaculture licences should be regularised such that limitations are placed on standing stock only,.....”¹³

In 2011, the then Minister for Agriculture, Food and the Marine, Simon Coveney launched new aquaculture and companion foreshore licence templates. In a press release announcing the new templates Minister Coveney promoted “a move to Standing Stock Biomass for finfish as the means of measuring production capacity at an aquaculture site.” He stated that “the new templates contain significant new terms and conditions which are designed to reflect the technical advances that have taken place in the industry and the enhanced environmental protection now required under EU and national legislation.”¹⁴ Inexplicably, the most recent draft aquaculture licence granted to MHI in 2015 did not measure production by SSB.

Recommendation 8 - that finfish production should only be managed and defined according to the Standing Stock Biomass (SSB) on a site at any given time in the production cycle.

3.3. Licence Format

Historically licences have been too descriptive forcing them to become out of date over time. In aquaculture there are several predefined protocols governing a variety of operating activity including but not limited to; Benthic Monitoring, Water Column Monitoring, Pest Control / Sea lice monitoring, Fallowing, Structural Design and site layout.

These are important guidelines and parameters for best practice operation, in the Irish context. Given the importance of these protocols for ensuring best practice operation it should be possible for the licensing authority to have the ability to update these protocols on an ongoing basis.

Although the Engineering protocol was published in 2016 and the Benthic Monitoring protocol was revised in 2008 the majority of these have not been revised since 2000.

¹³ *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013*, pg. 120

¹⁴ Press Release, 5th December 2011, Minister Coveney Launches New Aquaculture Licence Templates
<https://www.agriculture.gov.ie/press/pressreleases/2011/december/title,59997,en.html>

Protocols should be reviewed regularly – per example the one on “fallowing” (resting the seabed) is out of date. With that in mind these protocols should, for the convenience of the licensing authority, be separate to the actual licence, which is a legally binding document, and instead be attached as appendices to the licence. The licence should reference them and require that the operator meets the standard required in all cases but giving the licensing authority the freedom to up-date them, as and when required.

As with many other licensed industry operations, aquaculture licences should cross reference the existing protocols and regulations in the licence but not make those parameters part of the legal licence document.

Recommendation 9 - that the aquaculture licence should consist of a simple template to which conditions are annexed so that they can be managed in a more dynamic way. The licencing authority should identify and clarify a full list of industry protocols and regulations that will be annexed and cross referenced in the licence.

3.4. Updating Licences to Best Available Technology & Practice

Currently MHI holds several long standing licences which have out-of-date parameters that require review and regularisation. However, it has been the company’s experience that even a small change to an existing licence requires the submission of a full EIS and application process.

For example a licence may have been granted in respect of cage technology that no longer represents best available technology which might require a wider sub water level area. It should be possible to regularise this or anticipate and prepare for such a change in the future through a review process that does not involve the complete re-application process.

The purpose of EIS is to describe projects “*in a way, which takes account of their full "life-cycle"*”. Unlike some other industry licences in Ireland, aquaculture licences are not granted for the full lifecycle of the project but are granted on a periodic, renewable basis. However, this does not affect the legal obligation that the EIS must assess the full lifecycle. If an EIS has been submitted for an aquaculture activity, does another EIS need to be submitted when the licence is renewed or reviewed?

Should a full EIS be required to be submitted irrespective of the extent of the amendments sought on review of the licence or whether the change will have significant adverse effects on the environment? Sometimes a particular licence modification might only relate to a commercial term which benefits the environment such as the use of improved mitigation measures.

Recommendation 10 - that it should not be necessary, in accordance with the EIA Directive and ECJ case law, to submit an additional EIS for a licence renewal when the renewal does not include changes which have significant adverse effects on the environment.

3.5. Renewals

At present most aquaculture licences expire after ten years with a full licence renewal required on expiry involving the development of a completely new EIA in spite of the fact that the existing licensee would have been closely monitored on a regular basis and demonstrated an acceptable interaction with the environment over the tenure of the licence. It is the view of the industry that such actual hard data is far more informative than the extrapolation of effects that essentially make up an EIA.

Recommendation 11 - that a licence renewal can be achieved without recourse to a completely new EIS and associated EIA when the renewal does not have changes which have significant adverse effects on the environment.

MHI understand that Appropriate Assessment (AA) is now an integral part of the decision-making process for aquaculture licensing in, or proximate to, designated areas. AA is now a legal requirement under two EU Directives (Habitats Directive - 92/43/EEC & Birds Directive 2009/147/EC). The obligations under the Directives are transposed into Irish law primarily through the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

The Regulations require that the licensing authority must satisfy itself that the licence application will not adversely affect the integrity of the designated area, by reference to its Conservation Objectives.

As part of that *Programme of Measures* (POM) published by the Minister for Arts, Heritage and the Gaeltacht in 2009, the Minister for Agriculture, Food and the Marine, together with the Minister for Arts, Heritage and the Gaeltacht and the Marine Institute, has engaged in a comprehensive multi-annual work programme in relation to Natura 2000 areas relevant to aquaculture to allow for Conservation Objectives to be set by the Minister for Arts, Heritage and the Gaeltacht.

The National Strategic Plan for Sustainable Aquaculture Development (NSPSAD) targeted 2016 as the date for the completion of bay-level appropriate assessment reports by the Marine Institute. MHI understands that the publication by the Marine Institute of the AA report does not, in itself, conclude the overall AA Process. It can only conclude following the approval by the Minister of an “Appropriate Assessment Conclusion Statement” (a statement by the Minister that the proposed aquaculture licensing conforms with the relevant EU Directives).

Recommendation 12 - that the Minister now puts a discrete deadline on when the licencing authority will be in a position to progress outstanding licence renewal determinations in full compliance with the 2011 Regulations.

4.1. Separation of Licensing & Compliance

The Government and the Department's stated objectives for growth in aquaculture will not be realised without a greater Departmental focus on improving the aquaculture licensing process for operators in this country.

Currently the work required for an aquaculture licence determination is undertaken by the Department of Agriculture, Food and the Marine's Aquaculture and Foreshore Management Division (AFMD). Within that division the Marine Engineering Division (MED) is involved in the process of carrying out site inspections, reviewing and examining aquaculture licence applications and environmental impact statements ("EIS"), producing reports on licence compliance and in assessing, reviewing and providing technical advice on foreshore licence and lease applications.

The stated Mission Statement of the Aquaculture & Foreshore Management (AFMD) is to ensure the efficient and effective management of Aquaculture licensing and Foreshore licensing in respect of Aquaculture and Sea Fishery related activities.¹⁵

It has been MHI's experience that the licensing authority's time and resources are heavily focussed on compliance. A clear separation of compliance and licensing resources might provide the focus necessary for the dedicated team within the licensing authority to provide the dynamic necessary to move the industry forward.

An indigenous, export oriented industry looking to avail of growth opportunities needs a dynamic approach to development and regulation. MHI believes that this dynamic could be achieved by the appointment of a dedicated team from within the Department which has a specific remit of achieving the Government stated growth targets via the streamlining of the licencing process.

This very same recommendation was made by a Government sponsored report in 2006 – *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013* and was again included in the Draft Licence Template proposed by the Department in 2010.¹⁶

Recommendation 13 - Separate the licensing and compliance functions within the Department and appoint a dedicated team from within the Department's licensing authority which will have specific responsibility for achieving the streamlining of the aquaculture licencing process.

4.2. Additional Biological Expertise

Aquaculture is a biological business and it is the view of MHI that the aquaculture licensing process needs to have significantly more input from biologists. Issues related to fish husbandry, fish health and the marine ecosystem need the expertise of marine biologists.

It is MHI's experience that Department of Agriculture, Food and the Marine's Marine Engineering Division (MED) is often tasked with a disproportionate level of responsibility for licence review and adjudication.

¹⁵ Mission Statement of the Aquaculture & Foreshore Management (AFMD)
<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/>

¹⁶ See *Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013*, pg. 25

The MED has a significant role to play in the regulation and compliance of marine structures and other structural, physical and engineering related issues but a stronger allocation of expert capability in the areas of biology and marine biology and fish health management (e.g. fish Health management section of the Marine Institute) and are needed to adequately and effectively review licence applications in a timely manner. See section 5.2.

Recommendation 14 - that an increased allocation of resources with competent expertise in the areas of biology, marine biology and fish health management are assigned to the job of determining aquaculture licences.

4.3. Resource Allocation

MHI recognises the significant time, expertise and resources needed to thoroughly and comprehensively review an aquaculture licence application. There can be a requirement for a wide variety of professional expertise in the provision of an effective Environmental Impact Assessment, especially in Natura 2000 areas as well as a requirement for biological advice on particular aspects of an application.

It is understandable that the licencing authority may encounter resourcing issues from time to time. The authority may need to hire outside expertise to assist with particular parts of the licence review and determination especially where bottle necks are identified in the assessment process or where expected response times are going to create unacceptable delays.

In addressing that issue, more complex licence applications may necessitate a higher application fee, as is the case in the area of planning where projects that are adjudicated under the terms of the Strategic Infrastructure Development Act.

Recommendation 15 - that the licencing authority reviews its application fee structure to ensure that its licence review process can be appropriately and adequately resourced to provide licence determinations within the timeframes set out.

4.4. Licence Appeals

Currently the licencing system has an appeal mechanism that is channelled through the ALAB (Aquaculture licence appeals board). In considering an appeal on an application decision ALAB conducts a decision on an application for a licence as if the application had been made to ALAB (ie, a full re-consideration of the issues), though there are some limited exceptions.

MHI believes that ALAB's remit is over-extended and the Board could provide more value to the licencing process if it were to focus its review on the key issues rather than carrying out a full review of all the application particulars and analysis of scientific facts from first principles.

Recommendation 16 - that ALAB's remit is restricted to a review of the licence determination based on the information and evidence provided.

4.5 Cross-Department Policy Direction

As far back as 2006, the Steering a new Course for a Restructured, Sustainable and Profitable Irish Seafood Industry report recommended that *“State Development Agencies introduce and run a sustained, fact based communications programme with the support of industry in an effort to generate greater acceptance of aquaculture as a sustainable and legitimate activity by other stakeholders in the coastal zone.”*¹⁷ This is clearly not happening in Ireland.

Unfortunately, our industry finds itself in the opposite position where it is often the subject of negative commentary from one particular Government agency, Inland Fisheries Ireland. It is difficult to see how the government can effectively achieve its growth ambitions for the sector when one of its agencies, which has a mandate to work “for the protection, management and conservation of Ireland's inland fisheries and sea angling resources” is not supportive of marine based salmon farming.

A clearer more co-ordinated cross-department and cross-agency consensus is needed at government level if the stated national policy of aquaculture development is to be achieved and state resources are to be used to best effect.

Recommendation 17 – that at State level there is cross-department consensus for the Government’s stated policy of achieving sustainable growth of Irish aquaculture.

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| Section 5 | Inspection & Compliance |
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5.1. Update Protocols

Currently the licencing regime relies on a number of protocols to govern the monitoring and compliance within the industry. These include;

1. Benthic Monitoring
2. Water Column Monitoring
3. Sea lice monitoring and control
4. Audit of Operations
5. Fallowing
6. Structural Design

As stated earlier in Section 3.3. these Protocols are important guidelines and parameters for best practice operation, in the Irish context and should be kept up-to-date with the dynamic nature of the industry. Unfortunately, in the Irish context this is not happening. While the Engineering protocol was published in 2016 and the Benthic Monitoring protocol was revised in 2008 the majority of these have not been revised since 2000.

Recommendation 18 - that the aquaculture Protocols should be updated and that the Review Group establishes a structure and approach for the regular updating of the Aquaculture Protocols.

¹⁷Steering a new Course: Strategy for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013, pg. 19

http://www.bim.ie/media/bim/content/publications/corporate-other-publications/BIM_Steering%20a%20New%20Course%20-%20National%20Seafood%20Strategy.pdf

5.2. Marine Institute's role in Inspection & Compliance

Currently the most visible state agency involved in aquaculture inspection and compliance is the Marine Engineering Division (MED) of the Aquaculture and Foreshore Management Division (AFMD). As stated earlier in 4.2. it is MHI's view that the MED is challenged with a very wide remit and a lack of appropriate marine biology and environmental expertise.

The Marine Institute is currently the State Agency with the most competent expertise in the Biological Sciences and as such should have a very definite role in aquaculture inspection and compliance.

For example there is an agreement between the Environmental Protection Agency (EPA) and the Health Service Executive (HSE) to formally document the co-operative framework under which the EPA and HSE work together to achieve various objectives which fall under their mutual commitment to protect the environment and human health. This agreement between the EPA and the HSE is in the form of a Memorandum of Understanding.¹⁸

Interestingly, the EPA has a specific MoU in place with the Marine Institute. This MoU formally sets out the arrangement under which the Marine Institute provides key data to assist the EPA with certain of its environmental reporting obligations (specifically, the preparation of the 'Annual OSPAR Report on Discharges, Spills and Emissions from Offshore Gas and Oil Installations').

The MoU between the EPA and the Marine Institute is a useful example of the kind of agreement that should be put in place between the aquaculture licensing authority and the Marine Institute. It would formally document the activities carried out by the Marine Institute in assisting with the aquaculture licencing process in both application determination as well as inspection and compliance. It would also clarify and better define the expectations between the two entities.

Recommendation 19 – that the Marine Institutes role in aquaculture licence compliance is formalised and its remit clearly set out in a Memorandum of Understanding with the licensing authority.

5.3 Proportionate Sanctions

Once SSB as a stocking parameter is implemented, stocking can be more easily managed and monitored. However, as stated earlier in 3.2. the inappropriate production parameters currently applied to most licences are creating a situation where operators must walk a fine line between best environmental practice and the maintenance of out-dated production parameters.

As these production parameters do not accommodate best fish health and environmental management practices it creates situations where technical exceedances of operating licences can occur. The threat of licence revocation for first, minor or moderate breaches of licence parameters is a disproportionate sanction relative to other industries. MHI has experience of a situation where an unavoidable technical breach which did not result in any environmental impacts was threatened with revocation. This was the first breach in the 30 year history of this unit.

MHI is of the view that there should be a range of sanctions proportionate to the level of non-compliance if such should arise. In the case of the proposed MAB, a simple sanction could be to lower the MAB for the next rearing cycle and restore this only once subsequent compliance is deemed to be satisfactory.

Recommendation 20 – that proportionate sanctions be available to the regulatory authority.

¹⁸Memorandum of Understanding
www.epa.ie/pubs/reports/other/corporate/occs/mo/

5.4. Inspection

One of number of protocols associated with a finfish aquaculture licence includes Monitoring Protocol No. 4 for Offshore Finfish Farms - Audit of Operations. The purpose of this audit is to provide for an integrated assessment of finfish farm operations, based on a number of key monitoring programmes, so as to enable the Department of the Marine and Natural Resources (Department of Agriculture, Food and the Marine) to;

1. Establish whether the terms and conditions of aquaculture licences are being complied with;
2. Inform decisions on proposals for increased farm production;
3. Advise farm operators of changes in environmental parameters or other factors which need to be taken into account in their operations, and
4. Make information from monitoring programmes readily available to interested parties and the public.

It is the experience of MHI that this protocol has never been fully implemented and that the only direct audit of operations is the annual finfish farm surveys by the Marine Engineering Division of the Department of Agriculture Food and Marine.

Whilst sea lice data is certainly subject to regular inspection and review in addition to fish health and food safety monitoring, there is currently no objective audit of operations as described in protocol No. 4. MHI would welcome regular objective audits of operations with clearly measurable compliance indicators. This would greatly assist the farmer in demonstrating independent compliance to licence terms and conditions for stakeholders such as customers, ENGO's and independent certification control bodies.

The Marine Institute has the competency to review and evaluate the ecological aspects to aquaculture operation and should be given the resources and mandate to fulfil this inspection function.

Recommendation 21 – that the Marine Institute is given the resources and mandate to fulfil the inspection and compliance functions of Monitoring Protocol No. 4 for Offshore Finfish Farms - Audit of Operations.

6. 1. The Implementation Imperative

As stated at the outset over the past eleven years, Irish governments have commissioned seven separate reports which have noted the potential of Ireland’s aquaculture industry. Many of them have set ambitious growth targets to develop the sector. These reports include:

- 2006-Steering a new Course: Strategy for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013
- 2006-Sea Change A Marine Knowledge, Research & Innovation Strategy for Ireland 2007-2013
- 2010-Food Harvest 2020
- 2012-Harnessing our Ocean Wealth
- 2015-Foodwise 2025
- 2015-National Strategic Plan for Sustainable Aquaculture Development (NSPSAD)
- 2017-Realising our Rural Potential: Action Plan for Rural Development

Many of these Reports reference ambitious targets for the Blue Economy. As far back as 2006 the Steering a New Course report goes to great lengths to highlight the actions needed to fulfil those ambitions such as “speedier processing of licence applications”,¹⁹ [extending the] “duration of aquaculture licences”,²⁰ [regularising] “stocking conditions” in order to address the Department’s “slow response to critical development issues and the negative impact this [is] having on the industry’s ability to compete.”²¹

If these report prove anything it is that a review is of no value unless it is implemented. Even with the best intentions, this current review risks a similar fate unless tangible action is taken to ensure that a proactive approach to implementing its findings is taken once it has produced its final report.

Implementing recommendations – like those set out throughout this submission – is imperative in order to give the aquaculture sector some prospect of sustainable operations into the future not to mind the ambitious growth targets identified by Government sponsored reports.

In that regard MHI recommends the following actions;

Recommendation 22 - The Review Groups final report should chart very clearly the changes required in DAFM and elsewhere, as appropriate to create a fit-for-purpose licencing regime.

Recommendation 23 – that the final report sets out any changes to current legislation required and if necessary, provide draft wording for such legislative change in order for the Minister to be in a position to act expediently on the group’s findings.

¹⁹ Steering a new Course: Strategy for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013, pg. 119

²⁰ Steering a new Course: Strategy for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013, pg. 120

²¹ Steering a new Course: Strategy for a Restructured, Sustainable and Profitable Irish Seafood Industry 2007-2013, pg. 127

Recommendation 24 – that the Minister, in conjunction with the review group, puts a clear timeframe on implantation of the accepted recommendations to ensure that the agreed findings are implemented in a timely fashion.

Recommendation 25 – that quarterly meetings between the review authors and the Minister/DAFM officials should also be enshrined in the final document in order to continually monitor progress on its recommendations to ensure progress on implementation.

6.2. Avoiding New Legislation

MHI believes that if this review is to be successful it must find a way to implement the final recommendations of the Review Group in a timely manner. In that regard we believe that it is imperative that there is no proposal to overhaul the current existing legislation pertaining to aquaculture and that any and all recommendations made can be achieved through more expedient routes.

With that in mind MHI has commissioned its legal advisors Matheson to conduct a legal analysis of our recommendations to suggest ways in which those recommendations can be achieved without recourse to the drafting of new legislation.

The legal analysis is available in the attached document from Matheson. Below is a table which cross references Matheson’s legal analysis with MHI’s recommendations.

Cross-reference table

MHI Submission and Matheson Legal Analysis

| Marine Harvest Recommendation | Supporting Legal Analysis |
|---|--|
| Section 2.1 Application Decision Timeline Recommendation 1 – that the licensing authority publish a clearly defined set of steps assigned to the licence application and determination process with accompanying timeframes to endeavour to meet the four month goal but that guarantees a turnaround from licence application to determination within 12 months. | See generally: Section 2 (<i>Timeline for Decision Making</i>) In particular: Sub-sections 2.2 and 2.4. |
| Section 2.1 Application Decision Timeline Recommendation 2 – that the required notice periods for statutory and public consultation run concurrently. | See generally: Section 2 (<i>Timeline for Decision Making</i>) In particular: Sub-sections 2.2 and 2.4. |

| Marine Harvest Recommendation | Supporting Legal Analysis |
|--|--|
| <p>Section 2.2 Timeframe for Appeal</p> <p><i>Recommendation 3 – that the Aquaculture License Appeals Board (ALAB) observe the four-month timeframe for determining appeals. If this is not possible it should issue the applicant with written reasons detailing precisely the circumstances surrounding the need for an extension to this period.</i></p> | <p>See generally: Section 2 (<i>Timeline for Decision Making</i>)</p> <p>In particular: Sub-sections 2.2 and 2.4.</p> |
| <p>Section 2.3 Requests for Information During the Application Process</p> <p><i>Recommendation 4 – that the licencing authority’s requests for further information should be limited to two requests and the second should only be necessary to clarify matters arising in the response to the first.</i></p> | <p>See generally: Section 3 (<i>Requests for Information during the Application Process</i>)</p> <p>In particular: Sub-sections 3.3 and 3.4.</p> |
| <p>Section 2.4 Identifiable Point of Contact</p> <p><i>Recommendation 5 – that the licensing authority facilitates a pre-application meeting between itself and the applicant.</i></p> | <p>N / A – This recommendation does not appear to require legal analysis.</p> |
| <p>Section 3.1 Licence Tenure</p> <p><i>Recommendation 7 – that Aquaculture licences are provided for a period of at least 20 years with the powers to revoke such a license clearly defined and understood.</i></p> | <p>For licence period:</p> <p>See generally: Section 1 (<i>Licence Conditions, Period and Functions</i>)</p> <p>In particular: Sub-sections 1.1(i) and 1.2 (i).</p> <p>We have not addressed the power to revoke licences. This appears to be set out clearly in section 68 of the 1997 Act.</p> |
| <p>Section 3.2 Production Parameter</p> <p><i>Recommendation 8 – that finfish production should only be managed and defined according to the Maximum Allowable Biomass (MAB) on a site at any given time in the production cycle.</i></p> | <p>See generally: Section 1 (<i>Licence Conditions, Period and Functions</i>) and Section 4 (<i>Policy Directives by the Minister</i>)</p> <p>In particular: Sub-sections 1.1(i) and 1.2 (i) and 4.3(c)</p> |

| Marine Harvest Recommendation | Supporting Legal Analysis |
|--|--|
| <p>Section 3.3 Licence Format</p> <p>Recommendation 9 – that the aquaculture licence should consist of a simple template to which conditions are annexed so that they can be managed in a more dynamic way. The licencing authority should identify and clarify a full list of industry protocols and regulations that will be annexed and cross referenced in the licence.</p> | <p>See generally: Section 1 (<i>Licence Conditions, Period and Functions</i>) and section 4 (<i>Policy Directives by the Minister</i>)</p> <p>In particular: Sub-sections 1.1(i) and 1.2(i) and 4.3(c)</p> |
| <p>Section 3.4. Updating Licences to Best Available Technology & Practice</p> <p>Recommendation 10 - that it should not be necessary, in accordance with the EIA Directive and ECJ case law, to submit an additional EIS for a licence renewal when the renewal does not include changes which have significant adverse effects on the environment.</p> | <p>See generally: Section 5 (<i>Environmental Impact Statements</i>)</p> <p>In particular: Sub-sections 5.3 and 5.4</p> |
| <p>Section 3.5. Renewals</p> <p>Recommendation 11 – that a licence renewal can be achieved without recourse to a completely new EIS and associated EIA when the renewal does not have changes which have significant adverse effects on the environment.</p> | <p>See generally: Section 5 (<i>Environmental Impact Statements</i>)</p> <p>In particular: Sub-sections 5.3 and 5.4</p> |
| <p>Section 3.5. Renewals</p> <p>Recommendation 12 – that the Minister now puts a discrete deadline on when the licencing authority will be in a position to progress outstanding licence renewal determinations in full compliance with the 2011 Regulations.</p> | <p>See generally: Section 4 (<i>Policy Directives by the Minister</i>)</p> <p>In particular: Sub-section 4.2</p> <p>This could be achieved by the Minister issuing a policy directive.</p> |
| <p>Section 4.1 Separation of Licencing & Compliance</p> <p>Recommendation 13 – Separate the licensing and compliance functions within the Department and appoint a dedicated team from within the Department's licensing authority which will have specific responsibility for achieving the streamlining of the aquaculture licencing process.</p> | <p>See generally: Section 1 (<i>Licence Conditions, Period and Functions</i>)</p> <p>In particular: Sub-sections 1.1(ii) and 1.2(ii).</p> |

| Marine Harvest Recommendation | Supporting Legal Analysis |
|--|--|
| <p>4.2. Additional Biological Expertise</p> <p><i>Recommendation 14 – that an increased allocation of resources with competent expertise in the areas of biology, marine biology and fish health management are assigned to the job of determining aquaculture licences.</i></p> | <p>N / A – This recommendation does not appear to require legal analysis.</p> |
| <p>4.3. Resource Allocation</p> <p><i>Recommendation 15 - that the licencing authority reviews its application fee structure to ensure that its licence review process can be appropriately and adequately resourced to provide licence determinations within the timeframes set out.</i></p> | <p>See generally: Section 7 (<i>Licence Fees and Funding Structure</i>)</p> <p>In particular: See sub-section 7.2</p> |
| <p>4.4. Licence Appeals</p> <p><i>Recommendation 16 – that ALAB’s remit is restricted to a review of the licence determination based on the information and evidence provided.</i></p> | <p>See generally: Section 4 (<i>Policy Directives by the Minister</i>)</p> <p>We have not addressed ALAB’s remit to hear / adjudicate on appeals. You may wish to refer to sections 3.2 and 3.4 regarding the powers of the licensing authority (and ALAB) to request information from an applicant.</p> |
| <p>4.5 Cross-Department Policy Direction</p> <p><i>Recommendation 17 – that at State level there is cross-department consensus for the Government’s stated policy of achieving sustainable growth of Irish aquaculture.</i></p> | <p>N / A – This recommendation does not appear to require legal analysis.</p> |
| <p>5.1. Update Protocols</p> <p><i>Recommendation 18 - that the aquaculture Protocols should be updated and that the Review Group establishes a structure and approach for the regular updating of the Aquaculture Protocols.</i></p> | <p>N / A – This recommendation does not appear to require legal analysis.</p> |

| Marine Harvest Recommendation | Supporting Legal Analysis |
|---|---|
| <p>5.3. Inspection</p> <p><i>Recommendation 21 – that the Marine Institute is given the resources and mandate to fulfil the inspection and compliance functions of Monitoring Protocol No. 4 for Offshore Finfish Farms - Audit of Operations.</i></p> | <p>N / A – This recommendation does not appear to require legal analysis.</p> |
| <p>6.1 The Implementation Imperative</p> | <p>N / A – These recommendations do not appear to require legal analysis.</p> |

Section 7 Summary Recommendations

Section 2 – Licence Application Process

Recommendation 1 - that the licensing authority publish a clearly defined set of steps assigned to the licence application and determination process with accompanying timeframes and guarantees a turnaround from licence application to determination within 12 months.

Recommendation 2 - that the required notice periods for statutory and public consultation run concurrently.

Recommendation 3 – that the Aquaculture Licence Appeals Board (ALAB) observed the four-month timeframe for determining appeals. If this is not possible it should issue the applicant with written reasons detailing precisely the circumstances surrounding the need for an extension to this period.

Recommendation 4 - that the licencing authority's requests for further information should be limited to two requests and the second should only be necessary to clarify matters arising in the response to the first.

Recommendation 5- that the licensing authority facilitates a pre-application meeting between itself and the applicant.

Recommendation 6 – that the licencing authority would assign a specific case officer to each licence application to provide the applicant with a single point of communication and liaison and improve transparency with respect to the progress of a licence application.

Section 3 - Licence Structure

Recommendation 7 - that Aquaculture licences are provided for a period of at least 20 years with the powers to revoke such a licence clearly defined and understood.

Recommendation 8 - that finfish production should only be managed and defined according to the Maximum Allowable Biomass (MAB) on a site at any given time in the production cycle.

Recommendation 9 - that the aquaculture licence should consist of a simple template to which conditions are annexed so that they can be managed in a more dynamic way. The licencing authority should identify and clarify a full list of industry protocols and regulations that will be annexed and cross referenced in the licence.

Recommendation 10 - that it should not be necessary, in accordance with the EIA Directive and ECJ case law, to submit an additional EIS for a licence renewal when the renewal does not include changes which have significant adverse effects on the environment.

Recommendation 11 - that a licence renewal can be achieved without recourse to a completely new EIS and associated EIA when the renewal does not have changes which have significant adverse effects on the environment.

Recommendation 12 - that the Minister now puts a discrete deadline on when the licencing authority will be in a position to progress outstanding licence renewal determinations in full compliance with the 2011 Regulations.

Section 4 Administration & Resources

Recommendation 13 - Separate the licensing and compliance functions within the Department and appoint a dedicated team from within the Department's licensing authority which will have specific responsibility for achieving the streamlining of the aquaculture licencing process.

Recommendation 14 - that an increased allocation of resources with competent expertise in the areas of biology, marine biology and fish health management are assigned to the job of determining aquaculture licences.

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Recommendation 17 – that at State level there is cross-department consensus for the Government's stated policy of achieving sustainable growth of Irish aquaculture.

Section 5 Inspection & Compliance

Recommendation 18 - that the aquaculture Protocols should be updated and that the Review Group establishes a structure and approach for the regular updating of the Aquaculture Protocols.

Recommendation 19 – that the Marine Institutes role in aquaculture licence compliance is formalised and its remit clearly set out in a Memorandum of Understanding with the licensing authority.

Recommendation 20 – that proportionate sanctions be available to the regulatory authority.

Recommendation 21 – that the Marine Institute is given the resources and mandate to fulfil the inspection and compliance functions of Monitoring Protocol No. 4 for Offshore Finfish Farms - Audit of Operations.

Section 6 Implementation of Review Recommendations

Recommendation 22 - The Review Groups final report should chart very clearly the changes required in DAFM and elsewhere, as appropriate to create a fit-for-purpose licencing regime.

Recommendation 23 – that the final report sets out any changes to current legislation required and if necessary, provide draft wording for such legislative change in order for the Minister to be in a position to act expediently on the group's findings.

Recommendation 24 – that the Minister, in conjunction with the review group, puts a clear timeframe on implantation of the accepted recommendations to ensure that the agreed findings are implemented in a timely fashion.

Recommendation 25 – that quarterly meetings between the review authors and the Minister/DAFM officials should also be enshrined in the final document in order to continually monitor progress on its recommendations to ensure progress on implementation.