MARINE HARVEST IRELAND ("MHI")

SUBMISSION TO THE INDEPENDENT AQUACULTURE LICENSING REVIEW GROUP

LEGAL ANALYSIS BY MATHESON ON BEHALF OF MHI

9 FEBRUARY 2017

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Introduction and summary

A. Purpose

This submission provides a legal analysis that demonstrates that it is legally possible to implement MHI's recommendations to modernise the aquaculture licensing process within the existing legislative framework. In some instances, we suggest minor amendments to the secondary regulations. This approach has been adopted as MHI is concerned that a full overhaul of the existing legislative framework could cause further delays to progressing licence applications for a strategically important industry in which the licensing system has reached a state of near paralysis.

B. Format

Each section of the submission:

- identifies the road block(s) which exist in a specific area of the aquaculture licensing regime
- provides an analysis of the relevant area(s) of the existing legislative framework
- explains how MHI's recommendations can be implemented within the existing legislative framework.

C. Summary of Issues and Recommendations

Section	Road Block(s)	Solution(s)
1	▪ The conditions attached to aquaculture licenses are overly-prescriptive and require modernisation. Production limits based on annual tonnage, which is an inflexible and outdated metric, continue to be imposed. ▪ The usual life of an aquaculture licence is disproportionately short at 10 years. ▪ The same divisions of the Department of Agriculture, Food and the Marine (the "**Department**") are responsible for the licensing application and regulation functions.	▪ Simplify the format of aquaculture licences by cross-referring to technical guidance documents in place of prescriptive technical conditions, and use Maximum Allowable Biomass as the metric of production in line with best practice internationally. ▪ Aquaculture licences should be granted for a 20 year period, as is permitted by the existing legislative framework and in accordance with the other environmental licensing regimes in Ireland. ▪ Allocate responsibility for the licensing application function and regulation functions to separate divisions of the Department.
2	▪ There are lengthy delays in determining applications for aquaculture licences. ▪ Applicants are not kept informed of the progress of their licence applications. ▪ Revised decision dates are not being	▪ Section 13 of the Fisheries (Amendment) Act 1997 (the "**1997 Act**") should be commenced as a matter of urgency. This section provides that the Minister shall endeavour to determine an application for an aquaculture licence within four months

Section	Road Block(s)	Solution(s)
	provided at the first stage of the process. ▪ The statutory and public consultation periods are being run consecutively.	from the date on which all requirements for filing the application have been complied with. ▪ The Minister should issue a policy directive[1] that the Aquaculture Licensing Appeals Board ("**ALAB**") should inform the applicant, in writing, of not only the revised date for the determination of an appeal but also the reasons for the delay, each time a revised, extended timeframe is set for the determination of an appeal. ▪ The statutory and public consultation periods should be run concurrently.
3	▪ Repeated and excessive requests for information by the licensing authority[2], often for information that is not within the direct expertise or statutory remit of the licensing authority.	▪ The Minister could issue a policy directive which (i) places reasonable parameters on the entitlement of the licensing authority to request further information and on the type of information it can seek; and (ii) provides that the licensing authority is only permitted to seek further information from an applicant on one occasion only. ▪ The Minister could issue a policy directive which allows for pre-application consultations with potential applicants in order to clarify the information which the licensing authority will require to consider the application to ensure that the applicant submits all of necessary information.
4	▪ There are missed opportunities to streamline the application process without legislative change, for example, by way of policy directives issued by the Minister.	▪ The Minister could issue policy directives to streamline the application process. These policy directives could provide, for example, technical guidance, address the time frame for decision-making and format of aquaculture licences.
5	▪ The Aquaculture (Licence Application) Regulations 1998 (as amended) (the	▪ The 1998 Regulations could be amended in line with EU law to provide that an EIS

1. As permitted by section 62 of the 1997 Act

2. Defined by section 3 of the Fisheries (Amendment) Act 1997 (as amended) (the "**1997 Act**") as

"*(a) the Minister,*

(b) an officer to whom functions have been delegated under section 21(1) by the Minister, or

(c) the Aquaculture Licences Appeals Board."

Section	Road Block(s)	Solution(s)
	"**1998 Regulations**") require the submission of an Environmental Impact Statement ("**EIS**") more often than is required by European legislation or case law.	only needs to be submitted with an application for the renewal of an aquaculture licence where there would be a significant adverse change to the environmental effects cause by the change to the licensed activity.
6	▪ The refusal of the licensing authority to carry out Appropriate Assessment based on generic conservation objectives when no site specific conservation objectives have been set.	▪ Appropriate Assessment can be carried out using generic conservation objectives when no site specific conservation objectives have been set. This process is undertaken in other licensing spheres in Ireland.
7	▪ The funding and resource constraint within the licensing authority.	▪ The Minister could increase the licensing fees for certain categories of aquaculture licence or activities of certain degrees of magnitude or consider the use of scaled fees in order to increase the funding available to the licensing authority.
8	▪ The absolute requirement to obtain a foreshore licence, even for the temporary placement of water pipe or other temporary equipment.	▪ The Minister could automatically issue a written permission to carry out a trivial activity on the foreshore at the same time that the licensing authority grants an aquaculture licence. ▪ The General Scheme of Maritime Area and Foreshore (Amendment) Bill 2013 offers an opportunity to combine the aquaculture and foreshore licensing regimes into a single process and allow for the placement of temporary equipment on the foreshore to be permitted by the terms of an aquaculture licence.

1 Licence Conditions, Period and Functions

1.1 Road blocks: (i) licence conditions and period; (ii) responsibility for licensing and compliance functions

(i) Licence Conditions and Period

A person is not permitted to engage in aquaculture without holding an aquaculture licence[3]. A holder of an aquaculture licence is obliged to comply with the conditions of the licence. The Minister may revoke an aquaculture licence if satisfied that there has been a breach of a condition specified in a licence[4].

Three of MHI's key concerns regarding current licence conditions are:

- **Overly prescriptive conditions regarding process and methodology:** Aquaculture licences in their current form, contain extensive prescriptive conditions[5], which do not allow for improvements in technology. Thus, even improvements aimed at lowering environmental impact cannot be made without licence change. Changes to a licence require a formal amendment that is subject to a protracted process. For example, an aquaculture licence can dictate the time of year at which the licence holder is required to harvest its stocks. This licence condition is not compatible with the production process, as the production process is not aligned with the annual cycle. The holder of an aquaculture licence could find itself subject to enforcement action for technical breach of licence if the licence-holder updated the method of carrying out an activity to have a lesser environmental impact. By contrast, licences issued by the EPA are granted subject to the over-arching requirement that:

  "…at all times BAT [Best Available Technique] must be considered in the management and operation of the activity."

  Also, aquaculture activity may not only be subject to aquaculture licensing but can also be covered by a wider regulatory framework. For example, a licence holder may be required to obtain planning permission to construct a facility and may require a waste water discharge licence to operate. An overly-prescriptive aquaculture licence can cause difficulty for a licence holder if it obliges the licence holder to comply with a prescriptive technical standard that is different to that imposed by another permit.

- **Use of limits based on annual tonnage:** The licensing authority continues to issue finfish aquaculture licences which measure the limit of production capacity by reference to an annual maximum production limit (eg, harvested annual tonnage) as opposed to standing stock biomass (the weight of live fish on a site at any given time). We understand that an annual tonnage limit is an inflexible and outdated metric which requires an operator to tread a delicate

3. Section 6 of the 1997 Act. The licensing process is dealt with elsewhere in this document.

4. Section 68(1) of the 1997 Act

5. For example, specifying a particular technical process or methodology.

balance in stock management. An operator may be forced to transfer stock to another site, before it reaches a particular point in its development, to avoid a technical breach of a strict annual production limit. These issues are addressed further in section 5.3 of this submission.

- **Typical life time of 10 years for a licence:** Aquaculture licences are regularly granted for a limited period of 10 years, rather than the 20 years allowed by legislation[6]. In many other Irish industry sectors, operating life is either unlimited (such as for facilities licensed by the Environmental Protection Agency) or limited to 20 to 25 years unless further extended (in the case of wind farms). Environmental licences that require an Environmental Impact Assessment ("**EIA**") must be assessed on the basis of whole-of-lifetime effects, ie, from commissioning and construction through to operation and decommissioning[7]. This type of analysis (which is undertaken for aquaculture licences that require EIA) fully supports long-term 20-year licences in line with the requirements of European environmental law. The relatively short term of aquaculture licences is disproportionate to the administrative and regulatory burden imposed on operators when applying for the licence. It is inconsistent with other industries and Irish environmental practice that aquaculture licensing is subject to such unnecessarily short licence lives.

(ii) Licensing Application and Compliance Functions

Unlike other environmental licensing regimes in Ireland[8], we understand that the same departmental divisions are responsible for both the licensing and compliance functions for aquaculture. We are instructed that the concentration of responsibility for these functions can lead to a reduction in the availability of expertise necessary for the efficient turn-around of licence applications.

We understand that aquaculture licensing is administered through the Aquaculture and Foreshore Management Division ("**AFMD**") of the Department. AFMD is responsible for the licensing and regulation of aquaculture. The Marine Engineering Division ("**MED**") and the Marine Institute ("**MI**") work with AFMD and provide support functions in relation to aquaculture. We understand that the current practice is that MI advises on the biological / scientific aspects of licence applications and renewals and that MED provides the functions of reviewing and examining aquaculture licence applications and environmental impact statements ("**EIS**"), carrying out site inspections and producing reports on licence compliance.[9] MED is also involved in assessing, reviewing and providing technical advice on foreshore licence and lease applications in respect of aquaculture. We are instructed that the resources of AFMD and MED are heavily focused on the compliance function.

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6. Under section 15(2) of the 1997 Act a licence can have a life of up to 20 years.

7. EPA, *Guidelines on the information to be contained in Environmental Impact Statements* (2002).

8. For example, the Integrated Pollution Control ("**IPC**") Licence system under the Environmental Protection Agency Acts 1992 – 2013

9. See Chapter 4 – Seafood of the Structure of Department available here – https://www.agriculture.gov.ie/aboutus/briefingforministers2016/

The arrangement where the same divisions of the Department have responsibility for the licensing and compliance functions is relatively unusual in our experience. For example, the Environmental Protection Agency (the "**EPA**") has overall responsibility for the application and compliance functions of a number of licensing regimes[10]. However, the EPA's functions are divided between five different offices[11]. The Office of Environmental Sustainability is responsible for the licensing application function and the Office of Environmental Enforcement is responsible for the licensing compliance function.

1.2 **What changes should be made?**

(i) Licence Format and Period

There is no prescribed mandatory format for aquaculture licences under legislation, though template licences have been published[12]. The format of an aquaculture licence should be simplified by including cross-references to appendices or technical guidance documents in place of imposing extensive technical conditions. This approach would give the flexibility to update the technical requirements of the activity on an ongoing basis by updating the guidance without having to amend the letter of the licence directly by way of formal amendment.

The production parameters stated in an aquaculture licence should be quantified in terms of Standing Stock Biomass. In a press release by the Minister on 5 December 2011 to announce the launch of new aquaculture licence templates,[13] it was expressly acknowledged that:

> *"Standing Stock Biomass is internationally recognised as the appropriate metric for assessing loading at an aquaculture production site and can be measured on a real time basis thus facilitating effective regulation and management of sites".*

Maximum Allowable Biomass should be adopted as the standard metric of production in all aquaculture licences. This approach would align the Irish licensing regime with the Scottish and Norwegian aquaculture licensing regimes, both of which use 'maximum standing biomass' as the measurement of the limit of production capacity.

Aquaculture licences should be granted for a period of 20 years as standard, as permitted by the legislation[14]. As suggested above, the introduction of flexibility to update technical requirements on an ongoing basis throughout the life of a licence should provide comfort to the authority in granting a licence for the 20 year term.

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10. For example, the IPC and the Waste Water Discharge licensing systems.

11. EPA organisation chart available here – http://www.epa.ie/about/org/

12. Section 7(1) of the 1997 Act provides that the licensing authority may licence a person to carry on aquaculture on such terms as it thinks fit and specifies in the licence. Subsection (3) provides a non-exhaustive list of conditions to which an aquaculture licence may be subject.

13. Press release available here - http://www.agriculture.gov.ie/press/pressreleases/2011/december/title,59997,en.html

14. Section 15(2) of the 1997 Act

(ii) Licensing Application and Compliance Functions

There is no legal barrier to the Minister separating the licensing and compliance functions through internal reorganisation of the Department.

2 Timeline for Decision-Making

2.1 Road block: protracted timeframe for determining aquaculture licence applications

Delay in decision-making is a key roadblock. Licence applications can take many years to progress.[15]

The lack of a coherent time objective for determining applications and the lack of transparency in the current process is aggravating the delay.

During the process, (particularly the first stage), the applicant and interested parties are often left in the dark as to the progress of the application and are not given reasons for delay nor a revised decision date.

The European Commission (the "**Commission**") issued a Communication for the sustainable development of EU aquaculture[16] in which the Commission noted that authorisation procedures in several Member States can take around two to three years to complete. The Commission invited Member States to reduce time for licensing and other authorisations to one month by the end of 2015[17] provided EU environmental legislation is adhered to.

There are mechanisms within the current legislative framework that can address the objective to minimise delay as set out below.

2.2 The legal framework

In common with many environmental licensing regimes, the timelines for decision-making in the 1997 Act are not a strict cut-off point. There are helpful objectives, when backed with transparency of communication, and can assist in structuring the approach. The timelines are:

- Section 13 of the 1997 Act provides that the Minister shall endeavour to determine an application for an aquaculture licence within four months from the date on which all requirements for filing the application have been complied with. However, this section of the 1997 Act has not yet been commenced. Thus, this section will have no legislative force until brought into effect by commencement order (in the form of a regulation) passed by the Minister. The provision of the 1997 Act that sets a time limit for the Minister to determine an application (when commenced) will allow the Minister to extend the four month timeframe where it appears to the Minister that it will not be possible to determine an application within this timeframe. Where the Minister

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15 The case of *Deerland Construction Ltd v The Aquaculture Licences Appeals Board & Anor* [2008] IEHC 289 demonstrated that the process of issuing an aquaculture licence took five years. Lett and Company Limited applied for an aquaculture licence in October 1996. The licence was granted in October 2001. The delay in processing the application did not form part of this case.

16 Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, A strategy for the sustainable development of European aquaculture, 29 April 2013, available here - http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0229&from=EN

17 At page 5 the Communication notes "*The Commission has proposed an Action Plan to support entrepreneurship in Europe. The Action plan invites the Member States to reduce time for licensing and other authorisations necessary to start a business activity to one month by the end of 2015 provided that requirements of EU environmental legislation are met. As a first step, a comprehensive mapping and screening exercise needs to be performed".*

decides to extend the timeframe for an application, the Minister must issue a written notice to the applicant and any other person who has made submissions, setting out the reasons why the application will not be determined within the four month timeframe. The Minister must also specify a revised date in the written notice before which it is intended to determine the application.

- The provision of the 1997 Act[18] which requires ALAB to endeavour to determine an appeal within four months of the date of receipt of the notice of appeal has been commenced. This provision allows ALAB to extend the period for determining an appeal but requires ALAB to issue a notice to the parties to the appeal which (i) confirms the extension; (ii) gives the reasons for the extension; and (iii) specifies the date by which ALAB intends to determine the appeal. ALAB is obliged to endeavour to determine the appeal by the revised date set in such a notice. The 1997 Act does not specify what ALAB is required to do when the appeal is not determined by the revised date. However, we understand that ALAB notifies the applicant of any revised date for the determination of the appeal, but does not give reasons for the delay.

The legislation[19] also provides for public and statutory consultation periods. The legislation is silent on whether the consultation periods should be run consecutively or concurrently. The current practice is to run the consultation periods consecutively (first the statutory consultation and then the public consultation). This practice contributes to the delays experienced in the determination of aquaculture licence applications. We understand that the practice appears to be based on a concern that compliance with the Aarhus Convention[20] ("**Aarhus**") (which mandates public participation in decision-making and access to justice in environmental matters) cannot be achieved unless the public has an opportunity to consider the submissions of the statutory bodies. It has been held by both the High Court (in a judgment dealing with aquaculture licensing)[21] and the Court of Appeal[22] that Aarhus only forms part of Irish domestic law insofar as it has either (a) been incorporated into Irish law through the passing of legislation by the Oireachtas; or (b) been incorporated into European law that is of direct effect in Ireland (either by way of implementing Irish legislation or effluxion of time). Aarhus does not mandate anywhere that the consultation periods must be consecutive, and this type of provision cannot be implied into Irish law from a general concern about compliance with Aarhus. Other environmental licensing regimes[23] allow for notice periods for statutory bodies and the public to run concurrently.

2.3 **What is the legal risk for the licensing authorities and the process if the current delays continue?**

The current aquaculture licensing process, in which applicants experience significant delays, is at risk of being successfully challenged by court action. An expedient and transparent

18. Section 56 of the 1997 Act

19. Regulations 9 and 10 of the 1998 Regulations

20. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

21. *Waterville Fisheries Development Limited v Aquaculture Licenses Appeals Board (No 3)* [2014] IEHC 522

22. *McCoy & Anor v Shillelagh Quarries Ltd & Ors* [2015] IECA 28

23. For example, the planning regime under the Planning Acts 2000 – 2016 (the "**Planning Acts**")

timeline will enhance the legitimacy of the aquaculture licensing process and reduce the risk of a court challenge.

The reason for this legal risk is that the courts have repeatedly held in other statutory contexts that an applicant is entitled to a decision one way or another within a reasonable time.[24] What might be a reasonable time depends on the circumstances of each case, including the nature of the decision sought, the particularities of the applicant's position, the impact the delay may have and also the conduct of the administrative decision maker in dealing with such applications, together with any explanation for the time taken[25].

The courts have granted orders compelling a decision-maker to reach an administrative decision in instances where the applicant has experienced excessive and unjustifiable delay.

In 2016, the High Court, in *Mohammed Ahsan v Minister for Justice and Equality*[26], granted an order compelling the Minister to make a decision on the applications of the applicants[27] for non-national family members of EU citizens, one way or the other, within six weeks of the court order. The Minister for Justice argued that the court was not entitled to make an order requiring a decision to be made as this would equate to a direction to the Minister for Justice as to how (already limited) resources should be allocated. It was also argued that such an order would cut across the level of investigation required into each application. The court rejected these arguments and held that it was not trespassing on the Minister for Justice's remit by requiring a decision to be taken within a set timeframe, given the excessive and unjustifiable delay. In the *Ahsan* case, the judge pointed out that if the delay had been only a couple of months, and if there was a stated timeframe provided to the court for the commencement of the examination of the visa applications, then some margin of appreciation might have been afforded to the Minister for Justice. However, in the absence of any projected timeframe, the question of resources and other factors raised by the Minister for Justice were not sufficient to outweigh the applicants' rights. The open-ended timeframe for processing the visa applications was a factor in the court's decision to find against the Minister for Justice.

Parallels can be drawn between the manner of processing applications under the visa scheme in the *Ahsan* case and the current aquaculture licensing process. The *Ahsan* judgment illustrates that in instances of excessive and unreasonable delay in the making of an administrative decision, an aggrieved applicant may obtain relief from the court in the form of an order compelling the relevant body to make a decision. The *Ahsan* case also shows that a decision-making body is less vulnerable to court action where it adheres to a stated timeframe, even where this timeframe is extended, provided the delay is justified and the applicant is kept informed of the projected timeframe.

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24. For example, *Point Exhibition Co. Ltd v The Revenue Commissioners* [1993] 2 IR 551

25. *Nearing v Minister for Justice* [2010] 4 IR 211

26. [2016] IEHC 691

27. The applicants had been variously advised by the visa centre that the timeframe for determination of the applications would range from 8 to 12 to 16 weeks. These periods expired without any decision having been made on any of the applications. The applicants were not further advised of the projected timeframe. The judicial review proceedings were heard in July 2016, approximately one year after their applications were submitted.

An applicant may also be awarded damages where it can be shown that the decision-maker's delay in reaching the decision has interfered with a fundamental right[28], such as the right to property and to earn a livelihood in the context of aquaculture licensing.

2.4 **What changes should be made within the current legal framework to address the delays and lack of transparency?**

The appropriate use of the timeframe provisions in the 1997 Act should impose some structure on the application process by ensuring that the licensing authority endeavours to make aquaculture licence determinations in accordance within an expedient and transparent timeframe. The framework set out in the 1997 Act allows for necessary flexibility by permitting the Minister to extend the timeframe, where appropriate. The requirement for the Minister to give written reasons for extending the timeframe for determining an application also ensures transparency.

The purpose of the timeframe provisions within the 1997 Act precisely aligns with the objectives of the independent review, ie, the delivery of licence determinations in a timely manner and enhanced transparency in the licensing process. We propose that the Independent Aquaculture Licensing Review Group should recommend that the timeframe provisions of the 1997 Act for the determination of a licence application by the Minister be commenced as a matter of urgency, by way of a regulation issued by the Minister.

When it is not possible to determine an appeal within four months, ALAB is required by the 1997 Act to issue a notice to the parties to the appeal which (i) confirms the extension; (ii) gives the reasons for the extension; and (iii) specifies the date by which ALAB intends to determine the appeal. We understand that ALAB does issue a notification to the parties to an appeal on each occasion that an extension is required. However, we are instructed that those notifications do not give the reasons for which the extension is required. The Independent Review Group could recommend that the Minister issue a policy directive[29] which requires ALAB to provide the parties to an appeal with the reasons for which an extension of time is required on every occasion that a notification that an extension of time is required is issued. This practice would increase transparency by ensuring that the applicant is at least kept informed of the progress and prospective determination of the appeal and also allow the applicant to assist ALAB, for example by submitting information which ALAB might require to determine the application.

The application process could also be made more efficient by running both the statutory and public consultation periods concurrently and the Minister could issue a policy directive to that effect.

Once it is clear that there is in place "*an orderly, rational and fair system for dealing with [aquaculture licence] applications*", the court would no longer have any reason to infer any

28. In *O'Donoghue v The Legal Aid Board* [2004] IEHC 413, the High Court made an award of damages for breach of constitutional rights in favour of the plaintiff where she had experienced significant delay with her application for legal aid. Damages were awarded regardless of the fact that the decision-making body had eventually granted the plaintiff's application prior to the proceedings.

29. As permitted by section 62 of 1997 Act

illegality in the conduct of the licensing authority unless some specific wrong doing or default is demonstrated in a particular case[30].

A stated timeframe for the determination of licence applications, together with a practice of keeping the applicant informed on the progress of the application and the reasons for any delay, are necessary elements for an '*orderly, rational and fair system*' for dealing with applications. Adherence to the timeframe and transparency provisions by the licensing authority will enhance the overall legitimacy of the aquaculture licensing process and reduce the likelihood of the process being challenged in the courts.

30. *Nearing v Minister for Justice* [2010] 4 IR 211, para 25, per Cooke J.

3 Requests for Information During the Application Process

3.1 Road block: excessive requests for information

As set out by MHI it its submission, the current practice of the licensing authority when determining aquaculture licence applications can be to make repeated requests for a wide range of information from an applicant. The information sought can concern matters which are not within the direct expertise of the licensing authority such as:

- Property rights and arrangements for access / rights of way; or
- Other matters which the licensing authority is not required to take account of when determining an application for an aquaculture licence[31].

The type of additional information which is sought from an applicant can also differ from application to application. We are instructed that it appears to depend on subjective approaches as to how certain matters (for example, the visual impact of an aquaculture facility or passage of wild fish) should be addressed.

3.2 What powers does the licensing authority have to request information from an applicant?

Applications for an aquaculture licence must comply with the regulations set down by the Minister[32]. The application must be made on an application form approved by the Minister[33] and be accompanied by a number of specified documents[34]. The application form was most recently revised in June 2016[35]. There is a check-list of documents which must be included with the application form. The Minister is entitled to (i) require an applicant to furnish further information which may be reasonably required to allow an application be considered or (ii) produce any evidence which may be reasonably required to verify any information given in relation to the application[36].

ALAB is also entitled to require a party, or other person who has made a submission to an appeal, to submit such documents, particulars or other information which it considers necessary for it to determine the appeal[37].

3.3 How do other statutory application processes operate?

The application process under the Planning Acts operates in some similar respects to the aquaculture licensing process. Under the Planning Acts, a person who wishes to carry out development is obliged to obtain permission[38], either from the relevant local authority or An

31. The matters which the Licensing Authority shall take account of are listed in section 61 of the 1997 Act
32. The 1998 Regulations
33. Regulation 4(1) of the 1998 Regulations
34. These documents are listed in regulation 4(3) of the 1998 Regulations
35. Available at https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/formsdownloads/
36. Regulation 7 of the 1998 Regulations
37. Section 47 of the 1997 Act
38. Section 32 of the Planning Acts

Bord Pleanála ("**ABP**"). As with applications for aquaculture licences, regulations[39] have been made to govern the application process[40] and the documents which must accompany an application are specified[41] in those regulations.

The planning legislation[42] permits a potential applicant to enter into consultations with the relevant planning authority to discuss the proposed development and receive advice from the planning authority regarding the proposed application. A purpose of this consultation process is to ensure, as far as possible, that the applicant submits all of the information which the planning authority will require to consider the application.

Once an application is made, the planning authority is entitled to require an applicant to (i) submit any further information which the authority considers necessary to enable it to deal with the application or (ii) produce any evidence which may be reasonably required to verify any information given in relation to the application[43]. This approach is similar to the entitlement of the Minister under the 1997 Act. However, a planning authority, which has requested further information from an applicant, may not require that applicant to submit any further information or evidence unless it is necessary to clarify matters in the applicant's response to the planning authority's original request for further information[44].

If an appeal is brought to ABP then ABP is entitled to require any party, or person who has made a submission to an appeal, to submit such documents, particulars or other information which ABP considers necessary to determine the appeal[45].

It has been recognised by the courts[46] that a request for further information by a planning authority must be limited to planning matters which are relevant to the application. As a matter of practice, neither local authorities nor ABP generally require applicants to submit detailed information relating to property rights or arrangements for access / rights of way or other matters outside of their direct expertise and direct statutory remit. This information is not considered necessary because a planning permission, like an aquaculture licence, does not confer any property right on an applicant to actually carry out the development. The purpose of the planning permission or aquaculture licence is to consider the appropriateness of the development in environmental or other terms.

3.4 How should the powers of the licensing authority to request information be used?

Regulation 7 of the 1998 Regulations allows the Minister to seek further information from an applicant for an aquaculture licence. However, it is expressly stated that the Minister should only seek such information as is reasonably required to enable the application to be

39. Under section 33 of the Planning Acts

40. SI 600 of 2001 – the Planning and Development Regulations 2001 (as amended) (the "**2001 Regulations**")

41. Regulation 22 of the 2001 Regulations

42. Section 247 of the Planning Acts

43. Regulation 33(1) of the 2001 Regulations

44. Regulation 33(2) of the 2001 Regulations

45. Section 132 of the 2000 Act

46. *Illium Properties Limited v Dublin City Council* [2004] IEHC 327

considered or verify any particulars or information given by the applicant in relation to the application. Equally, section 47 of the 1997 Act limits ALAB's entitlement to require the production of documents, particulars or other information to those that are necessary to determine an appeal.

The information which the Minister has deemed necessary for the licensing authority to have in order to consider the matters set out in section 61 of the 1997 Act is set out in regulation 4 of the 1998 Regulations, regulation 4 of the European Communities (Control of Dangerous Substances in Aquaculture) Regulations 2008 and is listed in the aquaculture licence application form.

It is implicit in both regulation 7 of the 1998 Regulations and section 47 of the 1997 Act that any further information requested from an applicant should be solely for the purposes of allowing the licensing authority to take account of the matters listed in section 61 of the 1997 Act. The current wide-ranging use of the powers under regulation 7 of the 1998 Regulations and section 47 of the 1997 Act to make repeated requests for information could reasonably be curtailed without in any way affecting the necessary scrutiny under Irish or European environmental legislation.

In line with the planning regime[47], the licensing authority should endeavour to request further information from an applicant on one occasion only, unless otherwise justified. A subsequent request for further information should only be permitted if it is necessary to clarify matters in the applicant's response to the licensing authority's original request for further information. This efficiency in the application process could be achieved by the Minister issuing a policy directive that places reasonable parameters on the entitlement of the licensing authority to request further information and on the type of information it could seek. The Minister could also amend the powers of the Minister to seek information in regulation 7 of the 1998 Regulations using a statutory instrument.

As with the planning regime, the introduction of a pre-application consultation process could assist an applicant with submitting all of the information which the licensing authority will require to consider the application. The Minister could issue a policy directive which provides for this consultation process to be made available by the licensing authority to potential applicants.

47. Regulation 33 of the 2001 Regulations

4 Policy Directives by the Minister

4.1 Road block: missed opportunities to streamline the process without legislative change

MHI has identified a number of areas of the aquaculture licensing process which do not function efficiently.

The Minister has the power to issue policy directives which could address those areas. MHI believes that this approach would result in a more streamlined application and decision-making process.

4.2 What powers does the Minister have to direct the licensing process?

Under section 62 of the 1997 Act, the Minister may issue such general directives as to policy in relation to aquaculture as he or she considers necessary. The licensing authority must, in performing its functions, have regard to any such directives. Such policy directives could provide useful guidance to applicants for, and holders of, aquaculture licences and the licensing authority itself for the licencing process. This is a common practice. The Supreme Court stated in *McCarron v Kearney*[48] that:

> *"It would be wrong to preclude a decision-maker from formulating guidelines by reference to which he makes it clear that he will make his decisions. It would be inimical to good administration and to consistency in decision-making to oblige all decision-makers to treat each decision entirely on its own, without reference to previous decisions or criteria designed to serve the public interest."*

Accordingly, it is possible for the Minister to clarify the approach to be taken when considering an application for an aquaculture licence[49] by issuing a policy directive.

To date, the Minister has not issued any policy directives under section 62 of the 1997 Act. The Minister has issued policy directives under section 3(2) of the Fisheries (Amendment) Act 2003 (as amended by the Sea-Fishers and Maritime Jurisdiction Act 2006) (the "**2003 Act**")[50].

4.3 What types of policy directives could the Minister give?

Based on the analysis in this submission we summarise below three options for policy directives. There may of course be other initiatives that would benefit from being encompassed in policy directives as the Minister determines to be appropriate

(a) *Technical guidance*

MHI believes that it would be helpful for the Minister to issue policy directives as to certain technical matters. This type of guidance is given in other environmental licensing regimes. For example, under the IPC licensing regime, which is administered by the EPA, the EPA issues technical guidance notes. The guidance notes set out, for example, the best available technique for performing various

48. [2010] IESC 28

49. These matters to which the licensing authority shall have regard are listed in section 61 of the 1997 Act.

50. A full list of the Policy Directives issued under section 3(2) of the 2003 Act is available at http://www.agriculture.gov.ie/seafood/seafisheriesadministration/fishingboatlicencing/

industrial activities. The EPA considers applications for IPC licences in light of these guidance notes. The guidance can evolve over time as technology improves.

As with the IPC regime, the Department could issue technical guidance documents. The Minister could then issue a policy directive that all applications for aquaculture licences be assessed by reference to the technical guidance documents. The existence of such guidance documents and policy directives could provide useful guidance for applicants and the licensing authority and reduce the perceived need for the licensing authority to consider an applicant's scientific material from "first principles" every time it receives an application.

(b) *Time frame for decision-making*

The Independent Review Group could recommend that the Minister issue a policy directive[51] which requires ALAB, when notifying the parties to an appeal that an extension of time is required, to give the reasons for which the extension. This practice would increase transparency and also allow the applicant to assist ALAB, for example by anticipating information which ALAB might require to determine the application in light of the reasons given for the delay.

(c) *Terms of aquaculture licences*

New aquaculture licensing templates were announced in a press release issued by the Minister on 5 December 2011[52]. The new templates provide for Standing Stock Biomass to be used as the measurement for the limit of production capacity at a finfish aquaculture site. However, the licensing authority is continuing to issue finfish aquaculture licences which measure the limit of production capacity by reference to an annual maximum production limit (eg harvested annual tonnage).

The Minister could issue a policy directive that all future aquaculture licences issued by the licensing authority are in the same format as the new licence templates, use Standing Stock Biomass as the measurement of the limit of production capacity and do not dictate the time of year at which stocks must be harvested. This type of policy directive must be considered by the licensing authority and is thus a more effective mechanism to set policy than a press release. This type of licence would put the Irish licensing regime on an even footing with the Scottish and Norwegian aquaculture licensing regimes, both of which use 'Maximum Standing Biomass' as the measurement of the limit of production capacity.

(d) *Other policy directives*

Other Ministerial policy directives are suggested at the relevant points throughout this submission.

These types of Ministerial policy directive may benefit from a short prior consultation before issue, but the process should not be delayed by any such consultation. Indeed the

51. As permitted by section 62 of 1997 Act

52. Press release available at - http://www.agriculture.gov.ie/press/pressreleases/2011/december/title,59997,en.html

consultation for this independent review would be more than adequate to inform a number of policy directives.

5 Environmental Impact Statements

5.1 Road block: The requirement to submit an environmental impact statement with licence renewal applications

The 1998 Regulations require the submission of an EIS and the carrying out of an EIA more often than is required by the European Environmental Impact Assessment Directive[53] or the case law of the European Court of Justice ("**ECJ**").

There is a lack of engagement between the licensing authority and the applicant prior to the submission of an EIS, despite the 1997 Act making provision for engagement on the EIS aspect of an application prior to submission of the application.

5.2 What do the licensing regulations currently require?

Under the 1998 Regulations, a renewal of a licence is treated the same way as an initial application for a licence[54]. An application for a renewal of an aquaculture licence must be made in accordance with the regulations[55]. Applications for certain aquaculture licences[56], for example a seawater salmonid breeding installation (other than for trial or research purposes where the output would not exceed 50 tonnes), must be accompanied by a full EIS and are subjected to a full EIA and this requirement applies to the renewal of those licences, even if there are no significant environmental changes on renewal.

5.3 Are the current requirements necessary under European and Irish law?

The 1998 Regulations require EIS and EIA to be carried out as part of almost every renewal application (except for very limited circumstances). We are not aware of any other environmental licensing regime or industry which requires repeated submissions of EIS and carrying out of EIA if the project has not significantly changed.

The European Environmental Impact Assessment Directive only requires the submission of an EIS where there has been a significant adverse change to the environmental effects caused by the EPA licensed activity. Section 13 of Annex II of the Directive provides that an EIA is required for:

> "*[a]ny change or extension of project [that required EIA], already authorised, executed or in the process of being executed which may have significant adverse effects on the environment…*"

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53. Directive 2011 / 92 / EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as implemented by various Irish legislative provisions (full list available at http://www.housing.gov.ie/sites/default/files/migrated-files/en/Legislation/DevelopmentandHousing/Planning/FileDownLoad%2C33203%2Cen.pdf) , as amended by Directive 2014 / 52 / EU of the European Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment.

54. Regulation 1 of the 1998 Regulations

55. Regulation 4 of the 1998 Regulations

56. Specified in regulation 5(1) of the 1998 Regulations

Where there has been a change or extension in the aquaculture activity, whether that change is significant enough to warrant an EIS must be considered in accordance with the relevant criteria. Guidance issued by the EPA defines a 'significant impact', in the context of an EIS, as

"[a]n impact which, by its character, magnitude, duration or intensity alters a sensitive aspect of the environment".

Under the planning legislation, the relevant test for whether a change in a development already authorised will require an EIS is as follows:

"[a]ny change or extension of development already authorised, executed or in the process of being executed … which would:- …

result in an increase in size greater than –

- 25 per cent, or

- an amount equal to 50 per cent of the appropriate threshold,

whichever is the greater."[57]

Whilst aquaculture licences must currently be renewed from time to time[58], if there have been no significant environmental changes then the European Environmental Impact Assessment Directive does not require an EIS and EIA upon renewal of the aquaculture licence.

In line with the European Environmental Impact Assessment Directive, an EIS should only be required upon renewal if there has been a significant change sufficient to warrant an EIS. Accordingly, it is clear that the current requirements to submit an EIS as part of a renewal application under the 1998 Regulations, is neither necessary nor required under European law.

5.4 How can the environmental impact statement requirements be streamlined?

The 1998 Regulations have already been amended once to slightly restrict the circumstances in which an EIS must be submitted[59].

The Minister could amend the 1998 Regulations further, in line with the requirements of the European Environmental Impact Assessment Directive and the Irish implementing legislation, to provide that an EIS only needs to be submitted with an application for the renewal of an aquaculture licence if there would be a significant adverse change to the environmental effects caused by the change to the licensed activity or using the same types of thresholds as in the planning legislation.

57. Section 13, Schedule 5 (Part 2), Planning and Development Regulations 2001, SI No 600/2001 (as amended).

58. As the maximum duration of a licence is 20 years – section 15(2) of the 1997 Act

59. The insertion of regulation 4A into the 1998 Regulations by regulation 4 of the European Union (Environmental Impact Assessment) (Aquaculture) Regulations 2012

6 Natura Impact Statements

6.1 Road block: the Natura Impact Statement and Appropriate Assessment when no detailed conservation objectives have been set for the site

The Natura Impact Statement ("**NIS**") and Appropriate Assessment process is a separate process to EIS and EIA. The NIS and appropriate assessment process is undertaken under the EU Habitats Directive. The overall aim of the Habitats Directive[60] is to maintain or restore the favourable conservation status of habitats and species of community interest for which a site has been designated as a Natura 2000 site (sometimes called a European Site).

The licensing authority, when considering an application for an aquaculture licence (either a new licence or renewal) is obliged to conduct screening to ascertain whether the licensing authority must undertake an appropriate assessment under the Habitats Directive. If Appropriate Assessment is required, an applicant is obliged to submit a Natura Impact Statement. The June 2016 licence application guidance notes[61] state that an NIS should be included in applications for Marine Finfish Licences located within or adjacent to Natura 2000 sites.

The conservation objectives for Natura 2000 sites (ie, SACs[62] and SPAs[63], being sites within the Natura 2000 network) are determined under Article 4 of the Habitats Directive. Conservation objectives for SACs and SPAs must be set for the habitats and species for which the sites are selected[64]. The objectives are intended to ensure that the relevant habitats and species present on a site are maintained in a favourable condition/conservation status. These objectives are used when carrying out appropriate assessments for projects that might impact on these sites.

The National Parks and Wildlife Service (the "**NPWS**") website states that a "*process is underway for setting detailed site-specific conservation objectives for these habitats and*

60. Council Directive 92 / 42 / EU, as amended by Council Directive 97 / 62 / EC, Regulation (EC) No 1882 / 2003, Council Directive 2006 / 105 / EC and as amended by Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded and as amended by the Corrigendum to that Directive) (the "**Habitats Directive**")

61. Available at https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/formsdownloads/Aquacultureappguidelines0616.pdf

62. A Special Area of Conservation ("**SAC**") is defined in regulation 2 of the 2011 Regulations, which were implemented with the stated purpose of giving effect to the Habitats Directive and Directive 2009 / 147 / EC (the **"Birds Directive**"), as:

> "*a site of Community importance designated by a Member State pursuant to Article 4(4) of the Habitats Directive through a statutory, administrative or contractual act, or any combination thereof, where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of either or both the natural habitats and the populations of the species for which the site is designated.*"

63. A Special Protection Area ("**SPA**") is defined in regulation 2 of the 2011 Regulations as:

> "*an area classified pursuant to Article 4(1) or 4(2) of the Birds Directive as a special protection area.*"

64. https://www.npws.ie/protected-sites/conservation-management-planning

species" and provides a list of sites that have detailed conservation objectives. Site specific conservation objectives aim to define favourable conservation conditions for these habitats or species at the site level.

The NPWS website notes that generic conservation objectives have been compiled for the remaining Natura 2000 sites. These objectives are available to download[65].

In the context of aquaculture licensing, the licensing authority raises questions for an applicant who is required to submit an NIS when no site-specific "conservation objectives" have been set for a Natura 2000 site.

We are instructed that, in aquaculture licensing, the licensing authority may refuse to undertake an Appropriate Assessment based on the generic objectives. We understand that this approach is based on an interpretation of the decision of the ECJ in *Commission v Ireland*[66], namely that it is not possible to carry out an Appropriate Assessment of a Natura 2000 Site until site-specific conservation objectives have been set. This process has led to lengthy delays as the process of setting detailed site-specific objectives has taken many years.

This approach is contrary to that taken by other environmental licensing authorities in Ireland, which use the generic objectives if no site-specific objectives are available.

6.2 **What does the legislation require in terms of conservation objectives?**

The legislation[67] provides that a screening for Appropriate Assessment must take place in respect of a "*plan or project*" to assess whether it is likely to have a significant effect on a European Site. The guidance note[68] on Appropriate Assessment which was issued by the Department of Environment, Heritage and Local Government (now the Department of Housing, Planning, Community and Local Government) (revised on 11 February 2010) states that:

> *"…existing plans and projects that are modified or undergo new or periodic consents or authorisations, are captured by Appropriate Assessment requirements.*"

The application for an aquaculture licence (either a new licence or a renewal), constitutes a project for the purposes of the 2011 Regulations and is therefore subject to screening to assess whether it is likely to have a significant effect on a European Site.

The Minister, or ALAB, in carrying out its screening can require the submission of an NIS by the applicant[69].

Regulation 16 of the 2011 Regulations provides that a public authority[70]:

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65. Further information available here - https://www.npws.ie/protected-sites/conservation-management-planning

66. Case C-418 / 04

67. The 2011 Regulations

68. Available here - https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2009_AA_Guidance.pdf

69. As provided for by regulation 42(3)(a) of the 2011 Regulations

"*…shall give consent for a plan or project…only after having determined that the plan or project shall not adversely affect the integrity of a European Site.*"

An NIS is defined[71] as:

"*…a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information, including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment.*" (emphasis added)

"Conservation objectives" are defined[72] as:

"*…in relation to a European Site, means the maintenance and restoration of the habitat and species in respect of which the site has been identified as a European Site at favourable conservation status or their restoration to favourable conservation status, and shall include such particular objectives as the Minister may from time to time establish for those purposes under Regulation 26.*" (emphasis added)

6.3 **Can generic objectives be used for the purposes of NIS and Appropriate Assessment?**

It is clear that an NIS must be prepared: "*…in view of the conservation objectives of the site or sites*" and the Appropriate Assessment must be based on those objectives. Where detailed site-specific objectives have been established by the NPWS, those objectives must be used.

However, based on a reasonable interpretation of European law and on the Irish legislative definition of conservation objectives if there are no detailed site-specific objectives for the relevant site, then we do not believe that there is any legal bar to using the generic objectives. The definition of "conservation objectives" makes it clear that the objectives "include" (but are not limited to) any particular objectives, but the generic objectives meet the legislative definition and requirements.

By way of back-up to this position, the generic objectives are used by environmental regulators in the Appropriate Assessment process for other industries in Ireland, apart from aquaculture licensing. The guidance issued by the Commission[73] regarding aquaculture provides that:

"*If no specific conservation objectives have been set then it can be taken that the conservation objective is to prevent further deterioration of the site and its target features from the time it was included in the Natura 2000 network.*"

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70. As defined in regulation 2 of the 2011 Regulations, which includes the Minister and ALAB

71. In regulation 2 of the 2011 Regulations

72. In regulation 2 of the 2011 Regulations

73. "Guidance on Aquaculture and Natura 2000 – Sustainable aquaculture activities in the context of the Natura 2000 Network" - European Commission – 2012, available here - http://ec.europa.eu/environment/nature/natura2000/management/docs/Aqua-N2000%20guide.pdf

Accordingly, it appears to be acceptable for an NIS and Appropriate Assessment to be carried out by reference to generic conservation objectives, which are available for all Natura 2000 sites. Aquaculture licensing should not be held up by delays in setting detailed site-specific objectives for Natura 2000 sites.

7 Licence Fees and Funding Structure

7.1 Road block: perceived funding or resource constraint with the licensing authority

In many environmental licensing regimes the objectives of the licensing authority, interested parties and of the industry to achieve prompt decision-making can be met by difficulties of a lack of funding or resources for the licensing authority to process applications.

Section 64 of the 1997 Act permits the Minister to set fees for aquaculture licence applications and renewals. The fees are set out in Fees Regulations[74] and vary from approximately €63 to approximately €635. Obviously, these levels of fee bear no relation to the resources in processing the licensing applications. Section 64(3) of the 1997 Act states that: "*Every fee received by the Minister under this section shall be paid into, and be disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance shall direct.*"

In considering the funding of an environmental licensing regime, questions arise as to:

- whether it is appropriate to alter the licence fees and to direct that those fees be used for the benefit of the aquaculture licensing process, to ensure prompt, robust decision-making?

- whether it is appropriate for strategic or other complex projects to be levied with a higher licence fee that better reflects the cost of processing the licence in return for prompt, robust decision-making?

7.2 How have other licensing regimes adapted their fees?

In the planning regime, in 2006, the application fees for certain strategic infrastructure projects were raised. Those increased fees are directed to the costs of processing the application. In that regime, the applicant pays an additional amount if the cost of processing the application is greater than the application fee. If the cost of processing the application is less than the application fee a refund of the unused amount is paid to the applicant. This change in licensing fees was combined with setting an objective of decision-making to within 18 weeks of the date of receiving the public submissions (which is generally approximately seven weeks from the date of publication of the notice of application). That 18-week objective is often, though not always, met.

While the levels of fees are high, and are not suggested here, the costs incurred by both applicants and licensing authorities in processes where applications take a number of years can greatly increase over time. For example, during a multi-year process, regulation moves on and applications may need to be reassessed imposing costs on the applicant, interested observers and on the licensing authority.

It is open to the Minister under section 64 of the 1997 Act to increase the licensing fees for certain categories of aquaculture licence or for activities of certain degrees of magnitude. Scaled fees could also be applied, as the EPA does for small and large activities. However, if the industry was to be levied with such fee increases, in order to achieve fairness of approach, the fees would have to be directed to fund the application process and be accompanied by measurable improvements in processing time.

74. The Aquaculture (Licence Application and Fees) Regulations 1998

8 Foreshore and Aquaculture Licensing

8.1 Road block: the requirement to obtain a foreshore licence

Under the Foreshore Acts 1933 – 2014 (the "**Foreshore Acts**") a lease or a licence must be obtained from the Minister for works undertaken on the foreshore which are deemed to be any function in respect of an activity which is wholly or primarily for the use, development or support of aquaculture. In aquaculture, the type of activity which takes place on the foreshore can involve the placement of permanent equipment, such as anchors or navigational buoys, or the placement of temporary equipment, for example, a water pipe[75], on the foreshore. The perceived requirement that the operator of an aquaculture facility must obtain a separate foreshore licence for placement of any equipment, even a temporary freshwater pipe, creates an additional administrative burden. The imposition of this requirement by the authority is not required by the legislation and causes further unnecessary expense and delay in the operation of aquaculture facilities.

8.2 The solution

Short Term

Section 3(3) of the Foreshore Acts allows the Minister to grant a foreshore licence by way of written permission where the licence is trivial in character. It is clearly the case that the placement of temporary equipment on the foreshore, for example running a water pipe to a boat, is trivial and accordingly there is no requirement for the holder of an aquaculture licence holder to apply for, and obtain, a full foreshore licence for this type of activity. The Independent Licensing Review Group could recommend that the Minister automatically issue the written permission referred to in section 3(3) of the Foreshore Acts at the same time as the granting of an aquaculture licence by the licensing authority.

Long Term

The General Scheme of Maritime Area and Foreshore (Amendment) Bill 2013 (the "**2013 Bill**") proposes to combine the planning permission and foreshore licensing regimes.

Given that the Minister is responsible for issuing foreshore licences to the operators of aquaculture facilities, it would be more efficient for any conditions pertaining to aquaculture, that are currently dealt with by foreshore licensing, to be addressed in the aquaculture licence itself. The 2013 Bill is an opportunity for the necessary legislative framework to combine the aquaculture and foreshore licensing regimes into a single process to be put in place or, at the very least, for provision to be made for the placement of temporary equipment on the foreshore to be permitted under the terms of an aquaculture licence alone.

75. In the same way that a farmer might run a water hose across a public road from one field to another on a temporary basis.