



An Roinn Ealaíon, Oidhreachta,  
Gnóthai Réigiúnacha, Tuisithe agus Gaeltachta

Department of Arts, Heritage,  
Regional, Rural and Gaeltacht Affairs

**National Parks & Wildlife Service  
7 Ely Place, Dublin 2**

**Secretary  
Independent Aquaculture Licensing Review Group  
c/o Department of Agriculture, Food and the Marine  
National Seafood Centre  
Clonakilty, Co. Cork**

**Re: Independent Aquaculture Licensing Review**

**Date: 14/02/2017**

The Department welcomes the opportunity to make a submission to the Review and, cognisant of the review group's objectives as outlined in your letter of 11<sup>th</sup> January 2017, is pleased to submit the following comments and background material for consideration:

### **Legal background**

#### *EU Birds and Habitats Directives*

The Birds Directive of 1979 requires all Member States to designate Special Protection Areas (SPAs) for the protection of certain bird species and the habitats they use (e.g. breed, feeding, roosting, overwintering areas) and to give general protection to populations of all naturally occurring birds within the member state.

The Directive requires Member States to designate Special Protection Areas (SPAs) for species listed in Annex 1 of the Directive, and for important concentrations of migratory birds. The following broad criteria have been mainly used for SPA selection:

- Sites regularly supporting 1% or more of the all-Ireland population of a species listed in Annex I of the Birds Directive
- Sites regularly supporting 20,000 waterbirds or 10,000 pairs of seabird.
- Sites regularly supporting 1% or more of the biogeographic population of a migratory species.

Judgments of the European Court of Justice have directed that **all** sites of importance must be designated and if the State has failed to carry out adequate scientific survey, the Court has referred to published scientific literature in its determination of cases.

The designation process commenced in the 1980s but sites have been reviewed since then as a result of clearer guidance from the Commission, including the criteria above, and also in light of case law from ECJ judgments. Ireland is still required to complete the marine SPA network: this mostly relates to the offshore territory but will require some consideration of near shore areas particularly to ensure feeding areas near breeding sites, and also reflecting a lack of data on some marine species that occur mostly beyond the survey range of land-based surveys.

The Habitats Directive requires Member States to designate Special Areas of Conservation (SACs) for habitats listed in Annex I of the Directive and species listed in Annex II. These SACs, combined with the SPAs, form part of a European network of sites called Natura 2000.

As an island state, Ireland had a particular requirement to designate SACs for marine and coastal habitats. Marine Annex I habitats relevant to Ireland include:

- Large shallow inlets and bays
- Estuaries
- Intertidal mudflats and sand flats
- Reefs
- Sandbanks.

The selection process for SACs took place largely between 1997 and 2000. Maps were circulated to the then Department of Marine and Natural Resources for comment and all known aquaculture licensed holders were notified. Meetings were held in 2000 or 2001 with that Department to explain the Directives' requirements of appropriate assessment for aquaculture licensing.

For SACs that had been selected by 2000, a series of seminars were held around the country on the implications of the designations. It was stated at these seminars that existing aquaculture operations would not be affected unless they were shown to be damaging to the site but that any intensification and / or expansion of aquaculture would need to be considered through the appropriate assessment procedures.

### **Protection of Natura 2000 sites (i.e. SACs and SPAs)**

Article 6 (3) of the Habitats Directive requires that any plan or project likely to have a significant impact either individually or in-combination with other plans or projects requires an appropriate assessment to be undertaken. Article 7 of the Directive requires that Art 6(3) be applied to the SPAs.

In general, plans or projects for which a significant negative impact cannot be discounted cannot be permitted in a Natura 2000 site. Under Article 6(4), a plan or

project likely to have a significant impact on the site may be permitted to go ahead if strong socioeconomic reasons in its favour can be identified. In such a case, the Member State must ensure the coherence of the Natura network and inform the Commission of compensatory measures.

EU case law, notably the Waddenzee Judgement in 2004, makes it clear that activities such as aquaculture are required to undergo an appropriate assessment prior to a licensing consent, even if the activity had been in place prior to designation.

### **Irish Legislation**

The Habitats Directive was transposed into Irish law in the EU (Natural Habitats) Regulations, S.I. 94 of 1997 which were replaced by the European Communities (Birds and Natural Habitats) Regulations, S.I. 477 of 2011. Regulation 42 places an obligation on Ministers, whose powers include licensing of activities in Natura 2000 sites, to apply the protective elements of Article 6 of the Habitats Directive:

*“a screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary for the management of the site as a European site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.”*

### **The ECJ Judgement against Ireland (C 418/04 - The Birds Case)**

In 1997, the ECJ found against Ireland in a wide-ranging case concerning implementation of the Birds Directive. A large element of the judgement concerned failure to put in place adequate assessment of aquaculture licence applications for SPAs. Fisheries were subsequently included in the appropriate assessment requirement due to new infringement proceedings.

In the negotiations to address the judgement, a “Roadmap towards the Management of Fisheries & Aquaculture in Natura 2000 Sites” was agreed with DG Environment, in May 2009.

The Roadmap set out a five step process to compliance:

- Detailed data collection in 91 Bays/Estuaries (led by the Marine Institute (MI) and National Parks and Wildlife Service (NPWS))
- Detailed analysis of raw data collected (MI and NPWS)
- Setting conservation objectives to be met in each designated site (NPWS)
- Carrying out Appropriate Assessments (AA) of each licence application/fishery plan against the detailed conservation objectives set for the site in question

- Determination of licences/fisheries plans on the basis of the AA and other relevant factors (DAFM)

Between 2009 and 2012, DAFM, the Marine Institute, BIM and the NPWS section of DEHLG (now in Department of Arts, Heritage, Regional Rural and Gaeltacht Affairs) collaborated on data collection and analysis elements of this process. A work programme was agreed, prioritising setting of conservation objectives for sites with the greatest incidence of aquaculture.

Work on designing a system to compile, manage and disseminate site-specific conservation objectives (SSCO) began in 2009 and the first set of SSCO documents, along with supporting documents, was published in July 2011. In order to cover DAFM's list of priority sites, NPWS has published SSCOs for 37 SPAs and 81 SACs. These 118 sites include also several sites that were not on the original list (such as Blackwater Bank SAC (002953) and West Connacht Coast SAC (002998).

The collection and analysis of necessary baseline data and setting of detailed site-specific conservation objectives has removed a significant barrier to the aquaculture licensing process with respect to Natura 2000 sites. NPWS is a Statutory Consultee to this process.

### **Recent Procedural Issues**

Over 80% of aquaculture sites are located in Natura areas and Appropriate Assessments are sent for comment to the NPWS of DAHRRGA as the Minister is a statutory consultee. In almost all cases the turnaround time achieved is within the dates set by DAFM, albeit that the NPWS is severely handicapped by reduced scientific staff numbers, particularly bird scientists.

NPWS has previously raised concerns with DAFM over some aspects of the aquaculture licensing process, in particular with regard to the Appropriate Assessment (AA) process:

- Insufficient detail provided of the mitigation measures to be put in place;
- A lack of decisive conclusions in the AA report meaning that the effect of the activities on the site was unclear;
- Issues around transparency and communication of outcomes.

Examination of recent conclusion statements and the licencing declarations on the DAFM website, suggests that these issues are being addressed by including mitigation measures on the licence declaration in clear bullet point form.

### **Recommendations to improve the Aquaculture Licensing Process with regard to EU and National Law**

- Include the detailed conclusion statement in the actual appropriate assessment report.

- The legal robustness of the appropriate assessment report would be further strengthened by including mitigation measures which incorporate more specific details of the plans, their implementation and monitoring of the measures.
- All licence applications should be processed on a 'bay by bay' basis, with all documentation clearly dated. This would ensure that Statutory Consultees work from the most current version of all documents associated with the applications, including conclusion statements and licensing determinations.
- All documents relevant to licensing decisions to be made available on the DAFM website. This could include all comments received during the consultation phase, along with details of the mitigation plan. This would ensure that the decision making process was open and transparent.
- All Statutory Consultees be notified when the conclusion statement is published and similarly when the licensing decisions are published.
- Monitoring of adherence to licence and mitigation measures is required. Currently the Marine Institute undertake some monitoring of aquaculture activities and consideration should be given to extending this function

## **Conclusion**

A huge tranche of work on the collection and analysis of baseline data was achieved by a collaborative exercise. The Commission seems to accept that the roll out of licensing is being carried out in compliance with the judgment of the Court in case C-418/04.

Some of the challenges and barriers to the efficacy of the licensing process have been overcome in recent years as a result of collaboration of the relevant bodies. However, some concerns remain and the suggested approach, described above, would significantly address these concerns.

The Department looks forward to the outcome of this review and would welcome updates on its publication. In the meantime the Department is happy to provide whatever assistance may be required.