



Bradán, Gortalinny

St. Killians Harvest Ltd.

Kenmare, Co. Kerry

A brief history to 8th December 2016 of the application for a licence for a salmon farm site at Kidney Rock, Kenmare Bay, County Kerry.

St. Killian's Harvest Ltd. (SKH) has been engaged in Salmon Farming since 1986.

In August 2003 it was decided that, in order to keep the business economically viable, SKH should apply for new aquaculture licence for a grow out site, outside Kilmackilloge Harbour, in the Kenmare River at Kidney Rock. Accordingly the Department of Marine was informed by a letter of our intention.

After a scoping letter, which was approved by the Department of Marine, was sent out and submissions were received, work commenced on an EIA of the site and its location. Following this an EIS and application were compiled for the proposed site. This work was commissioned from Watermark Aqua-environmental at a cost in excess of €50,000, which SKH paid in full on submission of the licence application. The scoping study and responses were included in the EIS.

SKH delivered the licence application for the proposed Kidney Rock site to the Department of Marine on 5th December 2005. The application included the completed EIS, which has been compiled according to the rules of the Department of Marine. The application was accepted by the Department and published as required. Copies of the application, including the EIS were delivered for public consultation and to the statutory bodies within the time limit specified in the Act.

The Department of Marine forwarded the copies of scoping correspondence received after the publication on the 1st of March 2006, giving SKH three weeks to respond.

On the 14th of March 2006 Dr Neil Bass responded to the observations received for the application in a professional and adequate way.

The Department of Marine confirmed that it received the response by e-mail on the 22nd of March 2006.

It should be noted that "Scoping, of statutory bodies and members of the public that it is considered may have an interest in or be affected by an aquaculture licence application" is no more than a verbal protocol introduced by the Department in the 1990's. The Department's wishes were fully followed in this regard. However it is not a legal requirement.

On the 29th of November 2006 Dr Neil Bass requested a meeting with the Department of Marine on behalf of SKH as there seemed to be no progress with the application.

After that, a number of meetings between SKH and the Department of Marine were held in 2006 and 2007 regarding the Kidney Rock application. In one of the meetings, which also included licence applicants for mussel farm licences in the vicinity of Kidney Rock, we were told by the Department of Marine that we will get our license (the precise words used were "what we wanted", but that it was a question of time.

On June 26th 2008, SKH received a letter from the Department of Marine basically asking for clarification who is representing SKH and stating that the Department of Marine is currently processing a Licence Application for a new licence at Kidney Rock applied for in the name of SKH. A response was given immediately. Letter on file.

The Department of Marine wrote to SKH on the 10th of September 2008 explaining in the letter that it was processing a Licence Application in the name of SKH for a new site at Kidney Rock. Letter on file

After a prolonged silence from Department of Marine, SKH wrote again to the Department on 12th January 2009 to enquire about any progress re existing licences and the new licence application. Letter on file. A detailed response was promised by return.

No response was received from the Department of Marine. In a new letter (16th of February 2009, letter on file) SKH asked the Department of Marine again for a response to our previous submissions. A vague verbal response promised us answers to our previous correspondence which was never received.

SKH was invited to a meeting at the Department of Marine offices in Clonakilty, Co. Cork, in May 2009. During this meeting the future plans of SKH were discussed as well as the existing licences. A promised follow up from the Department of Marine was never received.

The 9th of November 2009 SKH made a representation to Minister Brendan Smith explaining the situation SKH was left in by the Department of Marine due to the lack of action by the Department of Marine. Letter on file. This letter was acknowledged but there was no further response from the Department

After a prolonged period of silence, on 21st October 2010, the Department of Marine invited SKH again for a meeting in Clonakilty on the 23rd of November 2010. This meeting was later postponed (by phone) by the Department, apparently due to the "adverse weather conditions at the time".

This meeting finally took place the 8th of February 2011, over five years after the original licence application. The Department of Marine refused to accept any evidence that a causal dependence was ever claimed by SKH between the existing licences and the new licence applied for. However it is made clear in the EIS that the sites would work in tandem in that the two sites operated by SKH in Kilmackilloge would produce at least some of the smolts to be grown out at Kidney Rock.

It was also at this meeting that SKH was informed for the first time that all licence applications were stalled until "problems with the Natura 2000 sites are cleared up"

SKH was not satisfied with the Department's elusive reasoning regarding further delays and a solicitor was asked to contact the Department for an appropriate answer. He wrote to the Department of Marine asking for reasons why a decision was not made by letter dated the 17th of February 2011. Letter on file

Department of Marine responded to this letter on 4th of April 2011 that the Minister cannot issue a licence as the application refers to a site in a Natura 2000 area.

When enquiring at what date the Department of Marine became aware of this situation no appropriate answer was delivered in subsequent letters from the Department of Marine.

On the 17th October 2011, the Department of Marine indicated by letter that the original application of December 2005 was incomplete. The solicitor for SKH explained by letter on 30th November 2011 to the Department of Marine that it accepted the application as complete in 2006 and had never referred to an "incomplete Licence Application". The Department of Marine then accepted in its letter dated the 13th of January 2012 that the licence had been adequate and that it would be processed as soon as the necessary work in respect of the EU Birds and Habitat Directive has been completed.

It was at this stage that SKH discovered that the European Court had ruled on 13th of December 2007 that the Republic of Ireland was in breach of the EU Birds and Habitat Directives. It therefore seemed to SKH, that it was being claimed that the Minister was unable make any decision anymore re Licensing in a Natura 2000 Area, in this case the Kenmare River cSAC . However, since the European Court ruling had absolutely nothing to do with salmon farms it is not clear how this applied and nor has this ever been explained. In all events, on the basis of the timescales for the granting of previous licences (for example for the Doonagh Point site in 2003, it is reasonable to have expected that the Kidney Rock licence could have been processed and either granted or refused well before the European Court ruling.

SKH's solicitor was asked to get this date and ruling confirmed by the Department of Marine. However, despite several letters written to the Department of Marine, SKH only received acknowledgements of the correspondence.

On the 26th of January 2016, ten years after the submission and acceptance by the Department of the application for the Kidney Rock site, SKH approached the Department of Marine again and asked:-

- about the status of its the application
- how it was possible that another licence application (for the proposed MHI Shot Head site) could “leapfrog” a much earlier application in the "processing queue".

Remarkably, on the 24th of February 2016 SKH was informed by the Department of Marine that it is now in the position to begin processing the licence application for the Kidney Rock site. This they did with no reference to endless earlier correspondence and without answering any of the other questions raised over a period of a decade. SKH was basically asked to supply a completely new application.

As this letter did not give any explanation to the status of our application and the questions asked, SKH approached the Department of Marine on the 29th of March 2016 with more detailed questions regarding the License Application supplied in 2005. This letter was brought to the attention of the Minister Agriculture, Food and Marine.

The office of the Minister acknowledged the letter within two days.

The Department of Marine replied on the 15th of June 2016 again not answering the questions raised and referred to its letter dated the 24th of February 2016.

After a period of more than a decade this application is ongoing but of uncertain status.

Simply put, SKH has spent well over €50,000 on the preparation and follow-up of this application. SKH accepted in good faith that the application was in process and the Department confirmed this both in its actions and in writing on numerous occasions. However, it now seems that this was never the case. It is now suggested by the Department that a new application (and EIS) will now be required to progress this licence application, which has been leap-frogged in the "processing queue" by an application by Marine Harvest Ireland for a site at Shot Head submitted about 5 years after the Kidney Rock application. SKH believes that the ECJ ruling was as the result of inaction by the Irish Government and that this had a direct impact on the progress of the Kidney Rock licence. SKH feels further that the Department has, at the very least, a moral duty to take responsibility for its failures in the processing of the Kidney Rock licence application and to make reparations for the stance that they have taken, through the years, by now finding a means by which to process this application without further undue expense to the applicant.

SKH provides this account as an indication of the depth of dysfunctionality in the Departmental Aquaculture Licensing Division over the last ten years. Further evidence can be provided in the form of all correspondence and papers involved in this application on request.