Law School,

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10 February 2017

Submission on Aquaculture Licence Reviews

Dear Secretary,

I am making this submission short in order to make it easier for the Review Body to carry out its task. For this reason, I ask to be forgiven if my comments appear terse.

1. We must start from the proposition that State polity is to foster aquaculture. Aquaculture is an indigenous industry which is vitally necessary to mitigate the risk of Ireland's reliance on overseas investment especially in turbulent economic conditions. The State should therefore do all within its power to foster sustainable aquaculture activities. Sometimes it appears that this is not the case.

2. There is some justifiable disappointment about the procedures and length of time it takes to get an aquaculture licence. Mandatory time limits should be set for decisions on aquaculture applications and foreshore licence/lease applications and the only ground for extending the time limit should be the necessity to carry out new or more scientific investigations in order to facilitate a proper assessment of environmental impacts. Regulators should only be allowed ask for further information once. Developers should be required to provide a timeframe for their development and provision made for a licensing authority being required to refund application fees if they depart from the mandatory time frame. (See s. 34 Planning and Development Act2000 which has a similar provision).

3. Far too many authorisations are required for what is basically the same project in Ireland. Aquaculture licencing should be transferred to An Bord Pleanala/EPA. One only has to look at the Corrib Gas debacle to see the defects in multiple licensing regimes. One qualified aquaculture expert in the Bord Pleanala/EPA could provide the necessary in-house expertise. If an aquaculture licence necessitates also getting a planning permission and a foreshore licence or lease, *all* authorisation procedures should be combined and EIA and AA of the project (if required) carried out in respect of all authorisations *at the same time.* This would be far more efficient and remove a single transferrable ground for judicial review i.e. inadequate coordination of EIA/AA by public authorities. This will probably be required to transpose the new EU Directive on environmental impact assessment which was enacted specifically, inter alia, to encourage better regulation and streamlining EIA procedures in Member States.

4. EIA should not be required for renewed licences unless there will be n*ew* significant environmental effects.

5. If planning permission is also required for elements of an aquaculture project and an appropriate assessment is required, then one regulator in consultation with other regulators should be enabled to carry out ONE AA on the entire project including that part of it on the foreshore and at sea . An attempt is made for joint AA in Regulation 42(21) the European Communities (Birds and Habitats) Regulations 2011 but in my experience this provision is defective and unworkable and there is no policy guidance requiring or compelling joint

screening and assessment. If there is joint screening and assessment under the Habitats Regulations, the decision by ONE regulator should be sufficient to approve the project.

6. The Foreshore Section of the Dept Agricuture appears in practice to have a very expansive and bureaucratic notion of the type of development that requires a foreshore lease or licence. There is anecdotal evidence that they consider that licences are required for minor and/or temporary developments many of which are even exempted from planning permission. Foreshore law should not differentiate between activities on the basis of the identify of the developer and should not require complex authorisations for minor developments which could not possibly be a hazard to navigation . Planning permission is not required for *underground* pipelines, cables or apparatus on the forshore[1]even though this is far more environmentally disruptive than overground apparatus. Yet foreshore licences are required for overland pipes. Laying apparatus on the foreshore if it is to be regulated at all should be regulated by byelaws under the Foreshore Acts or licensing by local authorities or fast track consents from the Minister for Agriculture, not foreshore leases or licences. Public participation is not needed for minor activities.

7. Aquaculture regulations should be consolidated in the interests of transparency, better regulation, efficiency and access to information.

8. Aquaculture licensing and the assessment of the environmental impacts of foreshore authorisations should be transferred to the EPA. It is a waste of public resources having separate bodies carrying out separate assessments.

9. Clear legislation should provide that if EIA or AA for an aquaculture project is needed, ONE EIA /AA shall suffice for the entire project subject to all public authorities regulating the project *being obliged* to participate in the assessment process.

10. A duty to provide full and clear reasons for decisions and conditions attached and to state the considerations taken into account should be imposed on decision makers.

11. Licences should be flexible enough to allow for innovations designed to improve human and animal health or the project generally that have no significant environmental impacts. A speedy (maximum three weeks) informal system (rather like technical amendments) to permit immaterial deviations from the approved development/operating regime should be provided for.

12. Only one set of monitoring requirements for an aquaculture project should be imposed.

13. In the interests of transparency, the State should provide and publish in advance generic requirements *that will be complied with by the Department for* foreshore authorisations and the charges that will be imposed on operators of aquaculture project. There should be a requirement to rationalise and justify deviations from the published charges to be imposed under foreshore authorisations. (There are great variations in the charges imposed for foreshore licences and leases. Sometimes it seems that the identity and resources available to the developer was the determining factor for levying a particular charge.

14. .The provision in the generic licence that" any condition or part of a condition in this licence is held to be illegal or unenforceable in whole or in part, such condition shall be deemed not to form part of this licence but the enforceability of the remainder of this licence is not affected" is probably illegal. It is the function of a court to decide t what the effect of holding a condition illegal should be.

[1] Planning and Development Act, 2000, s.225 (3).

15. The condition that "the Licensee shall at all times hold all necessary licences, consents, permissions, permits or authorisations associated with any activities of the Licensee in connection with the licensed area" is also bad practice. Each regulatory regime is responsible for policing compliance with authorisations it issues. It is generally bad practice and often unfair to impose duplicated regulatory controls. All programmes for good regulation aim to reduce regulatory duplication. Duplicated controls also waste public resources.

16. The practice of giving 10 year aquaculture licences deters investment. There are enough possibilities for controlling the effects of aquaculture to justify giving longer licences.

Yours sincerely,

Professor Yvonne Scannell