

Leonard, Brona

From: O'Donnell, Jim
Sent: Monday 12 February 2024 16:52
To: Carton, Margaret (Alab); Alab, Info
Cc: Buss, Patricia
Subject: ALAB: Appeal re site ref. T09/084
Attachments: 2023 01 29 - AP1-2024 - Notification of Appeal to Minister and File Request.pdf; 2. Tab A. FCL No. 71.pdf; 4. Tab C. MED 2023 Inspection.pdf; 5. Tab D MED 2021 Inspection.pdf; 6. Tab E Certificate of Revocation.pdf; 7. Tab F Proof of Delivery of Reg Letter.pdf; 1. Submission to Minister.pdf; 3. Tab B. Reg Letter to Frank Burke Aug 23.pdf; 8. Notice of decision sent to Applicant.pdf

Bronagh & Margaret a chairde,

Please find attached the following documents relating the revocation of Fish Culture Licence No. 71.

1. Submission to Minister
2. Tab A. Copy of the Licence
3. Tab B. Registered Letter to Mr. Frank Burke
4. Tab C. MED 2023 Inspection
5. Tab D. Med 2021 Inspection
6. Tab E. Certificate of Revocation
7. Tab F. Proof of Delivery of Registered Letter
8. Notice of Revocation to Applicant

Is mise le meas,

Jim O'Donnell

Aquaculture & Foreshore Management Division
Roinn Talmhaíochta Bia & Mara
Lárionad Bia Mara.
Cloich na Coillte
Co. Chorcaí

023 8859544

From: Carton, Margaret (Alab) [REDACTED] >
Sent: Tuesday, January 30, 2024 11:57 AM
To: Barry, Karen [REDACTED] >; Buss, Patricia [REDACTED]; Carey, Chloe [REDACTED]; Coakley, John [REDACTED]; Coleman, Gretta [REDACTED]; Connolly, Ann (Clonakilty) [REDACTED]; Cotter, Eucharía [REDACTED]; Cronin, Catherine [REDACTED] >; Farrell, Geraldine [REDACTED]; Fitzpatrick, Deirdre [REDACTED] >; Horan, Helena [REDACTED]; Jennings, David [REDACTED]; Lanigan, Aoife [REDACTED]; Maher, EileenM [REDACTED]; McDonald, Bernie [REDACTED] >; McLoughlin, PatrickM (Aquaculture) [REDACTED]; McSweeney, Noel [REDACTED] >; Moore, Laura [REDACTED]; Naughton, Maria [REDACTED]; Nyhan, Jennifer [REDACTED]; O'Brien, Grace [REDACTED] >; O'Connell, James [REDACTED]; O'Donnell, Jim [REDACTED] >; OFlynn, Deirdre [REDACTED]; O'Mahony, Jane [REDACTED]; O'Neill, RonanC [REDACTED]

(Fisheries) [redacted]; ORegan, Philip [redacted]; OShea, Nicole
[redacted]; OSullivan, Diarmuid [redacted]; Power, Thomas
[redacted]; Taman, Tatiana [redacted]; Waldron, Ultan
[redacted]; Walsh, ColetteM [redacted]; Waugh, Louise

Cc: Alab, Info <Info@alab.ie>

Subject: ALAB: Appeal re site ref. T09/084

Dear all

I attach a copy of the notification letter for the following site:

Re: Appeal by Frank Burke of Raford, Kiltulla, Athenry, Co Galway against the decision of the Minister for Agriculture, Food and the Marine to revoke an Aquaculture Licence to Frank Burke to cultivate rainbow trout.

Please confirm receipt of this message.

Regards

Margaret



Margaret Carton

An Bord Achomharc Um Cheadúnais Dobharshaothraith

Aquaculture Licences Appeals Board

Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32

DTW5

Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

T +353 (0) 057 8631912

R-phost/Email: info@alab.ie

Láithreán Gréasáin/Website: www.alab.ie

Submission AGR 01455-23: Recommendation to Revoke Fish Culture Licence No.71 Ref. T09/084

TO: Minister
STATUS: Completed
PURPOSE: Approval

AUTHOR: Buss, Patricia
OWNER: Buss, Patricia
REVIEWERS: O'Donnell, Jim
Horan, Helena
Waldron, Ultan
McSherry, Sinead
Byrne, Joyce

DIVISION: Aquaculture and Foreshore Management
Division

DECISION BY:

Final comment

Approved by the Minister

Action required

The Minister's determination is requested under Section 69(2)(a) of the Fisheries (Amendment) Act, 1997 in relation to the revocation of Fish Culture Licence No 71.

Executive summary

The Minister's determination is requested in relation to the revoking of Fish Culture Licence No. 71 (Ref T09/084) from Frank Burke, Rafford, Kiltulla, Athenry, Co. Galway under Section 69(2)(a) of the Fisheries (Amendment) Act 1997.

It is recommended that the Minister approves the revocation for the reasons outlined in the 'Detailed Information' section below.

Detailed information

Background

Fish Culture Licence No. 71 was granted to Frank Burke, Rafford, Kiltulla, Athenry, Co. Galway on 3rd November 1981 for the cultivation of rainbow trout at Rafford, Athenry, Co. Galway (**TAB A**). The licence does not have an expiration date.

Correspondence issued to the licensee advising him that revocation of the licence was under consideration and requesting any submissions that the licensee wished to make on his behalf on 9 August 2023 (**TAB B**). Proof of Delivery of this correspondence is attached (**TAB F**). No response was received from the Mr. Burke.

Section 69(2)(a) of the Fisheries (Amendment) Act 1997 states,

'(a) Subject to paragraph (b), where aquaculture in respect of which a licence has been granted has ceased for a continuous period of 2 years, the Minister shall, without compensation to the licensee, revoke the licence.

(b) A licensee who considers that there are exceptional reasons why aquaculture, in respect of which a licence has been granted to the licensee, has ceased or is likely to cease for the period referred to in in paragraph (a), may apply to the Minister, giving those reasons, for a determination not to revoke the licence.

(c) The Minister may, in his or her discretion, having considered the reasons given by the licensee under

paragraph (b), determine whether or not to revoke the licence. The determination of the Minister is final.'

Technical Consultation

The Department's Engineering Division confirmed on 20 July 2023 that there was no aquaculture activity on the site, and it appeared the site had not been used for some years **(TAB C)**. Marine Engineering Division had previously visited the site on 13 December 2021 and had noted that the "facility is in poor condition and does not appear to have been operating for some time." **(TAB D)**

Recommendation

It is recommended that the Minister approve the revocation of Fish Culture Licence No 71. If approved the revocation will proceed as outlined in Section 21 of SI 236/1998 - Aquaculture (Licence Application) Regulations, 1998 (as amended) and a certificate of revocation will issue to Mr. Burke **(TAB E)**.

-

Related submissions

There are no related submissions.

Comments

ODonnell, Jim - 19/09/2023 16:26

Helena,

I have added the following line to Trish's draft:

"A new licence for this site would only be granted in accordance with current licensing conditions."

For your consideration please.

Horan, Helena - 06/10/2023 15:11

I agree with the recommendation that the Minister revoke this non-expiry Fish Culture Licence for the reasons set out in the detailed submission.

Waldron, Ultan - 06/10/2023 17:12

I agree with the recommendation to revoke this license as outlined in the submission. The licensee has been give the 28 day statutory notice period and has not replied to challenge the revocation.

McSherry, Sinead - 09/11/2023 07:02

Helena, before advancement can the Division confirm that the department has been unsuccessful in making any contact with Mr. Burke on this matter. Was the registered letter accepted? thank you Sinead

Horan, Helena - 09/11/2023 09:38

Proof of delivery for the Department's correspondence is now attached as requested by Asec. Recommended that the Minister revoke the non-expiry Fish Culture Licence as set out in the submission attached.

Waldron, Ultan - 09/11/2023 16:08

Proof of delivery of revocation letter now attached. re submitted for approval of recommendation to revoke.

McSherry, Sinead - 24/11/2023 10:35

I agree with the recommendation that the Minister revoke this non-expiry Fish Culture Licence for the reasons set out in the detailed submission. The only legislative option to deal with this site is revocation and the site is essentially abandoned.

Rigney, Maria - 06/12/2023 18:06

Approved by the Minister

User details

INVOLVED: Buss, Patricia
ODonnell, Jim

READ RECEIPT: Buss, Patricia
ODonnell, Jim

Horan, Helena
Waldron, Ultan
McSherry, Sinead
Sub Sec Gens Office
eSub Sec Gen
eSub Ministers Office
eSub Minister

Horan, Helena
Waldron, Ultan
McSherry, Sinead
Byrne, Joyce
Rigney, Maria
OConnell, James
Farrell, Geraldine

Action Log

77/84
35

An Roinn Iascaigh
agus Foraisiacht
(Department of Fisheries)
and Forestry

Fisheries (Consolidation) Act, 1959

Fish Culture Licence

No 71
Joe Cooper
Licensing

The Minister for Fisheries ~~and Forestry~~ ^{in exercise of} the powers conferred on him by Section 15 of the Fisheries (Consolidation) Act, 1959 (no 14 of 1959) and the Fisheries (Transfer of Departmental Administration and Ministerial Functions) Order, 1977 (S.I. No. 30 of 1977) (as adapted by the Lands (Alteration of Name of Department and Title of Minister) Order, 1977 (S.I. No. 195 of 1978)), hereby by this licence authorises, subject to the conditions set out in the Schedule to this licence

Mr. Frank Burke

Rafford, Kiltulla, Athenry Co. Galway

1. To carry on at or in connection with the fish farm situate in the townland of Rafford in the Barony of Athenry County Galway the plans of which have been submitted to and approved by the Minister for Fisheries ^{and Forestry} all necessary operations in relation to the culture of rainbow trout.
2. To purchase and have in possession rainbow trout and the ova and fry of rainbow trout, the acquisition of which has been approved by the Minister for Fisheries **and Forestry**
3. To capture and have in possession within the confines of the said fish farm live rainbow trout and the fry thereof at any time of the year.
4. To have in possession and to sell at any time of the year rainbow trout for table use.
5. For the purpose of capture of fish as aforesaid to have in possession and use nets, traps, or such other engines as may be approved from time to time by the Minister for Fisheries **and Forestry**.

262

364

SCHEDULE


Conditions subject to which this licence is granted

- 1 No fish other than rainbow trout shall be bred and handled at the said fish farm.
- 2 The licensee shall provide and maintain such gratings or other devices in the intake and discharge channels as will effectually prevent the admission of migratory fish into the other water courses and ponds of the fish farm, and make adequate arrangements to ensure the safe passage past the farm of migratory fish and shall make all necessary provisions to prevent the escape of rainbow trout from the ponds and water courses of the farm and shall carry out any instructions issued in this connection from time to time by the Minister for Fisheries **and Forestry**.
- 3 Abstraction of water shall be so regulated that sufficient water will be maintained at all times in the natural water courses adjoining the farm to ensure the free passage of migratory fish past the farm. The licensee shall comply with any directions issued in that connection by the Minister for Fisheries **and Forestry** from time to time.
- 4 The stock of fish held in the farm shall not exceed such quantity as may be specified by the Minister for Fisheries **and Forestry** from time to time.
- 5 Records shall be kept at the said fish farm of all fish stripped, bred, held and handled at the said fish farm and of all sales of fish from it and such records shall be available for inspection at all reasonable times by any inspector appointed for the purpose of Part X of the Fisheries (Consolidation) Act, 1959.
- 6 The Licensee shall furnish to the Secretary, Department of Fisheries **(Fisheries and Forestry** Division) such returns from the records kept at the said fish farm as may be required from time to time by the Minister for Fisheries **and Forestry**.
- 7 Live rainbow trout or the ova or fry thereof **for stocking purposes** shall not be sold or disposed of to any person or in any way transferred outside the said fish farm save in accordance with the written permission of the Minister for Fisheries **and Forestry**.
- 8 The said fish farm and all premises used in connection with operations carried on at the said fish farm shall be open to inspection at any time by any authorised officer within the meaning of the Fisheries Acts.

licensee shall notify the Secretary, Department of Fisheries ~~Fisheries~~ **and Forestry** Division) within forty-eight hours of the appearance or suspected appearance of any disease ^{or abnormal mortalities} at the said fish farm and shall comply with any directions as to the treatment, disposal or destruction of stocks of fish at the said fish farm in the interests of safeguarding the stocks of fish in the State.

- 10 The licensee shall make arrangements for the provision of a lime pit for the disposal of dead fish.
- 11 The licensee shall make adequate arrangements for the hygienic operation of the said fish farm (including selection and preparation of food, treatment and disposal of effluent) and in that connection shall comply with any directions which may be issued from time to time by the Minister for Fisheries ~~and Forestry~~ **and Forestry**.
- 12 Such precautions shall be taken as the Minister for Fisheries ~~and Forestry~~ **and Forestry** may specify from time to time, in relation to (a) introductions of rainbow trout ova or fry for stocking the farm, including disease free certification, in appropriate terms, and (b) the adaptation of methods of operation or type of installation (e.g. use of concrete ponds).

Dated this 3rd day of November 1981.


for the Minister for Fisheries ~~and Forestry~~ **and Forestry**

and Forestry
An Officer of the Department of Fisheries/
duly authorised in that behalf.

N.B.

- (1) This licence is valid only so long as the layout of the fish farm conforms to the plans duly approved as provided in Paragraph 1 thereof.
- (2) This licence may be amended or revoked as provided by Section 15 of the Fisheries (Consolidation) Act, 1959.
- (3) This licence is not to be construed as authorising the licensee in any way to interfere with or infringe the rights of any other person.

Sent by Registered Post

Mr Frank Burke,
Rafford,
Kiltulla,
Athenry,
Co. Galway

Our Ref: T09/084

{ August 2023

Dear Mr Burke,

I refer to Fish Culture Licence No. 71 issued to you on 3rd November 1981 in relation to your site at Rafford, Athenry, Co. Galway.

Section 69(2)(a) of the Fisheries (Amendment) Act, 1997 (as amended) stipulates that:

“Where aquaculture in respect of which a licence has been granted has ceased for a continuous period of 2 years, the Minister shall, without compensation to the licensee, revoke the licence”

Section 69 (2) (b) stipulates that:

“A licensee, who considers that there are exceptional reasons why aquaculture, in respect of which a licence has been granted to the licensee, has ceased or is likely to cease for the period referred to in paragraph (a), may apply to the Minister, giving those reasons, for a determination not to revoke the licence.”

Section 69 (2)(c) stipulates that:

“The Minister may, in his or her discretion, having considered the reasons given by the licensee under paragraph (b), determine whether or not to revoke the licence. The determination of the Minister is final.”

The Department’s Marine Engineering Division has advised that this site is no longer in operation. If you consider that such exceptional reasons prevail in your circumstances, you should make such representations to the Minister within 28 days of the date of this letter. Such representations will be considered by the Minister and a final determination in the matter made as soon as possible thereafter.

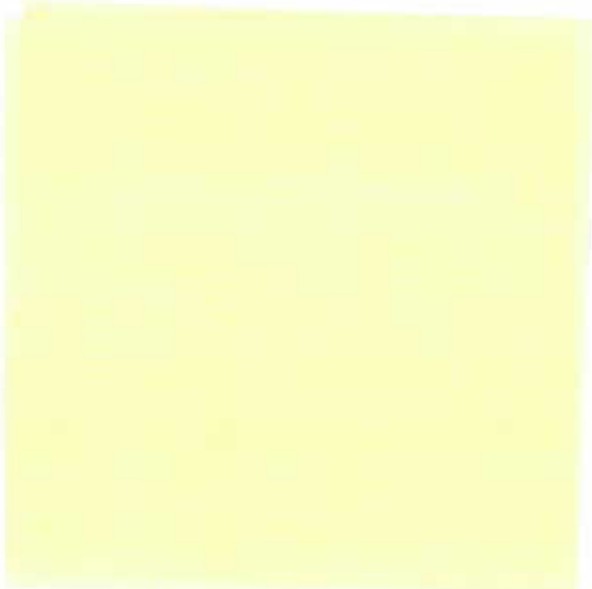
If no response is received to this letter within the period of 28 days mentioned above, I am to advise that the procedure for the revocation of the licence will proceed without further notice.

Yours sincerely,



Jim O'Donnell

Aquaculture & Foreshore Management Division
Roinn Talmhaíochta Bia & Mara
Ionad Náisiúnta Bia Mara
Cloich na Coillte
Co. Chorcaí



From: Crowley, Raphael [REDACTED]
Sent: Thursday, July 20, 2023 9:44 AM
To: O'Donnell, Jim [REDACTED]
Cc: Buss, Patricia [REDACTED] Horan, Helena
[REDACTED]
Subject: RE: T09/084 Frank Burke (Rafford Fish Farm)

Jim

I inspected the location of this site on 19th July 2023.

There is no aquaculture activity on site, and it appears the site has not been used for some years.

Regards

Raphael

Raphael Crowley

Chartered Engineer - Marine Engineering Division

An Roinn Talmhaíochta, Bia agus Mara

Department of Agriculture, Food and the Marine

Pointe Uí Rinn, Cathair Uí Mhóráin, Trá Lí, Co. Chiarraí, V92 X2TK

Reen Point, Blennerville, Tralee, Co. Kerry, V92 X2TK

[REDACTED] www.agriculture.gov.ie

From: O'Donnell, Jim [REDACTED]
Sent: 05 July 2023 16:24
To: Crowley, Raphael <[REDACTED]>
Cc: Buss, Patricia [REDACTED] Horan, Helena
[REDACTED]
Subject: T09/084 Frank Burke (Rafford Fish Farm)

Raphael a chara,

MED visited site T09/084 on 22 February 2022 and confirmed that that the site was not operational. Frank Burke contacted AFMD on 10 March 2022 to state that he wants to continue with aquaculture at the site.

AFMD is now considering revoking the licence on the grounds that the licence is not active. In this regard I would be obliged if you could arrange an inspection of the site to confirm that no aquaculture activity is going on there.

Le meas,

Jim

From: Crowley, Raphael [REDACTED]
Sent: Monday, February 21, 2022 5:29 PM
To: Buss, Patricia [REDACTED]
Cc: Power, Thomas [REDACTED]
Subject: RE: Frank Burke T09/084 Rafford Fish Farm

Patricia

I inspected the location of this site on 13 December 2021.

While there is some water flowing through the site, the facility is in poor condition and does not appear to have been operating for some time.

I can confirm that the site is not operational.

Regards

Raphael

Raphael Crowley
Chartered Engineer - Marine Engineering Division
An Roinn Talmhaíochta, Bia agus Mara
Department of Agriculture, Food and the Marine
Pointe Uí Rinn, Cathair Uí Mhóráin, Trá Lí, Co. Chiarraí, V92 X2TK
Reen Point, Blennerville, Tralee, Co. Kerry, V92 X2TK
[REDACTED] www.agriculture.gov.ie

From: Buss, Patricia
Sent: 18 June 2021 16:36
To: Crowley, Raphael ; MarineEngineeringClonakilty
Cc: Power, Thomas
Subject: FW: Frank Burke T09/084 Rafford Fish Farm

Hi Raphael,

Please see email below from Peter Donlon, BIM.

Can you please arrange a visit to Mr Burke's site at Rafford, Kiltulla, Athenry, Co. Galway and confirm if he is still operating.

We don't appear to have any MED Inspection Reports on file for many years.

Kind regards,
Patricia

Patricia Buss
AFMD
An Roinn Talmhaíochta, Bia agus Mara
Department of Agriculture, Food and the Marine
Oifigí an Rialtais, An tIonad Náisiúnta Bia Mara, An Cloichín, Cloich na Coillte, Co. Chorcaí, P85 TX47.
Government Buildings, National Seafood Centre, Clogheen, Clonakilty, Co Cork, P85 TX47
[REDACTED]

From: Buss, Patricia
Sent: 18 June 2021 16:23
To: [REDACTED]

Cc: Power, Thomas
Subject: Frank Burke T09/084

Hello Mr Donlan,

I refer to your earlier email to my colleague Dave Jennings.

Unfortunately I cannot confirm if Mr Burke is currently operating. Following a phone call with Mr Burke in 2019 I wrote to him as he had mentioned in the call that he was thinking of winding up the business. I asked him to confirm this in writing and I would then arrange to close the file.

I never received a response to my letter.

I will ask our Marine Engineering Division to visit the site and confirm the status of the site.

Regards,
Patricia

Patricia Buss

AFMD

An Roinn Talmhaíochta, Bia agus Mara

Department of Agriculture, Food and the Marine

Oifigí an Rialtais, An tIonad Náisiúnta Bia Mara, An Cloichín, Cloich na Coillte, Co. Chorcaí, P85 TX47.

Government Buildings, National Seafood Centre, Clogheen, Clonakilty, Co Cork, P85 TX47

From: Donlon, Peter [REDACTED]
Sent: 18 June 2021 15:32
To: Jennings, David
Subject: Query re T09/084

Hi David

I hope all is well with you. It's been a long time.

I am given to understand that you now look after inland aquaculture licences. But my information may be correct.

Do you know if T09/084 is still operational, the name is (or was) Frank Burke Raford, Kiltullagh, Athenry Co Galway, and the licence was for Rainbow trout.

I have done the usual google searches and any references I can find are a good few years old, so I don't know if he is still in business.

I would be grateful for any info you have on the current situation.

Many thanks

Pete Donlon

Aquaculture development officer, BIM

[REDACTED]

DRAFT

T09/084

CERTIFICATE OF REVOCATION
OF
FISH CULTURE LICENCE NO. 71

Dated 3rd November 1981

**GRANTED TO
MR FRANK BURKE
RAFFORD
KILTULLA
ATHENRY
CO. GALWAY**

This is to certify that the above-mentioned licence has been revoked pursuant to Sections 69
(2) (a) of the Fisheries (Amendment) Act, 1997

Signed: _____

A person authorised under Section 15 of
the Minister and Secretaries Act, 1924,
to authenticate the seal of the Minister
for Agriculture, Food and the Marine

September 2023



Proof of Delivery

For your world

Name: FRANK BURKE API
Delivery Date: 10 Aug 2023, 10:51
Signature: \

Barcode(s): RL560216820IE

An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine



Mr Frank Burke,
Rafford,
Kiltulla,
Athenry,
Co. Galway

Sent by Registered Post

Ref: T09/084

19th December 2023

**FISHERIES (AMENDMENT) ACT, 1997 (NO.23)
NOTICE OF MINISTERIAL DECISION TO REVOKE A FISH CULTURE LICENCE.**

Dear Mr Burke,

I would like to inform you that the Minister for Agriculture, Food and the Marine has decided that it is in the public interest to revoke Fish Culture Licence No. 71, for the cultivation of Rainbow Trout at a site located at Rafford, Athenry, Co. Galway site no. T09/084 (see attached information note.) I enclose a copy of the public notice of the decision which the Department has arranged to have published in the "Connacht Tribune".

Any person aggrieved by the decision may, in accordance with Section 41 of the Fisheries (Amendment) Act 1997, appeal against it in writing to the Aquaculture Licences Appeals Board. This appeal must be lodged within one month beginning on the date of the publication of the decision.

Yours sincerely,

Patricia Buss

Patricia Buss
Aquaculture and Foreshore Management Division

