

11 March 2020

Our Ref: HC/C3145/MEH

The Aquaculture Licences Appeals Board (ALAB)
Kilminchy Court
Dublin Road
Portlaoise
Co Laois.
R32 DTW5



Dear Sirs,

RE: Our Clients: Save Ballyness Bay

We write with reference to the above appeals which can be broadly described as the Ballyness Bay group of appeals.

For the reasons set out below, the Board is respectfully invited to accept these representations and the attached materials pursuant to section 46(2).

Section 46(2) provides:

2 "(1) Where the Board is of opinion that, in the particular circumstances of an appeal, it is appropriate in the interests of justice to request a party or other person who has made submissions or observations to the Board in relation to the appeal to make submissions or observations in relation to any matter which has arisen in relation to the appeal, it may, in its discretion, notwithstanding sections 41(3), 44(4), 45(4) or 50(4) serve on the party or person a notice -

requesting the party or person, within a period specified in the notice...to submit to the Board submissions or observations in relation to the matter, and

stating that, if submissions or observations are not received before the expiration of the specified period, the Board will, after the expiration of that period and without further notice to the person, pursuant to s. 48, determine the appeal."

It may be that, as well as formally receiving the attached representations under the auspices of s46, the Board invites the applicants and the Minister to respond to what we respectfully suggest are fundamental flaws in their applications and the corresponding decision.

The Board will be aware that at issue in these appeals is, inter alia, the decision by the Minister to grant aquaculture licences to Edward & Paul O'Brien and to Joseph Coll to engage in aquaculture in Ballyness Bay at the following designated sites:



Edward & Paul O'Brien: T12/409A, T12/409B.

Joseph Coll: T12/407B, T12/500A, T12/502, T12/514A, T12/515A, T12/516.

We invite attention to section 4(1) of the Fisheries and Foreshore (AM) Act 1998 which provides:

4. – (1) On and from the 10th day of December, 1998, an application for an aquaculture licence shall not be accepted, or if accepted shall not be determined, if the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or waters to the application relates before a licence is granted under the Act of 1997.

This section clearly provides that if an application was submitted during the period in which the applicant was engaging in aquaculture then s4(1) prohibits that application from being determined.

The last licence for aquaculture in Ballyness Bay expired in 2009 (per letter from DAFM dated 17 September 2019 (attached hereto – **Tab 1**). This letter was provided in response to a Freedom of Information Request to our client.

We have also had confirmation from Paul O'Brien and Joseph Coll (the applicant's named above) that they engaged in aquaculture at the place or waters to the application relates before a licence was granted.

This is confirmed in interviews with the applicants conducted with Paul O'Brien and Joseph Coll which have been brought to our client's attention. These were broadcast on Radio na Gaeltacht on 5 December 2019. The transcripts are attached at **Tab 2**. It is understood that Anthony McClafferty was also present at the interview but did not speak.

It seems clear therefore that, after 2009 (i.e. the date that the last license expired) unlawful/unlicensed aquacultural activity was carried out in Ballyness Bay.

This was also confirmed by the Minister in a reply to Deputy Eamon Ó Cuív in the Dáil on Wednesday 5 October 2016 (Q.216 and response attached **Tab 3**). The question reads:

“Deputy Éamon Ó Cuív asked the Minister for Agriculture, Food and the Marine when the full environmental impact assessment will be carried out on Ballyness Bay in Donegal; the reason a person (details supplied) has been instructed to remove oyster trestles from the bay even though they applied for an oyster aquaculture licence in 2012; and if he will make a statement on the matter. [28930/16]”

The Response from Minister was as follows:

“Ballyness Bay is located within Ballyness Bay Special Area of Conservation (SAC) (Natura 2000 site). All aquaculture activities in Natura site areas require an Appropriate Assessment to be carried out before any aquaculture licensing determinations can be made. My Department is working with the Marine Institute, Bord Iascaigh Mhara and the National Parks and Wildlife Service to achieve full compliance with the EU Birds and Habitats Directives through a multi-annual work programme. This data collection programme, which is substantially complete, together with the setting of Conservation Objectives, will enable all new and renewal aquaculture applications to be assessed.

Conservation Objectives have been set for Ballyness SAC. The next step in the process is the carrying out of an Appropriate Assessment by the Marine Institute. This is being progressed taking account of the need to facilitate the use of scientific and other resources on a flexible basis across the full range of bays. While the Appropriate Assessments are carried out on a bay by bay basis, each licence application within the bay must be assessed individually.

Section 4 of the Fisheries and Foreshore (Amendment) Act 1998 provides that an application for an aquaculture licence shall not be determined, if the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Fisheries (Amendment) Act 1997. My Department's Marine Engineering Division has confirmed that unauthorised aquaculture activity has taken place at a number of sites in Ballyness Bay, including the sites operated by the person referred to by the Deputy. My Department has written to the persons involved in this unauthorised activity seeking to have the illegal structures removed.

In accordance with the provisions of the applicable legislation, my Department cannot process further the application submitted by the person referred to by the Deputy due to the unauthorised activity on the area in question. The unauthorised aquaculture must cease and the related structures must be removed. It would then be open to the person referred to by the Deputy to apply for an Aquaculture and Foreshore Licence to conduct aquaculture in respect of this area." (Emphasis added)

It is clear therefore that that the aquaculture was then ongoing and indeed had been going on for some time.

This was further confirmed in a reply by the Minister in the Dáil to Deputy Pearse Doherty on **17 December 2019** (Qs.525, 526, 527 attached). The offending persons were not named but the Minister confirmed that they were known to DAFM and that the Department had been in communication with them.

It is clear from the transcript [Tab 2] that Paul O'Brien confirms that he began aquaculture activity in 2009 and "... was at it until two years ago." That is, on his own account, until 2017. He also confirmed that he had engaged in aquaculture activity "... for, seven, eight, nine years."

Paul: Around 2009 that I began initially down there.

Áine: Are you alone, aquafarming by yourself?

Paul: Yes

Áine: Are you working on oysters since, regularly would you say?

Paul: Yes, I was at it until 2 years ago, until the licences began being issued. I stopped then to get a licence.

Áine: At the beginning did you have a licence to farm oysters?

Paul: No, the government was not able to. A case was taken against the government in 2007 and the government could not give a licence to anyone. No oyster farm in the country had a licence. Once you applied for a licence they would have to give you word within 4 months telling you were getting a licence or not. So they couldn't do that either. We went to people and they told us 'you're doing nothing wrong with what you are doing, since they didn't refuse you'. We continued with what we were doing and we did it for 7, 8, 9 years.

Joe Coll confirms in the same interview that he began in 2010.

The licence approvals for Edward and Paul O'Brien were granted based on their applications which were signed by the applicant on **1 March 2010** and stamped by DAFM on **30 March 2010**.

The licence approvals granted to Joseph Coll were granted based on his applications as follows:

<u>Site.</u>	<u>Date Signed.</u>	<u>Date Stamped by DAFM.</u>
T12/407B	16.2.2010	8.3.2010
T12/500A		
T12/502	15.2.2015	11.3.2016
T12/514A		
T12/515A		
T12/516	18.2.2017	22.2.2017

Although the DAFM website classifies these as new applications, the record shows that **they are in fact the original applications which have simply been restamped by the Department.**

With regard to T12/514A, T12/515A and T12/516 it might be asserted that the applicant complied with the direction of the Department referred to in Q. 216 [Tab 3], to cease aquaculture activities and remove related infrastructure in time to then validly submit an application in respect of these sites. However, even if that can be proven, the application is still voided by section 4 since the applicant continued to engage in commercial harvesting of periwinkles until at least December 2019. (RnG interview page 4 at Tab 2).

Furthermore, DAFM Inspector Mr. Paul O'Sullivan has recently (9 January 2020) confirmed that no Ministerial consent has been given for this activity in respect of Ballyness Bay. We understand that this is in breach of ARC 36 (Activities requiring Consent of Minister) of S.I. No. 416/2018 – European Union Habitats (Ballyness Bay Special Area of Conservation 001090) Regulations 2018.

We respectfully therefore invite you to consider that these matters convincingly demonstrate that the applicant has been engaged in unapproved aquaculture activity during the relevant period covered by section 4 which vitiates his position as an applicant.

The Board will see the focused and pointed questions asked by Deputy Doherty on **17 December 2019** [Tab 4] at Q. 525, Q.526 and Q.527 which hone on the section 4 issue.

The Minister addresses all three of these question together:

“The activity of aquaculture on State foreshore requires an aquaculture licence and a foreshore licence in respect of the area occupied.

My Department is aware of previous unauthorised aquaculture activity in Ballyness Bay. Following inspections by my Department's Marine Engineering Division, contact was made with the relevant operators where identification was possible. Following these actions by my Department, the unauthorised activity was discontinued. (Emphasis added)

However, I have requested my Department's Marine Engineering Division to carry out an inspection of the Bay and to submit a report to the Aquaculture Licensing Division of my Department.”

The further questions (Q. 530 & 531) posed (also on 17 December 2019) [Tab 5] and the answer provided by the Minister in tabular form provide a useful guide to (i) the dates which applications were made; (ii) when they were made; and (iii) when they were granted.

As a matter courtesy, we also make the Board aware that, as the Minister is considering fresh evidence in relation to these applications, we will be asking the Minister whether, in arriving at his decision to grant aquaculture licences in respect of Ballyness Bay, he took cognisance of Ireland's obligations under the OSPAR Convention and, in particular, its judgment that Ballyness Bay should be designated a Marine Protected Area (MPA).

We have given some thought as to whether a more appropriate way in which to challenge the decision, given the fresh evidence set out above, might be to challenge the decision by way of judicial review. However, as judicial review is a remedy of last resort, we consider that whilst the legislation is clear that, ordinarily, further grounds/submissions will not be accepted, section 46(2)(1) seems to cater for this material being placed before the Board and, if the Board is of opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request a party to the appeal to make submissions or observations in relation to any matter which has arisen in relation to the appeal, it has a discretion to serve notice on the party requesting submissions or observations in relation to the matter.

It may also be that the Board, in light of this communication, formally regularises the situation by way of such a Notice on our client and perhaps also requires from the Minister the product of the 'Report' that he refers to in his response to the question from Deputy Doherty.

Furthermore, the Minister was asked [Q.524 Tab 6] by Deputy Doherty to provide details of:
"... the number of persons his Department has written to regarding unauthorised aquaculture activities in Ballyness Bay, County Donegal since 2010; the dates of correspondence; and the name of the recipients if appropriate."

DAFM have responded with the information of the dates applicants were written to regarding unlawful activity but giving no names. Again, Deputy Doherty at our clients' behest has asked DAFM if any of those written to were granted licences in the Minister's latest decision on the matter in December 2019. We are awaiting a response in respect of same.

Given the clear evidence (and admissions) of illegal/unauthorised aquaculture activity at the relevant sites we invite you to the view that this activity has the potential to be **determinative** of these appeals (given the unambiguous effect of s4 of the Fisheries Act) and we would therefore respectfully invite the Board to issue such Notices as it sees fit in light of the revelations set out herein.

We would ask for a response in respect of this matter within 7 days.

Yours faithfully,



Michael Halleron
Madden & Finucane
meh@madden-finucane.com

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

17th September 2019

John Connaghan
Chairman
SAVE BALLYNESS BAY S.A.C. ACTION GROUP
Killult,
Falcarragh,
Co. Donegal,
F92 N6X6

Re: FOI request – Ref. FOI/19/269

Dear Mr. Connaghan,

I refer to your request made under the Freedom of Information Act 2014, for records held by the Aquaculture and Foreshore Management Division of the Department of Agriculture, Food and the Marine which was received on 21 August 2019. Your request sought:

“.. in respect of the proposed use of Ballyness Bay, Co. Donegal for aquaculture activities.

.. all documentation in relation to:

- 1 The screening for an Environmental Impact Assessment.*
- 2 The Minister's decision in respect of the need for an Environmental Impact Assessment.*
- 3 All submissions received in relation to the Appropriate Assessment in respect of the proposed use of Ballyness Bay for aquaculture purposes, including submissions received as part of the consultation carried out and all responses by DAFM to same.*
- 4 Any amendments to the original development proposal arising from the consultation process.*
- 5 The final Natura Impact Report including assessment of any additional amendments and further issues identified.*
- 6 The Appropriate Assessment Conclusion statement in relation to any such amendments.*
- 7 The final Appropriate Assessment Conclusion statement.*
- 8 Any foreshore licence applications relating to the proposed use of Ballyness Bay for aquaculture purposes.*

9 Any consultation carried out in relation to such foreshore applications and any and submissions received and responses made.

10 Any approvals given since 1992 (or the period covered by the Freedom of Information Act 2014) to the present day for the use of Ballyness Bay for aquaculture activities."

I, Geraldine Farrell, Higher Executive Officer, have made a final decision today, 17th September 2019, my decision is to part grant your request. The decision to withhold certain information is outlined below and in the attached schedule of documents.

The purpose of this letter is to explain my decision. This explanation has the following parts:

- 1 a schedule of the records covered by your request;
- 2 an explanation of the relevant findings concerning the records to which access is allowed and denied, and
- 3 a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

1. Schedule of records

I enclose a schedule of the records which are being released/withheld.

2. Findings, particulars and reasons for decisions to deny access

I am refusing access to information pertaining to this request under Sections 15, 20 and 30 of the Freedom of Information Act 2014 (explanations below).

Refusal on administrative grounds to grant FOI requests

The records requested relating specifically to the foreshore application forms and accompanying documents are being refused under Section 15 (d) as this information is already in the public domain.

Details of the joint Aquaculture & Foreshore applications are available to the public and are available on the Department's website at:

<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/donegal/>

15. (1) A head to whom an FOI request is made may refuse to grant the request where—

(d) the information is already in the public domain,

The remainder of the records in your request are being refused under other sections of the Freedom of Information Act 2014 as will be seen below.

Deliberations of FOI Bodies

These records are being refused under Section 29 (1) of the Freedom of Information Act 2014, because the information contained therein relates to the Department/Minister's deliberative process. This Section provides that an FOI body may refuse to grant an FOI request if the record contains matter relating to its deliberative process and granting the request would be contrary to the public interest.

29. (1) *A head may refuse to grant an FOI request—*

(a) if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes), and

(b) the granting of the request would, in the opinion of the head, be contrary to the public interest,

and, without prejudice to the generality of paragraph (b), the head shall, in determining whether to grant or refuse to grant the request, consider whether the grant thereof would be contrary to the public interest by reason of the fact that the requester concerned would thereby become aware of a significant decision that the body proposes to make.

These records are subject to a statutory decision-making process. The records sought contain matters which relate to the Minister's deliberations on whether Aquaculture/Foreshore licences should be granted and no decision based on those deliberations has been made in respect of these applications. Accordingly, Section 29 (1) (a) applies to the records. I am then required to consider Section 29 (1) (b).

I wish to state that the Department considers all licence applications under the provisions of the 1997 Fisheries (Amendment) Act, the 1933 Foreshore Act and relevant EU legislation. The licensing process involves consultation with a wide range of scientific and technical advisers as well as various Statutory Consultees under Regulation 10 of the Aquaculture (Licence Application) Regulations, 1998. The legislation also provides for a period of public consultation. The Aquaculture Regulations of 1998 provide for the applicant to give public notice of an

application (Regulation 8) and for the public's right to make submissions concerning an application (Regulation 9).

There is a public interest in the use or proposed use of State foreshore. There is also a public interest in the sustainable development of aquaculture (for example, the National Strategic Plan for Sustainable Aquaculture Development). Furthermore, there is a strong interest in making the aquaculture licensing process as open and transparent as is feasible.

It is my view that the public interest, in this case, does not warrant the release of these records at this time. In relation to balancing the public interest that full access be granted, and the public interest in ensuring the right to due process, I find that the over-riding public interest is in making sure that the information held on this file is not released. The matters referred to in the records are still under deliberation. While acknowledging that release of the information would enable public debate, a concern is that release at this point in time could be unhelpful to the deliberative process and could significantly undermine the ongoing analysis of the issues concerned.

There are many competing interests for access to the marine environment and it would lead to wholly unnecessary difficulties releasing details of applications to the public at different times. It seems to me that it would be contrary to the public interest to release documents related to these applications at this time.

Functions and negotiations of FOI bodies

Section 30 (1) (b) of the FOI Act allows an FOI body, subject to consideration of the public interest, to refuse to grant a request if it considers that access to the record concerned could reasonably be expected to have a significant, adverse effect on the performance by the body of any of its functions relating to management.

30. (1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to—

(a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of an FOI body or the procedures or methods employed for the conduct thereof,

(b) have a significant, adverse effect on the performance by an FOI body of any of its functions relating to management (including industrial relations and management of its staff), or

(c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or an FOI body.

I find that granting this request could reasonably be expected to have a significant adverse effect on Aquaculture and Foreshore Management Division's ability to manage its day to day operations given the likely demand for access that would arise. A requirement on the Department to make aquaculture files available (prior to a Ministerial determination) under Freedom of Information would cause a significant adverse effect on its ability to manage its core operations in light of the demand that would be likely to arise in such circumstances. This is particularly so as there are a significant number of licence applications on hand that have not yet been determined. It is important to note that I am not refusing the request simply on the grounds that it will cause an administrative burden. I find, therefore, that Section 30 (1) (b) applies. I must now proceed to consider the public interest balancing test as set-out at Section 30 (2).

Section 30 (2) provides that the exemptions contained in subsection (1) *shall not apply in relation to a case in which in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the FOI request concerned.*

There is a general principle that there is a public interest in public bodies operating in an open and transparent manner. Notwithstanding this, the Freedom of Information Act 2014 requires that the public interest in releasing information which might contribute to such openness and transparency must also be balanced against the harm that might be occasioned by its release.

The current arrangements that the Department has in place for public consultation (in line with statutory requirements) serve to promote transparency and accountability in the manner in which it administers the aquaculture licensing process. Therefore, I do not consider that the release of files under Freedom of Information would further serve the public interest in

the promotion of transparency and accountability to such an extent as to outweigh the public interest in ensuring that the Department's ability to manage its core operations relating to the administration of the aquaculture licensing system is not significantly adversely affected. I find that the public interest would not, on balance, be better served by the release of the records at issue. Therefore, I am refusing access to the records under Section 30 (1) (b).

Decision


In my opinion, the release of these records would be in contravention of the aforementioned Sections of the Freedom of Information Act 2014 (and as denoted on the Schedule) as information pertaining to the file referred to is undergoing due process.

3. Rights of appeal

You may appeal this decision. A fee of €30.00 applies for an appeal for all non-personal records. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Department of Agriculture, Food & the Marine, Pavilion A, Grattan Business Centre, Dublin Road, Portlaoise, Co. Laois or by e-mail to foi@agriculture.gov.ie. Payment can be made by electronic fund transfer by contacting the Cash Office, Department of Agriculture, Food & the Marine, Cavan, telephone number 049 4352053 or 049 4368254 quoting the above reference number or by way of bank draft, money order, postal order or personal cheque made payable to the Department of Agriculture, Food & the Marine. You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances.

Should you wish to discuss any of the above, please contact me at 023-8859519.

Yours sincerely,



Geraldine Farrell

Aquaculture and Foreshore Management Division

Interview length: 16.54 minutes

Translated transcript of a recording made at Raidió na Gaeltachta studio on 5th December, broadcast on 6th December. Interview conducted by Áine Ní Chuireáin. The informants who spoke are Paul O'Brien and Joseph Coll. Anthony McCafferty did not speak during the interview. (This recording is available as a 20-minute segment on the Raidió na Gaeltachta iPlayer. SBB chairman John Conaghan follows for 3 minutes of a live interview) The recording is available as an attachment with this document. (20191206_rteraidion-barrscealta-pacaiste_c21671486_...)

Start

Introduction of the story by Áine.

Áine: When did you begin oyster farming yourself?

Paul: Around 2009 that I began initially down there.

Áine: Are you alone, aquafarming by yourself?

Paul: Yes

Áine: Are you working on oysters since, regularly would you say?

Paul: Yes, I was at it until 2 years ago, until the licences began being issued. I stopped then to get a licence.

Áine: At the beginning did you have a licence to farm oysters?

Paul: No, the government was not able to. A case was taken against the government in 2007 and the government could not give a licence to anyone. No oyster farm in the country had a licence. Once you applied for a licence they would have to give you word within 4 months telling you were getting a licence or not. So they couldn't do that either. We went to people and they told us 'you're doing nothing wrong with what you are doing, since they didn't refuse you'. We continued with what we were doing and we did it for 7, 8, 9 years.

Áine: Was that going on throughout the country?

Paul: Every oyster farm in the country from 2007 until 2 years ago, they had no licence, none of them.

Áine: You said there that you had no licence but did anyone have oyster farm licences ever to develop oyster farms in Ballyness bay?

Paul: There were people down there working at oysters for 30 years. A man had an expired licence and it ran out in 2009. He tried to give it to us. He couldn't then. We were a couple of months too late getting it into our name. He had the licence but he wasn't doing anything down there. He said to us that we could take the licence if we could but the licence was expired a few months, too late before this happened. We could not get a licence.

Áine: Then you (plural) applied for a licence?

Paul: Yes, we applied for a licence in 2009 or 2010.

Áine: Did you get the licence?

Paul: I got the licence last week.

Áine: Yes. This is the first time since that time that you received word that you had a licence to farm for oysters?

Paul: Yes.

Áine: Are you oyster farming presently?

Paul: No, when we were told that there was a process going on you had to stop. To get the licence, go through an assessment on everything and the process proceeded.

Áine: How much area were you fishing at the time in 2009 when you were aquafarming?

Paul: I'd say altogether one football field.

Áine: Now how much more?

Paul: Yes, more but I haven't looked into it. I would expect to use more than that. I have more written on my licence. I would only use 1/3 of the named amount for me.

Áine: Is it visible? Were people complaining about it before?

Paul: I was down for the guts of ten years. Not one person, not one problem. Half the townland didn't know it was there. You couldn't say it was visible.

Áine: Yes, how much area is allowed to you now? You and your brother Edward?

Paul: Around 5 hectares for oysters and 2 hectares for clams.

Áine: 7.2

Paul: The clams have no structures, they're in the land.

Áine: Have you plans to develop this to increase?

Paul: Never intended to develop for more. I'm planning on doing what I always did. Not getting more nor bigger, nor less than I had.

Áine: There have been questions raised about the damage to the road, the sand, ruining the beach, the dooey. Is this true?

Paul: We are not near ... the road is going down through the sand, there is a road going down. People are saying new roads getting made, no new road is getting made. There are as many cars going down there everyday. We were not going to use that road as another road is down the middle of the bay. We are using that instead of using the dooey.

Áine: Do you understand the people's concerns? Maybe it'll damage the environment? A scenic area and I'm sure if you live in the place that It's undoubtedly beautiful and that it will affect tourism?

Paul: I understand that people are anxious but what I see of it if they had no problem for 10 years and if they saw nothing for 10 years why is there a problem now? We can't understand, we're doing nothing more nor nothing less than we were doing. I understand that people have a problem that people do not know the proper story.

Áine: Are you happy to meet these people and discuss with them, openly on what you are doing?

Paul: We were with a councillor, he asked us the same question. We said we would meet them. They weren't happy to meet us.

Áine: Are you still happy to meet them and explain?

Paul: Yes, we'll meet anyone. No problem.

Áine: There was talk of pollution and trestles and surfing and all those people who use the beach from a tourism point of view. Were they doing that before you?

Paul: We were down there for 10 years almost everyday. Joe here was down twice as much as us. We never saw anyone walking there ever. An odd stranger, walking down wanting to know what was going on, great joy when we showed them around. This is not near the beach at all. It makes no difference to the beach. People are saying that no one will be able to walk down the beach any more. There is none of that. Not near the beach at all.

Áine: The public reps, the politicians. Are they helping you? Did you speak to them.

Paul: Two came Micheál Cholm Mac Giolla Easpaig and Michael McClafferty. They had questions, they came down and we walked the area with them. They said they had no problem with the aquaculture farms. Where we had the farm. You couldn't see them they said. They had issues with the French company, the company from Galway and the one from the North but we were in it for years in little corners. The two had no problem with us.

Áine: When you were at aquaculture before, before you stopped, before you got a licence how many did you have working for you?

Paul: Part-time I only had a small farm at the time. 5 there are now 10 around the townland who were working down there but not always together. Each time we went down there there were 5 of us working 4 months each year.

Áine: Now with objections against the licences how will that affect you?

Paul: It'll delay things but I don't know why. We can't understand their problem. They talk about everything, that oysters pollute the bay. They clean the bay the most. There a sewer pipe coming out there. The dirt that is seen. If half of them saw what's coming out there. The oysters clean that.

Áine: You're saying to me that oysters clean the bay?

Paul: Yes. A grown oyster can clean, filter 50 gallons of water per day.

Áine: Joe Coll from Meenlaragh is here too. Joe when did you start oyster farming?

Joe: 2010 yeah.

Áine: How much area do you have?

Joe: Half an acre in the beginning.

Áine: Did it increase gradually?

Joe: There has not been much of an increase on that, small pieces is what I have in. It's not a big area that I have in. Pieces in good places.

Áine: You're allowed a hectare now? One hectare?

Joe: A hectare.

Áine: This licence that you got, the same thing?

Joe: There is a little extra on it, the licence or more. But how that works you don't use the whole lot at once. Because you must transfer oysters up the claddagh to harden them. Like that. A small bit at a time.

Áine: You're not using it all?

Joe: Not all the time. It doesn't work like that.

Áine: Are many helping you or yourself?

Joe: Myself and my son. He's in Galways now. He's home at the weekend, he helps me at the weekend.

Áine: Is anyone giving out to you? Did anyone complain about your oyster farming in the past?

Joe: No, I never had trouble down there.

Áine: Can you see it from the road? Does it bother the tourist industry or anything like that?

Joe: It is not. To reiterate the point the tourists come to us when we're there. They're more or less interested in what we do. So we tell them what we're doing, they're happy and they go. That's how it is.

Áine: Are you farming now?

Joe: We have nothing. Now the licence is through we don't know what's going to happen.

Áine: Is that your livliehood?

Joe: All my life 35 years, that is what I have been doing.

Áine: You can earn a living?

Joe: Doing bits of winkles.

Áine: You mentioned your son when he's at home he helps you and in university in Galway. Would he be interested to continue with it?

Joe: He's at university. When he's home at the weekend he's with me, working with me so he would like to stay around here instead of going away. He can be on that doing what I do when I finish up. It's good for him to stay here instead of going away. He's happy enough going ahead carrying on after me.

Áine: What will happen now if objections go in against this, there'll be a delay?

Joe: There'll be a delay, but we must see how it works out. We don't know yet like. It's a new thing for us. So we must wait to see what the department proposes now.

Áine: A few big companies intended on getting licences too and a big area 15 hectares was allowed, 14 hectares was not allowed. Would you have had problems with big farms yourselves?

Joe: Yes, when the big ones came I thought that when the big ones came in then that was the end of me. That if anything was too big in the bay that I would be pushed out. If too many go in a bay like that especially big companies that it was downhill for me.

Paul: Definitely nobody want French companies coming in. Everyone was against that. The frenzy then caught up with us over that. They're gone now. They didn't get in that big one and I understand that there's one more big one over at Ballyness pier. It is very noticeable. I don't know what is happening about that one. We've nothing to do with that.

Áine: But the French were coming in. If they did you were finished?

Paul: Yes, finished. The man applying, Frenchman that was ... applied for another man, going around the country looking for oyster farm licences. He was going to take over oysters from France for the final year to mature them here and bring them over again. They were very visible, away up high on

the beach. People must understand the ones we have down there now. They are only visible 2 to 3 hours per day. When we were down there we set the clock working on them. Around 200 minutes before they're covered again. Only 2 to 3 hours per day.

Áine: Is the community split? How do you feel? Does it bother you? All this talk, drawing attention to the area, to you?

Paul: We have no problem in the community. Everyone is making fun and laughing. Like when people came out with 50 football fields and 4 jobs no one around our own way (laughing out loud) apart from a few, no one believed that. I'm in the pub every weekend with great craic (laughing out loud)

Áine: It's not bothering you?

Paul: Not at all.

Áine: Is the community behind you in Machaire Rabhartaigh?

Paul: Definitely there are people that aren't happy but for their own reasons.

Joe: That's people not living in the place. It really bothers them! They haven't walked the beach maybe 2 to 3 times a year.

Paul: People say they can't use the beach. A man told me last week he was told to sign the petition. He refused. He was told that you'll never walk Machaire Rabhartaigh beach again if this goes through. None of that like. It must be fair and get along with the people in the area.

Áine: We are making it clear here we are only speaking about Machaire Rabhartaigh aquafarms. The notice in the Democrat, a paper not read here, more read in another area. Not enough people saw it.

Paul: People are saying that they didn't see the paper. It was in the Democrat and you're right but enough people saw it. A whole lot of people said to us at the time "we see that you put your notices in the paper". A lot of objections were in against these licences, in the beginning.

Áine: Were there any notices on the beach saying about the licences?

Paul: No notice, it was on the paper and in the barracks. We didn't choose the paper. The department told us which paper it had to be sent to. We didn't choose the paper. We had no choice. We waited 10 years for this. They gave us word, they gave us 10 days to put a notice in the paper and they told us which paper to put the notice into.

Special Areas of Conservation

Dáil Éireann Debate, Wednesday - 5 October 2016

Wednesday, 5 October 2016

Questions (216)



Éamon Ó Cuív

Éamon Ó Cuív

Question:

216. Deputy **Éamon Ó Cuív** asked the **Minister for Agriculture, Food and the Marine** when the full environmental impact assessment will be carried out on Ballyness Bay in Donegal; the reason a person (details supplied) has been instructed to remove oyster trestles from the bay even though they applied for an oyster aquaculture licence in 2012; and if he will make a statement on the matter. [28930/16]

[View answer](#)

Written answers (Question to Agriculture)



Minister for Agriculture, Food and the Marine

Ballyness Bay is located within Ballyness Bay Special Area of Conservation (SAC) (Natura 2000 site). All aquaculture activities in Natura site areas require an Appropriate Assessment to be carried out before any aquaculture licensing determinations can be made. My Department is working with the Marine Institute, Bord Iascaigh Mhara and the National Parks and Wildlife Service to achieve full compliance with the EU Birds and Habitats Directives through a multi-annual work programme. This data collection programme, which is substantially complete, together with the setting of Conservation Objectives, will enable all new and renewal aquaculture applications to be assessed.

Conservation Objectives have been set for Ballyness SAC. The next step in the process is the carrying out of an Appropriate Assessment by the Marine Institute. This is being progressed

taking account of the need to facilitate the use of scientific and other resources on a flexible basis across the full range of bays. While the Appropriate Assessments are carried out on a bay by bay basis, each licence application within the bay must be assessed individually.

Section 4 of the Fisheries and Foreshore (Amendment) Act 1998 provides that an application for an aquaculture licence shall not be determined, if the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Fisheries (Amendment) Act 1997. My Department's Marine Engineering Division has confirmed that unauthorised aquaculture activity has taken place at a number of sites in Ballyness Bay, including the sites operated by the person referred to by the Deputy. My Department has written to the persons involved in this unauthorised activity seeking to have the illegal structures removed. (My emphasis).

In accordance with the provisions of the applicable legislation, my Department cannot process further the application submitted by the person referred to by the Deputy due to the unauthorised activity on the area in question. The unauthorised aquaculture must cease and the related structures must be removed. It would then be open to the person referred to by the Deputy to apply for an Aquaculture and Foreshore Licence to conduct aquaculture in respect of this area.

Aquaculture Regulation

Dáil Éireann Debate, Tuesday - 17 December 2019

Tuesday, 17 December 2019

Questions (525, 526, 527)



Pearse Doherty

Pearse Doherty

Question:

525. Deputy Pearse Doherty asked the Minister for Agriculture, Food and the Marine the steps taken to ensure that all unauthorised aquaculture activities in Ballyness Bay, County Donegal ceased; and if he will make a statement on the matter. [52933/19]

View answer



Pearse Doherty

Pearse Doherty

Question:

526. Deputy Pearse Doherty asked the Minister for Agriculture, Food and the Marine the steps taken to ensure that infrastructure relating to unauthorised aquaculture activities in Ballyness Bay, County Donegal was removed; and if he will make a statement on the matter. [52934/19]

View answer



Pearse Doherty

Pearse Doherty

Question:

527. **Deputy Pearse Doherty** asked the **Minister for Agriculture, Food and the Marine** the date his Department was satisfied that all unauthorised aquaculture activities in Ballyness Bay, County Donegal were no longer taking place; and if he will make a statement on the matter. [52935/19]

View answer

Written answers (Question to Agriculture)



Minister for Agriculture, Food and the Marine

I propose to take Questions Nos. 525 to 527, inclusive, together.

The activity of aquaculture on State foreshore requires an aquaculture licence and a foreshore licence in respect of the area occupied.

My Department is aware of previous unauthorised aquaculture activity in Ballyness Bay. Following inspections by my Department's Marine Engineering Division, contact was made with the relevant operators where identification was possible. Following these actions by my Department, the unauthorised activity was discontinued. (My emphasis).

However, I have requested my Department's Marine Engineering Division to carry out an inspection of the Bay and to submit a report to the Aquaculture Licensing Division of my Department.

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Aquaculture Licence Data

Dáil Éireann Debate, Tuesday - 17 December 2019

Tuesday, 17 December 2019

Questions (530, 531)



Pearse Doherty

Pearse Doherty

Question:

530. Deputy Pearse Doherty asked the Minister for Agriculture, Food and the Marine the dates on which each of the aquaculture licenses for Ballyness Bay were granted. [52953/19]

[View answer](#)



Pearse Doherty

Pearse Doherty

Question:

531. Deputy Pearse Doherty asked the Minister for Agriculture, Food and the Marine the reference number of each granted aquaculture licence for Ballyness Bay; and the date on which the applications were received, in tabular form. [52954/19]

[View answer](#)

Written answers (Question to Agriculture)



Minister for Agriculture, Food and the Marine

I propose to take Questions Nos. 530 and 531 together.

The information requested is set out in the following table.

Site Ref No.	Date Original Application Received	Date of Ministerial Determination
T12/407B	08/03/2010	25/11/2019
T12/409 A	30/03/2010	25/11/2019
T12/409 B	30/03/2010	25/11/2019
T12/441 A	26/08/2011	25/11/2019
T12/441 B	26/08/2011	25/11/2019
T12/441 C	26/08/2011	25/11/2019
T12/455 A	18/06/2012	25/11/2019
T12/455 B	18/06/2012	25/11/2019
T12/500A	11/03/2016	25/11/2019
T12/502A	11/03/2016	25/11/2019
T12/510A	02/02/2017	25/11/2019
T12/514A	22/02/2017	25/11/2019
T12/515A	22/02/2017	25/11/2019
T12/516A	22/02/2017	25/11/2019

- Previous Answer

Aquaculture Regulation

Dáil Éireann Debate, Tuesday - 17 December 2019

Tuesday, 17 December 2019

Questions (524)



Pearse Doherty

Pearse Doherty

Question:

524. **Deputy Pearse Doherty** asked the **Minister for Agriculture, Food and the Marine** the number of persons his Department has written to regarding unauthorised aquaculture activities in Ballyness Bay, County Donegal since 2010; the dates of correspondence; and the name of the recipients if appropriate. [52932/19]

[View answer](#)

Written answers (Question to Agriculture)



Minister for Agriculture, Food and the Marine

The specific information requested by the Deputy is not readily available and will require a detailed examination of my Department's records.

A full reply, to the extent appropriate, will issue to the Deputy by my Department as soon as possible.