

Aquaculture Licences Appeals Board [AP2/12/2015]

Oral Hearing Shot Head licence Marine Harvest Ireland [TO5/555]

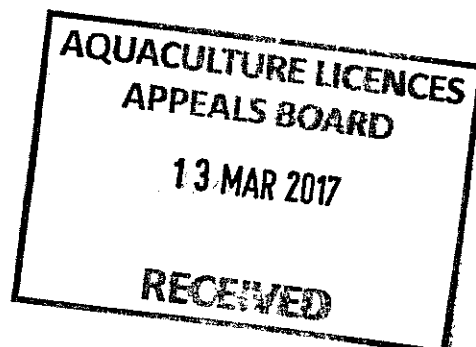
14 February 2017

Presentation by Friends of the Irish Environment

We make this presentation under protest on the grounds outlined by Save Bantry Bay and An Taisce – mainly but not limited to the failure of the 1997 Aquaculture legislation to incorporate changes in the law relating to participation and to the appropriate assessment of environmental impact. We reserve our right to challenge this Board's procedures.

We are here to 'seek to establish clarity' on three specific points of environmental impact which have been considered by the Licencing Authority and found acceptable. This is an appeal against that decision because no clarity can be provided through the current licencing system.

The Department of Marine's Engineering Division (which inspects production facilities and recommends actions to ensure licence compliance), the Department's aquaculture and foreshore management division (which issues and enforces licences), the Marine Institute (which provides research and analysis), and the Sea Fisheries Protection Authority (which addresses the contamination of the final product) - all feed into the licensing process.



The scientific work of The Marine Institute and the SFPA underpins Department policies on sea fisheries and aquaculture. It must be strictly evidence-based.

Their work includes:

- scientific assessment of salmon farm licences,
- regulation of fish movements by aquaculture operators,
- operation of the State's sea lice monitoring programme,
- responsibilities under the Residues Directive for food safety
- categorisation of suitable waters for certain aquaculture activities.

But their operations are each controlled by the Marine side of the Department, dependent on them for staffing and resources. Placing the governance and resourcing of these agencies under the control of the Department's Marine side with its aquaculture development priorities, rather than one of the many non-fisheries Divisions, undermines the independence of the advisory and regulatory duties of these agencies and the intention of the Oireachtas in establishing these bodies as independent agencies. The conflict of interest exists, *a priori*. The necessary and appropriate checks and balances incumbent on the Department in the exercise of its functions is impossible.

It is not a question of the scientific and technical competence of the agencies involved but rather who controls them. The current governance perpetuates a real and perceived conflict of interest and an inadequate separation of functions within the Department.

For example, we have examined the Marine Fish Farm Inspection Reports which confirm overstocking at Marine Harvests sites in the south west continue unabated from at least 2012 to date, in spite of the Marine Engineering Division's explicitly annual inspections and reports requesting support in enforcing this and many other breached licencing conditions. In response to this major non-conformity to the Aquaculture Stewardship Council standards the company made no apology to the certifying body or commitment to meet the stocking requirements, simply stating 'the current limit of 500 tons per annum would require harvest at 1.25 kg which is not a saleable size.'

Publicly, the Department has misled the Oireachtas, with the Minister for Agriculture informing Deputy Daly in a written Parliamentary reply on June 15, 2015 that 'My Department has identified the issue of possible overstocking, although not widespread, as a key operational priority over the next twelve months for the Monitoring and Compliance Unit of my Department's Aquaculture Licensing Division.'

In fact exactly twelve months later the Department's Aquaculture Licensing Division recommended that Marine Harvest's Lough Alton smoult hatchery have its licence rescinded for overstocking on the basis of Marine Engineering Division Fin Fish Inspection Reports. The company freely admitted the overstocking to the Department, citing 'legitimate and thoroughly justifiable business reason'. Lough Alton supplies 70% of Marine Harvest's smoults for all its production sites in Ireland and limiting production to the licenced amount here would curtail overstocking at all their sites.

In spite of being advised that Lough Alton was 'an important case with potentially significant implications for the company and also for the Department's licensing regime', the Assistant Secretary General advised against the recommendations to rescind the licence for over-

stocking, advising that such a Ministerial decision would have a 'disproportionate' commercial impact.

The Secretary General, upon asking if there was an assessment of the impact of the overstocking on the environment, was told by the Assistant Secretary General that not only was there 'no assessment of the impact on the environment', but that the Department was 'not sure we are equipped to carry out such an assessment'.

In fact the extensive and thoroughly researched Report submitted to the Assistant Secretary General by the Aquaculture and Foreshore Division recorded that Donegal County Council informed the Department that Lough Alton site has been 'been consistently [emphasis in original] In breach of their [discharge] licence conditions' and 'persistent' requests for an action plan to address the breaches had been met with a refusal by the company who 'cited economic reasons for not implementing the of treatment facilities which their current production rates would demand in order to achieve compliance'.

Compliance with Condition 1 of the Department's Aquaculture Licence required compliance to Donegal County Council's Discharge Licence.

The Assistant Secretary had in front of him emails from the Executive Scientist at Donegal Council's Central Laboratories' who actually pleaded to the Department on 4 May, 2016:

'If there is any mechanism within your aquaculture licence to limit production capacity, which will positively act on compliance, we would welcome such a development.'

The Assistant Secretary was also silent about Marine Harvest's statement to Donegal County Council that there were 'economic reasons' for the company's non-compliance.'

Last week the same Assistant Secretary General appeared before the Oireachtas Committee on Agriculture. Deputy Thomas Pringle expressed these concerns about a conflict of interest in the licencing system on our behalf. Dismissing these concerns, *inter allia* citing other Departments with similar 'host' duties, the Assistant Secretary General concluded that 'The regulatory and development are not separate arms...' 'They are heavily interlinked and we do not see them as two completely separate issues.'

That is the problem.

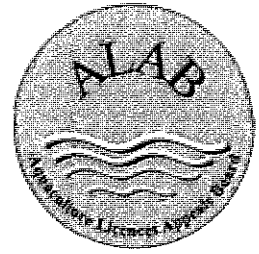
This Appeals Board cannot rely on a licensing system in performing its statutory duty when the evident conflict of interest leads to an authority extending licences without assessment even when faced with stark evidence of existing discharge exceedances provided to them by another statutory body with licencing authority for the same operation.

Nor is an applicant who openly informs a licencing authority that he has no intention of meeting his licencing conditions a fit person to hold a licence.

We would respectfully point out that ALAB is constricted under the legislation only to licence aquaculture 'if satisfied that it is in the public interest to do so'. We would urge the Board to consider the evidence we have outlined today and uphold this appeal in the public interest.

ENDS

Aquaculture Licences Appeals Board
An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Kilminchy Court
Dublin Road
Portlaoise
Co Laois



Tel: 057 8631912 Email: info@alab.ie Web: www.alab.ie

Mr Alec O'Donovan, Secretary
Save Bantry Bay
Newtown House
Bantry
Co.Cork

15 March 2017

Our Ref: AP2/1/2015
Site Ref: T05/555

Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to grant Aquaculture and Foreshore Licences to Bradán Fanad Teo t/a Marine Harvest Ireland, Kindrum, Fanad, Letterkenny, Co. Donegal on site Ref: T05/555 for the cultivation of Atlantic Salmon; Salmo Salar on a site on the foreshore at Shot Head, Bantry Bay, Co Cork

Dear Mr O'Donovan


I refer to notice dated 16th November 2016 in which the Board indicated it anticipated this Appeal would be determined by 31st May 2017.

The Aquaculture Licences Appeals Board reviewed this timescale at its meeting on 7 March last and has formed the view it will not be in position to determine this Appeal by that date, due to the adjournment of the oral hearing and the complexity of the matters which require to be determined as part of the Appeal.

Accordingly the Board hereby gives notice, as provided for in Section 56(3) of the Fisheries (Amendment) Act 1997, that this Appeal will not be determined by 31 May 2017 for the reasons specified above. It is the intention of the Board that the Appeal will be determined by 31st October 2017.

This notice is being copied to all parties to the Appeal.

Yours sincerely,


Mary O'Hara
Secretary to ALAB

