

00135-17: Recommendation to Grant Aquaculture and Foreshore Licences for 1 site (T12/461A)

To: Minister	Author: Brendan Farr
Status: Completed	Owner: Farr, Brendan
Purpose: For Decision	Reviewers: ODonovan, Geraldine, Whelton, Batt, Quinlan, John, Beamish, Cecil
Division/Office: Coastal Zone Management	
Decision By:	

Final Comment

Grant of Aquaculture and Foreshore licences approved by Minister

Action Required

Ministerial Determination on Aquaculture/Foreshore Licensing Application (T12/461)

Executive Summary

The Minister's determination is requested in relation to an application for an Aquaculture Licence from Mr Brendan Boyle, Ballymanus, Kincasslagh, Co. Donegal. The application is for the cultivation of Pacific Oysters using bags and trestles on Site T12/461A, totalling 4.194 hectares in Braade Strand, Gweedore Bay, Co. Donegal.

A submission in respect of the application for a Foreshore Licence is also set out for the Minister's consideration.

It is recommended that the Minister determines that the Aquaculture and Foreshore Licences be granted for the reasons outlined in the 'Detailed Information' section below.

Comments

- (03/10/2017 17:32:37) Ann Smith: Approved for submission to Minister.
- (03/10/2017 15:49:06) Cecil Beamish: Recommended that the Minister determines that the Aquaculture and Foreshore Licences be granted as proposed for the reasons outlined in the Submission

- (28/09/2017 16:54:52) John Quinlan: Recommended for approval please
- (27/09/2017 17:55:37) Batt Whelton: I agree with the recommendation that Aquaculture and Foreshore licences be granted for the cultivation of Pacific Oysters using bags and trestles on Site T12/461A, totalling 4.194 hectares in Braade Strand, Gweedore Bay, Co. Donegal.
- (27/09/2017 17:32:49) Geraldine ODonovan: I recommend the granting of licences for this site as outlined in the Submissions.

Detailed Information

Recommendation to grant an Aquaculture Licence for one site (T12/461A)

1. DECISION SOUGHT

The Minister's determination is requested please in relation to the application for an Aquaculture Licence from Mr. Brendan Boyle, Ballymanus, Kincasslagh, Co. Donegal for a site numbered T12/461A in Braade Strand, Gweedore Bay, Co. Donegal.

A submission in respect of the application for a Foreshore Licence is also set out below, for the Minister's consideration.

2. BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Aquaculture Submission) and submission underneath (Foreshore Submission), which refer to the same site.

The Aquaculture Licence defines the activity that is permitted on a particular site and the Foreshore Licence allows for the occupation of that particular area of foreshore. The continuing validity of each licence is contingent on the other licence remaining in force.

3. APPLICATION FOR AN AQUACULTURE LICENCE

An application for an Aquaculture Licence has been received from the applicant referred to above (in conjunction with an application for a Foreshore Licence) for the cultivation of Pacific Oysters using bags and trestles in relation to a 4.194 ha site on the foreshore in Braade Strand, Gweedore Bay, Co. Donegal (numbered T12/461A, see **Tab A**).

4. LEGISLATION

Section 7 of the Fisheries (Amendment) Act 1997 provides that the Licensing Authority (i.e. the Minister, delegated officer or, on appeal, the Aquaculture Licence Appeals Board) may, if satisfied that it is in the public interest to do so, license a person to engage in aquaculture.

Article 6 (3) of the Habitats Directive provides that *"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon ... shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives ... the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned ..."*

5. CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, statutory consultees and was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

Technical Consultation

Marine Engineering Division (MED): A reduction of the original site area was recommended (from 7.9 ha to 4.194 ha) as MED expressed concerns for the growing of oysters due to the height of the western part of the site relative to low tide levels. The applicant agreed to progress with the revised site area as recommended by MED. The revised site co-ordinates, maps and chart went to public notice. MED have no objection to the revised area being licensed.

Marine Survey Office (MSO): The MSO have no objection to this application from a navigational viewpoint.

Sea Fisheries Protection Authority (SFPA): The SFPA have no objection to this application. The current classification for Gweedore – Carrickfin is "B" which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying.

Statutory Consultation

Regulation 10 of the Aquaculture (Licence Application) Regulations, 1998 requires certain statutory bodies to be notified of an Aquaculture Licence application.

Comments were received from the following statutory bodies:

DCHG: The Department of Culture, Heritage and the Gaeltacht agreed substantially with the conclusions of the Appropriate Assessment report for Gweedore Bay and Islands Special Area of Conservation (SAC) but there were a number of points they wished to highlight. These issues are addressed in the Licensing Authority's Conclusion Statement for aquaculture activities in Gweedore Bay and Islands SAC (Natura 2000 site) - See Conclusion Statement at **Tab B**.

DHPLG: The Department of Housing, Planning and Local Government had no objection to this application from a water quality or foreshore perspective.

An Taisce: No comments were received for this application.

Marine Institute (MI): The MI had no objection to this application. They noted that the site is located within the Gweedore Bay and Islands SAC and the findings of the Appropriate Assessment report and the Licensing Authority's Conclusion Statement. The MI recommends strict adherence to the proposed access route in order to minimise habitat disturbance.

Commissioner of Irish Lights (CIL): No objection to this development.

Donegal County Council: No objection to this proposal subject to the provision that any related shore-based activity or structures have the written consent of the Planning Authority.

Inland Fisheries Ireland: No comments received.

BIM: No objection to this application and stated that they are satisfied that the proposed operation does not conflict with any other aquaculture or inshore fishery interests in the area.

Fáilte Ireland: No comments received.

Údarás na Gaeltachta: No comments received.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 15th September, 2016. The application and supporting documentation were available for inspection at Milford and Bunbeg Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **no objections** received from the public consultation process.

6. CRITERIA IN MAKING LICENSING DECISIONS

The Licensing Authority, in considering an application, is required by statute to take account, as appropriate, of the following points and also be satisfied that it is in the public interest to license a person to engage in aquaculture:

- (a) the suitability of the place or waters

Scientific advice is to the effect that the waters are suitable for the cultivation of Pacific Oysters.

- (b) other beneficial uses of the waters concerned

Significant public interest arose in the proposed licensing of other 'new' aquaculture sites at Braade Strand, Gweedore Bay in early 2017 following the Ministerial determination of these applications. The public interest centred on a proposed increase in the footprint of aquaculture in Gweedore Bay, particularly at Braade Strand. While this is a new site, the original area was reduced from 7.9 ha to 4.194 ha in accordance with technical advice and with the applicant's agreement, prior to public and statutory consultation. MED have advised that Braade Strand is used by a small number of people for amenity purposes, but the main focus for leisure activity is Carrickfin Beach which is located 1km further west. MED expect that oyster culture at this site will not have a significant impact on existing beneficial usages of the local shore area.

- (c) the particular statutory status of the waters

- Natura 2000

The site is located within the Gweedore Bay and Islands SAC. An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in this SAC. The Appropriate Assessment finds that the aquaculture activities, at the current and proposed or likely future scale and frequency of activity are consistent with the Conservation Objectives. This Assessment and its findings were examined by the Department and its scientific and technical advisors. The Licensing Authority (i.e. the Minister) has prepared a Conclusion Statement outlining how it is proposed to license and manage aquaculture activities in the above Natura site in compliance with the EU Habitats Directive.

- Shellfish Waters

The site is located within the Gweedore Bay Shellfish Growing Water Area. The SFPA, the body responsible for the food safety aspect of seafood production, has no objection to this application. The current classification for Gweedore – Carrickfin is "B" which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying.

- (d) the likely effects on the economy of the area

Aquaculture has the potential to provide a range of benefits to the local community such as the attraction of investment capital, development of support services etc.

(e) the likely ecological effects on wild fisheries, natural habitats, flora and fauna

No significant issues arose regarding wild fisheries. The potential ecological impacts of aquaculture activities on natural habitats, flora and fauna are addressed in the Article 6 Appropriate Assessment for Gweedore Bay and the Islands and in the Licensing Authority's Conclusion Statement.

(f) the effect on the environment generally

- *The Minister is obliged pursuant to Regulation 5 (2) of the Aquaculture (Licence Application) Regulations to consider on a case by case basis whether the proposed aquaculture is likely to have a significant effect on the environment.*
- *The Minister has already determined that an Environmental Impact Statement is not required for this project (See Declaration in Tab C).*
- *The DCHG have raised no objection to the development from an underwater archaeological perspective.*

7. RECOMMENDATION

This application for an Aquaculture Licence has been subject to a rigorous examination and a positive recommendation is based on the best advice available.

Accordingly, it is recommended that the Minister:

approves the granting of an Aquaculture Licence (**Tab D**) to Mr Brendan Boyle, Ballymanus, Kincasslagh, Co. Donegal for the cultivation of Pacific Oysters using bags and trestles on Site T12/461A (totalling 4.194 ha) on the foreshore in Braade Strand, Gweedore Bay, Co. Donegal for a period of ten (10) years in accordance with the terms and conditions of the attached draft Aquaculture Licence.

8. REASONS FOR DECISION

The Minister for Agriculture, Food and the Marine is required to give public notice of both the licensing determination and the reasons for it. To accommodate this it is proposed to publish the following on the Department's website, subject to the Minister approving the above recommendation:

"Determination of Aquaculture/Foreshore Licensing application – T12/461

Mr. Brendan Boyle has applied for an Aquaculture Licence and a Foreshore Licence for the cultivation of Pacific Oysters using bags and trestles on a 4.194 ha site (numbered T12/461A) on the foreshore in Braade Strand, Gweedore Bay, Co. Donegal.

The Minister for Agriculture, Food and the Marine has determined that it is in the public interest to grant the Aquaculture and Foreshore Licences sought. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with statutory provisions. The following are the reasons and considerations for the Minister's determination to grant the licences sought:-

- a) Scientific advice is to the effect that the waters are suitable for the cultivation of Pacific Oysters. The site is located within Gweedore Bay Shellfish Designated Waters which currently has a "B" classification for oysters;*
- b) There should be no significant impact on existing beneficial usages of the local shore area;*
- c) The Minister has already determined that the proposed aquaculture is not likely to have significant effects on the environment and that an Environmental Impact Statement is not required for this project. The reasons and considerations for the Minister's determination are available on the Department's website;*
- d) The site is located within the Gweedore Bay and Islands Special Area of Conservation (SAC). An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in the SAC (available on the Department's website);*
- e) The Licensing Authority's (i.e. the Minister's) conclusions in relation to the Appropriate Assessment are contained in the Appropriate Assessment Conclusion Statement for Gweedore Bay and Islands (available on the Department's website). This document outlines how aquaculture activities in this SAC, including this site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Gweedore Bay and Islands SAC;*
- f) Scientific observations related to the Appropriate Assessment received during the consultation process as addressed in Section 4 of the Licensing Authority's Appropriate Assessment Conclusion Statement;*
- g) Taking account of the recommendations of the Appropriate Assessment the proposed aquaculture activity at this site is consistent with the Conservation Objectives for the*

SAC. Management/Mitigation measures include a licence condition requiring strict adherence to the proposed access route in order to minimise habitat disturbance. A further licence condition requires full implementation of the measures set out in the draft Marine Aquaculture Code of Practice prepared by Invasive Species Ireland;

- h) The proposed aquaculture should have a positive effect on the economy of the local area;*
- i) No significant effects arose regarding wild fisheries;*
- j) No effects anticipated on the man-made environment heritage of value in the area;*
- k) All issues raised during the public and statutory consultation phases;*
- l) The updated Aquaculture and Foreshore Licences contain terms and conditions which reflect the enhanced environmental protection now required under EU and National law."*

Recommendation to grant a Foreshore Licence for one site (T12/461A)

1. DECISION SOUGHT

The Minister's determination is requested please in relation to an application for a Foreshore Licence from Mr Brendan Boyle, Ballymanus, Kincasslagh, Co. Donegal, for a site numbered T12/461A in Braade Strand, Gweedore Bay, Co. Donegal in which it is proposed to conduct aquaculture.

2. BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Foreshore Submission) and submission above (Aquaculture Submission), which refer to the same site.

The Foreshore Licence allows for the occupation of the particular area of foreshore while the Aquaculture Licence defines the activity that is permitted in this area. The continuing validity of each licence is contingent on the other licence remaining in force.

3. APPLICATION FOR A FORESHORE LICENCE

An application for a Foreshore Licence has been received from the applicant referred to above (in conjunction with an Aquaculture Licence application) relating to the occupation of

the foreshore associated with the Aquaculture Licence application which covers Site T12/461A totalling 4.194 hectares in Braade Strand, Gweedore Bay, Co. Donegal (see Tab A).

4. LEGISLATION

Section 3 of the Foreshore Act, 1933 gives power to the Minister to license the use of foreshore, if he is of the opinion that it is in the public interest to do so.

5. CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, and was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

This application was also sent to the Department of Housing, Planning and Local Government (DHPLG) in accordance with subsection (1B) of Section 3 of the Foreshore Act, 1933, which requires consultation between the Minister for Agriculture, Food and the Marine and the Minister for Housing, Planning and Local Government. Whilst aquaculture legislation requires certain statutory bodies to be notified of an aquaculture application, no other statutory bodies are prescribed consultees under Fisheries related foreshore legislation.

Comments from DHPLG: The Department of Housing, Planning and Local Government had no objection to this application from a water quality or foreshore perspective.

Technical Consultation

Marine Engineering Division (MED): A reduction of the original site area was recommended (from 7.9 ha to 4.194 ha) as MED expressed concerns for the growing of oysters due to the height of the western part of the site relative to low tide levels. The applicant agreed to progress with the revised site area as recommended by MED. The revised site co-ordinates, maps and chart went to public notice. MED have no objection to the revised area being licensed.

Marine Survey Office (MSO): The MSO have no objection to this application from a navigational viewpoint.

Sea Fisheries Protection Authority (SFPA): The SFPA have no objection to this application. The current classification for Gweedore – Carrickfin is "B" which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 15th September, 2016. The application and supporting documentation were available for inspection at Milford and Bunbeg Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **no objections** received from the public consultation process.

6. CRITERIA IN MAKING LICENSING DECISIONS

The Minister, in considering an application for a Foreshore Licence, may, if satisfied that it is in the public interest to do so, grant such a licence.

Section 82 of the Fisheries (Amendment) Act, 1997 stipulates that the Minister, in considering an application for a licence under the Foreshore Acts, which is sought in connection with the carrying on of aquaculture pursuant to an Aquaculture Licence, shall have regard to any decision of the licensing authority in relation to the Aquaculture Licence.

The Minister is also obliged pursuant to Regulation 5 (2) of the Aquaculture (Licence application) Regulations 1998 to consider on a case by case basis whether the proposed aquaculture is likely to have a significant effect on the environment. An EIA Screening Assessment was carried out by the EIA Screening Group (comprising of technical and scientific experts and Department officials). The Minister has already determined that an Environmental Impact Statement is not required for this project (See Declaration in **Tab C**).

7. RECOMMENDATION

It is recommended that the Minister:

approves the granting of a Foreshore Licence (**Tab E**) to Mr Brendan Boyle, Ballymanus, Kincasslagh, Co. Donegal for a site numbered T12/461A (totalling 4.194 ha) in Braade Strand, Gweedore Bay, Co. Donegal, for a period of ten (10) years for occupation of the site for the carrying out of aquaculture activity as defined in the Aquaculture Licence and in accordance with the terms and conditions of the attached draft Foreshore Licence.

Submitted for approval, please.

Brendan Farr,
Aquaculture and Foreshore Management Division.