

Mr John Quinlan  
Dept. of Agriculture, Fisheries and Food,  
Coastal Zone Adm. Division,  
Clogheen,  
Clonakilty,  
County Cork.

Date: 22<sup>nd</sup> of February, 2010.

Ref. Stocking levels at our operations in the South West.

*Mr. Barnett*  
*Pl. fill*  
*I will work*  
*off the*  
*e-mailed*  
*version*



**marine harvest**  
excellence in seafood

Marine Harvest Ireland  
Kindrum, Letterkenny, Co. Donegal

Telephone: +353 (0) 74 9159071  
Fax: +353 (0) 74 9159077

Sales Office:  
Telephone: +353 (0) 74 9192820  
Fax: +353 (0) 74 9192825

[www.marineharvest.com](http://www.marineharvest.com)

Registration No: 66929, VAT No: IE47487495

Dear Mr Quinlan,

We would like the Dept. to consider whether we could stock each of our sites at Inishfernard and Deenish with 800,000 smolts this Spring of 2010 with no further stocking in 2011, instead of the annual stocking of 400,000 smolts at these sites as outlined in their licenses.

Such "all in - all out" stocking would avoid overlapping generations at these sites and enable the fallowing of the entire Kenmare Bay between production cycles (Jan/Feb 2012 in this case) in the interest of avoiding the potential build ups of sea-lice. Annual stocking is no longer recommended, instead we are proposing to stock the same number of smolts in total but do so on an every other year basis.

Not only would this benefit the SW sites, but also provide us with the opportunity to skip a generation at Clare Island this year, so as to fallow its smolt and Portlea sites simultaneously; again in the interest of natural and effective control of potential sea-lice infestations.

We believe that in future any reviewed aquaculture licenses should facilitate such best farming practice. BIM appears to be aware of analogous precedents in this respect (applying 2 year parameters to an annual license) and hence we would like the Dept. to clarify this.

Thanking you for your assistance,

Yours sincerely,

[sales@marineharvest.com](mailto:sales@marineharvest.com)

Registered in Ireland as Comhlucht Iascaireachta Fanad Teoranta, Registration No. 66929.  
Comhlucht Iascaireachta Fanad Teoranta is the holding company for each of Bradan Fanad Teoranta, Bradan (Maol Rua) Teoranta, Bradan Próisíúil Teoranta, Feirm Farráige Oileán Chliara Teoranta, Fanad Pettigoe Teoranta and Fanad Fisheries (Trading) Limited.

Registered Office: Kindrum, Letterkenny, Co. Donegal.  
Directors: Jan Feenstra (Dutch), Damien O'Toole

Received  
28/4  
[Signature]

**Marine Harvest**  
**Submission to the Minister of State**

Dr. Beamish, Assistant Secretary

Runai Aire Stait

**1) Introduction**

The background to the above case is set out in the attached briefing note prepared for the former Minister of State on 12<sup>th</sup> March. Since then legal advice has been obtained in relation to the stocking of Deenish and Inishfarnard sites and the possible revocation of the Deenish licence for alleged non-use. The request for legal advice and the full text of the legal advice obtained are also attached.

**2) Key Issues**

The key issues are (1) whether the current Deenish and Inishfarnard licences can be interpreted to accommodate the increase in stocking capacity ( from 400,000 to 800,000 smolts per site) as sought by the company (2) if necessary, can the existing licences be amended by the Minister to meet the company's request (3) should the Deenish licence be revoked.

In relation to (1) the legal advice obtained indicates that:

*'Where words in the term of a contract have a clear and unambiguous meaning, the words should be given that meaning and there should be no necessity to go beyond that meaning. In the above clause of these aquaculture licences it is arguable that the wording as construed is clear and unambiguous and therefore the application of the Plain Meaning Rule can be stated as being the appropriate method of interpretation. In the light of this, applying the ordinary meaning of the words of this clause, the condition should be construed as meaning that the maximum number of smolts to be stocked at either site is 400,000 at any one time'*

It is clear therefore that the existing licence conditions should not be interpreted to allow for the stocking of the sites beyond 400,000 smolts. In relation to (2) the legislation provides for the amendment of the licences in the public interest. The legal advice is that this is a policy matter. It is considered by the Aquaculture and Foreshore Management Division that the licences should not be amended as to do so would serve to undermine the integrity of the licensing regime as set out in the attached briefing note of 12<sup>th</sup> March.

In relation to (3) the Department has been giving consideration to the possible revocation of the Deenish licence for alleged non-use for a continuous period of two years. These allegations have been made by solicitors acting for Salmon Watch Ireland and Waterville Fisheries Development Group Ltd. The company was given the opportunity to supply details of any exceptional reasons why the licence should not be revoked. The company submitted evidence to show that the site was fallowed in line with best practice, maintained to a high degree, monitored throughout by professional services and prepared for the re-introduction of stocks in line with the



company's plans. The matter was referred to Legal Services Division and the advice obtained was that in all the circumstances one would be reluctant to revoke the licence (see attached text of legal advice).

### 3) Other issues

Some of the cages on the Inishfarnard site were outside the licensed area. The Department's engineers have confirmed that this has now been rectified (one floating anchor is a few metres outside the area but the engineers say this is within a margin of error)

The company has indicated that it had negotiated an arrangement with the licensee of a site in Killary Harbour which has licensed capacity for 710,000 smolts with a view to taking the excess smolts from Marine Harvest. The licensee has confirmed in writing that an arrangement exists and the Division has written to him to draw his attention to the terms and conditions of his licence and the need to comply fully with same.

### 4) Recommendations

Having regard to the above and to the attached notes, the Minister's approval is requested please for the following measures which are recommended by the Division:

- That the company be advised that the operations in Deenish and Inishfarnard must come within the existing licence conditions and that the maximum smolt capacity for each site is 400,000.
- That amending the existing licences to take account of such a major change of use (100% increase in smolt capacity) would undermine the licensing regime and therefore would not be in the public interest. Such a major increase in stocking capacity would have to be the subject of new licence applications accompanied by the necessary Environmental Impact Statements
- That the exceptional reasons submitted by the company for not revoking the Deenish licence have been accepted and the licence will not be revoked

Submitted please

JOHN QUINLAN  
Aquaculture & Foreshore Management Division  
30/3/10

*I Agree Agreed with  
The Recommendations  
09/04/10 John Connolly*

**Hayes, Geraldine**

---

**From:** Quinlan, John

**Sent:** 28 April 2010 15:07

**To:** [REDACTED]

**Cc:** Monaghan, Seamus; Hayes, Geraldine; [REDACTED]; Beamish, Cecil

**Subject:** Licensing Issues - Inishfarnard & Deenish Sites

This is further to previous discussions and correspondence concerning the above sites. The company's proposals in relation to the sites have been the subject of extensive examination by the Department in conjunction with its technical/scientific and legal advisers. The Department is now in a position to convey the following decisions on the matters concerned:

- 1) The operations in Deenish and Inishfarnard sites must come within the existing licence conditions which, as you know, specify a maximum smolt capacity for each site of 400,000. This capacity must not be breached.
- 2) It is considered that the company's request to amend the existing licences to take account of the proposed increased smolt capacity ( 100% increase) is such a major change in use that to amend the licences would undermine the licensing regime and therefore would not be in the public interest. Such a major increase in stocking capacity would have to be the subject of new licence applications accompanied by the necessary Environmental Impact Statements.
- 3) The exceptional reasons submitted by the company for not revoking the Deenish licence have been accepted by the Department and therefore it is not intended to revoke the licence on this occasion.

I hope the above information is helpful. If you have any further queries please do not hesitate to contact me.

Regards  
John

28/04/2010

## Hayes, Geraldine

---

**From:** [redacted] com]  
**Sent:** 29 April 2010 12:42  
**To:** Quinlan, John  
**Cc:** Monaghan, Seamus; Hayes, Geraldine; Richie Flynn; Beamish, Cecil; [redacted]  
**Subject:** RE: Licensing Issues - Inishfarnard & Deenish Sites

Dear John,

Thank you for your efforts and interests in these matters.

I can confirm that we have stocked these licenses in accordance with the licensed smolt capacity to which you refer. It is respected that a strict clinical interpretation of these licenses and their wording is applied, but note that this unfortunately restricts the opportunity to raise our industry's overall and wider standards of fish health and environmental practices that serve the interest of all stakeholders. These licenses are simply out of date, potentially to the detriment of that for which they were created.

We are committed to improve licenses but for this we require the CZAD to embrace and implement constructive changes in license conditions as also previously communicated through our participation in the ISGA / IFA. Meanwhile it has and continues to be our understanding that because these sites are in marine SAC areas, it is not possible for their EIS to be evaluated completely until the NPWS has determined what appropriate assessment is required relative to their SAC – after all this is what has stopped these licenses from being reviewed (EIS were submitted) in the past, and regretfully, this situation prevails since several years.

Finally we are grateful that the Department finds that the Deenish license should not be revoked. The aquaculture regulation that is relevant to such considerations would be worthy of review.

Kind regards,

Jan.

---

**From:** Quinlan, John [mailto:John.Quinlan@agriculture.gov.ie]  
**Sent:** 28 April 2010 15:07  
**To:** Feenstra, Jan C  
**Cc:** Monaghan, Seamus; Hayes, Geraldine; [redacted] Beamish, Cecil  
**Subject:** Licensing Issues - Inishfarnard & Deenish Sites

