

## Ministerial Decision on

[REDACTED]

### 2. Inishfarnard (Licence T5/233)

## *Implementation Proposals*

### Submission to the Minister

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**From:** John Quinlan, Principal Officer, Aquaculture & Foreshore Management Division

**To:** 1) Dr. Beamish, Assistant Secretary

2) Secretary General

3) Rúnaí Aire

**Date:** 14/11/2017

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#### 1. Purpose of the Submission

The purpose of the Submission is to outline the recommended steps intended to operationalise the Minister's decisions in respect of [REDACTED] and Inishfarnard (Licence T5/233).



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5. Background – Inishfarnard (Licence T5/233)

In December 2016 Aquaculture and Foreshore Management Division recommended:

- “1. That the Minister determine that a breach of Condition 2(d) of the applicable aquaculture licence has occurred as described above.
2. That the Minister treat the statutory entitlement of Silver King Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act as discontinued for the following reason:

- Breach of condition 2(d) of the applicable aquaculture licence with states:-

*“the stock of fish in the cages shall not exceed such quantity as may be specified by the Minister from time to time, the number of smolts to be stocked at the site should not in any event exceed 400,000. Licensed stocking densities are not to be exceeded and will be subject to inspection at any time by the Department of the Marine;”* ”

The breach in question was that the cap in introduction of smolts at the site (400,000) was exceeded by 420,604 (an excess of 105%). Following consideration of all aspects of the case, the Minister determined that:

*“...a provable breach of a licence condition (condition 2(d)) did not occur.*

*Condition 2(d) of the licence states “the stock of fish in the cages shall not exceed such quantity as may be specified by the Minister from time to time, the number of smolts to be stocked at the site should not in any event exceed 400,000. Licensed stocking densities are not to be exceeded and will be subject to inspection at any time by the Department of the Marine;”*

*The Minister has concluded that a provable breach of the licence condition did not occur, in circumstances where evidential issues may arise as to what technically constitutes a smolt. The Minister wishes to seek to avoid a similar situation occurring in the future and therefore wishes to endeavour to have the licence amended.”*

The relevant set of Submissions to the Minister on this case are attached at **TAB C** and the full copy of the notice of the Minister’s decision as posted on the Department’s website is attached at **TAB D**.

## **6. Issues Associated with Amendment (Inishfarnard)**

The above extract from the Public Notice reflects a clarification of the Minister’s decision which was received on 9<sup>th</sup> February 2017 and which stated the following:

*“The Minister has considered the advice on this file and on balance has concluded that a provable breach of the licence conditions did not occur. The Minister wishes to seek to avoid a similar situation occurring in the future and therefore wishes to endeavour to have the licence amended. The Minister also requests that a meeting be arranged with the company at the most senior level to set out his views to them on the matter.”*

The situation in relation to Inishfarnard differs from that of [REDACTED] in that the Minister has concluded that a *“provable breach of the licence conditions did not occur”*. In such circumstances a strict reading of the matter would indicate that the Company has no case to answer. However, the fact remains that smolts exceeding the cap were placed on site. In his submission the Assistant Secretary has stated, inter alia:

***“In any event, the situation is not satisfactory and the case highlights the problem with the way in which the licence condition is drafted. It would be in the public interest to endeavour to amend this condition, either in this licence, or in any renewal licences or in both, to simply set a limit on the number of “fish” below a certain weight that could be inputted so that in this way or some similar formulation it would be possible to achieve the essence of the intention of the original licence. It would seem desirable to also consider further requiring the company to pre-notify the State where young fish are being inputted to enable clear real time verification that fish input limits are being reflected. Any action along these lines would need to be developed in close co-ordination with Legal Services Division given the complex legal situation in this case.”***

As the clear “intention” of the licence condition is to set a cap on the number of smolts that can be inputted into the site, the challenge would seem to be to arrive at a workable definition of what constitutes a smolt. The Marine Institute has provided the following definition:

***“A juvenile salmon which has undergone the physiological and physical changes necessary to survive at sea.”***

The above definition remains somewhat ambiguous and would be difficult to implement in terms of capping fish numbers at least in terms of establishing a “provable breach” should the permitted stocking levels be again exceeded by the Operator.

A more precise approach to this issue would be to set a specific cap to the number of salmon of any growth category which may be introduced in any one twelve month period. Accordingly it is proposed to amend the existing licence Condition 2(d) which states:

**“the stock of fish in the cages shall not exceed such quantity as may be specified by the Minister from time to time, the number of smolts to be stocked at the site should not in any event exceed 400,000. Licensed stocking densities are not to be exceeded and will be subject to inspection at any time by the Department of the Marine;”**

to state the following:

**“no more than 400,000 fish of any growth category may be input to the site in any twelve month period and will be subject to inspection at any time by the Department of Agriculture, Food and the Marine;”**



The amended wording has been approved by Legal Services Division.

It is proposed that this amendment be of immediate effect and be communicated to the Company in writing.

It is also proposed that information similar to [REDACTED] be sought immediately from the Operator in accordance with Condition 2(k) of the licence, i.e.:

To provide the Department on the last day of each calendar month the following information:

1. Stock numbers introduced to the site and held on site during the month.
2. Details of mortalities during the month.
3. Details of stock during the month (broken down by category, smolts, ova, fry, others).

## **7. Meeting with the Company (Inishfarnard)**

In his submission to the Minister the Secretary General has recommended that ***"....we should also seek a meeting with the company at the most senior level to set out very clearly how seriously we view these issues"***. It is proposed that this meeting be convened with a view to conveying the Department's views on not only Inishfarnard but also other breaches of licence conditions with the Company. ***"The most senior level"*** of Marine Harvest is the CEO of Marine Harvest ASA. The CEO has met with Ministers in the past in respect of the Company's operations in Ireland and has also written directly to the Aquaculture Licensing Review Group (TAB E). It is considered that contact at that level is most likely to have the desired effect in terms of future compliance with the Company and is strongly recommended.

## **8. Conclusion & Recommendation (Inishfarnard)**

It is recommended that:

1. The following amendment be made to the Company's licence with immediate effect:

The existing condition 2(d) be replaced by a new condition 2(d) which states as follows:

no more than 400,000 fish of any growth category may be input to the site in any twelve month period and will be subject to inspection at any time by the Department of Agriculture, Food and the Marine;



2. That the Department would write immediately to the Company and seek the following information in accordance with Condition 2(k) of the licence:

To provide the Department on the last day of each calendar month the following information:

1. Stock numbers introduced to the site and held on site during the month.
  2. Details of mortalities during the month.
  3. Details of stock during the month (broken down by category, smolts, ova, fry, others).
3. That the Department write immediately to the CEO of Marine Harvest ASA to arrange a meeting at as early a date as possible to convey the views of the Department in respect of licence compliance by the Company.

**Submitted please for approval**



John Quinlan  
Principal Officer  
Aquaculture and Foreshore Management Division

**ENDS**

