

## Submission AGR 00565-18: recommendation to refuse Aquaculture and Foreshore Licences for one site T06/376A

TO: Minister  
STATUS: Completed  
PURPOSE: For Decision

AUTHOR: McDonald, Bernie  
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Farrell, Brendan  
Quinlan, John  
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DIVISION: Fisheries  
DECISION BY:

### Final comment

Minister determines that the application for Aquaculture and Foreshore Licences be refused for the reasons set out.

### Action required

Ministerial determination on Aquaculture/Foreshore Licensing Application (T06/376A).

### Executive summary

The Minister's determination is requested in relation to an application for an Aquaculture Licence from Patrick T O'Sullivan, Cromane Lower, Killorglin, Co. Kerry.

The application is for the cultivation of pacific oysters using bags and trestles at Site T06/376A (2.9 ha), on the foreshore in Castlemaine Harbour, Co. Kerry.

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

It is recommended that the Minister determines that the application for Aquaculture and Foreshore Licences **be refused** for the reasons set out in the 'Detailed Information' section below (*essentially, the risk of significant disturbance from the proposed aquaculture activities cannot be discounted. The proposed increase in the spatial area arising from the new licence applications would pose a risk of seston depletion and impact on the carrying capacity of the harbour. New oyster licence applications cannot be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Natura 2000 sites*).

### Detailed information

#### **Recommendation to Refuse an Aquaculture Licence application (T06/376A)**

#### **DECISION SOUGHT**

The Minister's determination is requested please in relation to an application for an Aquaculture Licence from Patrick T O'Sullivan, Cromane Lower, Killorglin, Co. Kerry, for a site in Castlemaine Harbour, Co. Kerry.

Also attached is a submission in respect of the accompanying Foreshore Licence, for the Minister's consideration.

#### **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.

## **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 site on the foreshore in Castlemaine Harbour, Co. Kerry (numbered T06/376A – 2.9 hectares).

## **LEGISLATION**

Section 7 of the Fisheries (Amendment) Act 1997 provides that the Licensing Authority (i.e. 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 ..."*

## **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):

The site is located 2.5km east of Cromane Point. It appears to be located immediately outside the BIM unified Marking Scheme (SUMS) navigation marks and within the Shellfish Designated Waters SI 268 of 2006 Cromane Co. Kerry and within Castlemaine Harbour SAC and SPA.

The site is not in an area that is likely to be highly visible to many people. Population density in area is low and trestles will only be visible at times of low tide. There are no features of high landscape or scenic value that will be impacted upon.

MED does not recommend licensing this site as the Department's Conclusion Statement, which has been informed by the Appropriate Assessments, has concluded that this new application should not be licensed.

Should the Minister decide to grant a licence for this site, the applicant should be requested to provide details of navigation markings and structures to be deployed on the site.

#### Marine Survey Office (MSO):

Concerns were raised about the lack of compliance with pole marks of a correct design on existing sites and the potential that new entrants to the area will likewise not correctly mark sites.

#### Sea Fisheries Protection Authority (SFPA):

No observations/submissions have been received from the Sea Fisheries Protection Authority in relation to this application.

### **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 within the statutory consultation period from the following statutory bodies:

#### An Taisce:

An Taisce noted: "The Harbour is of major ecological importance, and contains a range of coastal habitats of excellent quality, including many that are listed on Annex I of the E.U. Habitats Directive. It is a very important site for passage and wintering waterfowl. There are a number of birds of international and national importance in this site."

On reviewing the documentation provided with the application, An Taisce submit, in agreement with the AA report conclusions, that the aquaculture licence application (Ref: T06/376A) should not proceed.

#### Marine Institute:

Site T06/376A is located within Castlemaine Harbour SAC (Site Code 000343) and the Castlemaine Harbour SPA (Site Code 004029). Marine Institute has noted the findings of the Appropriate Assessment reports, and the Department's Draft Appropriate Assessment Conclusion Statement in regard to the impacts of the proposed aquaculture activity on the Conservation Objectives of the Castlemaine Harbour SAC and Castlemaine Harbour SPA. On the basis of the Appropriate Assessment Conclusion Statement the Marine Institute is of view that an aquaculture licence at this site should not be granted.

#### Commissioner of Irish Lights:

No objection to the application. In the event of any licence being issued they have listed conditions to be included.

#### **Public Consultation**

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in "The Kerryman" on 6<sup>th</sup> June, 2018. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were seven submissions received during the public consultation period. It is not possible to disaggregate the comments into aquaculture and foreshore elements.

Five submissions consisted of objections to all oyster farming in Castlemaine Harbour on the grounds that the local environment and habitat would be damaged; the natural beauty of the area should be preserved for present and future generations; and aquaculture activities would have a detrimental effect on tourism. A concern about the impact of landowners in the area and their livestock was also referred to in one submission.

An existing licensee in Castlemaine Harbour provided a submission objecting to new applications on the basis of potential damage to the ecosystem in Castlemaine Harbour; the need to preserve wildlife and bird species; current overfishing in the harbour; lack of nutrients in the water to accommodate all potential new licensed sites; and the overall quantity and scale of the new licence applications.

The other submission received was signed by six licence applicants requesting that the Department consider their livelihoods in making a determination, and the potential boost to employment in the area arising from the granting of licences. They requested that applications be processed in a phased manner with the older applications considered in advance of, and separately from, subsequent applications.

#### **Applicant response to observations made during the consultation process**

The applicant did not provide a response to the submissions received during the consultation period.

#### **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

*The findings of the Appropriate Assessment of aquaculture activities in Castlemaine Harbour found that from a Natura 2000 perspective the risk of significant disturbance from the proposed aquaculture activities cannot be discounted. The proposed increase in the spatial area arising from the new licence applications would pose a risk of seston depletion and impact on the carrying capacity of the harbour. New oyster licence applications, including T06/376A, cannot be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Natura 2000 sites.*

- b) other beneficial uses of the waters concerned

*Public access to recreational and other activities can be accommodated by this project*

- c) the particular statutory status of the waters
  - (i) Natura 2000

*The sites are located within the Castlemaine Harbour SAC (Site Code: 000343) and the Castlemaine Harbour SPA (Site Code: 004029). An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in this SAC and SPA. The Appropriate Assessment (AA) found that:*

Licensing of the new sites, including T06/376A, for aquaculture in Castlemaine Harbour may result in the following adverse effects:

- interrupting the progress towards achieving the Conservation Objectives of the SPA for those species in long term population decline;
- disrupt those factors that help to maintain the favourable conditions of the SPA (i.e. spatial extent of functional habitat);
- interfere with the distribution and density of SCIs that are the indicators of the favourable condition of the SPA (i.e. caused by displacement);
- cause changes to the vital defining aspects (i.e. undisturbed foraging areas and an absence of obstructions to sight lines) that determine how the site functions as a supporting habitat for water birds);
- reduce the area of key habitats;
- result in disturbance that could affect population size or density or the balance between key species;
- result in habitat fragmentation;
- noise/visual disturbance for all intertidal SCIs and Cormorant; and
- the displacement for all intertidal foraging SCIs except Greenshank and Redshank.

The access routes used in intertidal areas, by virtue of persistent compaction of the sedimentary habitats, are considered disturbing.

The Licensing Authority's Conclusion Statement outlines how it is proposed to determine applications for aquaculture, including T06/376A, in compliance with the EU Birds and Habitats Directives.

(ii) Shellfish Waters

The site is located within Shellfish Designated Waters.

d) the likely effects on the economy of the area

Aquaculture has the potential to provide a range of benefits to the local community. Fáilte Ireland did not provide observations on the potential impacts on tourism, however concerns have been raised by members of the public in their submissions regarding the potential negative effect on local businesses and tourism caused by the visual impact of aquaculture infrastructure.

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 at (c) (i) above.

f) the effect on the environment generally

The potential ecological impacts of aquaculture activities on natural habitats, flora and fauna are addressed at (c) (i) above.

The site is not in an area that is likely to be highly visible to many people.

## RECOMMENDATION

It is recommended that the Minister:

**refuses the granting** of the Aquaculture Licence sought.

The reasons for the recommendation are:

*The findings of the Appropriate Assessment of aquaculture in the Castlemaine Harbour Natura sites were examined by the Department and its scientific/technical advisors. It was concluded that the risk of significant disturbance from the proposed aquaculture activities cannot be discounted. In addition, the proposed increase in the spatial area arising from new licence applications, including T06/376A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. Approval of this aquaculture licence is not recommended as it would be in contravention of the EU Birds and Habitats Directives.*

## 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 determination on the Department's website in relation to this site, subject to the Minister approving the above recommendation:

*Determination of Aquaculture/ Foreshore Licensing application –T06/376A*

Patrick T O'Sullivan has applied for authorisation for the cultivation of Pacific Oysters using bags and trestles at a site, T06/376A (2.9 ha), on the foreshore in Castlemaine Harbour, Co. Kerry.

The Minister for Agriculture, Food and the Marine has determined that it is **not in the public interest** to grant Aquaculture/Foreshore Licences for this site. 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 the statutory provisions. The following are the reasons and considerations for the Minister's determination to **refuse** the licences sought: -

a) The site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and Special Protection Area (SPA) Natura 2000 sites. A Natura Appropriate Assessment (AA) was carried out in 2011 in relation to existing aquaculture activity and new applications on hand at that time in the SAC and SPA. Licensing determinations were made in conformity with 'Natura' requirements. Recently, in 2018, a further Article 6 assessment has been carried out in relation to aquaculture applications received subsequent to the completion of the original AA (this includes this site). An Appropriate Assessment Conclusion Statement has been produced in relation to this recent AA (available on the Department's website). This document outlines how the proposed aquaculture activities in Castlemaine Harbour SAC and SPA, including this site, are being managed so as not to significantly or adversely affect the integrity of the SAC and SPA.

b) Taking account of the recommendations from the Appropriate Assessment process, the proposed aquaculture activities are not consistent with the Conservation Objectives for the SPA and could result in significant disturbances to key bird species and reductions in their density and functional foraging habitat area.

c) The potential increase in the spatial area arising from new aquaculture activities (including this site) could cause seston depletion and impact negatively on the carrying capacity of Castlemaine Harbour.

d) The potential risks from licensing the proposed aquaculture activities, including this site, on the integrity of the Natura 2000 sites cannot be discounted."

#### **Recommendation to refuse a Foreshore Licence Application (T06/376A)**

##### **DECISION SOUGHT**

The Minister's determination is requested please in relation to an application for a Foreshore Licence from Patrick T O'Sullivan, Cromane Lower, Killorglin, Co. Kerry, for a site in Castlemaine Harbour, Co. Kerry, on which it is proposed to conduct aquaculture.

##### **BACKGROUND**

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

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.

##### **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 (T06/376A), at a site (2.9ha) in Castlemaine Harbour, Co. Kerry.

##### **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.

##### **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.

#### **Department of Housing, Planning and Local Government (DHPLG)**

No submission was received, therefore there are no comments on water quality or foreshore perspective.

#### **Technical Consultation**

##### Marine Engineering Division (MED):

The site is located 2.5km east of Cromane Point. It appears to be located immediately outside the BIM unified Marking Scheme (SUMS) navigation marks and within the Shellfish Designated Waters SI 268 of 2006 Cromane Co. Kerry and within Castlemaine Harbour SAC and SPA.

The site is not in an area that is likely to be highly visible to many people. Population density in area is low and trestles will only be visible at times of low tide. There are no features of high landscape or scenic value that will be impacted upon.

MED does not recommend licensing this site as the Department's Conclusion Statement, which has been informed by the Appropriate Assessments, has concluded that this new application should not be licensed.

Should the Minister decide to grant a licence for this site, the applicant should be requested to provide details of navigation markings and structures to be deployed on the site.

##### Marine Survey Office (MSO):

Raised concerns about the lack of compliance with pole marks of a correct design on existing sites and the potential that new entrants to the area will likewise not correctly mark sites.

##### Sea Fisheries Protection Authority (SFPA):

No observations/submissions have been received from the Sea Fisheries Protection Authority in relation to this application.

#### **Public Consultation**

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in "The Kerryman" on 6<sup>th</sup> June, 2018. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were seven submissions received during the public consultation period. It is not possible to disaggregate the comments into aquaculture and foreshore elements.

Five submissions consisted of objections to all oyster farming in Castlemaine Harbour on the grounds that the local environment and habitat would be damaged; the natural beauty of the area should be preserved for present and future generations; and aquaculture activities would have a detrimental effect on tourism. A concern about the impact of landowners in the area and their livestock was also referred to in one submission.

An existing licensee in Castlemaine Harbour provided a submission objecting to new applications on the basis of potential damage to the ecosystem in Castlemaine Harbour; the need to preserve wildlife and bird species; current overfishing in the harbour; lack of nutrients in the water to accommodate all potential new licensed sites; and the overall quantity and scale of the new licence applications.

The other submission received was signed by six licence applicants requesting that the Department consider their livelihoods in making a determination, and the potential boost to employment in the area arising from the granting of licences. They requested that applications be processed in a phased manner with the older applications considered in advance of, and separately from, subsequent applications.

#### **Applicant's response to observations made during the consultation process**

The applicant did not provide a response to the submissions received during the consultation period.

#### **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.

## RECOMMENDATION

It is recommended that the Minister, taking account of the decision on the related aquaculture licence application:

**refuses** the granting of a Foreshore Licence to Patrick T O'Sullivan, Cromane Lower, Killorglin, Co. Kerry in respect of a site (ref. T06/376A) located in Castlemaine Harbour, Co. Kerry.

*The reason for the recommendation is that, taking account of the recommendations of the Appropriate Assessment, the proposed aquaculture activity at these sites, including T06/376A, is not consistent with the Conservation Objectives for the relevant Natura sites. In particular, the proposed increase in the spatial area arising from the new licence applications, including T06/376A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. In addition, it is not possible to measure the magnitude of the impact of individual licences, including T06/376A, and how the integrity of the Natura 2000 sites might be adversely affected.*

*Thus, the licensing of aquaculture activity at these sites, including T06/376A, would be in contravention of Article 6(3) of the Habitats Directive.*

## Related submissions

There are no related submissions.

## Comments

**OShea, Nicole** - 13/09/2018 15:28

Recommended to refuse Aquaculture and Foreshore Licences for one site T06/376A

**Farrell, Brendan** - 13/09/2018 16:01

Submission in respect of Licence application T06/376A with a recommendation that a licence should not be granted for reasons outlined.

**Quinlan, John** - 17/09/2018 11:02

Refusal is recommended in this case please.

**Beamish, Cecil** - 17/09/2018 13:00

Recommended that the Minister determines that the application for Aquaculture and Foreshore Licences be refused for the reasons set out in the submission.

**Smith, Ann** - 17/09/2018 13:02

Approved for submission to Minister. 17/09/2018

## User details

INVOLVED: McDonald, Bernie  
OShea, Nicole  
Farrell, Brendan  
Quinlan, John  
Beamish, Cecil  
Sub Sec Gens Office  
eSub Ministers Office

READ RECEIPT: McDonald, Bernie  
BTSSP-SC  
OShea, Nicole  
Farrell, Brendan  
Quinlan, John  
Beamish, Cecil  
Smith, Ann  
Lennox, Graham