

Submission AGR 00689-18: Recommendation to refuse Aquaculture and Foreshore Licences for one site T06/392A

TO: Minister
STATUS: Completed
PURPOSE: For Decision

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Smith, Ann

DIVISION: Coastal Zone Management
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 (T06/392A).

Executive summary

The Minister's determination is requested in relation to an application for an Aquaculture Licence from Gerard O'Reilly, Cromane Lower, Killorglin, Co. Kerry.

The application is for the cultivation of Pacific Oysters using bags and trestles at Site T06/392A (1.098 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

The Minister's determination is requested please, in relation to an application for an Aquaculture Licence from Gerard O'Reilly, 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 the 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 (ref. T06/392A - 1.098 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 it 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 in Castlemaine Harbour, immediately east of Cromane Point, and it is within the Mussel Fishery Order Area, T06-007. As the site is within the Mussel Fishery Order Area, the applicant requires consent from the Order holder to proceed with the application. The applicant was requested to obtain written consent from the holder of the MFO for this aquaculture activity but this consent was not provided.

The site is within the Shellfish Designated Waters, SI 268 of 2006, Cromane, Co. Kerry, and within Castlemaine Harbour SAC and SPA.

The proposed site is to be situated inside the Single Unified Marking Scheme (SUMS) for the harbour.

The site is not in an area that is likely to be highly visible to many people. Population density in the 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 access routes and structures to be deployed on the site.

Marine Survey Office (MSO):

This office has no objection to this development from a navigational viewpoint.

The applicant is required to apply to the Commissioners of Irish Lights for sanction to establish the following marks: four posts, projecting two meters above sea level at highest astronomical tide, and with a topmark of a diagonal St. Andrews cross, painted yellow, and these should be erected at the four corners of the development.

Sea Fisheries Protection Authority (SFPA):

The issuing of an Aquaculture and Foreshore Licence in the area identified as T6/392 for the cultivation of Pacific Oysters would have no negative impact on local sea fishing operations.

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: T06/392A) should not proceed.

Marine Institute:

Site T06/392A is located within Castlemaine Harbour SAC (Site Code 000343) and the Castlemaine Harbour SPA (Site Code 004029). We note 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 the view that an aquaculture licence at this site should not be granted.

Commissioner of Irish Lights:

Based on the information supplied, CIL has reservations concerning the encroachment of this site onto a navigable channel. It is important to ensure that no navigable inter-tidal channels are impeded by trestles or bags.

CIL has listed conditions to be included in the event of a licence being granted.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in "The Kerryman" on 13th June, 2018. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of four weeks from the date of publication of the notice in the newspaper.

Eight submissions were 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.

A 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.

A submission was received from a group named "Save This Beach" which objected to aquaculture licensing in Castlemaine Harbour. It objected on the basis that (1) it believes there was a lack of compliance with the Aarhus Convention for public participation; (2) it believes the Department waived the EIA screening process; (3) it has concerns for the adverse impact on the Environment in the event of the licences being granted; (4) it believes licensing of aquaculture would contravene the Kerry County Council Development Plan and (5) it believes aquaculture licensing in Castlemaine Harbour is economically unviable.

In relation to the latter submission, Point 1 is not relevant as the Department did engage in the public consultation process as required under legislation. Point 2 is not relevant as the applicant has applied for a licence to engage in 'extensive' aquaculture, i.e. where there is no external supply of feed or medicine, and this type of culture depends entirely on natural processes for production and supply of feed. Accordingly, the Department does not apply the EIA screening process in the case of 'extensive' aquaculture. The other issues raised (points 3, 4 and 5) are moot points as it is recommended that this application for an aquaculture licence is refused.

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, including T06/392A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. New oyster licence applications, including T06/392A, 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 T06/392A, 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 T06/392A, in compliance with the EU Birds and Habitats Directives.

(ii) Shellfish Waters

The site is 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.

Significant impacts on the general environment are not considered likely.

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 T06/392A, 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 – T06/392A

Gerard O'Reilly has applied for authorisation for the cultivation of Pacific Oysters using bags and trestles at a Site, T06/392A (1.098 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 (T06/392A)

DECISION SOUGHT

The Minister's determination is requested please, in relation to an application for a Foreshore Licence from Gerard O'Reilly, 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 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.

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 (T06/392A), at a site (1.098 ha) 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 it 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 a foreshore perspective.

Technical Consultation

Marine Engineering Division (MED):

The site is located in Castlemaine Harbour, immediately east of Cromane Point, and it is within the Mussel Fishery Order Area, T06-007. As the site is within the Mussel Fishery Order Area, the applicant requires consent from the Order holder to proceed with the application. The applicant was requested to obtain written consent from the holder of the MFO for this aquaculture activity but this consent was not provided.

The site is within the Shellfish Designated Waters, SI 268 of 2006, Cromane, Co. Kerry, and within Castlemaine Harbour SAC and SPA.

The proposed site is to be situated inside the Single Unified Marking Scheme (SUMS) for the harbour.

The site is not in an area that is likely to be highly visible to many people. Population density in the 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 access routes and structures to be deployed on the site.

Marine Survey Office (MSO):

This office has no objection to this development from a navigational viewpoint.

The applicant is required to apply to the Commissioners of Irish Lights for sanction to establish the following marks: four posts, projecting two meters above sea level at highest astronomical tide, and with a topmark of a diagonal St. Andrews cross, painted yellow, and these should be erected at the four corners of the development.

Sea Fisheries Protection Authority (SFPA):

The issuing of an Aquaculture and Foreshore Licence in the area identified as T06/392A for the cultivation of Pacific Oysters would have no negative impact on local sea fishing operations.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in "The Kerryman" on 13th June, 2018. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of four weeks from the date of publication of the notice in the newspaper.

Eight submissions were 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.

A 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.

A submission was received from a group named "Save This Beach" which objected to aquaculture licensing in Castlemaine Harbour. It objected on the basis that (1) it believes there was a lack of compliance with the Aarhus Convention for public participation; (2) it believes the Department waived the EIA screening process; (3) it has concerns for the adverse impact on the Environment in the event of the licences being granted; (4) it believes licensing of aquaculture would contravene the Kerry County Council Development Plan and (5) it believes aquaculture licensing in Castlemaine Harbour is economically unviable.

In relation to the latter submission, Point 1 is not relevant as the Department did engage in the public consultation process as required under legislation. Point 2 is not relevant as the applicant has applied for a licence to engage in 'extensive' aquaculture, i.e. where there is no external supply of feed or medicine, and this type of culture depends entirely on natural processes for production and supply of feed. Accordingly, the Department does not apply the EIA screening process in the case of 'extensive' aquaculture. The other issues raised (points 3, 4 and 5) are moot points as it is recommended that this application for an aquaculture licence is refused.

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

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 Gerard O'Reilly, Cromane Lower, Killorglin, Co. Kerry, in respect of a site (ref. T06/392A) 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 T06/392A, 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 T06/392A, 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 T06/392A, and how the integrity of the Natura 2000 sites might be

adversely affected.

Thus, the licensing of aquaculture activity at these sites, including T06/392A, would be in contravention of Article 6(3) of the Habitats Directive.

Related submissions

There are no related submissions.

Comments

OShea, Nicole - 05/10/2018 09:30

Recommended to refuse an Aquaculture & Foreshore Licence for one site T06/392A.

Farrell, Brendan - 05/10/2018 10:07

Recommended that Licence application T06/392A is refused by the Minister for the reasons set out in this submission.

Quinlan, John - 08/10/2018 10:20

Refusal is recommended in this case please.

Beamish, Cecil - 09/10/2018 09:50

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 - 09/10/2018 10:03

Approved for submission to Minister. 09/10/2018

Lennox, Graham - 09/10/2018 11:39

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

User details

INVOLVED: Naughton, Maria
OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
eSub Sec Gen
eSub Ministers Office
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READ RECEIPT: Naughton, Maria
OShea, Nicole
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Beamish, Cecil
Smith, Ann
Lennox, Graham