

00423-18: Recommendation to refuse to grant an Aquaculture/Foreshore Licence for Application T03/96

To: Minister	Author: James OConnell
Status: Completed	Owner: OConnell, James
Purpose: Approval	Reviewers: Whelton, Batt,Quinlan, John,Beamish, Cecil
Division/Office: 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 T3/96

Executive Summary

The Ministers determination is requested in relation to an application for an Aquaculture Licence from AG Oysters Ltd, First Floor, 10/11 Exchange House, International Financial Services Center, Dublin 1.

The application is for the cultivation of Pacific Oysters using bags and trestles at one site T03/96 (20.8ha) on the foreshore in Bannow Bay (within Bannow Bay SPA).

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

It is recommended that the Minister determines that the application for Aquaculture/Foreshore Licence(s) **be refused** for the reasons set out in the 'Detailed Information@ section below (i.e. the proposed aquaculture would potentially result in significantly high levels of disturbance for protected shorebird species).

Comments

- (20/07/2018 16:38:21) Ann Smith: Approved for submission to Minister. 20/07/2018
- (19/07/2018 15:01:46) Cecil Beamish: Recommended that the Minister determines that the application for Aquaculture/Foreshore Licence(s) be refused for the reasons set out in the submission.
- (19/07/2018 14:07:32) John Quinlan: Refusal is recommended please as set out in the detailed submission.
- (19/07/2018 12:16:24) Batt Whelton: I agree with the recommendation that this application be refused as there are significant, or near significant, displacement impacts on a number of protected shorebirds, for example, Grey Plover, Black-tailed Godwit, Bar-tailed Godwit, Knot, Dunlin.

Detailed Information

Recommendation to refuse an Aquaculture Licence Application(T03/96)

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Action Required

Ministerial determination on Aquaculture/Foreshore Licensing Application (T03/96)

Executive Summary

The Minister's determination is requested in relation to an application for an Aquaculture Licence from AG Oysters Ltd, First Floor, 10/11 Exchange Place, International Financial Services Centre, Dublin 1.

The application is for the cultivation of pacific oysters using bags and trestles at one site T03/96 (20.8ha) on the foreshore in Bannow Bay.

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 proposed aquaculture would potentially result in significantly high levels of disturbance for protected shorebird species).

Detailed Information

Recommendation to Refuse an Aquaculture Licence application (T03/96)

DECISION SOUGHT

The Minister's determination is requested please in relation to an application for an Aquaculture Licence from AG Oysters Ltd, First Floor, 10/11 Exchange Place, International Financial Services Centre, Dublin 1, for one site in Bannow Bay.

Also attached is a submission in respect of the accompanying Foreshore Licences, 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 sites.

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 one site on the foreshore in Bannow Bay, Co Wexford (numbered T03/96 -20.8 hectares, – see **Tab A**).

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: Recommended that on the basis of the Appropriate Assessment findings it is not proposed to licence any new aquaculture activity in Bannow Bay. As there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of specific shorebirds, MED does not recommend licensing this site.

Marine Survey Office: Stated no objection to this licence application from a navigational viewpoint.

Sea Fisheries Protection Authority: Stated no objection from a food safety and fishery control perspective.

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:

Dept. of Culture, Heritage & the Gaeltacht: Noted that the Conclusion Statement (see **Tab B**) published with the licence application states in the summary of mitigation measures and management actions that "... On the basis of the Appropriate Assessment findings it is not proposed to licence any new aquaculture activity in Bannow Bay..." and that it is the understanding of DCH&G that this licence will not be granted.

The Underwater Archaeology Unit requested that *that an underwater archaeological study be carried out (not relevant as it is not proposed to licence this site)*.

An Taisce: On reviewing the documentation provided with the application, An Taisce submit, in agreement with the AA report conclusions, that levels of aquaculture in the bay cannot be increased, as there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of shorebirds. Thus, the granting of new licences would be in contravention of Article 6(3) of the Habitats Directive.

Marine Institute: Noted that the sites are not located within a designated Shellfish Growing Waters Area. As a result of the conclusion statement noting that "on the basis of the Appropriate Assessment findings it is not proposed to licence any new aquaculture activity in Bannow Bay...", the Marine Institute is of the view that an aquaculture licence at this site should not be granted.

Commissioner of Irish Lights: Objects to the application as the site infringes in the approaches to New Quay.

Wexford County Council: Noted that the application is outside the BIM designated area and encroaches of the navigable area of Bannow Bay. It also noted the site encroaches on an area shown to host zosteria species, a priority species under Natura 2000. The lack of an impact study into the utilisation of a new access point onto the estuary was also highlighted. Taking into account the recommendations of the Appropriate Assessment as well as other technical/scientific observations it WCC noted occupation of all the aquaculture sites is predicted to have high levels of displacement to the Bannow Bay Grey Plover, Black Tailed Godwit, Knot and Dunlin. As there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of the above mentioned shorebirds *"it is suggested that this aquaculture licence is refused"*.

BIM: Stated that the application should be reviewed as the site appears to be located in a more sub-tidal area than is stated, tonnage production may impact on other producers and the fact that it is located in the main channel and outside the current Special Unified Marking Scheme may mean navigation issues arising.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in "The Wexford People" on 22nd May, 2018. The application and supporting documentation were available for inspection at Carrig-On-Bannow and New Ross Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were seventy seven objections received from the public consultation process on 22nd May 2018. It is not possible to disaggregate the comments into aquaculture and foreshore elements but the issues raised were as follows:

- The reduction in compacting mud/sand and resulting reduction in food for wildlife
- Potential damage to St. Pauls quay from nearby proposed tractor depot
- Increase in silting as a result of additional trestles.
- Encroachment into existing channel disrupting marine leisure activities.
- The visual impact on the landscape and resulting effects on tourism.
- The negative impact on local wildlife and the natural environment.

Applicant's response to observations made during the consultation process

The applicant made the following points in response to the statutory consultees comments.

- Any concerns regarding protected Zostera habitats can be resolved through protective measures being out in place such as surveying, monitoring, mapping and marking of Zostera beds.
- With regards the concern that the site may result in anchoring within navigation areas, "There is a lot of place for anchoring in Bannow Bay and the surface of the licence is small in comparison to the free anchoring area available".
- With regards the impact on birds the applicant states, "it has been actually proved that shellfish farms are having a positive effect on coastal environments".
- In response to the Commissioner of Irish Lights objection due to the site infringing on the approaches to New Quay the applicant states "it is proposed to clearly mark the access channel....the proposed site is big enough to clearly mark a large and safe passage for navigation and pier access".

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 licence a person to engage in aquaculture:

a) the suitability of the place or waters

The findings of the Appropriate Assessment of aquaculture activities in Bannow Bay found that "the licensing of all sites in the bay, both existing activity and new areas (this is a new area) would potentially result in significantly high levels of disturbance, exceeding the 10% threshold for 5 shorebird species".

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 site is located within the Bannow Bay SAC and the Bannow Bay SPA. 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 "the licensing of all sites in the bay, both existing activity and new areas, would potentially result in significantly high levels of disturbance, exceeding the 10% threshold for 5 shorebird species."

The AA and its findings were examined by the Department and its scientific/technical advisors. This led to the Licensing Authority (i.e. the Minister) producing a Conclusion Statement which states, inter alia, that "On the basis of the Appropriate Assessment findings it is not proposed to licence any new aquaculture activity in the Bannow Bay Natura sites as there are no clear mitigation measures available to prevent the risk of deterioration of the conservation status of the referenced shorebirds."

(ii) Shellfish Waters

The site is not 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.

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 DCH&G have requested that an underwater archaeological study be carried out.

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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 Bannow Bay Natura sites were examined by the Department and its scientific/technical advisors it was concluded that it is not possible to licence any new aquaculture activity, such as this application, in the Bannow Bay Natura sites as there are no clear mitigation measures available to prevent the risk of deterioration of the conservation status of protected shorebirds. In effect, the granting of a new licence would be in contravention of Article 6(3) of the Habitats Directive.

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 these sites, subject to the Minister approving the above recommendation:

"Determination of Aquaculture/ Foreshore Licensing application –T03/96

AG Oysters Ltd. has applied for authorisation for the cultivation of Pacific Oysters using bags and trestles on the foreshore at one site T03/96 (20.8 ha) on the foreshore in Bannow Bay.

*The Minister for Agriculture, Food and the Marine has determined that it is **not in the public interest** to grant an 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 Bannow Bay Special Area of Conservation and Bannow Bay Special Protection Area. An Article 6 Assessment has been carried out in relation to aquaculture activities in Bannow Bay SAC/SPA (available on the Department's website);*
- b. *The Licensing Authority's (i.e. the Minister) conclusions in relation to the Appropriate Assessment are contained in the Appropriate Assessment Conclusion Statement (available on the Department's website). This document outlines how aquaculture activities in this SAC/SPA, including these sites, are being managed so as not to*

significantly and adversely affect the integrity of Bannow Bay SAC and Bannow Bay SPA;

- c. *Taking account of the recommendations of the Appropriate Assessment the proposed aquaculture activity at this site is not consistent with the Conservation Objectives for the SPA with significant, or near significant, displacement impacts on a number of protected shorebirds, for example, Grey Plover, Black-tailed Godwit, Bar-tailed Godwit, Knot, Dunlin. In particular, there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of protected shorebirds. Thus, the licensing of aquaculture activity at this site would be in contravention of Article 6(3) of the Habitats Directive."*

Submitted for approval, please.

James O'Connell

Aquaculture and Foreshore Management Division

Recommendation to refuse a Foreshore Licence Application(T03/96)

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DECISION SOUGHT

The Minister's determination is requested please in relation to an application for a Foreshore Licence from AG Oysters Limited, 10/11 Exchange Place, International Financial Services Center, Dublin 1, for a site in Bannow Bay, Co. Wexford, 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 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 at a Site T03/96 (20.8ha) on the foreshore in Bannow Bay. - **Tab A**).

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, Community and Local Government (DHPCLG) 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, Community 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 **DHPCLG**: There were no comments received from a water quality or foreshore perspective.

Technical Consultation

Marine Engineering Division: Recommended that on the basis of the Appropriate Assessment findings it is not proposed to licence any new aquaculture activity in Bannow Bay. As there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of specific shorebirds, """""""" MED does not recommend licensing this site.

Marine Survey Office: Stated no objection to this licence application from a navigational viewpoint.

Sea Fisheries Protection Authority: Stated no objection from a food safety and fishery control perspective.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in "The Wexford People" on 22nd May, 2018. The application and supporting documentation were available for inspection at Carrig-On-Bannow and New Ross Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were seventy seven objections received from the public consultation process on 22nd May 2018. It is not possible to disaggregate the comments into aquaculture and foreshore elements but the issues raised were as follows:

- The reduction in compacting mud/sand and resulting reduction in food for wildlife
- Potential damage to St. Pauls quay from nearby proposed tractor depot
- Increase in silting as a result of additional trestles.
- Encroachment into existing channel disrupting marine leisure activities.
- The visual impact on the landscape and resulting effects on tourism.
- The negative impact on local wildlife and the natural environment.

The Department's response is as follows: The site is located within Bannow Bay Special Area of Conservation [and Bannow Bay Special Protection Area]. An Article 6 Assessment has been carried out in relation to aquaculture activities in Bannow Bay SAC/SPA. The Licensing Authority's (i.e. the Minister) conclusions in relation to the Appropriate Assessment are contained in the Appropriate Assessment Conclusion Statement. This document outlines how aquaculture activities in this SAC/SPA, including this site, are being licensed and managed so as not to significantly and adversely affect the integrity of Bannow Bay SAC and Bannow Bay SPA. Taking account of the recommendations of the Appropriate Assessment the proposed aquaculture activity at these sites is not consistent with the Conservation Objectives for the SPA. In particular, there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of shorebirds.

Applicant's response to observations made during the consultation process

The applicant made the following points in response to the statutory consultees comments.

- Any concerns regarding protected Zostrea habitats can be resolved through protective measures being out in place such as surveying, monitoring, mapping and marking of Zostera beds.
- With regards the concern that the site may result in anchoring within navigation areas, "There is a lot of place for anchoring in Bannow Bay and the surface of the licence is small in comparison to the free anchoring area available".
- With regards the impact on birds the applicant states, "it has been actually proved that shellfish farms are having a positive effect on coastal environments".
- In response to the Commissioner of Irish Lights objection due to the site infringing on the approaches to New Quay the applicant states "it is proposed to clearly mark the access channel....the proposed site is big enough to clearly mark a large and safe passage for navigation and pier access".

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 AG Oysters Limited, 10/11 Exchange Place, International Financial Services Center, Dublin 1 in respect of site (ref. T03/96) located in Bannow Bay.

The reason for the recommendation is that, taking account of the recommendations of the Appropriate Assessment, the proposed aquaculture activity at these sites is not consistent with the Conservation Objectives for the SPA. In particular, there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of protected shorebirds. Thus, the licensing of aquaculture activity at these sites would be in contravention of Article 6(3) of the Habitats Directive.

Submitted for approval, please.

James O'Connell

Aquaculture and Foreshore Management Division

Related Submissions

There are no related Submissions.

User Details

Users with access to Submission

OConnell, James
 Whelton, Batt
 Quinlan, John
 Beamish, Cecil
 Sub Sec Gens Office
 eSub Ministers Office

Read receipt list

BTSSP-SC
 OConnell, James
 Whelton, Batt
 Quinlan, John
 Beamish, Cecil
 Smith, Ann
 Lennox, Graham

Action Logs

Created: 17/07/2018 18:11:22: Submission created by James OConnell

Sent For Review: 17/07/2018 18:13:46: Submission sent to Batt Whelton for review by James OConnell

Reverted to the Author: 18/07/2018 10:02:28: Submission reverted to James OConnell by Batt Whelton

Reason: Detailed information section to be filled in. Also attach application form

Sent For Review: 19/07/2018 09:41:40: Submission sent to Batt Whelton for review by James OConnell

Sent For Review: 19/07/2018 12:17:19: Submission sent to John Quinlan for review by Batt Whelton

Sent For Review: 19/07/2018 14:07:53: Submission sent to Cecil Beamish for review by John Quinlan

Sent to the Secretary General: 19/07/2018 15:01:54: Submission sent to Secretary General for review by Cecil Beamish

Sent to the Minister: 20/07/2018 16:38:21: Submission sent to Minister for review by Ann Smith on behalf of the Secretary General

Reason: Approved for submission to Minister. 20/07/2018

Completed: 25/07/2018 13:52:50: Submission completed by Graham Lennox on behalf of the Minister

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