

## 00413-18: Recommendation to Refuse Aquaculture and Foreshore Licences for 1 site (T05/545A)

<b>To:</b> Minister	<b>Author:</b> Therese OKeeffe
<b>Status:</b> Completed	<b>Owner:</b> OKeeffe, Therese
<b>Purpose:</b> For Decision	<b>Reviewers:</b> Whelton, Batt,Quinlan, John,Beamish, Cecil
<b>Division/Office:</b> Coastal Zone Management	
<b>Decision By:</b>	

### 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 (T05/545A)

### Executive Summary

The Minister's determination is requested in relation to an application for an Aquaculture Licence from Mr Killian Tighe, Mr Marc Perdriel and Mr Michel Mousset, C/o Utterly Oysters Ltd, Rossleague, Cobh, Co. Cork.

The application is for the cultivation of pacific oysters using bags and trestles on one site on the foreshore in Ballymacoda Bay, Co. Cork (within Ballymacoda Bay SPA and immediately adjacent to Ballymacoda (Clonpriest & Pillmore) SAC).

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 activities pose a potential significant negative impact to a number of bird species in the SPA).

## Comments

- (17/07/2018 16:24:30) Ann Smith: Approved for submission to Minister. 17/07/2018
- (17/07/2018 15:26:37) Cecil Beamish: Recommended that the Minister determines that the application for Aquaculture and Foreshore Licences be refused for the reasons set out in the submission.
- (17/07/2018 10:00:07) John Quinlan: Refusal is recommended in this case please as set out in the detailed submission.
- (16/07/2018 14:52:55) Batt Whelton: I agree with the recommendation that the application be refused as the proposed aquaculture activities pose a potential significant negative impact to a number of bird species in the SPA

## Detailed Information

### Recommendation to refuse an Aquaculture Licence (T05/545A)

#### DECISION SOUGHT

The Minister's determination is requested please in relation to an application for an Aquaculture Licence from Mr Killian Tighe, Mr Marc Perdriel and Mr Michel Mousset, C/o Utterly Oysters Ltd, Rossleague, Cobh, Co. Cork, for one site numbered T05/545A in Ballymacoda Bay, Co. Cork.

A submission in respect of the accompanying Foreshore Licence is also set out below, 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). The application is for the cultivation of oysters using bags and trestles on the intertidal part of the foreshore on one site totalling 11.25 hectares in Ballymacoda Bay, Co. Cork. (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 Licences Appeals Board) may, if satisfied that it is in the public interest to do so, licence 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): Stated the proposed site is located in Ballymacoda Bay, Co. Cork. The aquaculture at this location has been in existence for many years which indicates that the hydrodynamic regime is suitable for this type of aquaculture. However, the 2016

Appropriate Assessment (AA) concluded that the combined effects of existing aquaculture sites and new licence applications would have a potentially adverse impact on numerous bird species at Ballymacoda Bay SPA. Aquaculture at any new site within the bay would cause added disturbance in an area that has been designated internationally important for a number of bird species and there is no viable mitigation measures which would reduce disturbance levels to within acceptable limits. Also the licensing of this site would cause navigational issues on the Womanagh River channel for small craft vessels.

MED recommends the refusal of this aquaculture application due to the environmental impacts highlighted in the findings of the Appropriate Assessment and navigational issues.

Marine Survey Office: Stated no objection to the application.

Sea Fisheries Protection Authority: Stated no objection to the 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 from the following bodies:

Marine Institute (MI): Stated that the proposed site is located within Ballymacoda Bay designated Shellfish Growing Waters area. Oysters in this area currently have a "B" Classification under Annex II of EU Regulation 854/2004.

The MI also noted the findings of the Appropriate Assessment report 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 Ballymacoda SPA and the Ballymacoda (Clonpriest & Pillmore) SAC . In particular, the MI noted the conclusion which stated that, *given the potential impacts of the proposed new aquaculture site T05/545 on Habitats and the potential disturbance on Wigeon, Ringed Plover, Grey Plover, Sanderling, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Common Gull, it is not proposed to licence this sites.*

On that basis the MI is of the view that an Aquaculture Licence at this site should not be granted.

Commissioner of Irish Lights: No objection to the application.

Inland Fisheries Ireland: Raised concerns regarding expanding aquaculture production which may pose a physical impediment to both ascending and descending salmonids from the Womanagh River at critical times. *This issue will not arise as it is not proposed to licence aquaculture at this site.*

Department of Culture Heritage & The Gaeltacht (DCH&G): Acknowledged the recommendation in the Department's Conclusion Statement that new applications not be licensed given the likely impact on the conservation objectives for several species at this SPA. DCH&G also raised some specific issues in relation to the Appropriate Assessment.

*These matters are dealt with by the Department's Conclusion Statement. (See Conclusion Statement at Tab B).*

### **Public Consultation**

The application was publicly advertised using a composite public notice covering aquaculture and foreshore elements in The East Cork Journal on 24<sup>th</sup> May 2018. The application and supporting documentation were available for inspection at Midleton Garda Station for a period of 4 weeks following the publication in the newspaper.

There were **six objections** received from the public consultation process. The main concerns are as follows:

- The findings of the Ballymacoda Appropriate Assessment.
- Impact on local beaches.
- Impact on tourism.
- Navigation marking concerns

A copy of all the observations/submissions received at the Public and Statutory consultation stage were forwarded to the applicant.

The applicant expressed his disappointment at the comments and observations. The applicant also feels that the Appropriate Assessment is ultra conservative in its approach. The applicant also addresses the issues raised such as beach cleaning, navigational markings and night working explaining that their work is tide dependent. The applicant stated that they hoped to offer more full time jobs if the licence is granted.

## CRITERIA IN MAKING LICENSING DECISIONS

The licensing authority, in considering an application, is required by statute to take account of, as appropriate, the following points and must 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 Ballymacoda Bay found that given the conclusions of the Appropriate Assessment process, the proposed new aquaculture activities are likely to have a significant effect on the integrity of the Ballymacoda Bay SPA.*

b) other beneficial uses of the waters concerned;

*While public access to some recreational and other activities can be accommodated by this project, there are potential environmental impacts and navigational issues for small craft vessels.*

c) the particular statutory status of the waters;

(i) Natura 2000

*The proposed site is located within the Ballymacoda Bay SPA and immediately adjacent to Ballymacoda SAC. An Article 6 Appropriate Assessment has been carried out in relation to aquaculture. This assessment considered the cumulative impacts of the combined effects of the aquaculture and other activities within these Natura sites (including coastal recreation, bait digging, fisheries and shellfisheries).*

*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 "the Licensing Authority is satisfied that, given the conclusions of the Appropriate Assessment process, the proposed new aquaculture activities are likely to have a*

*significant effect on the integrity of the Ballymacoda Bay SPA. Accordingly, it is proposed to make a negative determination in relation to all the new proposed aquaculture activities".*

*(ii) Shellfish Waters*

*The site is located within Shellfish Designated Waters. Oysters in this area currently have a "B" Classification under Annex II of EU Regulation 854/2004.*

d) the likely effects on the economy of the area;

*Aquaculture has the potential to provide a wide range of benefits to the local community such as direct employment, attraction of investment capital, development of support services etc.*

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;

*No chemicals or hazardous substances will be used during the production process.*

*This application is part of the overall oyster aquaculture industry within Ballymacoda Bay. The licence areas within the bay have been re-configured to improve navigation, farming practices and visual impact within the area.*

*There are potential impacts in relation to the proposed new aquaculture on protected bird species, for example, the potential disturbance on Wigeon, Ringed Plover, Grey Plover, Sanderling, Black-tailed Godwit, and Bar-tailed Godwit. Accordingly, it is not proposed to licence this site.*

## **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 Ballymacoda Bay 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 Ballymacoda Bay. The 2016 AA report found that the combined effects of existing aquaculture and new licence applications would have a potentially adverse impact on numerous bird species at Ballymacoda SPA and that there were no clear mitigation measures available to prevent the risk of deterioration of the conservation status of protected shorebirds. In effect, the granting of a 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 of the Department's website in relation to this site, subject to the Minister approving the above recommendation.

### "Determination of Aquaculture/ Foreshore Licensing Application – T05/545A

Mr Killian Tighe, Mr Marc Perdriel and Mr Michel Mousset, have submitted a new application for the cultivation of oysters in the intertidal part of the foreshore on one site totalling 11.25 hectares in Ballymacoda Bay, Co. Cork.

The Minister for Agriculture, Food and the Marine has determined that it is **not in the public interest** to grant the licence sought. 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 licence sought: -

- a) The site is located within Ballymacoda Bay Special Protection Area (SPA) and immediately adjacent to Ballymacoda (Clonpriest & Pillmore) Special Area of Conservation (SAC). An Article 6 Assessment has been carried out in relation to aquaculture activities in Ballymacoda Bay (SPA) Ballymacoda (Clonpriest & Pillmore) SAC (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 it is proposed to determine, from a

Natura perspective, applications for aquaculture cultivation in this SPA and SAC, including this site, so as not to significantly and adversely affect the integrity of these Natura sites.

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. This is a new application and new applications alone have the potential to result in significant adverse impact on the following SCI species of the Ballymacoda Bay SPA: Wigeon, Ringed Plover, Grey Plover, Sanderling, Black-tailed Godwit and Bar-tailed Godwit. Thus, the licensing of aquaculture activity at this site would adversely impact the conservation objectives of Ballymacoda Bay SPA."

#### **Recommendation to refuse a Foreshore Licence (T05/545A)**

#### **DECISION SOUGHT**

The Minister's determination is requested please in relation to the application for a Foreshore Licence from Mr Killian Tighe, Mr Marc Perdriel and Mr Michel Mousset, C/o Utterly Oysters Ltd, Rossleague, Cobh, Co. Cork, for a site in Ballymacoda Bay, Co. Cork, in 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 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 which covers a 11.25 hectare site (numbered **T05/545A** (see **TAB A**).

## **LEGISLATION**

Section 3 of the Foreshore Act, 1933 gives power to the Minister to licence 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 the 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 the Environment, 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.

DHPLG: There were no comments received from a water quality or foreshore perspective.

### **Technical Consultation**

Marine Survey Office: Stated no objection to the application.

Marine Engineering Division (MED): Stated the proposed site is located in Ballymacoda Bay, Co. Cork. The aquaculture at this location has been in existence for many years which indicates that the hydrodynamic regime is suitable for this type of aquaculture. However, the 2016 Appropriate Assessment (AA) concluded that the combined effects of existing aquaculture sites and new licence applications would have a potentially adverse impact on numerous bird species at Ballymacoda Bay SPA. Aquaculture at any new site within the bay would cause added disturbance in an area that has been designated internationally important for a number of bird species and there is no viable mitigation measures which would reduce disturbance levels to within acceptable limits. Also the licensing of this site would cause navigational issues on the Womanagh River channel for small craft vessels.

MED recommends the refusal of this aquaculture application due to the environmental impacts highlighted in the findings of the Appropriate Assessment and navigational issues.

Sea Fisheries Protection Authority: Stated no objection to the application.

### **Public Consultation**

The application was publicly advertised using a composite public notice covering aquaculture and foreshore elements in The East Cork Journal on 24<sup>th</sup> May 2018. The application and supporting documentation were available for inspection at Midleton Garda Station for a period of 4 weeks following the publication in the newspaper.

There were six objections received from the public consultation process. The main concerns are as follows:

- The findings of the Ballymacoda Appropriate Assessment.
- Impact on local beaches.
- Impact on tourism
- Navigation marking concerns

A copy of all the observations/submissions received at the Public and Statutory consultation stage were forwarded to the applicant.

The applicant expressed his disappointment at the comments and observations. The applicant also feels that the Appropriate Assessment is ultra conservative in its approach. The applicant also addresses the issues raised such as beach cleaning, navigational markings and night working explaining that their work is tide dependent. The applicant stated that they hoped to offer more full time jobs if the licence is granted.

The Department's response is as follows; *The site is located within Ballymacoda Bay Special Protection Area (SPA) and immediately adjacent to Ballymacoda (Clonpriest & Pillmore) Special Area of Conservation (SAC) . An Article 6 Assessment has been carried out in relation to aquaculture activities in Ballymacoda Bay SPA and in Ballymacoda (Clonpriest & Pillmore) SAC. 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 SPA and*

*SAC, including this site, are being managed so as not to significantly and adversely affect the integrity of Ballymacoda Bay SPA. 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. In particular there are no clear mitigation measures available to prevent the risk of the deterioration of the conservation status of protected shorebirds.*

## **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/refuse 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 Mr Killian Tighe, Mr Marc Perdriel and Mr Michel Mousset, C/o Utterly Oysters Ltd, Rossleague, Cobh, Co. Cork.

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

Submitted for approval, please.

## **Related Submissions**

There are no related Submissions.

## User Details

### Users with access to Submission

OKeeffe, Therese  
Whelton, Batt  
Quinlan, John  
Beamish, Cecil  
Sub Sec Gens Office  
eSub Ministers Office

### Read receipt list

BTSSP-SC  
OKeeffe, Therese  
Whelton, Batt  
Quinlan, John  
Beamish, Cecil  
Smith, Ann  
Lennox, Graham

## Action Logs

**Created:** 16/07/2018 11:47:31: Submission created by Therese OKeeffe

**Sent For Review:** 16/07/2018 12:16:41: Submission sent to Batt Whelton for review by Therese OKeeffe

**Sent For Review:** 16/07/2018 14:53:59: Submission sent to John Quinlan for review by Batt Whelton

**Sent For Review:** 17/07/2018 10:00:36: Submission sent to Cecil Beamish for review by John Quinlan

**Sent to the Secretary General:** 17/07/2018 15:26:45: Submission sent to Secretary General for review by Cecil Beamish

**Sent to the Minister:** 17/07/2018 16:24:30: Submission sent to Minister for review by Ann Smith on behalf of the Secretary General

**Reason:** Approved for submission to Minister. 17/07/2018

**Completed:** 18/07/2018 17:03:43: 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.