

Submission AGR 00481 -19: Recommendation to Refuse an Aquaculture and Foreshore Licence for 1 site (T06/179B)

TO: Minister
STATUS: Completed
PURPOSE: For Decision

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Hodnett, Kevin
Quinlan, John
Beamish, Cecil
Smith, Ann

DIVISION: Coastal Zone Management
DECISION BY:

Final comment

Minister determines that the Aquaculture and Foreshore Licences be refused for the reasons outlined.

Action required

Ministerial Determination on Aquaculture/Foreshore Licensing Application (T06/179B)

Executive summary

The Minister's determination is requested in relation to an application for the renewal of an Aquaculture Licence from Kush Seafarms Ltd, O'Shea House, New Road, Kenmare, Co. Kerry. The application is for the cultivation of oysters using bags and trestles on site T06/179B, totalling 2.4 hectares on the foreshore within Dunkerron Harbour, Upper Kenmare Bay, 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 Aquaculture and Foreshore Licences **not be granted** for the reasons outlined in the 'Detailed Information' section below.

Note: Tabs may contain additional information which is subject to redaction if transmitted to third parties.

Detailed information

DECISION SOUGHT

The Minister's determination is requested please in relation to an application for the renewal of an Aquaculture Licence from Kush Seafarms Ltd, O'Shea House, New Road, Kenmare, Co. Kerry, for a site within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry.

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 requested 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

A renewal 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 oysters using bags and trestles in relation to a 2.4 hectare site on the

foreshore within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry (numbered T06/179B – see documents at **TAB A**).

LICENCE FEES

There are outstanding Section 19 A. (4) fees associated with this licence. This issue is being dealt with through the standard debt management procedures.

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 – see documents at **Tab B**

Marine Engineering Division (MED): Stated no objection to the renewal application and recommended conditions in the licence.

Marine Survey Office (MSO): No objection and commented on the site being marked as per licensing requirements.

Sea Fisheries Protection Authority (SFPA): Stated there are ongoing issues with the Waste Water Treatment (WWT) plant in Kenmare that have caused periodic contamination of the inner Kenmare Bay and Templenoe areas, the latter of which is immediately adjacent to this site. The presence of sewage effluent in a water body makes it unsuitable for the production of oysters from a food safety perspective. Further comments were received in July 2019 on request from the Department and the SFPA are of the view that the site’s proximity to the WWT plant would remain a significant concern pending the increase in capacity at the Kenmare WWT which is scheduled for 2022. Under capacity issues were identified by the EPA in August 2018 at the Kenmare WWT.

Statutory Consultation – see documents at **Tab C**

Regulation 10 of the Aquaculture (Licence Application) Regulations, 1998 requires certain statutory bodies to be notified of an Aquaculture Licence application. Each of the required statutory bodies were informed of the application as required.

Comments were received from the following statutory bodies:

Marine Institute (MI): No objection to the application.

The MI also made the following recommendations:

- MI recommends that the initial source of seed and other sources which may be used at any point in the future should be approved by the Minister. This approval should be a specific condition of any licence that may issue.
- Prior to the commencement of operations at the site, the applicant be required to draw up a contingency plan, for the approval of DAFM, which shall identify, *inter alia*, methods for the removal from the environment of any invasive non-native species introduced as a result of operations at this site. If such an event occurs, the contingency plan shall be implemented immediately.

Following considerations implicit to Sections 61 (e and f) of the Fisheries (Amendment) Act 1997, the Marine Institute is of the view that there will be no significant impacts on the marine environment and that the quality status of the area will not be adversely

impacted.

Commissioner of Irish Light (CIL): Stated no objection to the development and recommend verifying that the aids to navigation as sanctioned are in position.

Bord Iascaigh Mhara (BIM): BIM are satisfied that the proposed operation does not conflict with any other aquaculture or inshore fisheries interests in the area.

Department of Culture, Heritage and the Gaeltacht (DCHG): The Department requested that the following be considered in the Department's decision making process;

1. The Harbour seal Qualifying Interest at the site, the terms "close proximity" and "immediate vicinity", by which the likelihood of man-made disturbance is concluded, are unclear. These could usefully be better defined within the assessment and its conclusions, in order to provide an appropriate level of confidence around this Attribute and its associated Target.
2. There are no recommendations made for the Marine Community Types "Muddy fine sands dominated by polychaetes and *Amphiura filiformis* community complex" and the two subtidal reef communities given that the spatial overlap of aquaculture, when considered in-combination with fishing activity, is close to or exceeds the 15% threshold.
3. Overlap with maërl is only considered in Kilmakilloge and Ardgroom Harbours. Maërl also occurs subtidally between Glinisk, Sharky Island and Parknasilla which has sites licensed for mussel culture and scallops culture. These areas have not been considered.

DCHG further stated: The Department would also like to draw attention to the coastal habitats of Vegetated sea cliffs of the Atlantic and Baltic coasts (1230), Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) (1330) and Mediterranean salt meadows (*Juncetalia maritimi*) (1410) which occur within the Kenmare River SAC. In some cases they occur adjacent to the aquaculture activities however no access routes are given within the Appropriate Assessment document. These habitats were screened out on the basis that there was no overlap with aquaculture activities. However it should be noted that storage of aquaculture materials and access routes for aquaculture can have negative impacts on these habitats. Therefore such activities should not be carried out either inside the Annex I habitat or in an area where it is likely to have an impact on the Annex I habitat (e.g. storing aquaculture frames on a cliff top, storage of equipment or establishing access paths in a saltmarsh). Disposal of waste from aquaculture activities should similarly take place well away from these Annex I coastal habitats.

These issues have been addressed in the Appropriate Assessment Conclusion Statement. See **TAB D**.

The Department requires that an appropriate Underwater Archaeological Impact Assessment (UAIA) be carried out in advance to assess the totality of potential impact of the proposed applications on potential cultural heritage. The UAIA shall be carried out by a suitably qualified and suitably experienced maritime archaeologist and should be licenced by this Department. A detailed method statement should accompany the licence application.

In the first instance a detailed desktop study should be undertaken for the UAIA to inform the potential for UCH to be present in the harbour and resultant report should include recommendations for further archaeological mitigation in the way of underwater archaeological survey (either geophysical survey and/or underwater archaeological diver survey) of areas to be impacted by the anchors, if deemed necessary based on the results of the desktop study in the UAIA. The report should be forwarded to the Department for consideration and further comments.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in The Kerryman on 03 April, 2019. The application and supporting documentation were available for inspection at Killarney and Kenmare Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **four** objections received from the public consultation process. It is not possible to disaggregate the comments into aquaculture and foreshore elements. The objections however can be summarised as follows:

The applicant's accounts, size and scale of project, fishing grounds and danger of activity to local sailing business.

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

The applicant refuted the claims.

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

Advice is to the effect that the waters are not suitable for the cultivation of oysters due to the sites close proximity to the Kenmare Waste Water Treatment plant.

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 Kenmare River SAC. An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in this SAC and/or SPA. This Assessment 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 outlining how it is proposed to licence and manage aquaculture activities in the above Natura sites in compliance with the EU Habitats and Birds Directives.

(ii) Shellfish Waters

The site is located within the Kenmare River/ Sneem/ Ardgroom Shellfish Designated Waters. Oysters in the Templenoe area currently have a "B" classification.

d) the likely effects on the economy of the area

Aquaculture has the potential to provide a range of benefits to the local community, such as 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 in the Article 6 Appropriate Assessment for Kenmare River SAC and in the Licensing Authority's Conclusion Statement.

f) the effect on the environment generally

The Department's Scientific Advisors the Marine Institute, are of the view that there will be no significant impacts on the marine environment and that the quality status of the area will not be adversely impacted.

g) DCHG requires that an underwater archaeological impact assessment is carried out in advance of licensing.

RECOMMENDATION

It is recommended that the Minister:

refuses the granting of an Aquaculture Licence to Kush Seafarms Ltd, O'Shea House, New Road, Kenmare, Co. Kerry.

The following are the reasons and considerations for the Minister's determination to refuse the licence sought:

The waters are not suitable due to the site's close proximity to the Kenmare Waste Water Treatment plant which the Department is advised has capacity issues which give rise to significant concerns for food production in the vicinity.

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 on the Department's website, subject to the Minister approving the above recommendation:

"Determination of Aquaculture/ Foreshore Licensing application –T06/179B

Kush Seafarms Ltd have applied for the renewal of an aquaculture licence to cultivate oysters using bags and trestles on the inter-tidal foreshore on a 2.4 hectare site (*T06/179B*) within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry.

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: -

The waters are not suitable due to the site's close proximity to the Kenmare Waste Water Treatment plant. In the circumstances it would not be appropriate for the Minister to licence this aquaculture site at this time due to the potential issues emerging in relation to food safety."

Recommendation to refuse a Foreshore Licence application (T06/179B)

DECISION SOUGHT

The Minister's determination is requested please in relation to the application for a Foreshore Licence from Kush Seafarms Ltd, O'Shea House, New Road, Kenmare, Co. Kerry, for a site within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry, 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 an 2.4 hectare site (numbered **T06/179B** – see documents at **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 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.

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

Technical Consultation – see documents at **TAB B**

Marine Engineering Division (MED): Stated no objection to the renewal application and recommended conditions in the licence.

Marine Survey Office (MSO): No objection and commented on the site being marked as per licensing requirements.

Sea Fisheries Protection Authority (SFPA): Stated there are ongoing issues with the Waste Water Treatment (WWT) plant in Kenmare that have caused periodic contamination of the inner Kenmare Bay and Templenoe areas, the latter of which is immediately adjacent to this site. The presence of sewage effluent in a water body makes it unsuitable for the production of oysters from a food safety perspective. Further comments were received in July 2019 on request from the Department and the SFPA are of the view that the site's proximity to the WWT plant would remain a significant concern pending the increase in capacity at the Kenmare WWT which is scheduled for 2022. Under capacity issues were identified by the EPA in August 2018 at the Kenmare WWT.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in The Kerryman on 03 April, 2019. The application and supporting documentation were available for inspection at Killarney and Kenmare Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were four objections received from the public consultation process. It is not possible to disaggregate the comments into aquaculture and foreshore elements. The objection can be summarised as follows:

The applicant's accounts, size and scale of project, fishing grounds and danger of activity to local sailing business.

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

The applicant refuted the claims.

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:

refuses the granting of a Foreshore Licence to Kush Seafarms Ltd, O'Shea House, New Road, Kenmare, Co. Kerry, for a site within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry having regard to the decision in relation to the Aquaculture Licence application.

Related submissions

There are no related submissions.

Comments

OKeeffe, Therese - 13/09/2019 15:22

Recommended that the Minister refuses to grant the Aquaculture and Foreshore licences for the reasons outlined in the submission.

Hodnett, Kevin - 17/09/2019 12:47

Deirdre,

I suggest the following amended text re publication in "REASONS FOR DECISION"

The waters are not suitable due to the site's close proximity to the Kenmare Waste Water Treatment plant. In the circumstances it would not be appropriate for the Minister to licence this aquaculture site at this time due to the potential issues emerging in relation to food safety.

Hodnett, Kevin - 17/09/2019 14:50

Recommended that the Minister determines that the Aquaculture and Foreshore Licences applied for by Kush Seafarms Ltd be refused for the reasons set out in the detailed submission.

Quinlan, John - 18/09/2019 11:58

Refusal is recommended in this case please.

Beamish, Cecil - 18/09/2019 17:41

Recommended that the Minister determines that the Aquaculture and Foreshore Licences not be granted for the reasons outlined in the submission.

Smith, Ann - 18/09/2019 17:46

Approved for submission to Minister. AS 18/09/2019

Lennox, Graham - 19/09/2019 17:22

Minister determines that the Aquaculture and Foreshore Licences be refused for the reasons outlined.

User details

INVOLVED: Fitzpatrick, Deirdre
O'Keeffe, Therese
Hodnett, Kevin
Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
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