

Submission AGR 00564-19: Recommendation to Refuse Aquaculture/Foreshore Licences for 3 sites (T12/397 A, B & C)

TO: Minister
STATUS: Completed
PURPOSE: For Decision

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DIVISION: Coastal Zone Management
DECISION BY:

Final comment

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

Action required

Ministerial Determination on Aquaculture/Foreshore Licensing Application (T12/397 A, B & C)

Executive summary

The Minister's determination is requested please in relation to an application for Aquaculture Licences from Donegal Oceandeeep Oysters Ltd., Rossylongan, Donegal Town, Co. Donegal. The application is for the cultivation of Pacific Oysters using bags and trestles in relation to three sites numbered T12/397A (17.5235 ha), T12/397B (25.526 ha) and T12/397C (22.375 ha), totalling 65.4245 ha on areas of the foreshore in Loughros Mór Bay, Ardara, Co. Donegal.

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

It is recommended that the Minister determines that the Aquaculture/Foreshore Licences **be refused** for the reasons outlined in the 'Detailed Information' section below.

Detailed information

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

Recommendation to Refuse Aquaculture Licences for three sites (refs: T12/397 A, B & C)

DECISION SOUGHT

The Minister's determination is requested please in relation to an application for Aquaculture Licences from Donegal Oceandeeep Oysters Ltd., Rossylongan, Donegal Town, Co. Donegal for three sites numbered T12/397 A, B and C in Loughros Mór Bay, Ardara, Co. Donegal.

A submission in respect of the application for Foreshore Licences 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 below (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 AQUACULTURE LICENCES

An application for Aquaculture Licences has been received from the applicant referred to above (in conjunction with an application for Foreshore Licences) for the cultivation of Pacific Oysters using bags and trestles in relation to three sites numbered T12/397A (17.5235 ha), T12/397B (25.526 ha) and T12/397C (22.375 ha), totalling 65.4245 ha on areas of the foreshore in Loughros Mór Bay, Ardara, Co. Donegal (see **Tab A**).

LEGISLATION

Section 7 of the Fisheries (Amendment) Act 1997 provides that the Licensing Authority (i.e. the Minister, delegated officer or, on appeal, the Aquaculture Licences 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

Observations/Comments were made by Technical Advisers as follows (see **Tab B**):

Marine Engineering Division (MED): MED does not recommend the licensing of these sites for a number of reasons, primarily due to a combination of potential impacts on the environment, physical factors and water quality concerns. The main issues can be summarised as follows:

Proximity to amenity usage: The proposed sites are located on a publicly accessible area of foreshore which is used for activities including walking. There is a concern these sites would intrude on this amenity use. This applies particularly to Site T12/397A.

Navigation: A portion of the area of the sites T12/397B and T12/397C are located sub-tidally in the low tide channel. This is a cause for concern as there is a risk (though minor) that the proposed aquaculture will have an impact on navigation in the bay. In addition, Site T12/397C is across the low tide channel and cannot be accessed at any tide level from the proposed access route.

High elevation of area: The sites are at a high elevation in places, indicating that the oysters would spend longer periods out of water and exposed to the air. The very best parts of Site T12/397A are still considered sub optimal.

Mobile or Loose Substrate and Hydrology of the Bay: There is soft ground in areas which can cause a number of problems. Firstly, the trestles can become buried and dislodge, and secondly, the terrain of the sites can change almost on a tidal basis, meaning it can be difficult to anticipate usable parts of the sites.

Sites T12/397B and T12/397C span the bay and full use of the sites could redirect the low water channels. This would create new barriers to fish and mammal movement where there were no previous issues.

Potential impact on Owenea River channel and outflow: The southern portion of the sites extend into (without fully traversing) the low water channel of the Owenea River. There is a possibility this would impact on the navigation of small boats in the area and clear navigational markings would be required.

Visual Impact: Due to the location and visibility at a distance from local roads and viewing points in the area, there may be a moderate visual impact from trestles and aquaculture on the sites.

Salmon Fishery: There is a possibility that Site T12/397A will interact with the local salmon fishery by catching and snagging on nets or otherwise damaging or impeding fishing vessels.

Water quality concerns: There is a sewage discharge point very close to the sites from nearby Ardara. The quality of the water in the bay has not yet been determined as this would be carried out by the SFPA post licensing, but there is cause for concern. The

discharge is continuous, and outflow is not regulated to the tide, meaning waste sits in the region between tides without being washed out. Further, the tidal exchange is restricted by sediment at the mouth of the bay. An exclusion zone is suggested, but due to the confines of the bay, this may not be sufficient.

This issue applies particularly to Sites T12/397B and T12/397C, as the outflow is in one site and adjacent to the other, while in close proximity to Site T12/397A.

Rocky outcrops: There are rocky regions of Site T12/397A which would make it difficult to cultivate the site, both in terms of access and trestle placement.

Marine Survey Office (MSO): The MSO have no objection to this application from a navigational viewpoint. They have recommended navigational site markings should the licences be granted.

Sea Fisheries Protection Authority (SFPA): The SFPA noted that there is no current E. coli classification or biotoxin monitoring programmes in place in Loughros Mór Bay. They stated that these programmes would need to be put in place and classification assigned prior to the commencement of operations. The SFPA reiterated that it is the producer's responsibility to supply safe food intended for human consumption.

Statutory Consultation

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

Observations/Comments were made by Statutory Consultees as follows (see **Tab C**):

Department of Housing, Planning and Local Government (DHPLG): The DHPLG noted that there is a wastewater outflow located in the vicinity and they are concerned about water quality as a result for shellfish consumption. They urge that this issue is carefully monitored to ensure food safety and health regulations are met.

Marine Institute (MI): The MI noted that the proposed sites are not located within a designated Shellfish Growing Waters Area and oysters in the bay are not currently classified under Annex II of EU Regulation 854/2004. The MI stated that the sites are located within the West of Ardara/Maas Road Special Area of Conservation (SAC) and noted the findings of the Appropriate Assessment report and the Licensing Authority's Natura Conclusion Statement with regards to the impacts of the proposed aquaculture activity on the Conservation Objectives of the West of Ardara/Maas Road SAC. The MI concluded that there should be no significant impacts on the marine environment and the quality status of the area should not be adversely affected by the proposed aquaculture at these sites.

Commissioner of Irish Lights (CIL): CIL have no objection to the development of these sites provided no navigable intertidal channels are impeded. They specifically requested that a condition be added to ensure that Site T12/397B does not obstruct the approaches to the Ardara and Owenea Bridges as this site appears to straddle the navigable channels for both locations.

Donegal County Council (DCC): DCC comments were against the licensing of the sites on the grounds of protecting tourism and archaeological monuments. The reasons cited relate to the Donegal County Development Plan 2018-2024, the objective being to protect natural heritage and areas zoned as 'especially High Scenic Amenity Area' especially by preserving 'the views between public roads and the sea, lakes and rivers'. They note the Wild Atlantic Way passes nearby, and 'it is a policy of the Council not to permit development which would materially detract from visual and scenic amenities along the route of the Wild Atlantic Way'.

The Council also aim to protect the 'character, settings of and views from National Monuments and Recorded Monuments and to manage development which would be considered to (visually or physically) intrude upon or inhibit the enjoyment of the amenities of these sites'. There are three historical sites in particular in the region that are of concern for DCC - a ritual site, a graveyard and ecclesiastical remains.

DCC also raise concerns about possible disease transmission from cultured oysters to other species and the impacts the access routes may have on the environment.

Bord Iascaigh Mhara (BIM): BIM are satisfied that the application does not conflict with any aquaculture or inshore fisheries, and therefore have no objections.

Department of Culture, Heritage and the Gaeltacht (DCHG): The DCHG provided nature conservation observations on this application. They are concerned that further nearby Special Protection Areas (SPAs) need to be assessed for any interactions between the proposed aquaculture sites and Conservation Objectives for these SPAs.

The DCHG raises the question of possible changes to the hydrology of the bay. There is a concern that due to the small size of the

bay, the trestles may have a larger overall effect. This possible change in hydrography could lead to water quality issues in the area.

The Department and its scientific advisers, the Marine Institute, considered the DCHG concerns. These issues are addressed in the updated Natura Conclusion Statement (see **Tab D**) along with a summary of mitigation measures and management actions that are to be implemented as a consequence of the findings in the Appropriate Assessment report. In the event of licensing, the footprint of the sites would be reduced in order to prevent an impediment to water flow and avert barriers to seal movement from trestle-based aquaculture.

The Marine Institute have also provided comments on the DCHG observations at the Department's request (see **Tab E**).

Irish Water: Irish Water stated that the application T12/397 is not wholly within designated shellfish waters. They also noted that the proposed sites are in the vicinity of the Ardara Wastewater Treatment Plant outfall and that consideration should be given to the proximity of wastewater discharges to the proposed aquaculture development when deciding on the licensing of these sites.

Inland Fisheries Ireland (IFI): Inland Fisheries Ireland provided observations, but these were received outside the timeframe for statutory consultation, and as a result, cannot be taken into consideration.

An Taisce: No response received.

Fáilte Ireland: No response received.

Údarás na Gaeltachta: No response received.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in the 'Donegal Democrat' on 23rd August 2018. The application and supporting documentation were available for inspection at Ardara and Glenties Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **408** observations received as part of the public consultation process. The majority (384) of these objections came in the form of a single page outlining key concerns such as effects on the Special Area of Conservation (SAC), effects on the nearby Special Protection Areas (SPAs), recreational use of the bay and the aesthetics of the proposed development.

The remainder of the objections covered other topics, as well as reiterating the above concerns. In broad terms, the concerns raised fell under the following headings:

Road Access: The access to these sites is via the L7773, a small, narrow 1.43km road. It is reported that the road is in disrepair, with subsidence and surface deterioration. The concern has been raised that this will be further compounded with the heavy traffic of tractors and congestion will be an issue for the homes on this stretch of road.

Recreational Use of the Bay: Pastimes like walking, swimming, horse riding, kayaking, rowing, leisure fishing and cycling were all cited as recreational uses that would be affected in the bay if the proposed aquaculture were to go ahead. All of the above are attractions to the area for both permanent residents and tourism. The objectors note 'the extent of the proposed oyster farm would render any such recreational activities impossible to undertake for health and safety reasons and would deprive the existing users of their enjoyment of the bay's amenities.'

Wild Fisheries: One fishing organisation noted there has been draft net fishing for Atlantic salmon in Loughros Mór as long as has been recorded. Six boats currently fish under a local licence using the draft net method. The objection raised concerns that aquaculture will both impede access to the sites and damage netting by being snagged on aquaculture equipment. It was stated that the central channel in the region moves regularly and it may in fact be blocked by the trestles for access at lower tides, which could impede boat access.

Suitability of Sites: It is noted that the location proposed for the sites is poor with the bay completely drying out with the tide. There is also the issue of sewage from Ardara running into the bay which is a further cause for concern. The discharge point for this sewage is in close proximity to the proposed aquaculture.

Grazing Land: An objector raised concerns about transporting his livestock to Derryness Island, where his cattle graze, on a route which goes across the foreshore through the proposed location of the sites to this grazing area. The objector notes that an obstruction, by way of oyster trestles, would pose a risk to his livestock as they traverse this terrain. The objector stresses there is no other route to the island.

Historical Significance: It is noted in one submission that Loughros Mór is rich in history and archaeological evidence. This objector raised concerns that aquaculture may disturb some of the extant monuments and possible undiscovered relics in the area.

Visual Impact: As the area is largely undeveloped, concerns were raised about the impacts of this project in conjunction with other new aquaculture developments which could greatly impinge on the area's unique rural landscape and unblemished topography. The method of cultivation i.e. oyster trestles (steel structures) and the installation of navigation poles along the marine bed may also be considered unsightly. It is argued that such a method of cultivation would be considered visually intrusive especially in light of the proximity of the Wild Atlantic Way.

Environmental Impact: Concerns were raised about the potential negative influences associated with aquaculture development on the marine environment. The area in which the proposal is planned is a Special Area of Conservation (SAC) and concern is rife that the proposed aquaculture will damage the environs and local wildlife. Objectors were concerned that the proposed levels of aquaculture would damage the local flora and fauna and specific birds such as Brent Geese, Curlew, White Fronted Geese, Whooper Swans and Plovers.

Economic Impact: Economic concerns were raised in terms of potential negative impacts on the local tourism industry as a result of the proposed project. Recreational activities and amenities such as fishing, water sports, walking and equestrian beach trekking could be potentially affected by new aquaculture development. Further, concerns were raised that local property values could fall. The objections highlight nearby Ardara is on the Wild Atlantic Way and tourism is cited as the main source of income in the area. They stress the aquaculture sites will heavily impact on the visual aesthetic of the area, being visible from many notable sites around Loughros Mór Bay.

Response to Statutory and Public Consultation

In accordance with statutory requirements, a copy of all the observations received during the Statutory and Public consultation stage of the process were sent to the applicant for consideration.

A Director of Donegal Oceandeepest Oysters Ltd. submitted a detailed response (see **Tab E**) and disagrees with many of the points raised in the objections. He believes that the Appropriate Assessment from the MI dealt with all the relevant environmental concerns and are noted as the competent authority in this field. With regards to wild fisheries, his view is that shellfish aquaculture is more sustainable than draft salmon fishing. Regarding the Ardara wastewater outflow, he believes it would have no impact on the health of the oysters and the area would likely be rated favourable when the waters are classified. He disagrees that aquaculture would affect tourism negatively, and points to the 'Taste the Atlantic' part of the Wild Atlantic Way brand as being integral to tourism. In relation to visual impact, he points to the fact that due to tides, the trestles will only be visible 20% of the time. He believes the trestles will eventually blend into the landscape, due to weathering. He argues that if the need arose, the trestles could be removed with no lasting effect on the surrounding terrain.

Noting the concerns that the access routes would be degraded by heavy use, he disagrees as his experiences in similar roads have not been negative. The applicant lists his considerable amount of training and experience in the aquaculture sector and feels that this is more than sufficient to build up his farm safely and efficiently. He summarises the positive reasons he feels his application should be granted including bringing business to the area, alleviating pressure on traditional fisheries and that aquaculture can co-exist with other foreshore users and activities.

Marine Engineering Division (MED) Report on Aquaculture licence applications in Loughros Mór Bay, following submissions made by Statutory Consultees and the General Public

The Department's MED were asked to comment on the observations which were received during the consultation process. A comprehensive report was compiled for all the sites in the bay, including Sites T12/397 A, B and C.

An important clarification was received from Irish Water on the location of the Ardara Wastewater Treatment Plant outfall. The outfall to site distances as provided by Irish Water during the consultation process were incorrect. MED site surveys in early 2019 identified the primary outfall discharge point for Ardara sewage scheme to be 525m further to the west than previously thought and located at the south corner of Site T12/397B. MED contacted Irish Water seeking clarification on the coordinates of the discharge point. They have confirmed that the outfall is at or close to coordinates 171679, 391662 and discharges continuously within Site T12/397B and close to T12/397C.

MED recommended a number of approaches in order to deal with this situation. While not recommended by any of the Statutory Consultees, MED observed that an exclusion zone for licensing aquaculture in the vicinity of a town sewage outfall should be possible. This approach of not licensing within a zone around a main outfall could be justified on the grounds of expected low water quality in that zone. However, in putting a provisional exclusion zone in place and taking into account a combination of potential impacts on the environment, physical factors and water quality concerns that apply to various parts of each site, it was concluded that only small sub optimal areas of certain sites may be suitable for licensing. The approach being taken is to recommend the refusal of the licences on the basis that, the sites as applied for, are not licensable.

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:

- the suitability of the place or waters

Scientific advice is to the effect that the waters are not suitable for the cultivation of Pacific oysters. The sites are at a high elevation meaning the oysters are in less than favourable conditions for growth and survival when exposed to the air for prolonged periods.

The Ardara main sewage outfall is in proximity to all three of the proposed sites (physically within T12/397B and adjacent to T12/397C) and may impact on the quality and safety of the produce in the bay.

Access to Site T12/397C and parts of T12/397B are impossible from the suggested access point due to the presence of a low water channel blocking access by terrestrial vehicles.

Some areas of the sites have a soft substrate, making it difficult to farm, access, and may be prone to movement of the sands.

Access to certain sections of the sites may be difficult due to rocky outcrops.

- other beneficial uses of the waters concerned

Concerns were raised regarding the potential impact of this project on recreational activities in the area. Parts of the sites extend into low water channels. This would create areas difficult to navigate due to the presence of trestles on the seabed. It would also pose a risk for small vessel navigation to St. John's Pier.

Public access to recreational and other activities may also be hindered by this project. Site T12/397A, in particular, is proximal to amenity usage on the beaches, such as walking, kayaking and horse riding, and may impede use of two farmers' grazing land on Derryness Island.

MED concluded in their report that the scenic and amenity impacts of this application are considered low to moderate.

- the particular statutory status of the waters

Natura 2000

The proposed sites are located within the West of Ardara/Maas Road Special Area of Conservation (SAC). An Article 6 Appropriate Assessment has been carried out in relation to the proposed aquaculture activities in the SAC and the report is available on the Department's website. The Licensing Authority's Natura Conclusion Statement (also available on the Department's website) outlines how it is proposed to manage/license proposed aquaculture activities in Loughros Mór Bay in compliance with the EU Habitats Directive. It concludes that consideration can be given to the proposed licensing of aquaculture activities from a Natura 2000 perspective in conjunction with a reduction in the footprint of a number of the sites and subject to other licensing criteria and considerations. It was concluded that the proposed licensing of certain aquaculture activities, along with specific management actions and mitigation measures, is not likely to have a significant effect on the integrity of the West of Ardara/Maas Road SAC.

Shellfish Waters

The proposed sites are not located within a designated Shellfish Growing Waters Area. Oysters in this area are currently not classified under Annex II of EU Regulation 854/2004.

The SFPA, the body responsible for the food safety aspects of seafood production, note there are no shellsan E.coli classification or biotoxin monitoring programmes in place for this area. These programmes would need to be put in place and the area classified before any operations could occur.

- the likely effects on the economy of the area

Aquaculture has the potential to provide a range of benefits to the local community. However, note has also to be taken of the concerns which were raised regarding the potential impact of this project on the tourism industry. Factors such as the proximity of the sites to the Wild Atlantic Way, historical monuments, quality of roads, and areas of Especially High Scenic Amenity were

highlighted.

- the likely ecological effects on wild fisheries, natural habitats, flora and fauna

Parts of the proposed sites extend into the low water channels of the bay. This may affect salmonid migration into their spawning regions upstream and could have consequences for angling tourism.

A draft salmon fishery is located in the western part of the bay, and submerged trestles pose a risk by fouling nets and causing some areas to be inaccessible.

The potential ecological impacts of aquaculture activities on natural habitats, flora and fauna are addressed in the Appropriate Assessment report for the West of Ardara/Maas Road SAC and in the Licensing Authority's Natura Conclusion Statement (which are available on the Department's website).

- the effect on the environment generally

Following considerations implicit to Section 61 (e and f) of the Fisheries (Amendment) Act 1997, the Marine Institute advised that significant impacts on the general environment from this proposed development are not considered likely.

Due to the level and scale of the proposed aquaculture, there is potential for impacts on the morphology of the bay.

The DCHG raised no objection to the development from an underwater archaeological perspective.

RECOMMENDATION

It is recommended that the Minister:

refuses the granting of Aquaculture Licences to Donegal Oceandeeep Oysters Ltd., Rossylongan, Donegal Town, Co. Donegal for the cultivation of Pacific Oysters using bags and trestles in relation to three sites numbered T12/397A (17.5235 ha), T12/397B (25.526 ha) and T12/397C (22.375 ha), totalling 65.4245 ha on areas of the foreshore in Loughros Mór Bay, Ardara, Co. Donegal.

This recommendation is based primarily on the findings of Site Surveys and Engineering Reports which were carried out by the Department's Marine Engineering Division (MED). The comprehensive MED report (at **Tab E**) concludes that the proposed aquaculture at Sites T12/397A, B and C is not suitable for licensing due to a combination of potential impacts on the environment, physical factors and water quality concerns that apply to the area.

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 – T12/397A, B and C

Donegal Oceandeeep Oysters Ltd., Rossylongan, Donegal Town, Co. Donegal have applied for authorisation to cultivate Pacific Oysters using bags and trestles on three sites numbered T12/397A (17.5235 ha), T12/397B (25.526 ha) and T12/397C (22.375 ha), totalling 65.4245 ha on the intertidal foreshore in Loughros Mór Bay, Ardara, Co. Donegal.

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

- *The proposed sites are unsuitable for aquaculture for reasons including the high elevation of the sites, excessive depth, water quality concerns, potential channel obstruction, access issues and impacts on morphology of the bay;*

- *The high elevation of the proposed sites relative to the bay would result in poor growth and survival conditions for the oysters. This is due to long exposure times of the oyster stock to the air when the tide goes out. The oysters would be uncovered for a considerable period of time per tide cycle leading to food safety concerns and high mortality rates;*
- *The primary outfall discharge point for the Ardara sewage scheme is located at the south corner of Site T12/397B (Coordinates 171679, 391662), discharging continuously within this site and close to Site T12/397C. The presence of a town sewage outfall in close proximity to the proposed aquaculture raises significant water quality and food safety concerns due to the enclosed nature of the bay and the continuous discharge indicates that water quality at low tide near the outfall will be locally poor;*
- *Possible scenic impacts from the proposed aquaculture are considered low to moderate. Views may be affected from the Wild Atlantic Way;*
- *Parts of the proposed sites extend into the low water channels of the bay, potentially impeding salmonid migration upstream for spawning;*
- *Potential for impact on the salmon draft fishery due to nets getting caught on trestles;*
- *The access to Site T12/397C is unreachable via the proposed route due to the presence of a low water channel in the centre of the bay;*
- *The mobility of the substrate in this part of the bay could have implications for the stability of aquaculture structures if placed in this area;*
- *Potential impacts on navigation in the bay and access to St. John's Pier would be impeded by the presence of trestles in the low water channel and at various tides due to the effective spanning of the entire bay by the proposed sites;*
- *Potential disturbance to the area due to the scale of operations changing the morphology of the bay;*
- *Public access to recreational and marine leisure activities may be hindered by this project;*
- *The proposed sites are not located within a designated Shellfish Growing Waters Area. Oysters in this area are currently not classified under Annex II of EU Regulation 854/2004;*
- *Taking account of the issues raised during the public and statutory consultation phase."*

Recommendation to Refuse Foreshore Licences for three sites (refs: T12/397 A, B & C)

DECISION SOUGHT

The Minister's determination is requested please in relation to an application for Foreshore Licences from Donegal Oceandeeep Oysters Ltd., Rossylongan, Donegal Town, Co. Donegal for three sites numbered T12/397 A, B and C in Loughros Mór Bay, Ardara, Co. Donegal 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 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 FORESHORE LICENCES

An application for Foreshore Licences has been received from the applicant referred to above (in conjunction with an application for Aquaculture Licences) relating to the occupation of the foreshore associated with the Aquaculture Licence application which covers three sites numbered T12/397A (17.5235 ha), T12/397B (25.526 ha) and T12/397C (22.375 ha), totalling 65.4245 ha on the foreshore in Loughros Mór Bay, Ardara, Co. Donegal (see **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 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): The DHPLG noted that there is a wastewater outflow located in the vicinity and they are concerned about water quality as a result for shellfish consumption. They urge that this issue is carefully monitored to ensure food safety and health regulations are met.

Technical Consultation

Marine Engineering Division (MED): MED does not recommend the licensing of these sites for a number of reasons, primarily due to a combination of potential impacts on the environment, physical factors and water quality concerns. The main issues can be summarised as follows:

Proximity to amenity usage: The proposed sites are located on a publicly accessible area of foreshore which is used for activities including walking. There is a concern these sites would intrude on this amenity use. This applies particularly to Site T12/397A.

Navigation: A portion of the area of the sites T12/397B and T12/397C are located subtidally in the low tide channel. This is a cause for concern as there is a risk (though minor) that the proposed aquaculture will have an impact on navigation in the bay. In addition, Site T12/397C is across the low tide channel and cannot be accessed at any tide level from the proposed access route.

High elevation of area: The sites are at a high elevation in places, indicating that the oysters would spend longer periods out of water and exposed to the air. The very best parts of Site T12/397A are still considered sub optimal.

Mobile or Loose Substrate and Hydrology of the Bay: There is soft ground in areas which can cause a number of problems. Firstly, the trestles can become buried and dislodge, and secondly, the terrain of the sites can change almost on a tidal basis, meaning it can be difficult to anticipate usable parts of the sites.

Sites T12/397B and T12/397C span the bay and full use of the sites could redirect the low water channels. This would create new

barriers to fish and mammal movement where there were no previous issues.

Potential impact on Owenea River channel and outflow: The southern portion of the sites extend into (without fully traversing) the low water channel of the Owenea River. There is a possibility this would impact on the navigation of small boats in the area and clear navigational markings would be required.

Visual Impact: Due to the location and visibility at a distance from local roads and viewing points in the area, there may be a moderate visual impact from trestles and aquaculture on the sites.

Salmon Fishery: There is a possibility that Site T12/397A will interact with the local salmon fishery by catching and snagging on nets or otherwise damaging or impeding fishing vessels.

Water quality concerns: There is a sewage discharge point very close to the sites from nearby Ardara. The quality of the water in the bay has not yet been determined as this would be carried out by the SFPA post licensing, but there is cause for concern. The discharge is continuous, and outflow is not regulated to the tide, meaning waste sits in the region between tides without being washed out. Further, the tidal exchange is restricted by sediment at the mouth of the bay. An exclusion zone is suggested, but due to the confines of the bay, this may not be sufficient.

This issue applies particularly to Sites T12/397B and T12/397C, as the outflow is in one site and adjacent to the other, while in close proximity to Site T12/397A.

Rocky outcrops: There are rocky regions of Site T12/397A which would make it difficult to cultivate the site, both in terms of access and trestle placement.

Marine Survey Office (MSO): The MSO have no objection to this application from a navigational viewpoint. They have recommended navigational site markings should the licences be granted.

Sea Fisheries Protection Authority (SFPA): The SFPA noted that there is no current E. coli classification or biotoxin monitoring programmes in place in Loughros Mór Bay. They stated that these programmes would need to be put in place and classification assigned prior to the commencement of operations. The SFPA reiterated that it is the producer's responsibility to supply safe food intended for human consumption.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in the 'Donegal Democrat' on 23rd August 2018. The application and supporting documentation were available for inspection at Ardara and Glenties Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **408** observations received as part of the public consultation process. The majority (384) of these objections came in the form of a single page outlining key concerns such as effects on the Special Area of Conservation (SAC), effects on the nearby Special Protection Areas (SPAs), recreational use of the bay and the aesthetics of the proposed development.

In accordance with statutory requirements, a copy of all the observations received during the Statutory and Public consultation stage of the process were sent to the applicant for consideration.

The applicant submitted a detailed response (see **Tab E**) and disagrees with many of the points raised in the objections.

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 Foreshore Licences to Donegal Océandeep Oysters Ltd., Rossylongan, Donegal Town, Co. Donegal for the occupation of three sites numbered T12/397A (17.5235 ha), T12/397B (25.526 ha) and T12/397C (22.375 ha), totalling 65.4245 ha on the foreshore in Loughros Mór Bay, Ardara, Co. Donegal.

This recommendation is based primarily on the findings of Site Surveys and Engineering Reports which were carried out by the Department's Marine Engineering Division (MED). The comprehensive MED report (at **Tab E**) concludes that the proposed aquaculture at these sites is not suitable for licensing due to a combination of potential impacts on the environment, physical factors and water quality concerns that apply to the area.

Submitted for approval, please.

Aquaculture and Foreshore Management Division.

Related submissions

There are no related submissions.

User details

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Horan, Helena
Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
eSub Sec Gen
eSub Ministers Office
eSub Minister

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