

Recommendation to refuse to grant an Aquaculture Licence for 1 site (T12/396)

REF #:	AGR 00238-19	AUTHOR:	McCull, Mary
TO:	Minister	OWNER:	McCull, Mary
STATUS:	Completed	REVIEWERS:	OConnell, James, OCallaghan, Grace, Quinlan, John, Beamish, Cecil, Smith, Ann
PURPOSE:	For Decision	DECISION BY:	
DIVISION/OFFICE:	Coastal Zone Management		

Final comment

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

Action required

Ministerial determination on an Aquaculture/Foreshore Licensing application (T12/396)

Executive summary

The Minister's determination is required in relation to an application for an Aquaculture Licence from Donegal Oceandeeep Oysters Ltd. for a site in Donegal Bay.

A submission in respect of the accompanying Foreshore Licence is also set out below for the Minister's consideration.

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

In summary, the proposed site extended beyond a mapped line established to limit aquaculture expansion westward at the Mountcharles side of Donegal Bay. A landscape and visual impact assessment concluded that a the visual amenity of Warren

Beach/Jacks Quay areas would be impacted negatively by expansion westwards. Furthermore the Report on Sanderling Populations within Donegal Bay SPA 2014/2015 and subsequent Appropriate Assessment report recommended that the placement of trestles in the south-western corner of the site be avoided because of potential for negative effects on Sanderling.

Comments

OConnell, James - 22/05/2019 17:02

It is recommended that the Minister refuses to grant Aquaculture/ Foreshore licence(s) for application T12/396 for the reasons outlined in the submission above

OConnell, James - 25/06/2019 12:20

It is recommended that the Minister refuses to grant Aquaculture/ Foreshore licence(s) for application T12/396 for the reasons outlined in the submission above

OConnell, James - 19/07/2019 12:02

It is recommended that the Minister refuses to grant Aquaculture/ Foreshore licence(s) for application T12/396 for the reasons outlined in the submission above

OCallaghan, Grace - 06/08/2019 16:06

I have reviewed the detailed information set out in this submission and agree with the recommendation made, that the Minister determines the Aquaculture and Foreshore Licences sought be refused in relation to an application for an Aquaculture Licence from Donegal Oceandeeep Oysters Ltd. for a site in Donegal Bay.

Quinlan, John - 12/08/2019 14:23

Refusal of the licence application is recommended in this case please.

Beamish, Cecil - 12/08/2019 16:00

Recommended that the Minister determines that the application for the Aquaculture and Foreshore Licences be refused for the reasons outlined in the submission.

Smith, Ann - 12/08/2019 16:01

Approved for submission to Minister. A.S.12/08/2019

Lennox, Graham - 16/08/2019 12:34

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

Detailed information

DECISION SOUGHT

The Minister's determination is requested please in relation to an application for an Aquaculture Licence from Donegal Oceandeeep Oysters Ltd, Rossylongan, Donegal Town, Co. Donegal, for a site in Donegal Bay, Co. Donegal.

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), for the cultivation of Pacific Oysters using bags and trestles in relation to a 13.46 hectare site on the foreshore in Donegal Bay, Co. Donegal (numbered **T12/396A** – 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, 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 (MED): To limit the westward spread of aquaculture at the Mountcharles side of Donegal Bay a 'mapped line' was created in the early 1990s. The line was created in light of the large number of objections received to a previous application, File Reference T12/145. The then Minister stated in correspondence that *"any aquaculture development west of the proposed clam farming sites would not be in the public interest"*. MED have noted that the existence of the 'line' is well known to both operators and the Department and that it has been respected over the years. The applied for site, T12/396A is west of this 'line'. MED is of the view that the bay is at present well managed and that if the 'line' were revoked, it would be contrary to good bay management and set a precedent for westward development.

From a technical point of view the site is suitable for oyster and clam culture.

A Landscape and Visual Impact Assessment (LVIA) was recommended and carried out subsequent to the public advertising stage. It concluded that the visual amenity of the Warren Beach/Jacks Quay areas would be impacted negatively by expansion westwards. The visual impact significance from the Jacks Quay amenity area is expected to be of moderate significance. Landscape impact significance is predicted to be slight. In this case given the value of the amenity area of the Warren Beach for recreation and impact mitigation not being possible, the finding there of substantial visual impact significance is a strong basis for refusal of the proposed development.

Following the conclusions of the LVIA and the Appropriate Assessment outcomes MED support the continuing employment of a 'dividing line' separating areas of aquaculture from areas of bird/amenity usage in the area (in the case the division line that runs along the western boundary of the existing oyster farm should continue to be observed). MED recommends that this licence be refused.

Marine Survey Office: No objection to this development from a navigational perspective. Applicant is required to apply to the Commissioner of Irish Lights for sanction to establish the necessary site markings and lighting. In order for charts and nautical publications to be updated the applicant is required to inform the British Admiralty Hydrographic Office of the location and nature of the site.

Sea Fisheries Protection Authority: No objection to this development

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:

DCHG: The Department of Culture, Heritage and the Gaeltacht had no objection to the development from an underwater archaeological perspective. The Department did however raise some concerns upon review of the Appropriate Assessment Report. Further survey work was undertaken by Atkins for the Marine Institute on foot of these concerns with the specific purpose of reporting on shorebird monitoring in Donegal Bay SPA. The DCHG acknowledged the additional monitoring in relation to Sanderling populations and provided the management/mitigation measures, as outlined in the updated Conclusion Statement (**see Tab B**) are fully applied (i.e. not licensing T12/396 and recommending that at least 50% of the area of T12/446 is not licensed), DCHG had no further comments in this regard.

Marine Institute: The Marine Institute recommend that DAFM take full account of the conclusions and recommendations of the Appropriate Assessment Report and subsequent shorebird monitoring report and the management/mitigation measures set out in the Department's Natura Conclusion Statement.

Commissioner of Irish Lights: Based on the information supplied, there appears to be no objection to the development. If a licence is granted all structures must be clearly marked as required by Regulations and Licensing permit conditions and to the approval of the Nautical Surveyor with the Marine Survey Office.

Request to include the following in the terms of the licence-

That the applicant secures Statutory Sanction from the Commissioners of Irish Lights for the aids to navigation that may be required by the Marine Survey Office. These aids should be in place before development on the site commences. Statutory sanction forms are available on <https://www.irishlights.ie/safety-navigation/statutory-sanction.aspx>

The size and specification of aids to navigation should be of the design and specification approved by the Marine Survey Office and must be agreed in advance with the Commissioner of Irish Lights.

It is recommended that local fishing and leisure interests be consulted prior to a decision being made.

Furthermore, if a licence is granted, the UK Hydrographic Office must be informed of the developments geographical position in order to update nautical charts and other nautical publications.

Inland Fisheries Ireland: Has no objections to the development

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 13th March 2017. The application and supporting documentation were available for inspection at Donegal and Ballyshannon Garda Stations for a period of 4 weeks following the publication in the newspaper.

While there was one objection received from the public consultation process, this objection related primarily to another site (T12/446) which was advertised at the same time but did refer to concerns that T12/396 may add to issues regarding the deposition of waste oyster shells along the shoreline and nearby beaches.

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

Scientific advice is to the effect that the waters are suitable for the cultivation of oysters.

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 a Natura area (i.e. in a Special Area of Conservation and Special Protected Area). An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in Donegal Bay (Murvagh) SAC (0133) and Donegal Bay (004151) and Durnesh Lough (004145) SPAs (the Appropriate Assessment Report and Licensing Authority's Conclusion Statement are available on the Department's website).

The Appropriate Assessment report concluded that there was potential for intertidal oyster culture in the Mountcharles-Eddrim Estuary area to cause sizeable displacement impacts on Sanderling. The National Parks and Wildlife Service (NPWS) of DCHG were concerned that a further extension of oyster trestle activity in this area may further displace the existing Sanderling that use this area. Consequently, further information was requested to increase confidence levels in the predicted impact on Sanderling in Donegal Bay.

As a result, additional monitoring took place in 2014/15, to further inform the interactions of aquaculture on Sanderling (Report on monitoring Sanderling populations within Donegal Bay SPA, 2014/15, completed in March 2016 is also available on the Department's website).

The Monitoring Report made specific recommendations in relation to new and existing sites. The 2014/15 monitoring data highlights the importance of an area running south from Jack's Quay towards the south-western corner of T12/396 for the Sanderling. Foraging was also recorded on a number of occasions within the southern section of this site. Therefore, the placement of trestles in this area is to be avoided because of the potential for negative impacts on Sanderling.

(ii) Shellfish Waters

The site is located within Donegal Bay Shellfish Designated Waters.

The oysters in these waters 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 Donegal Bay and in the Licensing Authority's Conclusion Statement.

The Department of Department of Culture, Heritage and the Gaeltacht (DCHG) raised some concerns upon review of the Appropriate Assessment Report. Further survey work was undertaken by Atkins for the Marine Institute on foot of these concerns with the specific purpose of reporting on shorebird monitoring in Donegal Bay SPA. The DCHG acknowledged the additional monitoring in relation to Sanderling populations and provided the management/mitigation measures, as outlined in the updated Conclusion Statement (see **Tab B**) are fully applied (i.e. not licensing T12/396 and recommending that at least 50% of the area of T12/446 is not licensed), DCHG had no further comments in this regard.

f) the effect on the environment generally

The Minister is obliged pursuant to Regulation 5 (2) of Licence Applications Regulations to consider on a case by case basis whether the proposed aquaculture is likely to have significant effect on the environment.

(g) the effect on the man-made environment of heritage value in the vicinity of the place or waters

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

RECOMMENDATION

It is recommended that the Minister:

refuse the granting of an Aquaculture Licence to Donegal Oceanadeep Oysters Ltd, Rossylongan, Donegal Town, Co. Donegal. The reasons for the recommendation are:

- *The Appropriate Assessment report on aquaculture activities in Donegal Bay concluded that there was potential for intertidal oyster culture in the Mountcharles-Eddrim Estuary area to cause sizeable displacement impacts on Sanderling. The Report on monitoring of Sanderling populations within Donegal Bay SPA, 2014/15, completed in March 2016 - highlighted the importance of an area running south from Jack's Quay towards the south-western corner of T12/396A for the Sanderling. Foraging was also recorded on a number of occasions within the southern section of this site. Therefore, the placement of trestles in this area is being avoided because of the potential for negative impacts on Sanderling.*

- *The Monitoring Report also noted that aerial photography in the region indicated that an area of deeper channel has developed through the northern section of T12/396A and it may not be feasible to place trestles in this 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 –T12/369

Donegal Oceandeeep Oysters Ltd has applied for authorisation to cultivate pacific oysters using bags and trestles on the inter-tidal foreshore on a 13.46 ha site (T12/369A) in Donegal Bay, Co. Donegal.

The Minister for Agriculture, Food and the Marine has determined that it is not in the public interest to grant the licences 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 recommendations of the Department's Engineer.

Also, the Appropriate Assessment findings (as updated by the 2015 sanderling survey) give grounds for concern about the impact of this proposed development on the foreshore of Donegal Bay at Mountcharles. Existing beneficial usages (amenity and wildlife) in the area would be significantly reduced therefore the dividing line currently in place should remain and continue to provide a reasonable balance between competing foreshore uses.

Recommendation to Refuse a Foreshore Licence application (T12/369A)

DECISION SOUGHT

The Minister's determination is requested please in relation to the application for a Foreshore Licence from Donegal Oceandeeep Oysters Ltd, Rosssylongan, Donegal Town, Co. Donegal, for a site in Donegal Bay, 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 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 13.46 hectare site (numbered **T12/369A**- 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 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 Engineering Division (MED): Initial observations from MED referenced the early 1990s when a 'line' was created to limit the westward spread of aquaculture at the Mountcharles side of Donegal Bay. The line was created in light of the large number of objections received to a previous application, File Reference T12/145. The then Minister stated in correspondence that *"any aquaculture development west of the proposed clam farming sites would not be in the public interest"*. MED also noted that the existence of the 'line' is well known to both operators and the Department and that it has been respected over the years (the applied for site, T12/396A is west of this 'line'). MED is of the view that the bay is at present well managed and that if the 'line' were revoked, it would be contrary to good bay management and set a precedent for westward development.

From a technical point of view the site is suitable for oyster and clam culture.

A Landscape and Visual Impact Assessment (LVIA) was recommended and carried out subsequent to the public advertising stage. It concluded that the visual amenity of the Warren Beach/Jacks Quay areas would be impacted negatively by expansion westwards. The visual impact significance from the Jacks Quay amenity area is expected to be of moderate significance. Landscape impact significance is predicted to be slight. In this case given the value of the amenity area of the Warren Beach for recreation and impact mitigation not being possible, the finding there of substantial visual impact significance is a strong basis for refusal of the proposed development.

Following the conclusions of the LVIA and the Appropriate Assessment outcomes MED support the continuing application of a 'dividing line' separating areas of aquaculture and bird/amenity usage in the area, in the case the division line that runs along the western boundary of the existing oyster farm should continue to be observed. MED recommends that this licence be refused.

Marine Survey Office: No objection to this development from a navigational perspective. Applicant is required to apply to CIL for sanction to establish the necessary site markings and lighting. In order for charts and nautical publications to be updated the applicant is required to inform the British Admiralty Hydrographic Office of the location and nature of the site.

Sea Fisheries Protection Authority: No objection to this development

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 13th March 2017. The application and supporting documentation were available for inspection at Donegal and Ballyshannon Garda Stations for a period of 4 weeks following the publication in the newspaper.

While there was one objection received from the public consultation process, this objection related primarily to another site (T12/446) which was advertised at the same time but did refer to concerns that T12/396 may add to issues regarding the deposition of waste oyster shells along the shoreline and nearby beaches.

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 Donegal Oceandeeep Oysters Ltd, Rossylongan, Donegal Town, Co. Donegal, for a site in Donegal Bay having regard to the decision in relation to the Aquaculture Licence application. The reasons for the decision are;

The recommendations of the Department's Engineer.

Also, the Appropriate Assessment findings (as updated by the 2015 sanderling survey) give grounds for concern about the impact of this proposed development on the foreshore of Donegal Bay at Mountcharles. Existing beneficial usages (amenity and wildlife) in the area would be significantly reduced therefore the dividing line currently in place should remain and continue to provide a reasonable balance between competing foreshore uses.

Submitted

Mary Mc Cull

Aquaculture and Foreshore Management Division

Related submissions

There are no related submissions.

User details

INVOLVED: McCull, Mary
 OConnell, James
 Hodnett, Kevin
 OCallaghan, Grace
 Quinlan, John
 Beamish, Cecil
 Sub Sec Gens Office
 eSub Sec Gen
 eSub Ministers Office
 eSub Minister

READ RECEIPT: McCull, Mary
 OConnell, James
 OCallaghan, Grace
 Quinlan, John
 Beamish, Cecil
 Smith, Ann
 Monks, Amanda
 Lennox, Graham

Action log

ACTION	DESCRIPTION	USER	DATE
Create	Submission AGR 00238-19 to Minister created.	McCull, Mary	22/05/2019 14:38

Submit for review	Submission sent for review to OConnell, James.	McCull, Mary	22/05/2019 15:28
Submit for review	Submission sent for review to Hodnett, Kevin.	OConnell, James	22/05/2019 17:02
Take ownership	Submission ownership taken by OConnell, James.	OConnell, James	25/06/2019 11:52
Submit for review	Submission sent for review to OCallaghan, Grace.	OConnell, James	25/06/2019 12:20
Take ownership	Submission ownership taken by OConnell, James.	OConnell, James	17/07/2019 10:25
Submit for review	Submission sent for review to OCallaghan, Grace.	OConnell, James	19/07/2019 12:02
Submit for review	Submission sent for review to Quinlan, John.	OCallaghan, Grace	06/08/2019 16:06
Submit for review	Submission sent for review to Beamish, Cecil.	Quinlan, John	12/08/2019 14:24
Submit for review	Submission sent for review to Secretary General.	Beamish, Cecil	12/08/2019 16:00
Submit for review	Submission sent for review to Minister.	Smith, Ann	12/08/2019 16:01
Complete	Submission completed by Lennox, Graham.	Lennox, Graham	16/08/2019 12:34