

# **AGR 00647-19: Recommendation to Refuse Aquaculture/Foreshore Licences for 1 site (T06/505A)**

## **Action required**

Ministerial Determination on Aquaculture/Foreshore Licensing Application (T06/505A)

## **Executive summary**

The Minister's determination is requested please in relation to an application for an Aquaculture Licence from Mr. Tomás Hayes, Tochar, Cromane Upper, Killorglin, Co. Kerry. The application is for the cultivation of Pacific Oysters using bags and trestles on Site T06/505A, a 6.01 hectare site on the foreshore east of Cromane Lower in Castlemaine Harbour, Co. Kerry.

There is also a submission in respect of this application for a Foreshore Licence, 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 an Aquaculture Licence for one site (ref: T06/505A)**

## **DECISION SOUGHT**

The Minister's determination is requested please in relation to an application for an Aquaculture Licence from Mr. Tomás Hayes, Tochar, Cromane Upper, Killorglin, Co. Kerry for a site numbered T06/505A east of Cromane Lower in Castlemaine Harbour, Co. Kerry.

A submission in respect of the application for a 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 below (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 one site - T06/505A, totalling 6.01 ha on the foreshore east of Cromane Lower in Castlemaine Harbour, Co. Kerry (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 noted that this is a new application for the cultivation of Pacific Oysters using bags and trestles. They observed that the proposed site is located approximately 1 km east of Cromane Lower. MED noted that the site is situated inside the Castlemaine Special Unified Marking Scheme (SUMS) for the harbour. This marking scheme was previously agreed between BIM, the Marine Survey Office, the Commissioners of Irish Lights and Marine Engineering Division.

The proposed site is not in an area that is likely to be highly visible to many people. Population density in the area is low and trestles will only be visible at times of low tide. There are no features of high landscape or scenic value that will be impacted upon by this project.

This exact area (under Site Reference T06/436A) was previously applied for by a different applicant and was refused by the Minister in 2018.

MED does not recommend licensing this site as the Licensing Authority's Natura Conclusion Statement, which has been informed by the Appropriate Assessment process, has concluded that this new application should not be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Castlemaine Natura 2000 sites.

Marine Survey Office (MSO): The MSO have no objection to this development from a navigational viewpoint. They recommended that the proposed site should be marked in accordance with the Co-ordinated Local Aquaculture Management System (CLAMS) and Special Unified Marking Scheme (SUMS) within Castlemaine Harbour.

Sea Fisheries Protection Authority (SFPA): The SFPA stated that the cultivation of Pacific Oysters would have no negative impact on local sea fishing operations.

### **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**):

Marine Institute: The MI noted that Site T06/505A is not located within a designated Shellfish Growing Waters Area. They stated that the implications of licensing a site which is not located within a designated Shellfish Growing Waters Area should be fully considered as part of the licensing process.

The MI observed that Site T06/505A is located within the Castlemaine Harbour SAC (Site Code 000343) and the Castlemaine Harbour SPA (Site Code 004029). The MI noted the findings of the 2019 Appropriate Assessment reports and the Licensing Authority's Natura Conclusion Statement (see **Tab D**) with regards to the impacts of the proposed aquaculture activity on the Conservation Objectives of the Castlemaine Harbour SAC and SPA.

The MI noted the Licensing Authority's conclusions as follows:

- There is insufficient evidence to suggest that the affected areas within Castlemaine Harbour would maintain a comparable level of ecological functionality if licensing were permitted;
- No further consenting of licence applications can take place within the Castlemaine Harbour SAC and SPA until such time as additional studies are completed and further mitigation approaches are considered.

On this basis, the Marine Institute is of the view that an aquaculture licence should not be granted at this site.

Commissioners of Irish Lights: CIL have no objection to the granting of this licence and stated that all structures should be clearly marked as required by the regulations. They reiterated the importance of ensuring that no navigable intertidal channels are impeded by this project.

Department of Culture, Heritage and the Gaeltacht (DCHG): The DCHG commented on the 2019 Appropriate Assessment reports and the Natura Conclusion Statement for the Castlemaine Harbour SAC and SPA from a nature conservation perspective. They welcomed the Licensing Authority's recommendation that no further consenting of licence applications can take place until such time as additional studies are completed and further mitigation approaches are considered.

The DCHG observed that eleven coastal terrestrial habitats listed as qualifying interests at the Castlemaine Harbour SAC including beaches and dunes, saltmarsh and seacliff habitats were screened out of the current Appropriate Assessment. It was noted that the aquaculture applications outlined in the Appropriate Assessment take place very close to salt marsh habitats in the SAC and these habitats should be taken into account in the Appropriate Assessment as they are vulnerable to damage resulting from aquaculture activities such as use of vehicles to access aquaculture sites, storage of materials and disposal of waste.

The Licensing Authority and its scientific advisers, the MI, noted the concerns raised but maintain that no applications were received to carry out aquaculture activity on these habitat types. Consequently, no spatial overlap occurs and these coastal terrestrial habitats were screened out. These issues are addressed in the updated Natura Conclusion Statement for the Castlemaine Harbour SAC and SPA (see **Tab D**).

-

Bord Iascaigh Mhara (BIM): BIM have no objection to the proposed aquaculture and are satisfied that the application does not conflict with any other aquaculture or inshore fisheries interests in the area.

Department of Housing, Planning and Local Government (DHPLG): No observations were received from the DHPLG in respect of this application from a water quality or foreshore perspective.

An Taisce: An Taisce did not provide observations on this application.

Inland Fisheries Ireland (IFI): The IFI did not provide comments on this application.

Irish Water: No comments were received in respect of this application.

Kerry County Council: No comments were received on this application.

Fáilte Ireland: No comments received.

Údarás na Gaeltachta: No comments received.

## **Public Consultation**

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in ‘The Kerryman’ on 10<sup>th</sup> July, 2019. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **no** objections received from the public consultation process.

## **Response to Statutory and Public Consultation**

In accordance with statutory requirements, copies of the observations received during the consultation process were forwarded to the applicant for comment.

The applicant did **not** provide a response to the submissions received during the consultation period.

## **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**

*Technical advice is to the effect that the waters are suitable for the production of Pacific Oysters. Scientific advice indicates that, from a Natura 2000 perspective, given the conclusions and recommendations of the Appropriate Assessment process for the Castlemaine Harbour SAC and SPA, the risk of significant disturbance from the proposed aquaculture cannot be discounted.*

*In considering new licence applications, including T06/505A, alone and cumulatively, likely significant effects were identified, i.e. noise/visual disturbance for all intertidal Special Conservation Interests (SCIs) and Cormorant and displacement for all intertidal foraging SCIs except Greenshank and Redshank. In addition, new licence applications, including this proposed site, are predicted to cumulatively contribute to intertidal habitat loss in all I-WeBS subsites considered to be key areas for maintaining the long-term population trends of SCIs.*

- **other beneficial uses of the waters concerned**

*Public access to recreational and other activities can be accommodated by this project.*

- **the particular statutory status of the waters**

#### Natura 2000

*The proposed site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and the Castlemaine Harbour Special Protection Area (SPA). An Article 6 Appropriate Assessment was carried out in relation to aquaculture activities in the SAC and SPA in 2019 and the reports are available on the Department's website. The Licensing Authority's 2019 Natura Conclusion Statement (also available on the Department's website) outlines how certain proposed aquaculture activities, including intertidal culture at Site T06/505A, shall not be permitted as the risk of disturbance to the integrity of the SAC and SPA cannot be discounted given the conclusions and recommendations of the Appropriate Assessment process.*

*The proposed aquaculture activity should not be authorised as in-combination adverse effects could result, as follows:*

- *Cause delays and interrupt progress towards achieving the Conservation Objectives of the Castlemaine Natura 2000 sites for those species in long term population decline;*
- *Disrupt those factors that help to maintain the favourable conditions of the Natura 2000 sites (i.e. spatial extent of functional habitat);*
- *Interfere with the distribution and density of Special Conservation Interests (SCIs) that are the indicators of the favourable condition of the Natura 2000 sites (i.e. caused by displacement);*
- *Cause changes to the vital defining aspects (i.e. undisturbed foraging areas and an absence of obstructions to sight lines) that determine how the Natura 2000 sites function as a supporting habitat for waterbirds;*
- *Reduce the area of key habitats;*
- *Result in disturbance that could affect population size or density or the balance between key species;*
- *Result in habitat fragmentation;*
- *Result in loss or reduction of key features (i.e. an absence of obstructions to sight lines).*

*It was concluded that no further consenting of licence applications can take place within the Castlemaine Harbour SAC and SPA until such time as additional studies are completed and further mitigation approaches are considered.*

## Shellfish Waters

*Site T06/505A is not located within a designated Shellfish Growing Waters Area.*

- **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 employment, the attraction of investment capital, development of support services etc.*

- **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 2019 Appropriate Assessment reports for the Castlemaine Harbour SAC and SPA 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(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 by aquaculture activity at this site.*

*No objections were raised to the development from an underwater archaeological perspective.*



## RECOMMENDATION

It is recommended that the Minister:

**refuses the granting** of an Aquaculture Licence to Mr. Tomás Hayes, Tochar, Cromane Upper, Killorglin, Co. Kerry for the cultivation of Pacific Oysters using bags and trestles in relation to one site - T06/505A, totalling 6.01 ha on the foreshore east of Cromane Lower in Castlemaine Harbour, Co. Kerry.

This recommendation is based on the findings and conclusions of the 2019 Appropriate Assessment process for the Castlemaine Harbour SAC and SPA and the Licensing Authority's Natura Conclusion Statement.

The proposed aquaculture activity should not be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Castlemaine Natura 2000 sites. In addition, there is insufficient evidence to suggest that the affected areas within Castlemaine Harbour would maintain a comparable level of ecological functionality if licensing were permitted. It was concluded that no further consenting of licence applications can take place within the Castlemaine Harbour SAC and SPA until such time as additional studies are completed and further mitigation approaches are considered.

Furthermore, the proposed site is not located within a designated Shellfish Growing Waters 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 – T06/505A"**

*Mr. Tomás Hayes, Tochar, Cromane Upper, Killorglin, Co. Kerry has applied for authorisation to cultivate Pacific Oysters using bags and trestles on one site numbered T06/505A totalling 6.01 ha on the intertidal foreshore east of Cromane Lower in Castlemaine Harbour, Co. Kerry.*

*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 this site. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act, 1997 and other relevant legislation he was required to have regard.*

*Such matters include any submissions and observations received in accordance with statutory provisions. The following are the reasons and considerations for the Minister's determination to **refuse** the licences sought:-*

- The proposed site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and the Castlemaine Harbour Special Protection Area (SPA). An Article 6 Appropriate Assessment was carried out in relation to aquaculture activities in the SAC and SPA in 2019 and the reports are available on the Department's website. The Licensing Authority's 2019 Natura Conclusion Statement (also available on the Department's website) outlines how certain proposed aquaculture activities, including intertidal culture at Site T06/505A, shall not be permitted as the risk of disturbance to the integrity of the SAC and SPA cannot be discounted given the conclusions and recommendations of the Appropriate Assessment process;*
- Given the potential significant effects identified in considering new licence applications, including T06/505A, alone and cumulatively, within the Castlemaine Harbour SAC and Castlemaine Harbour SPA such as noise/visual disturbance for all intertidal Special Conservation Interests (SCIs) and Cormorant and displacement for all intertidal foraging SCIs except Greenshank and Redshank. In addition, it is predicted that new licence applications, including this proposed site, could cumulatively contribute to intertidal habitat loss in all I-WeBS subsites considered to be key areas for maintaining the long-term population trends of SCIs;*
- There is insufficient evidence to suggest that the affected areas within Castlemaine Harbour would maintain a comparable level of ecological functionality if licensing were permitted. It was concluded that no further consenting of licence applications can take place within the Castlemaine Harbour SAC and Castlemaine Harbour SPA until such time as additional studies are completed and further mitigation approaches are considered;*
- The proposed site is not located within a designated Shellfish Growing Waters Area;*
- Taking account of the issues raised during the public and statutory consultation phase.”*

### **Recommendation to refuse a Foreshore Licence (T06/505A)**

## **DECISION SOUGHT**

The Minister's determination is requested please in relation to an application for a Foreshore Licence from Mr. Tomás Hayes, Tochar, Cromane Upper, Killorglin, Co. Kerry for a site numbered T06/505A on the foreshore east of Cromane Lower in Castlemaine Harbour, 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).

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, Mr. Tomás Hayes (in conjunction with an application for an Aquaculture Licence) relating to the occupation of the foreshore associated with the Aquaculture Licence application which covers T06/505A, totalling 6.01 ha, east of Cromane Lower in Castlemaine Harbour, Co. Kerry (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 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): No observations were received from the DHPLG in respect of this application from a water quality or foreshore perspective.

## **Technical Consultation**

Marine Engineering Division (MED): MED noted that this is a new application for the cultivation of Pacific Oysters using bags and trestles. They observed that the proposed site is

located approximately 1 km east of Cromane Lower. MED noted that the site is situated inside the Castlemaine Special Unified Marking Scheme (SUMS) for the harbour. This marking scheme was previously agreed between BIM, the Marine Survey Office, the Commissioners of Irish Lights and Marine Engineering Division.

The proposed site is not in an area that is likely to be highly visible to many people. Population density in the area is low and trestles will only be visible at times of low tide. There are no features of high landscape or scenic value that will be impacted upon by this project.

This exact area (under Site Reference T06/436A) was previously applied for by a different applicant and was refused by the Minister in 2018.

MED does not recommend licensing this site as the Licensing Authority's Natura Conclusion Statement, which has been informed by the Appropriate Assessment process, has concluded that this new application should not be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Castlemaine Natura 2000 sites.

Marine Survey Office (MSO): The MSO have no objection to this development from a navigational viewpoint. They recommended that the proposed site should be marked in accordance with the Co-ordinated Local Aquaculture Management System (CLAMS) and Special Unified Marking Scheme (SUMS) within Castlemaine Harbour.

Sea Fisheries Protection Authority (SFPA): The SFPA stated that the cultivation of Pacific Oysters would have no negative impact on local sea fishing operations.

## **Public Consultation**

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in 'The Kerryman' on 10<sup>th</sup> July, 2019. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were **no** objections received from the public consultation process.

## **Response to Statutory and Public Consultation**

In accordance with statutory requirements, copies of the observations received during the consultation process were forwarded to the applicant for comment.

The applicant did **not** provide a response to the submissions received during the consultation period.

### **CRITERIA IN MAKING LICENSING DECISIONS**

The Minister, in considering an application for a Foreshore Licence, may, if satisfied that it is in the public interest to do so, grant such a licence.

Section 82 of the Fisheries (Amendment) Act, 1997 stipulates that the Minister, in considering an application for a licence under the Foreshore Acts, which is sought in connection with the carrying on of aquaculture pursuant to an Aquaculture Licence, shall have regard to any decision of the Licensing Authority in relation to the Aquaculture Licence.

### **Recommendation**

It is recommended that the Minister, taking account of the decision on the related aquaculture licence application:

**refuses the granting** of a Foreshore Licence to Mr. Tomás Hayes, Tochar, Cromane Upper, Killorglin, Co. Kerry for the occupation of a site, T06/505A totalling 6.01 ha on the foreshore east of Cromane Lower in Castlemaine Harbour, Co. Kerry.

This recommendation is based on the findings and conclusions of the 2019 Appropriate Assessment process for the Castlemaine Harbour SAC and SPA and the Licensing Authority's Natura Conclusion Statement.

The proposed aquaculture activity should not be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Castlemaine Natura 2000 sites. In addition, there is insufficient evidence to suggest that the affected areas within Castlemaine Harbour would maintain a comparable level of ecological functionality if licensing were permitted. It was concluded that no further consenting of licence applications can take place within the Castlemaine Harbour SAC and SPA until such time as additional studies are completed and further mitigation approaches are considered.

Furthermore, the proposed site is not located within a designated Shellfish Growing Waters Area.

Submitted for approval, please.

Aquaculture and Foreshore Management Division.

## **Comments**

**ODonovan, Geraldine** 31/10/2019

I recommend the refusal of licences for this site (T06/505A) as outlined in the Aquaculture and Foreshore Licence Submissions.

**Horan, Helena** 05/11/2019

I agree with the recommendation that the application for Aquaculture and Foreshore licences be refused for the reasons outlined.

**Quinlan, John** 06/11/2019

Refusal is recommended in this case please.

**Beamish, Cecil** 06/11/2019

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

**Smith, Ann** 06/11/2019

Approved for submission to Minister. AS 06/11/2019

**Lennox, Graham** 07/11/2019

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