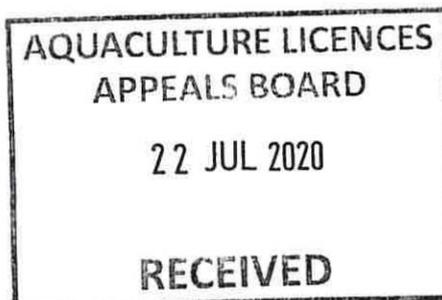


**An Roinn Talmhaíochta,
Bia agus Mara**
Department of Agriculture,
Food and the Marine



Ms. Mary O'Hara
Secretary to the Board
Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5



21st July 2020

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine under the provisions of Section 68(1) and Section 19(A)4 of the Fisheries (Amendment) Act 1997 (as amended), in respect of entitlement by Silver King Seafoods Limited t/a Mowi Ireland to continue aquaculture operations under the provisions of Section 19(A)4 of the Act for the culture of salmon in cages at a site east of Deenish Island, Ballinskelligs Bay, Co. Kerry, T06/202

Dear Mary,

I refer to your letter of 24th June 2020 where you set out the details of the additional information required by the Board in relation to the above-named aquaculture licence. I have set out hereunder in detail the Department's response to the various matters raised. You will note that in several cases we have addressed the issues raised compositely as this provides a more holistic response to the issues raised. The Department's response in a number of instances draws upon material already supplied to ALAB and it is strongly recommended that the text hereunder is read in conjunction with the detailed correspondence previously issued to ALAB including:

- Department's letter of 11th December 2019 - Material requested in ALAB's letter of 17th May 2019, including all 3 submissions, the aquaculture licence and location map.



- Letter from Minister's Office of 19th December 2019 – Observations submitted to ALAB under Section 44(2) of the Fisheries (Amendment) Act 1997.
- Chief State Solicitor's Office letter of 3rd March 2020. Submissions/Observations submitted to ALAB under Section 46 of the Fisheries (Amendment) Act.

Copies of the above correspondence are attached for your convenience.

1. *"Copies of the records held by the Department of Agriculture, Food and the Marine (DAFM) regarding the annual harvested tonnage produced at Site T06/202 Deenish Island for the last 30 years or, if DAFM records do not subsist for that period, for such a shorter period for which DAFM holds such records"*

You will appreciate that due to the ongoing COVID-19 crisis there are considerable necessary restrictions on the number of staff that can attend the normal workplace. In these circumstances access to the records requested is currently limited to what can be accessed electronically by officers remotely from the office. The Department has, in the context of the constraints currently in place conducted an electronic only search of its records. The records available for search electronically were for the most part confined to the most recent ten-year period. The following records were identified and are attached for your attention:

- Mowi email of 24th February 2017 to the Department (2016 harvest figures)
- Mowi email of 24th June 2019 to the Department (2018 harvest figures)

2. *"Information as to the monitoring regime followed by DAFM (or its agencies) for the purposes of monitoring of annual tonnage harvested at finfish sited licences by the Minister"*

Aquaculture licences are issued in accordance with the applicable national and EU legislation which includes:

- Fisheries (Amendment) Act 1997
- Foreshore Act 1933
- EU Habitats Directive of 92/43/EEC
- EU Birds Directive 79/409/EEC



- Consolidated Environmental Impact Assessment Directive 2011/92/EU
- Consolidated Environmental Impact Assessment Directive 2014/52/EU
- Public Participation Directive (Aarhus Convention)

The licensing process involves consultation with a wide range of scientific and technical advisers as well as various Statutory Consultees. The legislation also provides for a period of public consultation. In addition to the above legislation the Department must adhere to a wide range of regulatory requirements and other legislation which impact on the licensing process.

As you are aware the aquaculture operator in this case is operating subject to the provisions of 19(A) 4 of the 1997 Fisheries Act (As amended) which states:

"A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application."

As can be seen the licence holder's entitlement to operate at the Deenish site is subject to the terms and conditions of the original licence. In addition it is clear from the judgment in the *Murphy's Irish Seafood v MAFM*, [2017] IEHC 353 case that the Court concluded that an operator operating under Section 19A(4) of the 1997 Act must be treated as equivalent to a licensee under Section 68 of that Act (Section 68 of the Act provides for the revocation or amendment of aquaculture licences).

Aquaculture licence conditions in relation to harvest/production limits are site specific and set out clearly what is permissible at the relevant aquaculture site. The licence holder is directly responsible for compliance with all licence conditions including any condition setting harvest limits. The Department's Marine Engineering Division conducts a programme of routine inspections of finfish aquaculture sites. The inspections are generally conducted on an annual basis and by prior appointment with the licence holder. The Engineer will conduct a visual inspection of the site structures and location. In addition, the licence holder is requested to provide information



concerning the harvest tonnage, dates of harvest etc. **It should be noted that this information is provided by the licence holder and is not independently verified by the Department's engineer.**

The licence holder is generally supplied with a copy of the report of the Marine Engineering Inspection and requested to confirm that any necessary remedial action has been taken. In relation to the "**monitoring regime followed by DAFM (or its agencies) for the purposes of monitoring of annual tonnage harvested**", it is the standard practise of the Department to conduct a review of the relevant records and to take appropriate action where a possible breach of licence conditions has been identified. This includes:

- Convening a meeting with the licence holder to afford them an opportunity to outline their position in relation to the reported breach of the aquaculture licence condition.
- Consideration of any new information provided to the Department by the operator at that meeting.
- If appropriate, the issue of a letter to the licence holder advising that under the provisions of Section 68 of the 1997 Fisheries Act (As amended) consideration is being given to the termination of the Licence Holder's statutory entitlement to continue aquaculture operations at the relevant site. The licence holder is in accordance with the legislation, afforded 28 days in which to make representations to the Minister in relation to the proposed cessation of its statutory entitlement to operate.
- Consideration of any representations made by the licence holder.
- Preparation of a detailed submission on the matter for the consideration of the Minister with a recommendation for proposed action on foot of the breach of licence conditions.

Please refer to the attached copies of submissions made to the Minister in the case of the Deenish aquaculture site.

Note: *Where the Department's Engineer forms the view that the stock held on site at the date of the inspection is likely to give rise to a future excess harvest/production this is generally brought to the attention of the operator where appropriate.*



3. “A copy of the DAFM policy or policies whereby DAFM (or its agencies) deal with incidents of harvesting of excess tonnage on such sites”

Aquaculture licences are issued in accordance with the applicable national and EU legislation. The licence conditions in relation to harvest limits are site specific and clearly identified in the licence. **Department actions taken on foot of an identified breach of an aquaculture licence condition are informed by and derive directly from the legislative requirements in relation to breaches of aquaculture licence conditions.**

4. “If no policy exists concerning annual harvesting of excess tonnage on such sites, details of all sites for which DAFM (or its agencies) have noted harvesting in excess of licenced tonnage in the past 30 years or for such lesser period as DAFM (or its agencies) records subsist or, if DAFM (or its agencies) form the view that it (or they) are unable to provide such detail to ALAB, then, on an anonymised basis, details of the number of sites over the period where annual harvesting of excess tonnage has been recorded”

As outlined in Section (3) above Department actions taken on foot of an identified breach of an aquaculture licence condition are informed by and derive directly from the legislative requirements in relation to breaches of aquaculture licence conditions. The licence conditions in relation to harvest limits are site specific and clearly identified in the licence.

The Department has noted your request for details of sites where the harvested tonnage was in excess of what was licensed for the “**past 30 years**”. Again, and as previously outlined the Department has, in the context of the constraints currently in place conducted an electronic only search of its records. The records available for search electronically were for the most part confined to the most recent ten-year period. The following table provides on an anonymised basis details of instances where the harvested tonnage was in excess of what was licensed for particular aquaculture sites:



	Year	Licensed Tonnage	Reported Harvested Tonnage	Excess Tonnage Harvested	Excess
Site A	2016	500	1,119	619	123.8%
	2015	500	615	115	23%
Site B	2015	600	1075	475	79.1%
	2017	600	1763.8	1163.8	193.96%
	2019	600	1139.554	539.554	89.9%
Site C	2016	1000	1196.4	196.4	19.6%
	2017	1000	1153.7	153.7	15.37%

Note:

- 1) Harvest figures were provided by the operator.
- 2) The figures above represent reported harvests in excess of what is permitted under the relevant licence condition at a number of sites. Determinations on whether a breach of a licence condition capping harvest levels has occurred can only be made by the Minister. The Department has however initiated a formal process in respect of a breach of harvest licence conditions in respect of a number of the above reported excess harvests. These proceedings form part of a statutory process and it would not be appropriate to comment further at this time.

5. ***“Details of the action or actions taken by the Minister (or its agencies) in each such circumstance”***

and

6. ***“Details as to the sanctions or penalties (if any) which DAFM has imposed on other such licenced operators”***

As stated above, aquaculture licences are issued in accordance with the applicable national and EU legislation. All Department actions taken on foot of an identified breach of an aquaculture licence condition derive from the provisions of the relevant legislation. The licensee in the case currently under consideration by the Board is operating under the provisions of Section 19 A(4) of the 1997 Fisheries Act (As amended) and I would draw your attention to the text in Section (3) above in this regard.



The Minister's options in relation to sanctions and penalties are comprehensively set out in the submissions made to the Minister in this case. *(Copies of the detailed submissions made to the Minister are attached for your information).*

The table on the next page sets out the position in relation to identified breaches of licence conditions where a determination was made by the Minister.



Reference	Site	Identified Breach of licence condition.	Determination by Minister
T12/093/3	Lough Altan (Mowi)	Breach of Condition 11 of the Licence which states: "The Annual Production of salmon smolts shall not exceed 2.5 million smolts."	Determination that a breach did occur and to amend the licence.
T05/233	Inishfarnard (Mowi)	Breach of condition 2(d) of the licence which states: <i>"the stock of fish in the cages shall not exceed such quantity as may be specified by the Minister from time to time, the number of smolts to be stocked at the site should not in any event exceed 400,000. Licensed stocking densities are not to be exceeded and will be subject to inspection at any time by the Department of the Marine;"</i>	Determination that a provable breach did not occur and to amend the licence. Appealed to ALAB who subsequently overturned the Minister's decision and substituted the amendment proposed by the licence holder in its letter of appeal to ALAB. *(see note below at No.7)
T06/202	Deenish (Mowi)	Breach of condition 2(e) of the applicable aquaculture licence which states: <i>"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"</i>	Determination to discontinue the entitlement of Silver King Seafoods Ltd to continue aquaculture operations.



There are in addition a number of cases currently under consideration for which correspondence has issued under the provisions of Section 68 of 1997 Fisheries Act (As amended) and it would not be appropriate to comment on these cases at this time. The details of cases where the Minister has made a determination under the provisions of Section 68 of the 1997 Fisheries Act (As amended) are available on the Department's website at the following link:

<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/ministerialdecision-section68ofthefisheriesamendmentact1997/>

7. Full details of whether DAFM has revoked any other finfish licence, whether for annual harvesting of excess tonnage or for any other reason.

The table provided at No. 6 above sets out the details of cases where the Minister made a determination in relation to breaches of Aquaculture Licence conditions. In the case of Inishfarnard the Minister determined that an amendment should be made to the conditions of the aquaculture licence. This determination was appealed to ALAB which determined as follows:

"To uphold the appeal and amend the conditions of the Licence by:

- 1. Deleting Conditions 2(d) and 2 (e) of the Licence; and***
- 2. Substituting as a new condition the following:-***

"The cages or pens shall be subject to a Maximum Allowable Biomass of 2,200 tonnes, being the Maximum Standing Stock permitted at the licensed area. The stocking of the licensed area shall be subject to inspection at any time by the Department of Agriculture, Food and the Marine"

In the case of Deenish and as stated in the Department's letter of 19th December 2019 to you ***"It is the consistent view of the Department that the Minister's decision to treat as discontinued the statutory entitlement of Silver King Seafoods Ltd. (a wholly owned Company of Comhlucht Iascaireacta Fanad Teoranta (Mowi Ireland)) to continue aquaculture operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act, is warranted by the undisputed***



facts of this case and is proportionate having regard to the very significant excess in the stock harvested (121% excess)". The extent of the breach in this case is very significant by any standard and occurred in circumstances where the operator was fully aware of the limits set by the specific condition of the licence governing harvest tonnage. Failure by the Department to take appropriate action as set out in the legislation would only serve to bring the Department's Regulatory Regime into disrepute with serious consequences for the aquaculture sector as set out in the letter of 19th December 2019 sent to you by the Minister's Office.

I hope you find the above information helpful and if I can be of any further assistance please do not hesitate to contact me.

Yours Sincerely,

Kevin Hodnett

Assistant Principal Officer

Aquaculture & Foreshore Management Division

Enclosures:

- Copy of Department's letter of 11th December to ALAB.
 - Aquaculture Licence – T06/202 AQ199 Deenish
 - Submission AGR00116-19 – March 2019
 - Submission AGR00396-18 – July 2018
 - Submission AGR00228-17 – November 2017
 - Decision Letter to Mowi dated 12th April 2019
 - Location Map
- Copy of Minister's Office letter dated 19th December to ALAB
 - Section 44(2) Observations
- Copy of Chief State Solicitors Office letter of 3rd March 2020 to ALAB
 - Section 46 Submission/Observation on behalf of the Minister
- Copy of Mowi email of 24th February 2017
- Copy of Mowi email of 24th June 2019

**An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine**



COPY

Ms. Mary O'Hara
Secretary to the Board
Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5

11th December 2019

Re: AP1/2019 – Appeal against the notice of Ministerial decision of the Minister for Agriculture, Food and the Marine under the provisions of Section 68(1) and Section 19A(4) of the Fisheries (Amendment) Act 1997, in respect of the entitlement to continue Aquaculture Operations under the provisions of Section 19A(4) of the Act for the culture of Salmon in cages at a site east of Deenish Island, Ballinskelligs Bay, Co. Kerry, T06/202 held by Silver King Seafoods Limited, a wholly owned company of Comhlucht Iascaireachta Fanad Teoranta (Mowi Ireland), Fanad Fisheries, Kindrum, Fanad, Letterkenny, Co. Donegal

Dear Mary,

This is further to the Board's letter of 17th May 2019 concerning the appeal by Mowi Ireland against the Minister's decision to treat as discontinued the Statutory entitlement of Silver King Seafoods Limited (a wholly owned Company of Comhlucht Iascaireachta Fanad Teoranta (Mowi Ireland)) to continue aquaculture operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act. The Court ordered a Stay on this in view of the Judicial Review proceedings initiated by the Company in respect of the



Minister's decision. As you know this Stay was lifted on Monday 2nd December 2019. Accordingly, I enclose for the consideration of the Board, a copy of the material sought in its letter of 17th May 2019. (Legal Advice to the Minister has been redacted in accordance with standard procedures).

Please note also that having regard to the scope and content of the appeal lodged by the Company the Department will forward observations in writing to the Board in accordance with Section 44(2) of the Act within the timeline specified.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'John Quinlan', is written over a horizontal line.

John Quinlan

Principal Officer

Aquaculture & Foreshore Management Division

Department of Agriculture, Food and the Marine

National Seafood Centre

Clonakilty

Co. Cork

P85 TX47

CERTIFICATION OF RENEWAL
OF
AQUACULTURE LICENCE No.199
AND
FORESHORE LICENCE No.199

Dated 30 January 1995

This is to certify that the above-mentioned licences have been renewed, subject to the modification of the Aquaculture Licence specified below, with the approval of the Minister of State at the Department of Communications, Marine and Natural Resources, for the period up to and including 15 February 2007 subject to the terms and conditions thereof and subject to the provisions of the Fisheries (Amendment) Act, 1997 (No. 23), as amended.

Aquaculture Licence

- substitution for condition 2(l) of the following condition

- 2(l)(i) *The Licensee shall fallow the licensed area for at least 30 continuous days before restocking with fish of a different generation, in accordance with the requirements of the Department of Communications, Marine and Natural Resources (Protocol No. 5 Fallowing Offshore Finfish Farms, as may be revised from time to time).*
- 2(l)(ii) *The Licensee shall undertake Benthic Monitoring of the licensed area in accordance with the detailed specifications of the Department of Communications, Marine and Natural Resources (Monitoring Protocol No. 1 for Offshore Finfish Farms - Benthic Monitoring, as may be revised from time to time) and promptly prepare and implement a Benthic Amelioration Plan if permitted parameters are breached.*
- 2(l)(iii) *The Licensee shall undertake Water Column Monitoring of the licensed area in accordance with the detailed specifications of the Department of Communications, Marine and Natural Resources (Monitoring Protocol No. 2 for Offshore Finfish Farms - Water Column Monitoring, as may be revised from time to time) and promptly take any required follow-up action in the light of the results of that monitoring.*
- 2(l)(iv) *The Licensee shall arrange for the treatment of fish against sea-lice and shall comply with the detailed specifications of the Department of Communications, Marine and Natural Resources (Monitoring Protocol No. 3 for Offshore Finfish Farms - Sea lice Monitoring and Control, as may be revised from time to time).*
- 2(l)(v) *The Licensee shall co-operate in the audit from time to time of its aquaculture operations and licensed area and facilities and premises in accordance with the detailed specifications of the Department of Communications, Marine and Natural Resources (Monitoring Protocol No. 4 for Offshore Finfish Farms - Audit of Operations, as may be revised from time to time)*

Signed: _____

A person authorised under Section 15 of the Minister and Secretaries Act, 1924, to authenticate the seal of the Minister for Communications, Marine and Natural Resources

Dated this 4 AUG 2004

CERTIFICATE OF ASSIGNMENT

OF
AQUACULTURE LICENCES No's. AQ 198, AQ 199 AND AQ 299.

AND
FORESHORE LICENCES No's AQ 198, AQ 199 AND AQ 299

This is to certify that the Licences referred to above have been assigned, with the approval of the Minister of State at the Department of Communications, Marine and Natural Resources, from:

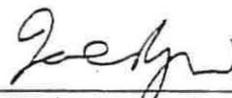
Murpet Fish Ltd.

to

Silver King Seafoods Limited
c/o John Power
Curryglass
Waterfall
Co. Cork

subject to the terms and conditions thereof.

Signed:



A person authorised under Section 15
of the Ministers and Secretaries Act 1924,
to authenticate the seal of the Minister for
Communications, Marine and Natural
Resources.

31 July 2004

FCL 199
File copy

CERTIFICATION OF ASSIGNMENT

LICENCES Nos. FCL1, FCL11, FCL64, FCL77, FCL198, FCL199 and FCL299, GRANTED IN ACCORDANCE WITH SECTION 15 OF THE FISHERIES (CONSOLIDATION) ACT, 1959.

(deemed to be Aquaculture Licences under the Fisheries (Amendment) Act, 1997)

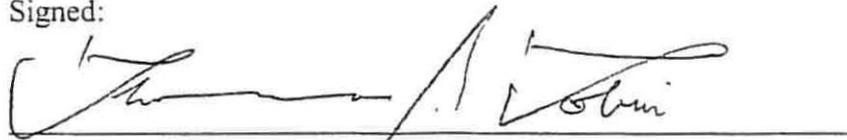
and

LICENCES NOS. FCL 198, FCL 199 AND FCL 299, GRANTED IN ACCORDANCE WITH SECTION 3 (1) OF THE FORESHORE ACT, 1933

This is to certify that the above mentioned licences have been assigned with the approval of the Minister of State at the Department of the Marine and Natural Resources, on behalf of the Minister for the Marine and Natural Resources, to Murpet Fish Ltd., Fintra Road, Killybegs, Co Donegal with effect from 15 November, 1999, subject to the terms and conditions thereof.

By virtue of Section 75 of the Fisheries (Amendment) Act, 1997 (No. 23) the above mentioned licences under the Fisheries (Consolidation) Act, 1959 are deemed to be Aquaculture Licences under the Fisheries (Amendment) Act, 1997 and therefore shall be subject to the provisions of the last mentioned Act.

Signed:



A person authorised under Section 15 of the Minister and Secretaries Act, 1924, to authenticate the seal of the Minister for the Marine and Natural Resources.

Date: 15 November, 1999

DEENISH

FCC 199

AGREEMENT made the 30th day of January, 1995.

1. The Minister for the Marine, (hereinafter referred to as "the Minister"), in exercise of the powers conferred on him by Section 15 of the Fisheries (Consolidation), Act, 1959, and the Fisheries (Transfer of Departmental Administration and Ministerial Functions) Order, 1977 (S.I. No. 30 of 1977), (as adapted by the Tourism, Fisheries and Forestry (Alteration of Name of Department and Title of Minister) Order, 1987 (S.I. No. 82 of 1987)), hereby grants to Gaelic Seafoods (Ireland) Ltd., whose registered address is at Rusheenamanagh, Carna, Co. Galway (hereinafter referred to as "the Licensee"), at the place and in the waters delineated on the map annexed hereto and thereon coloured red (hereinafter referred to as "the fishery"), the exclusive right to
 - (a) perform all operations necessary for the culture of salmon in cages, details of which have been submitted to and approved by the Minister placed in that area east of Deenish Island in Ballinskelligs Bay, Co. Kerry, designated in the agreement dated the 30th day of January, 1995 and the map annexed thereto between the Licensee and the Minister;
 - (b) at any time of year to purchase, have in possession or sell salmon and salmon smolts, the acquisition of which has been approved by the Minister;
 - (c) at any time of year to take and have in possession salmon and salmon smolts within the confines of the area referred to at (a) above;
 - (d) for the management of the fishery, to have in possession and use nets, traps or other such devices as may be approved by the Minister for the taking of salmon as aforesaid.

2. This licence shall be subject to the following conditions:

- (a) no fish other than salmon shall be cultured or taken under the terms of this licence without the prior written permission of the Minister;
- (b) the Licensee shall make adequate arrangements to ensure that the cages shall not obstruct the passage of migratory fish and shall take all measures necessary to prevent the escape of salmon from the cages and shall carry out any instructions issued in this connection by the Minister;
- (c) the licensee shall ensure that all towing of cages for any reason to and from the fish farm site is carried out only with the prior notification to and approval of the Minister;
- (d) the stock of fish in the cages shall not exceed such quantity as may be specified by the Minister from time to time, the number of smolts to be stocked at the site should not in any event exceed 400,000. Licensed stocking densities are not to be exceeded and will be subject to inspection at any time by the Department of the Marine;
- (e) the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year.
- (f) all chemicals and antibiotics used in the fishery shall be used in accordance with instructions issued by the Minister from time to time;
- (g) the Licensee shall keep records of all chemicals and antibiotics with which the fish have been treated, including quantities and times of use;

- (h) The Licensee shall notify the Secretary, Department of the Marine, (Aquaculture Section), Leeson Lane, Dublin 2, and the Fisheries Research Centre (Fish Pathology Unit), Abbotstown, Castleknock, Dublin 15, within forty-eight hours of the suspected appearance of any disease in the fishery or of any abnormal losses or mortalities in the fishery and shall carry out any instructions issued by the Minister as a result of the notification including instructions relating to the treatment, disposal and destruction of diseased stocks;
- (i) disposal of all dead fish shall be in a manner acceptable to the local authority;
- (j) the Licensee shall notify the Secretary, Department of the Marine, (Aquaculture Section), Leeson Lane, Dublin 2, within twenty-four hours of any escapes of fish from the fishery and shall keep records of fish escaped, including numbers, types, origin and year classes and shall make these records available to the Secretary on request;
- (k) the Licensee shall furnish to the said Secretary at the said address such returns relating to the fishery as may be required by the Minister;
- (l) the Licensee shall carry out such monitoring as the Minister shall specify from time to time and the results of such monitoring shall be furnished to said Secretary;
- (m) the licensee shall ensure that water quality monitoring is continued for the duration of this licence in accordance with specifications laid down by the Minister, which may be modified from time to time, and results should be forwarded to the Fisheries Research Centre at agreed regular intervals;

- (n) the licensee shall, before the end of each year for the duration of this licence, forward to the Fisheries Research Centre, annual review/update of water chemistry and other environmental parameters to assess the impact of operations at the fish farm;
- (o) the licensee shall ensure that sea-lice densities are monitored regularly and that all warranted measures are taken to ensure that lice densities are minimised and the licensee shall comply with any instructions issued by the Minister in this regard;
- (p) live salmon and salmon smolts shall not be sold or disposed of to any person or in any way transferred outside the said fish farm save in accordance with the prior written permission of the Minister;
- (q) the licensee shall keep the Secretary, Department of the Marine advised of ongoing precautionary measures to deal with naturally occurring algal blooms in the area of the fish farm;
- (r) the fishery and any equipment, structure, thing or premises wherever situated, used in connection with operations carried on in the fishery shall be open for inspection at any time by an authorised person (within the meaning of section 292 of the Fisheries (Consolidation) Act, 1959 (No.14 of 1959) (as amended by the Fisheries Act, 1980) other than a private water keeper), a sea fisheries protection officer (within the meaning of section 220 of the Fisheries (Consolidation) Act, 1959) or any other person appointed in that regard by the Minister;

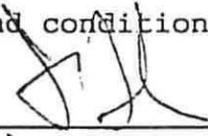
- (s) the Licensee shall give all reasonable assistance to an authorised person, a sea fisheries protection officer or any person duly appointed by the Minister, to enable the person or officer enter and inspect the fishery, equipment, structures, things or premises pursuant to sub-paragraph (r) of this paragraph;
- (t) the Licensee shall not use any substance or thing or do anything which has a deleterious effect on the fishery environment including the use of organotin based anti-foulants and shall make adequate arrangements for the hygienic and disease-free operation of the fishery and shall comply with any directions issued by the Minister from time to time in that regard;
- (u) the Licensee shall not carry out any operations authorised by this licence in the fishery in such a manner as to interfere unreasonably with fishing or navigation in the vicinity of the fishery and shall comply with any direction given to it in that regard by the Minister;
- (v) the Licensee shall make adequate provision for the removal and disposal of all waste from the fishery;
- (w) the Licensee shall indemnify and keep indemnified the State, the Minister, his officers, servants or agents against all actions, loss, damage, costs, expenses and any demands or claims howsoever arising in connection with the construction, maintenance or use of any structures, apparatus, equipment or other thing used in connection with the fishery or in the exercise of the rights granted under this licence and the Licensee shall take such steps as the Minister may specify in order to ensure compliance with this condition;

- (x) the Licensee shall obtain the consent of the Minister to any proposed major change in the shareholding or control of the Licensee where such change substantially alters the identity of the Licensee;
 - (y) this licence shall remain in operation until the 15th day of February, 2001 subject to the payment of the fee prescribed by the Department of the Marine;
3. The Minister shall be at liberty at any time to revoke or amend this licence if he considers that it is in the public interest to do so or if he is satisfied that there has been a breach of any condition specified in the licence or that the fishery to which the licence relates is not being properly maintained. Any such revocation or amendment shall be subject to the provisions of section 15 of the Fisheries (Consolidation) Act, 1959.
 4. This licence will remain subject to ongoing review in light of continued monitoring of, and research into, the two marine sites and neighbouring sea trout fisheries which may be undertaken by the Salmon Research Agency and/or the Fisheries Research Centre.
 5. In the event of proven contra-indications for sea trout stocks causatively linked to the fish farming operations permitted under this licence, the Minister may exercise his discretion to take any necessary protective measures ranging from reduction in permitted production levels to revocation of the licence and harvesting of all stock.
 6. The number given to the Licensee under this licence shall be FCL 199.
 7. This licence is not transferable.

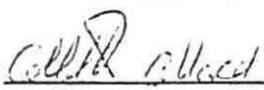
8. This Licence replaces the licence dated 15th day of February, 1991 between the Minister and Salmara Fisheries Ltd.

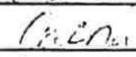
<u>PRESENT</u> when the Seal of Office)	
of the MINISTER FOR THE MARINE)	
was affixed and was authenticated)	
by the Signature of:)	_____
_____)	a person authorised
in the presence of:)	under section 15(1)
WITNESS: _____)	of the Ministers and
ADDRESS: _____)	Secretaries Act,
_____)	1924 to authenticate
OCCUPATION: _____)	the Seal of the
)	Minister.

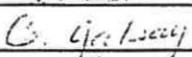
I agree, on behalf of Gaelic Seafoods (Ireland) Ltd. to accept the terms and conditions of this licence.

Signed: 

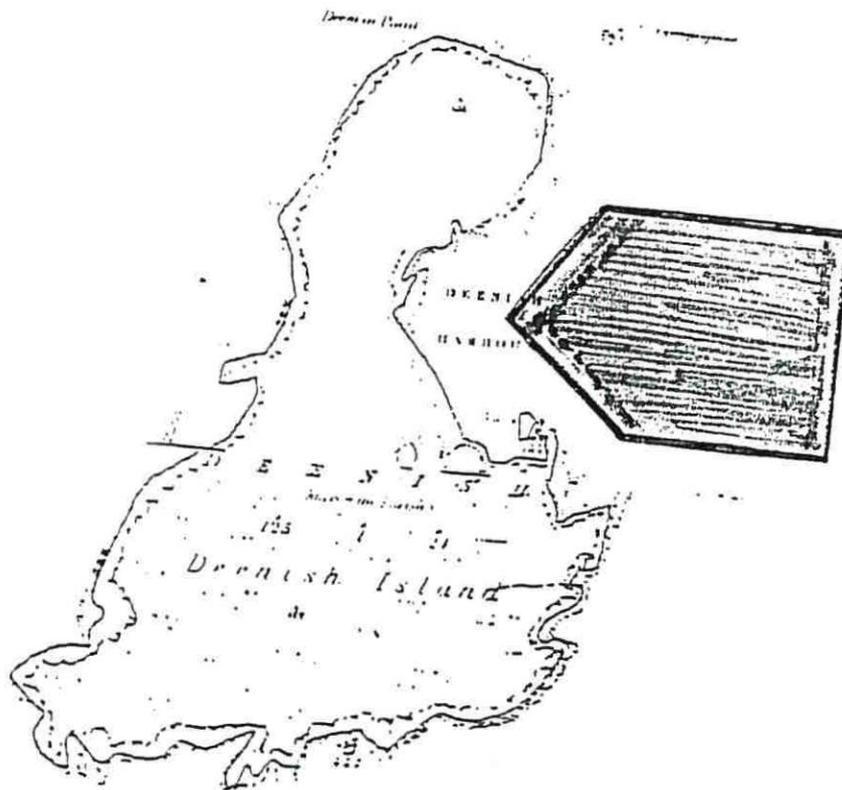
Date: SEPTEMBER 14th 1995

Witness: 

Address: 



Occupation: Regional Assistant



DEPARTMENT OF THE MARINE
Leeson Lane, Dublin, 2. Tel No.
Engineering Section. Fisheries Division

BASED ON THE ORDNANCE SURVEY BY
PERMISSION OF THE GOVERNMENT
PERMIT No 4204
COUNTY KERRY Scale No: 105

Dated 30th January, 1995

MINISTER FOR THE MARINE
WITH
GAELIC SEAFOODS (IRELAND)
LIMITED

FISH CULTURE LICENCE

Submission AGR 00116-19: Correspondence with MOWI Ireland (Marine Harvest Ireland)

TO: Minister
STATUS: Completed
PURPOSE: For Decision

AUTHOR: Quinlan, John
OWNER: Quinlan, John
REVIEWERS: Beamish, Cecil
Kelly, Aiden

DIVISION: Coastal Zone Management
DECISION BY:

Final comment

Minister has approved the course of action submitted

Action required

Ministerial decision for issue of correspondence.

Executive summary

The submission concerns draft correspondence for possible issue to MOWI Ireland in respect of previous submissions and discussions with the Minister concerning possible overharvesting at the Company's site at Durnish, Co. Kerry. Draft correspondence is attached for decision.

COPY

Detailed information

1. The purpose of the Submission is to recommend to the Minister the following draft communications in respect of an Aquaculture Licence (T06/202) held by Silver King Seafoods Limited a wholly owned Company of Comhlucht Iascaireachta Fanad Teoranta (MOWI Ireland). It is understood that the Minister has requested that the draft communications be forwarded for consideration.
 - a. Draft Letter to the Company advising them of the Minister's Decision to treat as discontinued the statutory entitlement of Silver King Seafoods Limited, a wholly owned Company of Comhlucht Iascaireachta Fanad Teoranta (MOWI Ireland) to continue aquaculture operations at the site.
 - b. Draft notice for the Department's website.
 - c. Draft public notice for the local newspaper.
2. This follows consideration by the Minister of Submission AGR 00396-18 of 11th July 2018 and Submission AGR 00228-17 of 1st November 2017. The drafts at 1 above have been approved by Legal Services Division. In accordance with the previous submissions and discussions the attached drafts are recommended for issue as considered appropriate.

The draft letter to the Company has been drafted for signature at official level. From a legal perspective it does not matter which official signs but it is suggested that it should be either Head of the Licensing Division, at Assistant Secretary level or Secretary General level.
3. **Communication with MOWI ASA, Norway**

It is understood that, following the communication of the Minister's decision to the Company, a separate letter may issue to the company's corporate headquarters extending an invitation to discuss licence compliance. A draft letter is attached for the signature of the Minister's Private Secretary.

Related submissions

There are no related submissions.

Comments

Beamish, Cecil - 22/03/2019 17:51

Submitted for consideration and Ministerial Decision that Letter (a) attached should issue from the Principal Officer of the Aquaculture & Foreshore Management Division to the Company informing the company of the Ministers Decision in this case and that the Runai Aire should as soon as the first letter has issued ,issue the second letter to the CEO of the overall holding company in Norway inviting him to a meeting with the Minister. Finally for Ministerial decision to in conjunction issue the draft public notice and website notices attached.

Kelly, Aiden - 03/04/2019 16:15

Approved by the SG for submission to the Minister. AK 03/04

Lennox, Graham - 10/04/2019 11:42

Minister has approved the course of action submitted

User details

INVOLVED: Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
eSub Sec Gen
eSub Ministers Office
eSub Minister

READ RECEIPT: Quinlan, John
Beamish, Cecil
Smith, Ann
Kelly, Aiden
Lennox, Graham
Kilroy, Aine

Action log

ACTION	USER	DATE	DESCRIPTION
Create	Quinlan, John	13/03/2019 14:56	Submission AGR 00116-19 to Minister created.
Submit for review	Quinlan, John	13/03/2019 15:01	Submission sent for review to Beamish, Cecil.
Submit for review	Beamish, Cecil	22/03/2019 17:52	Submission sent for review to Secretary General.
Submit for review	Kelly, Aiden	03/04/2019 16:15	Submission sent for review to Minister.
Complete	Lennox, Graham	10/04/2019 11:42	Submission completed by Lennox, Graham.

Submission AGR 00396-18: T6/202 Deenish Submission to Minister

TO:	Minister	AUTHOR:	Quinlan, John
STATUS:	Completed	OWNER:	Quinlan, John
PURPOSE:	For Decision	REVIEWERS:	Beamish, Cecil
DIVISION:	Coastal Zone Management		
DECISION BY:			

Final comment

Minister wishes to have a further meeting with officials from the Licencing Division and Legal Services Division before finalising his consideration of the issue and deciding on a course of action.

Action required

For Ministerial Decision

Executive summary

The purpose of the submission is to provide a further update to the Minister on developments relating to the harvesting of salmon by Marine Harvest Ireland in excess of what is permitted under the terms of the Aquaculture Licence at the above site and to take account of developments since the previous submission (00228-17 of 1st November 2017) which set out the situation in detail.

On 30th November 2018 the Minister determined that there should be a meeting with Legal Services Division and others and that a further submission should be made containing a recommendation on a specific course of action. Two subsequent meetings were convened in accordance with the Minister's decision. At both meetings there was a broad discussion on the policy and legal issues that arose.

The recommendation of the Division in respect of this case is as follows:

It is recommended:

- (a) That the Minister determines that Condition 2(e) of the applicable aquaculture licence which sets out the harvest limits has been breached by the operator.

- (b) That the Minister treat as discontinued the entitlement of Silver King Seafoods Ltd. (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act.

Detailed information

Recommendation to treat as discontinued the entitlement of Silverking Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act

(T6/202 - Deenish)

Submission to the Minister

From: John Quinlan, Principal Officer, Aquaculture & Foreshore Management Division.

To: 1) Dr Beamish, Assistant Secretary

2) Secretary General

3) Runai Aire

Date: 11th July 2018

1. Purpose of the Submission

The purpose of the submission is to provide a further update to the Minister on developments relating to the harvesting of salmon by Marine Harvest Ireland in excess of what is permitted under the terms of the Aquaculture Licence at the above site and to take account of developments since the previous submission (00228-17 of 1st November 2017) which set out the situation in detail. The full text of submission 00228-17 is attached at **TAB 8**.

On 30th November 2018 the Minister determined that there should be a meeting with Legal Services Division and others and that a further submission should be made containing a recommendation on a specific course of action.

Meetings of 19 December 2017 and 22 February 2018

On 19th December 2017 a meeting took place involving the Secretary General, Assistant Secretary Beamish, officials from AFMD and officials from Legal Services Division to discuss the case.

On 22nd February 2018 a meeting took place involving the Minister, Secretary General, Assistant Secretary Beamish, officials from the Minister's office, from AFMD and from Legal Services Division.

At both meetings there was a broad discussion on the policy and legal issues that arose for the operator, the industry in general and for the licensing regime.

Condition 2(e) of the licence states that: "***the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year***" but in the year 2016 the operator harvested **1108.91 tonnes** of salmon from the site which represented an excess of **121.78%** over the permitted tonnage under the licence conditions.

It is recommended

(a) That the Minister determines that Condition 2(e) of the applicable aquaculture licence which sets out the harvest limits has been breached by the operator.

(b) That the Minister treat as discontinued the entitlement of Silver King Seafoods Ltd. (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act.

2. Background

The licence in question (T6/202) was held by Silver King Seafoods Limited, a wholly owned subsidiary of Marine Harvest Ireland. The

licence expired on 15th February 2007 and as a renewal application has been received by the Department, the relevant aquaculture activity is governed under the provisions of Section 19(A)4 under the 1997 Fisheries (Amendment) Act which states:

"A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application."

The Aquaculture & Foreshore Management Division (AFMD) has, on foot of inspections conducted at the site by the Marine Engineering Division, given detailed consideration to possible breaches of aquaculture licence conditions by the Company.

This submission and the recommendation contained therein is based on harvested tonnage in excess of the permitted cap. **The figures in question have been supplied by the operator.**

The full text of the licence is attached at **TAB 1**.

3. Temporary amendment to the Aquaculture Licence granted in October 2012 (Pilot Project)

The company applied for a temporary amendment of the Aquaculture Licence in 2011 so as to facilitate a once-off pilot project involving the use of maximum standing stock biomass as a means of gauging and capping production capacity rather than tonnage. The temporary amendment was granted by the Aquaculture Licences Appeals Board (ALAB) on 31st October 2012. This temporary amendment ceased on 31st March 2015 and the Company received a written reminder to this effect on 27th March 2015. A condition of this amendment was that it ***"is strictly a once off pilot for this site only and that any repeat of the stocking pattern would have to be considered, inter alia, in light of the outcome of the monitoring and the progress of the implementation of overall licensing policy towards the use of "maximum standing stock biomass" as a control point in licence terms and conditions"***.

4. Harvesting in excess of maximum permitted under the terms and conditions of the Aquaculture Licence

(Now operating however under the provisions of Section 19(A)4 of the 1997 Fisheries Amendment Act)

The key points in relation to the temporary amendment which facilitated the pilot project are:

1. The amendment was time bound and expired on **31st March 2015**.
2. Marine Harvest Ireland were written to on **27th March 2015** and were reminded of the expiry of the amendment.
3. The Marine Harvest Ireland report on the Pilot Study dated **20th January 2015** acknowledged that the amendment was for two years duration.

Details of the conditions of the Pilot Study Communications and Reports are attached at **TAB 3a-c**

5. Engineering Reports and Company response of 29th January 2016

The Department's Marine Engineering Division (MED) carried out an inspection at the site on the 2nd July 2015. The MED Report advised of an excess stock of smolts in the order of 84% and also referred to the permitted harvest limit of 500 tonnes (dead weight) in a year.

The Engineering Report was forwarded to the Company on 6th January 2016. The Company was advised that remedial actions necessary on foot of the Engineering Report should be completed within 2 weeks of the letter that issued. On 29th January 2016 the Company responded and raised the following key points:

1. The company queried the accuracy of the MED Report in respect of the type of fish stocked (smolts v salmon).
2. The Company stated that no harvest had taken place at the site (in 2015)
3. The Company stated there had been no exceedance of the maximum harvest allowable.

The Engineering Report is attached at **TAB 2a**.

6. Meeting with the Company 14th March 2016

The Department convened a meeting with the Company on 14th March 2016. The purpose of the meeting was to afford the Company an opportunity to outline further its position on overstocking in respect of Deenish and also another site at Inishfarnard which has been the subject of a separate submission. At the meeting the Department provided an overview of its position, including the Engineering Report of 2nd July 2015 and the fact that the Pilot Programme concerning measurement based on biomass had ended on 31st March 2015. The Department noted the Company's response contained in its letter of 29th January 2016.

At the meeting the Company said it could not state what tonnage would be harvested but in any event harvesting would not occur from the site as the fish would be removed in the same manner as Inishfarnard. The Department restated its position that it regarded removal of fish from the site for slaughter as representing harvesting from the site in accordance with condition 2 (e) of the licence.

A copy of the Company's letter of 29th January 2016 is attached at **TAB 2c**.

The Summary Report of the meeting is attached at **TAB 2e**.

7. Harvest Data for 2016

In response to a request from the Department, Marine Harvest Ireland supplied harvest data for 2016 on 24th February 2017 and also confirmed that there had been no harvest in 2015. The details are as follows:

- Total Harvest (Dead Weight) for 2016 was **1108.91 tonnes**
- The harvest figure is **121.78%** in excess of what is permitted under licence condition No. 2 (e)
- 2016 harvest took place between 2nd October 2016 and 21st December 2016
- Based on the available prices for organic certified salmon during the period in question there can be little doubt that the unauthorised excess harvesting resulted in substantial commercial benefits for the operation

Email communication in relation to the harvest data is attached at **TAB 4**.

8. Department's Letter of 9th March 2017

On 9th March 2017 the Department wrote to the Company advising it that consideration was being given to the termination of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act. The breach of licence Condition 2(e) which sets out the maximum harvest levels was cited as the reason for this action. The company was afforded 28 days in which to make representations to the Minister in relation to the proposed cessation of its statutory entitlement.

The full text of the Department's letter of 9th March 2017 is attached at **TAB 5**.

9. Company response dated 3rd April 2017

The Company wrote to the Department on 3rd April 2017 in response to the Department's letter of 9th March 2017. The following are the key issues raised by the company in their response:

1. That previous representations made to the Department in relation to the Deenish site "remain relevant"
2. That there has been no breach of the Licence conditions or consequential environmental impacts.
3. That the legislation does not provide for the revocation of the company's statutory entitlement to operate and that the Company relies on its constitutional property rights to operate under the provisions of Section 19(A)4 of the 1997 Fisheries Amendment Act.
4. That the "parameters and terminology of the Licence are out of date when compared to best international practises"
5. That revocation of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act would not be in the public interest.

The letter also included the following attachments:

- Previous correspondence (15/06/16) and 19/07/16)
- Professor Randolph Richards' "expert opinion" dated 29 November 2016 and resume
- Aquaculture Stewardship Council's Certificate of Conformity dated 10 March 2015
- Environmental Survey carried out by Aquafact International Services Limited, issued September 2016
- MHI Submission to Independent Aquaculture Licensing Review Group

The full content of the Company's letter together with the attachments have been fully reviewed by the Division and also referred to the Department's Legal Services Division for consideration and advice.

Company letter and attachments are attached at **TAB 6a-g**.

10. Consideration of the Representations made by the Company (letter of 3rd April 2017)

Aquaculture Licences are issued by the Department subject to the provisions of the 1997 Fisheries (Amendment) Act, the 1933 Foreshore Act (where appropriate) and applicable EU legislation, including the EU Birds and Habitats Directive and the EU Directive

on Public Participation and Decision Making (Aarhus Convention). Licensing decisions must be taken in accordance with legislation. The licence in question states:

"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"

The Division has considered each of the points raised by the Company in its letter of 3rd April 2017.

A copy of the letter of 3rd April 2017 is attached at **TAB 6a**.

Arguments put forward by the Company

11. That previous representations made to the Department in relation to the Deenish site "remain relevant"

The previous representations referred to by the operator consist of two letters dated 15th June and 19th July 2016 (the letter dated 15th June 2016 was in fact incorrectly dated by the operator and should read 15th July 2016). Both letters were received subsequent to a letter issued by the Department dated 23rd June where the company was advised that the Department was giving consideration to the withdrawal of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act on foot of a breach of Licence Condition 2(d) which sets out the maximum smolt stocking levels.

Letter of 15th July 2016.

This letter sets out a series of general complaints concerning the licensing system. The following points were raised in the letter:

- ***"MHI asserts that the licence term attaching to T6/202 limiting the number of 'smolts' is anachronistic, legally and technically meaningless and its application is contrary to modern good salmon farming practice.***
- ***The irrefutable evidence arising from the benthic impact monitoring programme is that the stocking levels at this site are and have been comfortably within the site's 'biological assimilative capacity'. Thus it is a matter of fact that no significant environmental damage has been visited on the state's foreshore by MHI's actions. Surely this demonstrates clearly and in a quantifiable fashion that the company has been acting within the spirit of the regulatory system and thereby securing the public interest.***
- ***The department, armed with this data, can show any interested parties that it is effectively regulating the activity at the site and that it is ensuring the highest levels of environmental protection."***

The licence condition referred to above by the company is in relation to smolt stocking levels and does not form part of the matters under consideration in this submission. The issue of benthic impacts was also subsequently raised by the company in their letter of 3rd April 2017 and is considered separately below. The data referred to by the company is also addressed separately below.

A copy of the letter of 15th June 2016 is attached at **TAB 6b**.

Letter of 19th July 2016.

The advice of the Department's Legal Services Division in respect of this particular letter is as follows:

[REDACTED]

Accordingly this letter does not form any part of the consideration of the matters that arise in this submission.

A copy of the letter of 19th July 2016 is attached at **TAB 6c**.

LSD advice is attached at **TAB 7**.

12. That there has been no breach of the Licence conditions or consequential environmental impacts

Marine Harvest Ireland raises two separate but inter-linked issues in its letter of 3rd April 2017. Essentially they argue that:

1. There has been no breach of the license condition in relation to harvest limits (Condition 2(e)).
2. That there have been no negative environmental impacts.

The text of Licence Condition 2(e) is unambiguous: the Licensee is not permitted to harvest more than "**500 tonnes (dead weight) of salmon in any one calendar year**".

There is no dispute in relation to the quantum of the harvest in 2016. Marine Harvest Ireland in its email of 24th February 2017 has advised that the Dead Weight Harvest for 2016 was 1,108,907.36 Kgs (1108.91 tonnes). This harvest figure is 121.78% in excess of what is permitted under licence condition 2(e).

The company goes on to argue that, as it "**transfers live salmon from Deenish to the quay at Castletownbere, where the harvesting of this salmon occurs**" there is consequently no breach of the licence. It ignores the fact that Licence Condition 2(e) refers only to harvest and is not specific on location. In any event it is clear that the fish are removed from the Deenish site for the purpose of slaughter and therefore Deenish is a harvest site. There is no reasonable basis for the Company's argument in relation to this aspect. If the Marine Harvest argument was to be accepted, it would effectively render all harvest limits at all Aquaculture sites as redundant and entitle operators to effectively produce and harvest without restriction by simply stating that they had removed the stock from site and harvested (effectively slaughtered) elsewhere.

It is also worth noting that the Company did not apply for or obtain a Fish Movement Order from the Marine Institute which would be the case if the fish were being moved for further ongrowing. It is a requirement on all operators to notify the Marine Institute in advance where fish are moved for 'ongrowing'. The company did not in this case apply for a Fish Movement Order and it is clear that any movement from the site was to harvest/slaughter.

The Company has argued that there has been no negative/adverse environmental impact arising from their breach of Condition 2 (e) of the licence.

It is axiomatic that an increase of 121% in the stock harvested from the site must increase the effluent discharge from the site. The extent to which this increase in effluent discharge is significant is open to argument, however, it is not open to the Company to interpret the licence conditions any way it wishes.

Legal Services Division provided the following advice in relation to the Company's argument:

[REDACTED]

Copy of email correspondence of 24th February 2017 is attached at **TAB 4**.

The full text of the legal advice is attached at **TAB 7**.

13. That the legislation does not provide for the revocation of the company's statutory entitlement to operate and that the Company relies on its constitutional property rights to operate under the provisions of Section 19(A)4 of the 1997 Fisheries Amendment Act

The Department's Legal Services Division has examined the argument made by the Company and has concluded that:

[REDACTED]

[REDACTED]

[REDACTED]

The full advice of Legal Services Division is attached at **TAB 7** and specific attention is drawn to Section 5-18 inclusive.

14. That the "parameters and terminology of the Licence are out of date when compared to best international practises"

The Company has stated that **"the parameters and terminology of the Licence are out of date when compared to best**

international practise" and also that "the Licence sets stocking limits by reference to "smolts", rather than 'Maximum Allowable Biomass', despite the fact Maximum Allowable Biomass is internationally-recognised as the most appropriate standard metric of production and that the Minister issued a press release on 5 December 2011 clearly outlining the policy to implement a Maximum Allowable Biomass limit to salmon rearing operations".

In support of its position the Company commissioned a report by an industry professional which is attached. Not surprisingly, the report is also of the view that the wording of the licence is out of date and contrary to supporting best practices.

Even if the Department accepted this view, which it does not, the relevant facts in respect of the licence are as follows:

- The licence held by the company sets out clearly the terms and conditions attaching to that licence.
- The company was fully aware of the terms and conditions of the licence.
- The company had sought and obtained a temporary amendment to the licence which allowed it to operate on revised terms and conditions for the duration only of the pilot study.
- The company was notified and fully aware of the expiry of the temporary amendment to the licence with effect from 31st March 2015.

In addition to the above, Legal Services Division has advised as follows:

[REDACTED]

The use of Maximum Allowable Biomass (MAB) as a measure for capping production has yet to be implemented by the Department and will require scientific, technical and possibly legal input before implementation. The application of MAB to licences is likely to represent a material change to each licence and therefore will require both public and statutory consultation as well as the submission of an Environmental Impact Statement. The obvious time for such a transition is therefore when licence renewal is under consideration. In the meantime the current mechanism for capping production is of general application throughout the industry and unilateral departure by one operator would inject huge levels of uncertainty into the overall system in addition to being unlawful. Prior to transitioning to MAB the Department will need to assess every renewal application with a view to ensuring that production levels are properly transitioned from the existing calculation methods over to MAB. It should be clear therefore that the transition to MAB will be a significant operation for the Department and relevant agencies.

For all of these reasons the argument put forward by the Company is not sustainable and is rejected in full.

A copy of the report is attached at **TAB 6d**.

The full text of the legal advice is attached at **TAB 7**.

15. That revocation of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act would not be in the public interest

The public interest argument is of particular interest and relevance in relation to this case. The Company has adduced a number of technical and quasi-legal arguments in support of its case but it can be argued that the most important consideration is the public interest. This Company is by far the largest producer of organic finfish in the country. The Company has substantial technical, administrative and managerial resources available to it in order to manage its production and also the licences which underpin that

production. Because of its dominant role in the industry the Company has a close working relationship with the Licensing Division through a series of Coordination meetings. The Company is fully aware of the terms and conditions of all licences held or operated by them. Furthermore, on all relevant occasions the Department has underlined the importance of compliance with the regulatory regime operated by the State. There is absolutely no doubt whatsoever that the Company has been and continues to be fully aware of the importance of compliance with licence conditions. In its letter of 3rd April 2017 the Company has emphasised the employment it creates and the revenue it generates from its operation and also states as follows:

"In light of the current deadlock being experienced in the existing aquaculture licensing system, MHI cannot understate the importance of being able to operate every facility for which it has permission in order to maintain our viability and levels of employment."

Of course the problem is that the Company has not only operated "***.....every facility for which it has permission.....***" but has exceeded the permission it has under the terms and conditions of its licence and that is the core issue.

Advice from Legal Services Division in respect of the "public interest" argument put forward by the Company indicates that the Minister's consideration of relevant issues should include the following:

i. [REDACTED]

ii. [REDACTED]

In relation to ***i.*** above [REDACTED]

In relation to ***ii.*** [REDACTED]

There are further public interest considerations beyond those raised by the Company. The actions by the Company if allowed to go unchecked could place in jeopardy the ongoing acceptance by the EU Commission that the licensing of aquaculture is being carried out by the State in compliance with the ECJ judgement against Ireland of 2007. Anything which would cause the Commission to review its position would have very serious implications for the industry as a whole and the employment generated thereby.

The setting of a cap on production and the enforcement of same is clearly in the public interest in respect of all operators. The specific reasons applicable to this case include the following:

1. An increase of 121% in the stock harvested from the site must increase the effluent discharge from the site. The extent of the discharge is open to argument. However it is not open to the Company to interpret the licence conditions any way it wishes.
2. Enforcement of the licence conditions by the Department serves, inter alia, to uphold the integrity of the State's regulatory regime in respect of food production from the marine environment.
3. The maintenance and development of Ireland's food exports is clearly dependent upon the acceptance by the general public and the authorities in other jurisdictions of the certitude attached to Ireland's regulatory regime.

4. Failure or perceived failure by the Department to enforce licence conditions will inevitably provide an incentive for further non-compliance by this operator and perhaps by others.
5. Failure to enforce licence conditions by the Department would amount to a de facto anti-competitiveness measure as it affords a major commercial advantage to the operator that is non compliant.
6. The current iteration of the Department's Mission Statement states:

"Serving the government and people of Ireland by leading, developing and regulating the agri-food sector, protecting public health and optimising social, economic and environmental benefits."

The explicit reference to regulation underscores not only the Department's commitment to carrying out this function but also acts as a recognition of the liabilities associated with non enforcement.

The final argument must be that the Company is aware of the terms and conditions of the licence it holds and must conduct its affairs in accordance with the law.

16. Attachments appended to the company's letter of 3rd April 2017

The following documents were appended to the Company's letter of 3rd April 2017:

- Previous correspondence (15/06/16 and 19/07/16)
- Professor Randolph Richards expert opinion dated 29 November 2016 and resumé
- Aquaculture Stewardship Council's Certificate of Conformity dated 10 March 2015
- Environmental Survey carried out by Aquafact International Services Limited, issued September 2016
- MHI Submission to Independent Aquaculture Licensing Review Group.

All of these documents have been given the fullest consideration by the Division in the preparation of this submission.

The documents are attached at **TAB 6b-g**

17. Actions for consideration on foot of a breach of the Licence condition No 2(e) by Marine Harvest Ireland.

The following are the available options identified by the Division:

1. Do Nothing
2. Seek to amend the licence
3. Treat the entitlement of Silver King Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations as discontinued, under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act.

The Division has given detailed consideration to each of these options and has sought and obtained extensive legal advice from the Department's Legal Services Division in relation to the legislative options available. The three options are discussed in detail below.

18. Do Nothing

The Department has an obligation to implement the State's aquaculture licensing regime in an impartial manner in accordance with the provisions of the applicable legislation. Aquaculture and Foreshore Management Division has, within the resources available to it, sought to monitor and police compliance with the terms of all aquaculture and foreshore licences issued. The 1997 Fisheries (Amendment) Act does not provide for an extensive suite of sanctions, short of revocation, to be used in line with the seriousness of the breach of licence condition No 2(e).

As set out above, the Company has brought forward a number of arguments in support of its position and the Department's response to these has also been set out. The total tonnage harvested in 2016 **is not in dispute and the Division is in fact relying on the harvest data provided by the Company**. There can be no doubt that harvesting 121% in excess of what is permitted under the licence condition 2(e) represents a very serious breach. This breach occurred notwithstanding the Department's clearly stated position in relation to harvest limits as set out at its meeting with the Company earlier that same year on 14th March 2016 and the expiry on 31st March 2015 of the temporary amendment to the Aquaculture Licence.

An additional issue in this case is the statutory entitlement to operate which applies given that operations are subject to Section 19(A)4 of the 1997 Fisheries (Amendment) Act (see Section 2 above). Section 19(A)4 is the means by which most of Ireland's aquaculture industry (shellfish and finfish) has continued to function while the "Appropriate Assessment" procedure has been rolled out in respect of NATURA bays. The continued appl. capability of Section 19(A)4 has not been without controversy as environmental NGO's have asserted that it allows aquaculture operators to continue to function without a licence (and the environmental impact analysis that goes with consideration of licences). However the State has successfully argued that the continued applicability of Section 19(A)4 is essential to the survival of the industry pending completion of the "Appropriate Assessment" process. The EU Commission has, at least tacitly, accepted this position following confirmation from the national authorities that no new licences would be issued or existing licences renewed until a full "Appropriate Assessment" is available for the NATURA bays in which the aquaculture in question takes place. It is clear however that a breach of licence conditions by any operator while operating under Section 19(A)4 weakens the whole basis for this measure and lends substantial credence to the NGO argument. If NGO's, via the Courts or via approaches to the EU Commission succeeded in having Section 19(A)4 overturned on the basis that it is not policed adequately by the State there would undoubtedly be serious consequences for both the finfish and shellfish industry.

Legal Services Division has

[REDACTED]
[REDACTED]
[REDACTED] In this regard, it must be acknowledged that Section 19(A)4 was not designed to take into account the circumstances surrounding Deenish (and indeed other cases of a similar nature). However, the Department must cope as best it can with the existing legislation and cannot ignore complexities that arise from the current legislation. Whether the facilities available under the legislation can extend to an actual amendment of an out of date licence is undoubtedly open to argument.

There is always a strict separation between the Minister's role as Regulator and the Ministerial duty to promote the sustainable development of the industry. This situation is essential in view of the dual role of the Department as regulator and developer in respect of the industry. In the current circumstances, while it can be argued that the development of the industry will be affected adversely by any sanction against the Company, the overriding obligation of the Department is to take action in accordance with the obligations set out in the legislation. In circumstances where there has been a clear breach by the Company of their obligations under the licence and under the law, anything less than this will seriously undermine the State's regulatory system in relation to marine aquaculture. The long term effect which this would have on the development of the industry is as serious as it is obvious. In this regard the recent Supreme Court Decision in the State's appeal of a High Court Case on mussel seed availability (Cromane Seafoods Ltd & Others -v- The Minister for Agriculture, Food and Fisheries & Others) has explicitly pointed to the "overarching legal duty" of the Minister to comply with and implement EU law. It has long been asserted by Environmental NGO's and others that the State's regulatory regime in respect of Marine Aquaculture is implemented inadequately. The EU Commission has twice opened a Pilot Case against the State in respect of sea lice controls, for example. For its part the Department has always provided robust responses to these assertions and has successfully defended the regulatory regime. To that extent, dealing vigorously with significant breaches of licence conditions constitutes no more than the discharge of both regulatory and developmental responsibilities which must be a crucial consideration, in the public interest.

The representations made by the Company to the Minister on foot of the Department's letter of 9th March 2017 have been carefully considered by the Division as set out above. In relation to the breach of Licence Condition 2(e) the company has argued that as it **"transfers live salmon from Deenish to the quay at Castletownbere, where the harvesting of this salmon occurs"** that there is no breach of the licence. There is as already set out, no reasonable basis for the Company's argument in relation to this aspect. The legislation, and the upholding of same, is clearly in the public interest of all aquaculture operators. The Company has availed of an enhanced bilateral communication facility with the Department's Licensing Division due to its overwhelming prominence in the industry. This took the form of regular scheduled bilateral coordination meetings with agreed detailed agendas. This group has met on at least 20 occasions and it would be fair to say that the Department has emphasised the need to comply with licence conditions at all times during these meetings. The operator, by virtue of its dominant role in the industry, its administrative and technical resources and its participation in the Coordination Group meetings is acutely aware of the importance the Department attaches to compliance with legislation.

It should also be noted that a number of Parliamentary Questions have been received in respect of this and related cases. In all the circumstances, it is clear that to do nothing is not an option which is desirable or, indeed, available in any meaningful way to the Department in this case. Furthermore it is considered that action such as a letter of admonishment to the company will be tantamount to doing nothing and will be seen as such by the company, by other stakeholders and by the general public. This would seriously undermine the integrity of the regulatory process.

A "do nothing" option cannot therefore be recommended.

A copy of the legal advice is attached at **TAB 7**.

See copy of Department's letter attached at **TAB 5**.

19. Amendment of the Aquaculture Licence

Although the recommendation in this submission is that the Minister withdraw the entitlement enjoyed by Silver King Seafoods Limited (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under Section 19(A)4 of the 1997 Fisheries (Amendment) Act it should be noted that Condition No 3 of the Aquaculture Licence provides for an amendment to the licence where the Minister considers that it is in the public interest to do so or if he is satisfied that there has been a breach of any condition specified in the licence

Condition No 3.

"The Minister shall be at liberty at any time to revoke or amend this licence if he considers that it is in the public interest to do so or if he is satisfied that there has been a breach of any condition specified in the licence or that the fishery to which the licence relates is not being properly maintained. Any such revocation or amendment shall be subject to the provisions of Section 15 of the Fisheries (Consolidation) Act 1959"

Legislation

Sections 68 and 70 of the 1997 Fisheries (Amendment) Act are the relevant provisions dealing with any amendments to the licence that might be considered in this case. The Division previously received the advice of Legal Services Division in relation to the possible amendment of aquaculture licence conditions where the operator is operating under the provisions of Section 19(a)4 of the 1997 Fisheries Amendment Act. The Division was advised that [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The legal advice goes on [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Having considered the applicability of the 1997 Fisheries (Amendment) Act to a possible amendment on foot of the breach of the licence conditions the legal advice as set out below [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Licence Condition regarding amendment

Condition No 3 of the Aquaculture Licence quoted above does however set out the circumstances in which the Minister may amend the aquaculture licence:

"there has been a breach of any condition specified in the licence or that the fishery to which the licence relates is not being properly maintained".

The advice goes on to state however that [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

It should be noted also that any decision to amend the aquaculture licence will be subject to all the legislative requirements of Section 68 of the Act together with subsequent Public and Statutory consultation processes, appeal processes etc and that the outcome of such processes cannot be prejudged.

Copy of relevant Legal advice attached at **TAB 7**.

Aquaculture Licences Appeals Board

It should also be noted that the Ministerial decision to amend another licence held by the operator (Inishfarnard) was appealed by the operator to the Aquaculture Licences Appeals Board.

On the 4 May 2018 the Minister was formally notified by ALAB that, at a meeting of the Board on 1 May 2018, ALAB had decided to uphold the appeal by the operator and to amend the conditions of the licence by:

1. "Deleting Conditions 2 (d) and 2 (e) of the Licence ; and
2. Substituting as a new Condition 2 (d) the following:-
3. "The cages or pens shall be subject to a Maximum Allowable Biomass of 2,200 tonnes, being the Maximum Standing Stock permitted at the licensed area. The stocking of the licensed area shall be subject to inspection at any time by the Department of Agriculture, Food and the Marine"

The ALAB decision on the case has effectively doubled the production limit on the site. This has given rise to a number of concerns which were referred to the Department's Legal Services Division for preliminary advice. [REDACTED]

[REDACTED]

[REDACTED] It is possible to say at this stage, however, that the Minister's decision to amend the licence was not intended to result in the doubling of the production capacity of the licence in question.

The ALAB decision on the Inishfarnard amendment is a further indication of why the amendment option is not only unwarranted in the current case (Deenish) but is also likely to lead to entirely unpredictable outcomes.

Conclusion

Given that the Minister is precluded from amending the licence in any fashion that could be seen as punitive it is difficult to see how any amendment to the conditions of the Aquaculture Licence (now operation under the provisions of Section 19(A) 4 of the 1997 Fisheries (Amendment) Act, could be seen as any form of sanction against the company for the breach of Condition 2(e) of the licence (which sets out the maximum harvest limit under the terms and conditions of the licence).

The 1997 Fisheries (Amendment) Act does not permit the amendment of a licence as a sanction against the licensee but Condition 3 of the licence does provide for an amendment of the licence where the Minister is satisfied that there has been a breach of any condition specified in the licence. Any such amendment is however subject to the legislation. An amendment in this particular case is simply not viable as it cannot be by way of punitive sanction. Since there is no other reason to amend the licence other than as some sort of punitive sanction this course of action is not viable.

Amendment of the licence is therefore not recommended in the circumstances.

20. Withdrawal of the entitlement to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act

As will be seen above, amendment of the licence is not recommended in this case for reasons of clear public interest. What remains therefore, is the option of treating as discontinued the statutory entitlement to engage in aquaculture operations provided for by Section 19(A)4 of the 1997 Act. There is no doubt that withdrawal of the consent to operate will have the effect of extinguishing the Company's activity in relation to this site. It should be noted however, that the Company's application for renewal of the licence will still be operative and will be processed in the normal way.

Withdrawal by the Department of the Company's entitlement to continue operations is proportionate to the breach of the applicable licence condition (excess production by 121%) for all of the reasons set out heretofore in this submission and while it will undoubtedly impact the commercial interests of the operator it is unlikely to have a catastrophic impact having regard to the overall size of the Company and the wide scale of its operations.

It is considered that withdrawal of the entitlement to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act, is not only appropriate in this case given all of the circumstances, but also necessary in view of the seriousness of the breach in question having regard to the following:

1. The extent of the breach of Condition 2(e) which sets the harvest limits (121% excess) resulting in a significant commercial gain for the Company.
2. The fact that the breach of the licence condition took place in circumstances where the Company was fully aware of the limits set by the specific condition of the licence governing harvest tonnage.

21. Recommendation

Having regard to all of the above, it is recommended:

1. That the Minister determine that a breach of Condition 2(e) of the applicable aquaculture licence has occurred as described above.
2. That the Minister treat the statutory entitlement of Silver King Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act as discontinued for the following reason:

Breach of condition 2(e) of the applicable aquaculture licence which states:

"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"

Submitted please for approval.

Related submissions

There are no related submissions.

Comments

Beamish, Cecil - 19/07/2018 17:25

This is an updated Submission and the earlier substantive submission on this is at Tab 20. My detailed comments on this issue, dated 17/11/2017, are contained in that submission. Given the effluxion of time since this was last considered and the complexity of the issues to be considered by the Minister in considering what course of action to take, I feel it might be useful if a further meeting was held between the Minister and officials from the Licencing Division and Legal Services Division to traverse the issues before the Minister finalises his consideration of the issue and decides on a course of action.

Ball, Siobhan - 23/07/2018 12:15

Approved for submission to Minister.

User details

INVOLVED: Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
eSub Ministers Office

READ RECEIPT: Quinlan, John
BTSSP-SC
Beamish, Cecil
Smith, Ann
Ball, Siobhan
Lennox, Graham
Waldron, Ultan

Action log

ACTION	USER	DATE	DESCRIPTION
Attachment removed	Quinlan, John	11/07/2018 10:31	Quinlan, John removed attachment TAB 8.pdf
Sent For Review	Quinlan, John	11/07/2018 10:36	Submission sent to Cecil Beamish for review by John Quinlan
Sent to the Secretary General	Beamish, Cecil	19/07/2018 17:26	Submission sent to Secretary General for review by Cecil Beamish
Sent to the Minister	Ball, Siobhan	23/07/2018 12:15	Submission sent to Minister for review by Siobhan Ball on behalf of the Secretary General
Completed	Lennox, Graham	26/07/2018 16:45	Submission completed by Graham Lennox on behalf of the Minister

Submission AGR 00228-17: T6/202 - Deenish Submission to Minister

TO: Minister
STATUS: Completed
PURPOSE: For Decision
DIVISION: Coastal Zone Management
DECISION BY:

AUTHOR: Quinlan, John
OWNER: Quinlan, John
REVIEWERS: Beamish, Cecil

Final comment

Minister agrees that meeting with Legal Division and others should go ahead and further submission is made containing recommendation on specific course of action.

Action required

For Ministerial Decision. NOTE: In view of the size of the submission a hard copy with supporting documentation has also been submitted.

Executive summary

The purpose of the submission is to update the Minister on developments relating to the harvesting of salmon by Marine Harvest Ireland in excess of what is permitted under the terms of the Aquaculture Licence at the above site. Condition 2(e) of the licence states that: ***"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"*** but in the year 2016 the operator harvested **1108.91 tonnes** of salmon from the site which represented an excess of **121.78%** over the permitted tonnage under the licence conditions.

And to recommend:

(a) That the Minister determines that Condition 2(e) of the applicable aquaculture licence which sets out the harvest limits has been breached by the operator.

(b) That the Minister treat as discontinued the entitlement of Silver King Seafoods Ltd. (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act.

Detailed information

Recommendation to treat as discontinued the entitlement of Silverking Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act

(T6/202 - Deenish)

Submission to the Minister

From: John Quinlan, Principal Officer, Aquaculture & Foreshore Management Division.

To: 1) Dr Beamish, Assistant Secretary

2) Secretary General

3) Runaí Aire

Date: 1st November 2017

1. Purpose of the Submission

The purpose of the submission is to update the Minister on developments relating to the harvesting of salmon by Marine Harvest Ireland in excess of what is permitted under the terms of the Aquaculture Licence at the above site. Condition 2(e) of the licence states that: "***the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year***" but in the year 2016 the operator harvested **1108.91 tonnes** of salmon from the site which represented an excess of **121.78%** over the permitted tonnage under the licence conditions.

And to recommend

(a) That the Minister determines that Condition 2(e) of the applicable aquaculture licence which sets out the harvest limits has been breached by the operator.

(b) That the Minister treat as discontinued the entitlement of Silver King Seafoods Ltd. (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act.

2. Background

The licence in question (T6/202) was held by Silver King Seafoods Limited, a wholly owned subsidiary of Marine Harvest Ireland. The licence expired on 15th February 2007 and as a renewal application has been received by the Department, the relevant aquaculture activity is governed under the provisions of Section 19(A)4 under the 1997 Fisheries (Amendment) Act which states:

"A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application."

The Aquaculture & Foreshore Management Division (AFMD) has, on foot of inspections conducted at the site by the Marine Engineering Division, given detailed consideration to possible breaches of aquaculture licence conditions by the Company.

This submission and the recommendation contained therein is based on harvested tonnage in excess of the permitted cap. **The figures in question have been supplied by the operator.**

The full text of the licence is attached at **TAB 1**.

3. Temporary amendment to the Aquaculture Licence granted in October 2012 (Pilot Project)

The company applied for a temporary amendment of the Aquaculture Licence in 2011 so as to facilitate a once-off pilot project involving the use of maximum standing stock biomass as a means of gauging and capping production capacity rather than tonnage. The temporary amendment was granted by the Aquaculture Licences Appeals Board (ALAB) on 31st October 2012. This temporary amendment ceased on 31st March 2015 and the Company received a written reminder to this effect on 27th March 2015. A condition of this amendment was that it ***"is strictly a once off pilot for this site only and that any repeat of the stocking pattern would have to be considered, inter alia, in light of the outcome of the monitoring and the progress of the implementation of overall licensing policy towards the use of "maximum standing stock biomass" as a control point in licence terms and conditions"***.

4. Harvesting in excess of maximum permitted under the terms and conditions of the Aquaculture Licence

(Now operating however under the provisions of Section 19(A)4 of the 1997 Fisheries Amendment Act)

The key points in relation to the temporary amendment which facilitated the pilot project are:

1. The amendment was time bound and expired on **31st March 2015**.
2. Marine Harvest Ireland were written to on **27th March 2015** and were reminded of the expiry of the amendment.
3. The Marine Harvest Ireland report on the Pilot Study dated **20th January 2015** acknowledged that the amendment was for two years duration.

Details of the conditions of the Pilot Study, Communications and Reports are attached at **TAB 3a-c**.

5. Engineering Reports and Company response of 29th January 2016

The Department's Marine Engineering Division (MED) carried out an inspection at the site on the 2nd July 2015. The MED Report advised of an excess stock of smolts in the order of 84% and also referred to the permitted harvest limit of 500 tonnes (dead weight) in a year.

The Engineering Report was forwarded to the Company on 6th January 2016. The Company was advised that remedial actions necessary on foot of the Engineering Report should be completed within 2 weeks of the letter that issued. On 29th January 2016 the Company responded and raised the following key points:

1. The company queried the accuracy of the MED Report in respect of the type of fish stocked (smolts v salmon)
2. The Company stated that no harvest had taken place at the site (in 2015)
3. The Company stated there had been no exceedance of the maximum harvest allowable.

The Engineering Report is attached at **TAB 2a**.

6. Meeting with the Company 14th March 2016

The Department convened a meeting with the Company on 14th March 2016. The purpose of the meeting was to afford the Company an opportunity to outline further its position on overstocking in respect of Deenish and also another site at Inishfarnard which has been the subject of a separate submission. At the meeting the Department provided an overview of its position, including the Engineering Report of 2nd July 2015 and the fact that the Pilot Programme concerning measurement based on biomass had ended on 31st March 2015. The Department noted the Company's response contained in its letter of 29th January 2016.

At the meeting the Company said it could not state what tonnage would be harvested but in any event harvesting would not occur from the site as the fish would be removed in the same manner as Innisfarnard. The Department restated its position that it regarded removal of fish from the site for slaughter as representing harvesting from the site in accordance with condition 2 (e) of the licence

A copy of the Company's letter of 29th January 2016 is attached at **TAB 2c**

The Summary Report of the meeting is attached at **TAB 2e**

7. Harvest Data for 2016

In response to a request from the Department, Marine Harvest Ireland supplied harvest data for 2016 on 24th February 2017 and also confirmed that there had been no harvest in 2015. The details are as follows

- Total Harvest (Dead Weight, for 2016 was **1108.91 tonnes**.
- The harvest figure is **121.78%** in excess of what is permitted under licence condition No. 2 e..
- 2016 harvest took place between 2nd October 2016 and 21st December 2016
- Based on the available prices for organic certified salmon during the period in question there can be little doubt that the unauthorised excess harvesting resulted in substantial commercial benefits for the operation.

Email communication in relation to the harvest data is attached at **TAB 4**.

Consideration of termination of statutory entitlement to operate pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act

8. Department's Letter of 9th March 2017

On 9th March 2017 the Department wrote to the Company advising it that consideration was being given to the termination of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act. The breach of licence Condition 2(e) which sets out the maximum harvest levels was cited as the reason for this action. The company was afforded 28 days in which to make representations to the Minister in relation to the proposed cessation of its statutory entitlement.

The full text of the Department's letter of 9th March 2017 is attached at **TAB 5**.

9. Company response dated 3rd April 2017

The Company wrote to the Department on 3rd April 2017 in response to the Department's letter of 9th March 2017. The following are the key issues raised by the company in their response.

- 1 That previous representations made to the Department in relation to the Deenish site "remain relevant"
- 2 That there has been no breach of the Licence conditions or consequential environmental impacts.
- 3 That the legislation does not provide for the revocation of the company's statutory entitlement to operate and that the Company relies on its constitutional property rights to operate under the provisions of Section 19(A)4 of the 1997 Fisheries Amendment Act.
- 4 That the "parameters and terminology of the Licence are out of date when compared to best international practises"
- 5 That revocation of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act would not be in the public interest.

The letter also included the following attachments

- Previous correspondence (15/06/16) and 19/07/16)
- Professor Randolph Richards' "expert opinion" dated 29 November 2016 and resume
- Aquaculture Stewardship Council's Certificate of Conformity dated 10 March 2015
- Environmental Survey carried out by Aquafact International Services Limited, issued September 2016
- MHI Submission to Independent Aquaculture Licensing Review Group

The full content of the Company's letter together with the attachments have been fully reviewed by the Division and also referred to the Department's Legal Services Division for consideration and advice.

Company letter and attachments are attached at **TAB 5a-g**.

10. Consideration of the Representations made by the Company (letter of 3rd April 2017)

Aquaculture Licences are issued by the Department subject to the provisions of the 1997 Fisheries (Amendment) Act the 1933 Foreshore Act (where appropriate) and applicable EU legislation, including the EU Birds and Habitats Directive and the EU Directive on Public Participation and Decision Making (Aarhus Convention). Licensing decisions must be taken in accordance with legislation. The licence in question states:

"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"

The Division has considered each of the points raised by the Company in its letter of 3rd April 2017.

A copy of the letter of 3rd April 2017 is attached at **TAB 6a**.

Arguments put forward by the Company

11. That previous representations made to the Department in relation to the Deenish site "remain relevant"

The previous representations referred to by the operator consist of two letters dated 15th June and 15th July 2016 (the letter dated 15th June 2016 was in fact incorrectly dated by the operator and should read 15th July 2016). Both letters were received subsequent to a letter issued by the Department dated 23rd June where the company was advised that the Department was giving consideration to the withdrawal of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19A(4) of the 1997 Fisheries (Amendment) Act on foot of a breach of Licence Condition 2(d) which sets out the maximum smolt stocking levels.

Letter of 15th July 2016.

This letter sets out a series of general complaints concerning the licensing system. The following points were raised in the letter:

- ***"MHI asserts that the licence term attaching to T6/202 limiting the number of 'smolts' is anachronistic, legally and technically meaningless and its application is contrary to modern good salmon farming practice.***
- ***The irrefutable evidence arising from the benthic impact monitoring programme is that the stocking levels at this site are and have been comfortably within the site's 'biological assimilative capacity'. Thus it is a matter of fact that no significant environmental damage has been visited on the state's foreshore by MHI's actions. Surely this demonstrates clearly and in a quantifiable fashion that the company has been acting within the spirit of the regulatory system and thereby securing the public interest.***
- ***The department, armed with this data, can show any interested parties that it is effectively regulating the activity at the site and that it is ensuring the highest levels of environmental protection."***

The licence condition referred to above by the company is in relation to smolt stocking levels and does not form part of the matters

under consideration in this submission. The issue of benthic impacts was also subsequently raised by the company in their letter of 3rd April 2017 and is considered separately below. The data referred to by the company is also addressed separately below.

A copy of the letter of 15th June 2016 is attached at **TAB 6b**.

Letter of 19th July 2016.

The advice of the Department's Legal Services Division in respect of this particular letter is as follows:

[REDACTED]

Accordingly this letter does not form any part of the consideration of the matters that arise in this submission.

A copy of the letter of 19th July 2016 is attached at **TAB 6c**.

LSD advice is attached at **TAB 7**.

12. That there has been no breach of the Licence conditions or consequential environmental impacts

Marine Harvest Ireland raises two separate but inter-linked issues in its letter of 3rd April 2017. Essentially they argue that:

1. There has been no breach of the license condition in relation to harvest limits (Condition 2(e)).
2. That there have been no negative environmental impacts.

The text of Licence Condition 2(e) is unambiguous: the Licensee is not permitted to harvest more than "**500 tonnes (dead weight) of salmon in any one calendar year**".

There is no dispute in relation to the quantum of the harvest in 2016. Marine Harvest Ireland in its email of 24th February 2017 has advised that the Dead Weight Harvest for 2016 was 1,108,907.36 Kgs (1108.91 tonnes). This harvest figure is 121.78% in excess of what is permitted under licence condition 2(e).

The company goes on to argue that as it "**transfers live salmon from Deenish to the quay at Castletownbere, where the harvesting of this salmon occurs**" there is consequently no breach of the licence. It ignores the fact that Licence Condition 2(e) refers only to harvest and is not specific on location. In any event it is clear that the fish are removed from the Deenish site for the purpose of slaughter and therefore Deenish is a harvest site. There is no reasonable basis for the Company's argument in relation to this aspect. If the Marine Harvest argument was to be accepted, it would effectively render all harvest limits at all Aquaculture sites as redundant and entitle operators to effectively produce and harvest without restriction by simply stating that they had removed the stock from site and harvested (effectively slaughtered) elsewhere.

It is also worth noting that the Company did not apply for or obtain a Fish Movement Order from the Marine Institute which would be the case if the fish were being moved for further on-growing. It is a requirement on all operators to notify the Marine Institute in advance where fish are moved for 'on-growing'. The company did not in this case apply for a Fish Movement Order and it is clear that any movement from the site was to harvest/slaughter.

The Company has argued that there has been no negative/adverse environmental impact arising from their breach of Condition 2 (e) of the licence.

It is axiomatic that an increase of 121% in the stock harvested from the site must increase the effluent discharge from the site. The extent to which this increase in effluent discharge is significant is open to argument, however, it is not open to the Company to interpret the licence conditions any way it wishes.

Legal Services Division provided the following advice in relation to the Company's argument:

[REDACTED]

Copy of email correspondence of 24th February 2017 is attached at **TAB 4**.

The full text of the legal advice is attached at **TAB 7**.

13. That the legislation does not provide for the revocation of the company's statutory entitlement to operate and that the Company relies on its constitutional property rights to operate under the provisions of Section 19(A)4 of the 1997 Fisheries Amendment Act

The Department's Legal Services Division has examined the argument made by the Company and has concluded that:

[REDACTED]

The full advice of Legal Services Division is attached at **TAB 7** and specific attention is drawn to Section 5-18 inclusive.

14. That the "parameters and terminology of the Licence are out of date when compared to best international practises"

The Company has stated that "the parameters and terminology of the Licence are out of date when compared to best international practise" and also that "the Licence sets stocking limits by reference to "smolts", rather than 'Maximum Allowable Biomass', despite the fact Maximum Allowable Biomass is internationally-recognised as the most appropriate standard metric of production and that the Minister issued a press release on 5 December 2011 clearly outlining the policy to implement a Maximum Allowable Biomass limit to salmon rearing operations".

In support of its position the Company commissioned a report by an industry professional which is attached. Not surprisingly the report is also of the view that the wording of the licence is out of date and contrary to supporting best practices.

Even if the Department accepted this view, which it does not, the relevant facts in respect of the licence are as follows:

- The licence held by the company sets out clearly the terms and conditions attaching to that licence.
- The company was fully aware of the terms and conditions of the licence.
- The company had sought and obtained a temporary amendment to the licence which allowed it to operate on revised terms and conditions for the duration only of the pilot study.
- The company was notified and fully aware of the expiry of the temporary amendment to the licence with effect from 31 March 2015.

In addition to the above, Legal Services Division has advised as follows.

[REDACTED]

The use of Maximum Allowable Biomass (MAB) as a measure for capping production has yet to be implemented by the Department and will require scientific, technical and possibly legal input before implementation. The application of MAB to licences is likely to represent a material change to each licence and therefore will require both public and statutory consultation as well as the submission of an Environmental Impact Statement. The obvious time for such a transition is therefore when licence renewal is under consideration. In the meantime the current mechanism for capping production is of general application throughout the industry and unilateral departure by one operator would inject huge levels of uncertainty into the overall system in addition to being unlawful. Prior to transitioning to MAB the Department will need to assess every renewal application with a view to ensuring that production levels are properly transitioned from the existing calculation methods over to MAB. It should be clear therefore that the transition to MAB will be a significant operation for the Department and relevant agencies.

For all of these reasons the argument put forward by the Company is not sustainable and is rejected in full.

A copy of the report is attached at **TAB 6d**.

The full text of the legal advice is attached at **TAB 7**.

15. That revocation of the Company's statutory entitlement to continue aquaculture operations at the Deenish site pursuant to Section 19(A)4 of the 1997 Fisheries (Amendment) Act would not be in the public interest

The public interest argument is of particular interest and relevance in relation to this case. The Company has adduced a number of technical and quasi legal arguments in support of its case but it can be argued that the most important consideration is the public interest. This Company is by far the largest producer of organic finfish in the country. The Company has substantial technical, administrative and managerial resources available to it in order to manage its production and also the licences which underpin that production. Because of its dominant role in the industry the Company has a close working relationship with the Licensing Division through a series of Coordination meetings. The Company is fully aware of the terms and conditions of all licences held or operated by them. Furthermore, on all relevant occasions the Department has underlined the importance of compliance with the regulatory regime operated by the State. There is absolutely no doubt whatsoever that the Company has been and continues to be fully aware of the importance of compliance with licence conditions. In its letter of 3rd April 2017 the Company has emphasised the employment it creates and the revenue it generates from its operation and also states as follows:

"In light of the current deadlock being experienced in the existing aquaculture licensing system, MHI cannot understate the importance of being able to operate every facility for which it has permission in order to maintain our viability and levels of employment."

Of course the problem is that the Company has not only operated ".....**every facility for which is has permission**....." but has exceeded the permission it has under the terms and conditions of its licence and that is the core issue.

Advice from Legal Services Division in respect of the "public interest" argument put forward by the Company indicates that the Minister's consideration of relevant issues should include the following

i. [REDACTED]

ii. [REDACTED]

In relation to **i.** above [REDACTED]

In relation to **ii.** [REDACTED]

There are further public interest considerations beyond those raised by the Company. The actions by the Company if allowed to go unchecked could place in jeopardy the ongoing acceptance by the EU Commission that the licensing of aquaculture is being carried out by the State in compliance with the ECJ judgement against Ireland of 2007. Anything which would cause the Commission to

review its position would have very serious implications for the industry as a whole and the employment generated thereby.

The setting of a cap on production and the enforcement of same is clearly in the public interest in respect of all operators. The specific reasons applicable to this case include the following:

1. An increase of 121% in the stock harvested from the site must increase the effluent discharge from the site. The extent of the discharge is open to argument. However it is not open to the Company to interpret the licence conditions any way it wishes.
2. Enforcement of the licence conditions by the Department serves, inter alia, to uphold the integrity of the State's regulatory regime in respect of food production from the marine environment.
3. The maintenance and development of Ireland's food exports is clearly dependent upon the acceptance by the general public and the authorities in other jurisdictions of the certitude attached to Ireland's regulatory regime.
4. Failure or perceived failure by the Department to enforce licence conditions will inevitably provide an incentive for further non-compliance by this operator and perhaps by others.
5. Failure to enforce licence conditions by the Department would amount to a de facto anti-competitiveness measure as it affords a major commercial advantage to the operator that is non compliant.
6. The current iteration of the Department's Mission Statement states:

"Serving the government and people of Ireland by leading, developing and regulating the agri-food sector, protecting public health and optimising social, economic and environmental benefits."

The explicit reference to regulation underscores not only the Department's commitment to carrying out this function but also acts as a recognition of the liabilities associated with non enforcement.

The final argument must be that the Company is aware of the terms and conditions of the licence it holds and must conduct its affairs in accordance with the law.

16. Attachments appended to the company's letter of 3rd April 2017

The following documents were appended to the Company's letter of 3rd April 2017.

- Previous correspondence (15/06/16) and 19/07/16)
- Professor Randolph Richards expert opinion dated 29 November 2016 and résumé
- Aquaculture Stewardship Council's Certificate of Conformity dated 10 March 2015
- Environmental Survey carried out by Aquafact International Services Limited, issued September 2016
- MHI Submission to Independent Aquaculture Licensing Review Group.

All of these documents have been given the fullest consideration by the Division in the preparation of this submission.

The documents are attached at **TAB 6b-g**.

17. Actions for consideration on foot of a breach of the Licence condition No 2(e) by Marine Harvest Ireland.

The following are the available options identified by the Division:

1. Do Nothing
2. Seek to amend the licence
3. Treat the entitlement of Silver King Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations as discontinued, under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act.

The Division has given detailed consideration to each of these options and has sought and obtained extensive legal advice from the Department's Legal Services Division in relation to the legislative options available. The three options are discussed in detail below

18. Do Nothing

The Department has an obligation to implement the State's aquaculture licensing regime in an impartial manner in accordance with the provisions of the applicable legislation. Aquaculture and Foreshore Management Division has within the resources available to it sought to monitor and police compliance with the terms of all aquaculture and foreshore licences issued. The 1997 Fisheries (Amendment) Act does not provide for an extensive suite of sanctions, short of revocation, to be used in line with the seriousness of the breach of licence condition No 2(e).

As set out above, the Company has brought forward a number of arguments in support of its position and the Department's response to these has also been set out. The total tonnage harvested in 2016 **is not in dispute and the Division is in fact relying on the harvest data provided by the Company**. There can be no doubt that harvesting 121% in excess of what is permitted under the licence condition 2(e) represents a very serious breach. This breach occurred notwithstanding the Department's clearly stated position in relation to harvest limits as set out at its meeting with the Company earlier that same year on 14th March 2016 and the expiry on 31st March 2015 of the temporary amendment to the Aquaculture Licence.

An additional issue in this case is the statutory entitlement to operate which applies given that operations are subject to Section 19(A)4 of the 1997 Fisheries (Amendment) Act (see Section 2 above). Section 19(A)4 is the means by which most of Ireland's aquaculture industry (shellfish and finfish) has continued to function while the "Appropriate Assessment" procedure has been rolled out in respect of NATURA bays. The continued applicability of Section 19(A)4 has not been without controversy as environmental NGO's have asserted that it allows aquaculture operators to continue to function without a licence (and the environmental impact analysis that goes with consideration of licences). However the State has successfully argued that the continued applicability of Section 19(A)4 is essential to the survival of the industry pending completion of the "Appropriate Assessment" process. The EU Commission has, at least tacitly, accepted this position following confirmation from the national authorities that no new licences would be issued or existing licences renewed until a full "Appropriate Assessment" is available for the NATURA bays in which the aquaculture in question takes place. It is clear however that a breach of licence conditions by any operator while operating under Section 19(A)4 weakens the whole basis for this measure and lends substantial credence to the NGO argument. If NGO's, via the Courts or via approaches to the EU Commission succeeded in having Section 19(A)4 overturned on the basis that it is not policed adequately by the State there would undoubtedly be serious consequences for both the finfish and shellfish industry.

Legal Services Division has [REDACTED]

[REDACTED] In this regard, it must be acknowledged that Section 19(A)4 was not designed to take into account the circumstances surrounding Deenish (and indeed other cases of a similar nature). However, the Department must cope as best it can with the existing legislation and cannot ignore complexities that arise from the current legislation. Whether the facilities available under the legislation can extend to an actual amendment of an out of date licence is undoubtedly open to argument.

There is always a strict separation between the Minister's role as Regulator and the Ministerial duty to promote the sustainable development of the industry. This situation is essential in view of the dual role of the Department as regulator and developer in respect of the industry. In the current circumstances, while it can be argued that the development of the industry will be affected

adversely by any sanction against the Company, the overriding obligation of the Department is to take action in accordance with the obligations set out in the legislation. In circumstances where there has been a clear breach by the Company of their obligations under the licence and under the law, anything less than this will seriously undermine the State's regulatory system in relation to marine aquaculture. The long term effect which this would have on the development of the industry is as serious as it is obvious. In this regard the recent Supreme Court Decision in the State's appeal of a High Court Case on mussel seed availability (Cromane Seafoods Ltd & Others –v- The Minister for Agriculture, Food and Fisheries & Others) has explicitly pointed to the "**overarching legal duty**" of the Minister to comply with and implement EU law. It has long been asserted by Environmental NGO's and others that the State's regulatory regime in respect of Marine Aquaculture is implemented inadequately. The EU Commission has twice opened a Pilot Case against the State in respect of sea lice controls, for example. For its part the Department has always provided robust responses to these assertions and has successfully defended the regulatory regime. To that extent, dealing vigorously with significant breaches of licence conditions constitutes no more than the discharge of both regulatory and developmental responsibilities which must be a crucial consideration, in the public interest.

The representations made by the Company to the Minister on foot of the Department's letter of 9th March 2017 have been carefully considered by the Division as set out above. In relation to the breach of Licence Condition 2(e) the company has argued that as it "**transfers live salmon from Deenish to the quay at Castletownbere, where the harvesting of this salmon occurs**" that there is no breach of the licence. There is as already set out, no reasonable basis for the Company's argument in relation to this aspect. The legislation, and the upholding of same, is clearly in the public interest of all aquaculture operators. The Company has availed of an enhanced bilateral communication facility with the Department's Licensing Division due to its overwhelming prominence in the industry. This took the form of regular scheduled bilateral coordination meetings with agreed detailed agendas. This group has met on at least 20 occasions and it would be fair to say that the Department has emphasised the need to comply with licence conditions at all times during these meetings. The operator, by virtue of its dominant role in the industry, its administrative and technical resources and its participation in the Coordination Group meetings is acutely aware of the importance the Department attaches to compliance with legislation.

It should also be noted that a number of Parliamentary Questions have been received in respect of this and related cases. In all the circumstances it is clear that to do nothing is not an option which is desirable or, indeed, available in any meaningful way to the Department in this case. Furthermore it is considered that action such as a letter of admonishment to the company will be tantamount to doing nothing and will be seen as such by the company, by other stakeholders and by the general public. This would seriously undermine the integrity of the regulatory process.

A "do nothing" option cannot therefore be recommended.

A copy of the legal advice is attached at **TAB 7**.

See copy of Department's letter attached at **TAB 5**.

19. Amendment of the Aquaculture Licence

Although the recommendation in this submission is that the Minister withdraw the entitlement enjoyed by Silver King Seafoods Limited (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under Section 19(A)4 of the 1997 Fisheries (Amendment) it should be noted that Condition No 3 of the Aquaculture Licence provides for an amendment to the licence where the Minister considers that it is in the public interest to do so or if he is satisfied that there has been a breach of any condition specified in the licence.

Condition No 3.

"The Minister shall be at liberty at any time to revoke or amend this licence if he considers that it is in the public interest to do so or if he is satisfied that there has been a breach of any condition specified in the licence or that the fishery to which the licence relates is not being properly maintained. Any such revocation or amendment shall be subject to the provisions of Section 15 of the Fisheries (Consolidation) Act 1959"

Legislation

Sections 68 and 70 of the 1997 Fisheries (Amendment) Act are the relevant provisions dealing with any amendments to the licence that might be considered in this case. The Division previously received the advice of Legal Services Division in relation to the possible amendment of aquaculture licence conditions where the operator is operating under the provisions of Section 19(a)4 of the 1997 Fisheries Amendment Act. The Division was advised that [REDACTED]

[REDACTED]

The legal advice goes on [REDACTED]

[REDACTED]

Having considered the applicability of the 1997 Fisheries (Amendment) Act to a possible amendment on foot of the breach of the licence conditions the legal advice as set out below [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Licence Condition regarding amendment

Condition No 3 of the Aquaculture Licence quoted above does however set out the circumstances in which the Minister may amend the aquaculture licence:

"there has been a breach of any condition specified in the licence or that the fishery to which the licence relates is not being properly maintained".

The advice goes on to state however that [REDACTED]

It should be noted also that any decision to amend the aquaculture licence will be subject to all the legislative requirements of Section 68 of the Act together with subsequent Public and Statutory consultation processes, appeal processes etc and that the outcome of such processes cannot be prejudged.

Copy of relevant Legal advice attached at **TAB 7**.

Conclusion

Given that the Minister is precluded from amending the licence in any fashion that could be seen as punitive it is difficult to see how any amendment to the conditions of the Aquaculture Licence (now operation under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act) could be seen as any form of sanction against the company for the breach of Condition 2(e) of the licence (which sets out the maximum harvest limit under the terms and conditions of the licence).

The 1997 Fisheries (Amendment) Act does not permit the amendment of a licence as a sanction against the licensee but Condition 3 of the licence does provide for an amendment of the licence where the Minister is satisfied that there has been a breach of any condition specified in the licence. Any such amendment is however subject to the legislation. An amendment in this particular case is simply not viable as it cannot be by way of punitive sanction. Since there is no other reason to amend the licence other than as some sort of punitive sanction this course of action is not viable.

Amendment of the licence is therefore not recommended in the circumstances.

20. Withdrawal of the entitlement to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act

As will be seen above, amendment of the licence is not recommended in this case for reasons of clear public interest. What remains therefore is the option of treating as discontinued the statutory entitlement to engage in aquaculture operations provided for by Section 19(A)4 of the 1997 Act. There is no doubt that withdrawal of the consent to operate will have the effect of extinguishing the Company's activity in relation to this site. It should be noted however, that the Company's application for renewal of the licence will still be operative and will be processed in the normal way.

Withdrawal by the Department of the Company's entitlement to continue operations is proportionate to the breach of the applicable licence condition (excess production by 121%) for all of the reasons set out heretofore in this submission and, while it will undoubtedly impact the commercial interests of the operator it is unlikely to have a catastrophic impact having regard to the overall size of the Company and the wide scale of its operations.

It is considered that withdrawal of the entitlement to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act, is not only appropriate in this case given all of the circumstances, but also necessary in view of the seriousness of the breach in question having regard to the following:

1. The extent of the breach of Condition 2(e) which sets the harvest limits (121% excess) resulting in a significant commercial gain for the Company.
2. The fact that the breach of the licence condition took place in circumstances where the Company was fully aware of the limits set by the specific condition of the licence governing harvest tonnage.

21. Recommendation

Having regard to all of the above, it is recommended:

1. That the Minister determine that a breach of Condition 2(e) of the applicable aquaculture licence has occurred as described above.
2. That the Minister treat the statutory entitlement of Silver King Seafoods Ltd (Subsidiary Company of Marine Harvest Ireland) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act as discontinued for the following reason.

Breach of condition 2(e) of the applicable aquaculture licence which states

"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"

Submitted please for approval

John Quinlan

Principal Officer

Aquaculture and Foreshore Management Division

Related submissions

There are no related submissions

Comments

Quinlan, John - 01/11/2017 10:55

The attached submission and supporting documentation is comprehensive in nature and contains a clear recommendation. Due to the size of the submission a hard copy has also been forwarded.

Beamish, Cecil - 17/11/2017 12:13

Secretary General.

This file relates to a salmon farm in Ballinskelligs Bay, Caherdaniel, Co. Kerry operated by a subsidiary of Marine Harvest Ireland under licence from the Minister.

The issue

The core point at issue is that the licence contains a condition that:

"the licence shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year."

Records submitted by the company suggest that 1108.91 tonnes were produced on this site in 2016. This core fact is not contested. The matter is however complicated by the fact that the licence which was granted in 1997 has, on plain reading, expired in February 2007 simply by the effluxion of time. However, this is not the case.

Section 19(A) 4 of the 1997 Act provides that :

"a licensee who has applied for renewal or further renewal of an aquaculture licence shall notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending a decision on the said application."

It is on the basis of Section 19(A) 4 that the firm currently operates and that requires it operate subject to the terms and conditions of the licence. The legal contention, [REDACTED]

In short, the firm is subject to the 500 tonne per annum production limit, by virtue of its licence. If the Minister were to determine that the terms and conditions of the old licence are not respected it is contended in the submission beneath and in the legal advices given that the effect automatically would be that the firm's statutory entitlement to continue farming at the site would cease, effectively closing the enterprise at that farm. While this is the perceived consequence it would undoubtedly be tested.

The Submission

The issues addressed in this file must be considered within the legal framework applicable and taking account of the specificities of the case and the Legal Advices available (Tab 7).

Mr. Quinlan's submission below is well presented and laid out. It traverses the issues in relation to this matter and should be read fully in conjunction with the following and with the other documentation on file.

The Aquaculture legislation does not provide for graduated sanctions and there are limited options available to the Minister, as set out in Mr. Quinlan's submission. In this case, the core issue is that the proposed consequence of determining that a breach occurred in relation to this specific licence condition is to cease all activity on this farm.

Mr. Quinlan's extensive submission recommends that the Minister determine that the harvest limit in the licence has been breached and that the Minister treat as discontinued the entitlement of the company to continue aquaculture operations at the site. Key issues around this course of action that will undoubtedly be tested and fall for consideration in determining this course of action are reasonableness, public interest and proportionality and in the following I will endeavour to tease these out a little further to inform further any decision which falls to be made in this case.

The Company's defence

The company's defence to the matter relies on a variety of arguments which are all on file and examined legally in the file and in the submission. Firstly, the company would like the licence in this respect to be something other than it is and this does not seem to me to be pertinent. The company seeks to look behind conditions of the licence and speculate as to what might have been intended and construct a defence on that basis. That does not seem valid.

The company argues that the licence is "out of date" in terms of parameters and terminology. The company points out that it applied for renewal in 2007 and then seeks to argue that the old licence should operate on different parameters informed by modern aquaculture thinking.

The delay in determining the renewal application is understandably frustrating to all concerned, including the State side. The delay is due to the fact that the firm operates in a Natura 2000 site and following the ECJ judgement against Ireland in 2007, no determination can be made in a Natura 2000 site until multi-year biological data was gathered on the site, scientific conservation interests were determined for the site by NPWS, a detailed appropriate assessment is carried out on the site and only then can the licensing process move forward to determination in respect of any aquaculture operations in this Natura 2000 site. At this point the multi-year scientific data has been collected, the scientific interests to be protected in Kenmare Bay have been identified and the appropriate assessment for Kenmare Bay has been completed. However, as this is a salmon farming operation EU law requires that an EIS is carried out by the operator. An EIS for this site is currently awaited from the company. In short consideration of a licence renewal is on going in the way that it must proceed under EU and National law and in accordance with the process agreed with the EU Commission following the ECJ Judgement.

Notwithstanding the delay in determining the renewal, this matter must be considered under the terms of the old licence under which the firm operates. Those Terms and Conditions must be respected it is contended to maintain the Statutory entitlement under Section 19(A) 4 which provides the basis on which the firm continues to operate.

The other defences raised by the company are addressed in Mr. Quinlan's submission and in the Legal Advices (Tab 7). A consistent defence stated by the company is that, because the fish taken for harvest from the site were killed elsewhere, then no harvest actually occurred on site and hence no harvest limit applies or was breached. The fish taken from the site were not moved to other sites for on growing, but instead were moved for immediate slaughter and processing. The fish removed were "harvestable", were removed from the site for "harvest" and were "harvested", hence it is hard to see how this defence could stand up.

In summary on the face of it, it does appear that a quantity in excess of the harvest limit was "harvested" from the site in 2016. The

issue is what is the appropriate thing to do in the circumstances and this is more complicated.

Mr. Quinlan's submission argues for treating as discontinued the right to operate. In effect, the logic is that by determining the breach the Statutory entitlement to continue operating under Section 19 (A) 4. This is a strong punitive result arising from the determination of a breach in one instance, which effectively closes the operation at this site.

Some Legal Considerations

The following legal considerations, in addition to those set out in Mr Quinlan's submission which should be read in conjunction, should be borne in mind in weighing up the appropriate course of action in this matter.

The legal advice on file (Tab 7) [REDACTED]

Mr Quinlan's submission sets out reasons why it would be in the public interest to take such action. Marine Harvest Ireland argued that no environmental damage was done by the level of production on the site and the Department has no evidence to refute this. Marine Harvest Ireland's other public interest arguments relate to the viability of the firm and the employment it creates (Tab 6A). The legal advice on file (Tab 7) states that :

The legal advice above [REDACTED]

[REDACTED] Those seem to be advised as the key tests to be considered in deciding whether or not to take a decision whose effect is to discontinue the right to operate.

The concluding legal advice (Tab 7) is that :

Marine Harvest Ireland have already strongly contested the merits of the tonnage limit arguing that it was outdated and did not represent modern regulatory practices. The licence at issue here was amended by the Minister and confirmed by ALAB in 2012 for a trial period to early 2015 to allow for a different control provision, based on Maximum Allowable Biomass. In effect, the Minister removed the 500 tonne limit for a Trial period and replaced it with a different type of limit based on biomass. That trial adjustment to the licence ended on 31/03/2015. Thus while production in 2016 was governed by the 500 tonne limit condition Marine Harvest argue that the maximum production limitation was changed for a period by the Minister and they will undoubtedly argue that this strengthens their contention that the condition is outdated. The company have submitted expert evidence supporting this view. Undoubtedly this approach will be employed to test the "reasonableness" of any decision that the licence term was breached and the "proportionality" of thereby removing the right to continue aquaculture operations on the site. Those arguments coupled with the lack of State evidence of environmental damage caused by the increased level of production will undoubtedly be used to test if any action taken meets the "public interest" test. Whilst the trial licence approach, based on maximum allowable biomass, came to an end and the tonnage limit was in place in 2016, the mere fact that the Minister allowed this to be "tried" at this site and supported the general merits of an approach based on a biomass limit, will be used by the company to argue against the "public interest" being served by taking action which results in discontinuance of the enterprise at this site based on a breach of the tonnage limit.

These tests and potential vulnerabilities in relation to the reasonableness and public interest must be weighed against the reasons stated in the underlying submission and in deciding whether or not to take the action recommended in the submission beneath and much of this resolves to legal advice and legal argument.

Amendment of Licence

It is worth considering separately the question of amending the Licence, which is not an alternative to punitive action but is worthy of consideration on its own merits. Section 19 of the submission addresses the question of whether or not the Minister can amend the licence. [REDACTED] However the Minister can make an amendment to the licence "if it is in not being properly maintained", but it must be "in the public interest to do so."

One of the dimensions of this matter is that the apparent breach of the production limit for 2016 was detected by the Department in

late February 2017, when the company forwarded its harvest records for the site. Harvesting had gone on progressively day by day according to the company records on file from the start of October 2016 to the end of December. The 500 tonnes limit would have been breached according to the Harvest records by mid October. Determining any injurious environmental impact would have required inspections in the October – December period but as the harvest figures did not have to be reported in real time, the type of determination was not facilitated.

It could be argued that an amendment of the licence which required real time harvest notification or pre-notification would be in the public interest, to allow any volume breach to be detected contemporaneous with the fish being in the water so as address the issue immediately and carry out any necessary investigations into possible injurious environmental impact. Such a determination would assist the Minister moving quickly, in weighing any action in the public interest and in defending any such action when taken. The issue of making an amendment to the company's licence as set out above is an issue which might also be considered by the Minister.

Next Steps

Mr. Quinlan's submission covers the issues and consideration of those issues and should be read in full. That submission makes one recommendation which is to determine that the company breached the licence and that as a consequence their right to continue operations under Section 19(A) 4 is removed by virtue of the breach. On the face of it this is a logical summation of the position. However given its consequences in terms of ceasing the legal right to operate at all on this farm the [REDACTED]

A separate matter that arises is whether or not there is some public interest merit in amending the licence in respect of reporting/pre-reporting harvest tonnages. Such an amendment could not be seen as punitive or a sanction in relation to a breach. Rather such a course of action would be in the public interest to allow better real time environmental assessment of such a future breach.

As a next step and as any course of action is strongly framed within a judgement and weighing of the legal issues and considerations I would recommend that a further meeting might be advisable involving the head of legal services, yourself and the relevant other officials involved. It would be a matter for the Minister as to whether or not he would wish to be a party to any such meeting to hear and tease out the issues. In any event, the meeting would I suggest be necessary before the file is finally considered by the Minister for decision.

C Beamish
17/11/2017

Beamish, Cecil - 17/11/2017 12:16
Hard Copy file to follow for ease of reference

ODriscoll, Aidan - 30/11/2017 09:55

The papers in this submission are quite detailed and complex. The recommendation (see "next steps") is that these issues be further examined with legal division and others. I propose to go ahead with this meeting to develop a specific recommendation for action. I am therefore forwarding this submission at this stage for the Minister's information and an indication of whether he wishes to meet to discuss the case at this time or to await the outcome of the meeting referred to above.

User details

INVOLVED: Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
eSub Ministers Office

READ RECEIPT: Quinlan, John
BTSSP-SC
Beamish, Cecil
Smith, Ann
Ball, Siobhan
ODriscoll, Aidan
Waldron, Ultan
Lennox, Graham

Action log

ACTION	USER	DATE	DESCRIPTION
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Sent For Review	Quinlan, John	01/11/2017 10:58	Submission sent to Cecil Beamish for review by John Quinlan
Sent to the Secretary General	Beamish, Cecil	17/11/2017 12:17	Submission sent to Secretary General for review by Cecil Beamish
Sent to the Minister	ODriscoll, Aidan	30/11/2017 09:56	Submission sent to Minister for review by Aidan ODriscoll
Completed	Lennox, Graham	30/11/2017 17:30	Submission completed by Graham Lennox on behalf of the Minister

An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine



Mr. Jan Feenstra
Chief Executive Officer
Comhlucht Iascaireachta Fanad Teoranta
MOWI Ireland
Kindrum
Letterkenny
Co Donegal

COPY

sent by registered post

12th April 2019

Re: Entitlement to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act for the culture of salmon in cages at a site east of Deenish Island, Ballinskelligs Bay, Co Kerry (T06/202)

Dear Mr. Feenstra,

I am to refer to the Department's previous correspondence and discussions concerning the above issue.

The Minister has considered all aspects of this case, including all arguments adduced by the Company and its legal representatives in support of the Company's position. The Minister's consideration of the case includes the following:

1. The licence conditions in question are clearly stated in the licence. The relevant condition is condition 2(e) which states:

"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"

It is noted that the Dead Weight Harvest for 2016 was 1,108,907.36kg (1.108.91 tonnes). This harvest figure is 121.78% in excess of what is permitted under licence condition 2(e). The Minister has noted the arguments adduced by the Company relating to harvesting in its letter and attachments of 3rd April 2017 and elsewhere.

2. The extent of the breach by the Company of condition 2(e) is significant. The breach of the licence condition (121.78% excess of authorised limit) is of such a scale that the decision to treat as discontinued the entitlement of the Company to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act is warranted and proportionate. In this regard the Minister has given the fullest consideration to all arguments adduced by the



Company in its communications with the Department including supporting documentation/arguments from scientific experts forwarded by the Company.

3. The breach of the licence condition took place in circumstances where the Company was fully aware of the limits set by the specific condition of the licence governing harvest tonnage. The Company was also aware from communications with the Department relating to the temporary amendment of the licence to facilitate a pilot project in 2012, that such amendment was "a once off pilot for this site only" (Department's letter of 1st April 2011 and ALAB's licence of 31st October 2012 refer). In this regard also the Minister has noted the arguments adduced by the Company relating to harvesting in its letter and attachments of 3rd April 2017 and elsewhere.
4. Breaching licence conditions serves to undermine public confidence in the regulatory system and therefore enforcement by the Department of licence conditions is in the public interest. The reasons for this include the following:
 - An increase of 121% in the stock harvested from the site must increase the effluent discharge from the site. The extent of the discharge is open to argument. However it is not open to the Company to interpret the licence conditions any way it wishes.
 - Enforcement of the licence conditions by the Department serves, inter alia, to uphold the integrity of the State's regulatory regime in respect of food production from the marine environment.
 - The Company is aware of the terms and conditions of the licence it holds and must conduct its affairs in accordance with the law.

Following consideration of all the circumstances the Minister has determined that:

1. A breach of a licence condition 2(e) has occurred. Condition 2(e) of the licence states:

"the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year"
2. The statutory entitlement of Silver King Seafoods Ltd. (a wholly owned Company of Comhlucht Iascaireachta Fanad Teoranta (MOWI Ireland)) to continue aquaculture operations under the provisions of Section 19(A)4 of the 1997 Fisheries (Amendment) Act is discontinued for the following reason:

Breach of condition 2(e) of the applicable aquaculture licence.



A public notice of the Minister's decision will be made in accordance with the applicable legislation.

Under the provisions of Sections 40 and 41 of the Fisheries (Amendment) Act 1997, an appeal against the above decision may be made to the Aquaculture Licences Appeals Board. This appeal must be lodged within one month beginning on the date of the publication of the Minister's decision.

Yours Sincerely,

John Quinlan
Principal Officer
Aquaculture and Foreshore Management Division



Office of the Minister for Agriculture, Food and the Marine, Dublin 2.

Oifig an Aire Talmhaíochta, Bia agus Mara, Baile Átha Cliath 2.

Ms. Mary O'Hara
Secretary to the Board
Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5

COPY

19 December 2019

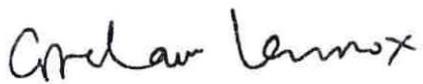
Re: AP1/2019 – Appeal against the notice of Ministerial decision of the Minister for Agriculture, Food and the Marine under the provisions of Section 68(1) and Section 19A(4) of the Fisheries (Amendment) Act 1997, in respect of the entitlement to continue Aquaculture Operations under the provisions of Section 19A(4) of the Act for the culture of Salmon in cages at a site east of Deenish Island, Ballinskelligs Bay, Co. Kerry, T06/202 held by Silver King Seafoods Limited, a wholly owned company of Comhlucht Iascaireachta Fanad Teoranta (Mowi Ireland), Fanad Fisheries, Kindrum, Fanad, Letterkenny, Co. Donegal

Dear Ms O'Hara,

The Minister has asked me to refer to the Board's letter of 17th May 2019 concerning the appeal by Mowi Ireland against the Minister's decision to treat as discontinued the Statutory entitlement of Silver King Seafoods Limited (a wholly owned Company of Comhlucht Iascaireachta Fanad Teoranta (Mowi Ireland)) to continue aquaculture operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act. The Court ordered a Stay on this in view of the Judicial Review proceedings initiated by the Company in respect of the Minister's decision. As you know this Stay was lifted on Monday 2nd December 2019.

I enclose for the consideration of the Board observations from the Department in accordance with Section 44(2) of the Act.

Yours sincerely,

A handwritten signature in black ink that reads "Graham Lennox". The signature is written in a cursive style with a long, sweeping tail on the "x".

Graham Lennox
Private Secretary

Appeal by Mowi Ireland against a Ministerial decision to treat as discontinued the statutory entitlement of Silver King Seafoods Ltd. (a wholly owned Company of Comhlucht Iascaireacta Fanad Teoranta (Mowi Ireland)) to continue aquaculture operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act at a site at Deenish, Co. Kerry

Observations submitted by the Department of Agriculture, Food and the Marine under Section 44 (2) of the Fisheries (Amendment) Act 1997.

1. These observations are submitted to ALAB on foot of the above appeal and address the specific points raised by the Appellant in the appeal application. The Board's attention is respectfully drawn to the detailed submissions made to the Minister in relation to the decision to treat as discontinued the entitlement of the Appellant to continue operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act. This documentation was forwarded to ALAB on 11 December 2019.
2. It is noted that the Appellant has asked ALAB to:
 - 1. Substitute for the Minister's Determination that there was a breach of condition 2(e) of the Licence, its own decision that there has been no such breach;***
 - 2. Substitute for the Minister's Determination to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site pursuant to Section 19(A)4 of the Fisheries Act, its own decision that Mowi Ireland's statutory entitlement is continuing; and***
 - 3. Substitute for the Minister's Determination to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site pursuant to Section 19(A)4 of the Fisheries Act, its own decision to amend the Licence to provide for the control of production by reference to a maximum Standing Stock Biomass ("SSB"), otherwise known as a Maximum Allowable Biomass ("MAB")."***
3. ***"Substitute for the Minister's Determination that there was a breach of condition 2(e) of the Licence, its own decision that there has been no such breach"***

The Department would respectfully refer the Board to the detailed submission made to the Minister with relevant supporting documentation outlining the nature and extent of the breach in question. Specifically the Board's attention is drawn to the fact that the Appellant does not deny the harvest figures in question.

It is the Department's view that the breach is manifestly obvious, is supported by the applicable engineering reports, is acknowledged by the Appellant and is based on figures actually supplied by the Appellant.

Furthermore the breach represents an excess of 121% in the stock permitted to be harvested from the site.

4. ***"Substitute for the Minister's Determination to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site pursuant to Section 19(A)4 of the Fisheries Act, its own decision that Mowi Ireland's statutory entitlement is continuing"***

It is the consistent view of the Department that the Minister's decision to treat as discontinued the statutory entitlement of Silver King Seafoods Ltd. (a wholly owned Company of Comhlucht Iascaireacta Fanad Teoranta (Mowi Ireland)) to continue aquaculture operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act, is warranted by the undisputed facts of this case and is proportionate having regard to the very significant excess in the stock harvested (121% excess).

5. ***"Substitute for the Minister's Determination to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site pursuant to Section 19(A)4 of the Fisheries Act, its own decision to amend the Licence to provide for the control of production by reference to a maximum Standing Stock Biomass ("SSB"), otherwise known as a Maximum Allowable Biomass ("MAB)"***

The Department would respectfully draw the Board's attention to the fact that the Appellant currently operates under the provisions of section 19A(4) of the Fisheries (Amendment) Act 1997. The Department has not to date received an application from the Appellant to amend the applicable licence to reflect harvesting by reference to Maximum Allowable Biomass (MAB). In addition, the Appellant has to date not submitted the Environmental Impact Statement necessary to support such a request.

It is the strong view of the Department that a capping mechanism on harvesting based on tonnage harvested is viable and is the basis on which the finfish industry generally in Ireland operates and is regulated. This view is supported by the Marine Institute.

Notwithstanding this fact, the Department has no objection in principle to moving towards MAB as a means of capping harvesting. However, such a move will represent a significant material change to each licence and therefore will require both public and statutory consultation as well as the submission of Environmental Impact Statements. The optimal time for such a transition is when an individual licence is under consideration for renewal. For one operator such as the Appellant to choose to depart from the capping mechanism prescribed in its licence is not alone unilaterally a breach of the individual licence, but an undermining of the entire scheme of regulation of the industry.

The conversion from the current capping mechanism for harvest/production based on annual tonnage to a mechanism based on MAB will require the development of a reliable conversion protocol/metric. In addition, the MAB would need to be calculated to reflect the current licence conditions at all currently licensed sites. Such a protocol/metric would need to be objective, transparent and independently validated. It is the view of the Department that the Marine Institute is the most appropriate body to prepare such a protocol/metric. It should be noted also that such a protocol/metric should be subject to consultation and peer review. The Department would also be of the view that the conversion to MAB would represent a significant and material change to a licence and require an Environmental Impact Statement.

Detailed arguments set out by the Appellant in its appeal

"PRELIMINARY [LEGAL] OBJECTIONS TO THE MINISTER'S DETERMINATION"

6. ***"Minister does not have the power to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site"***

The Department notes that the Appellant has appealed this matter to ALAB under Section 40 of the Fisheries (Amendment) Act 1997, as amended.

The Department notes the Appellant's sole submission in their Notice of Appeal regarding the Minister's alleged lack of authority to treat as discontinued their entitlement to engage in aquaculture.

That submission is that *"there is no express provision in the Fisheries Act that allows the Minister to bring an end to the statutory entitlement contained in section 19A(4), nor is there any basis for implying such a power."*

In the first place, if one were to follow the Appellant's argument, there would be no express power in the Fisheries (Amendment) Act 1997 for the Appellant to appeal to ALAB the decision referred to above. Nevertheless, the Appellant has lodged their appeal. Moreover, the Appellant refers in their Notice of Appeal to judicial review proceedings. Those proceedings, which included a submission regarding the above construction of Section 19A(4), have been stayed at the instance of the Appellant for the express purpose of appealing this matter to ALAB. Accordingly, it is clearly the view of the Appellant that the discontinuation of their entitlement to operate is an appropriate decision of the Minister to be appealed to ALAB. This is notwithstanding the absence of any express provision in the Fisheries Act to appeal the Minister's decision to bring an end to their statutory entitlement under Section 19A(4).

Second, and notwithstanding the absence of any ALAB appeal, there are two further possible outcomes which would arise, should the Appellant's strict interpretation of Section 19A(4) be adopted:

- (a) First, if the Minister is without **any** power to enforce the conditions of an expired licence by which the appellant is bound by under Section 19A(4), then any operator acting under Section 19A(4) can continue operating indefinitely (or until their renewal), and with absolute impunity. Indeed, there would be little reason for the express inclusion in Section 19A(4) of the phrase '*subject otherwise to the terms and conditions of the licence*' because there would be no mechanism by which non-compliance with those terms and conditions could be acted upon. The Department submits that any plain reading of Section 19A(4) does not disclose an intention by the Oireachtas to permit those operating under Section 19A(4) to operate with absolute impunity and without any power on the Minister to respond to a failure to comply with "*the terms and conditions of the licence.*"
- (b) The second possible outcome of the Appellant's interpretation of Section 19A(4) is that any failure to adhere to the terms and conditions of the licence would **automatically – by operation of Statute** – remove the operator's entitlement to engage in aquaculture.

Because a strict interpretation of Section 19A(4) would not provide for any intervening Ministerial determination of a breach of licence conditions, the entitlement to operate **would immediately extinguish** once the terms of the expired licence were breached. This is because the statutory entitlement is, read strictly, granted by Statute rather than by any Licensing Authority. No power is granted to any Licensing Authority to consider whether or not a breach has occurred, and to afford the right to the operator to make representations as to the alleged breach.

In order to ensure procedural fairness for aquaculture operators (such as the Appellant) acting under Section 19A(4) of the 1997 Act, the Department has afforded such operators the same procedural rights afforded to extant licensees under Section 68 of the 1997 Act. This is reflected in the comprehensive submissions previously made by the Appellant in the course of the Minister's determination that they had breached the terms of their expired licence, submissions with which the Minister equally comprehensively engaged. Should the Appellant's construction of Section 19A(4) be adopted, no such procedural rights or engagement under Section 68 (including a right of appeal under Section 40) could be provided.

Finally, the Department notes that the above position adopted by the Minister has been clearly endorsed by the High Court, in *Murphy's Irish Seafood v MAFM*, [2017] IEHC 353. It is clear from the judgment in *Murphy's Irish Seafood* that the Court concluded that an operator under Section 19A(4) of the 1997 Act must be treated as equivalent to a licensee under Section 68 of that Act, for the purposes of requiring appropriate procedural fairness to be afforded to such operators.

7. "Breach of the requirements of the Fisheries Act"

In arriving at his decision the Minister took into account matters specifically raised with the Appellant by the Department as well as matters adduced by the Appellant in its various responses to the Department. The Appellant's assertion in its appeal that the Minister considered matters not raised with the Appellant are wholly without foundation.

The Department would respectfully draw the Board's attention to the detailed submission to the Minister. In relation to the Appellant's assertion regarding where the actual harvesting took place, it is the strong view of the Department that the Appellant's argument is not tenable. The Appellant's argument disregards the fact that condition 2(e) of the applicable licence refers only to harvest and is not specific to the location of such harvest. In any event it is unanswerable that the Appellant removed fish from the Deenish site for the purpose of harvesting and therefore Deenish was a harvest site. Moreover, it is significant that the Appellant did not apply for a Fish Movement Order from the Marine Institute. Such an order is required where an operator is to move live fish from one location to another for 'ongrowing'. The Appellant did not apply for such an Order in this case as it is clear that any movement from the Deenish site was for the sole purpose of harvesting. The Appellant's assertion that this does not represent harvesting is simply not credible.

In relation to the Appellant's argument that there was no evidence of an increase in effluent discharged from the site as a result of the number of stock harvested, it is noted that the Appellant has referenced Benthic Reports in this regard. The Department is advised by the Marine Institute that Benthic impacts are only one indicator of adverse environmental and other impacts. Other matters that should be considered include:

- i. Impacts of activities on seafloor habitats and species, (under Monitoring Protocol No. 1 for Offshore Finfish Farms- Benthic Monitoring)
- ii. Chemical treatments considered in line with the information specified in Regulation 4 of the European Communities (Control of Dangerous Substances in Aquaculture) Regulations 2008 (SI 466 of 2008).
- iii. Residues in fishes – ensuring that requirements of EU Residues Directive (96/23) are adhered to such that animal and animal products pose no threat to consumers and that good practices are adhered to on farms.
- iv. Nutrients derived from the finfish operations and subsequent water quality status (under WFD and Monitoring Protocol No. 2 for Offshore Finfish Farms- Water Quality Monitoring)
- v. Fish health status – also status/adherence to fish health management plans and relevant legislation.

- vi. Sea lice status – interactions and risk to wild salmonids. Performance of farm sites as it relates to Monitoring Protocol No. 3 for Offshore Finfish Farms- Sea Lice Monitoring and Control and DAFM strategy for improved pest control on Irish salmon farms 2008.
- vii. Hydrodynamic (dispersion) modelling as it relates to sediments, chemotheraputents, sea lice and other pathogens.
- viii. Natura sites and conservation features (habitats, birds and species incl. Salmon) likely to interact with the proposed/existing activities.
- ix. Alien species - risks and potential interactions.
- x. Escapes - risks and interactions with wild species.
- xi. Interactions with other users, fisheries, recreational etc.
- xii. Litter – Descriptor 10 under Marine Strategy Framework Directive

The Appellant appears to be stating that in the absence of a negative environmental impact on the environment by reference to benthic and water column monitoring, the Minister should not be permitted to revoke or be deemed to have revoked the entitlement to continue to operate under Section 19A(4). The Department does not accept this.

If the argument put forward by the Appellant was accepted no action could be taken against operators who breached condition 2(e) unless and until actual damage to the environment was detected and established, by which time it would be too late.

In relation to the reference to public interest made by the Appellant the Board's attention is respectfully drawn to the detailed submissions made to the Minister.

It is clearly in the public interest that the Department enforce licences issued to operators in order to uphold the integrity of the State's regulatory regime in respect of food production from the marine environment. It is not in the public interest that operators should be permitted to interpret the terms and conditions of their licences in a manner which is contrary to the natural and ordinary meaning of such terms and conditions in order to obtain a commercial advantage. A failure or perceived failure by the Department to properly enforce licence conditions would provide an incentive for further non-compliance by the Appellant and perhaps non-compliance by other operators within the sector. Failure by the Department to enforce licence conditions would be anti-competitive as it has the potential to afford a significant commercial advantage to the non-compliant operator. The maintenance and development of Ireland's food exports is dependent on an acceptance by the general public and authorities in other jurisdictions of the efficacy of Ireland's regulatory regime. For this reason, it cannot be said that for the Department to ignore a very significant breach of licence conditions is in the public interest.

Conclusion

1. The Department is strongly of the view that all appropriate procedures and regulations were complied with fully by the Minister in making the determination to treat as discontinued the entitlement of the Appellant to continue operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act.
2. The Appellant's argument that the Minister considered matters that they did not have an opportunity to address is not supported by the facts and is rejected by the Department.
3. The Appellant's argument that its actions in breaching condition 2(e) did not give rise to environmental damage based on Benthic Reports is rejected for reasons outlined above.
4. The Appellant's arguments that the public interest is not served by the Minister's determination to treat as discontinued the entitlement of the Appellant to continue operations under the provisions of Section 19A(4) of the Fisheries (Amendment) Act 1997, is rejected for the reasons outlined above.
5. The Appellant's argument that a "***simple amendment to the terms of the Licence to allow for the application of a MAB would have regularised the Deenish Licence and would facilitate internationally recognised sustainable farming practices***" is rejected for the reasons outlined above and is also an admission by the Appellant that its actions were not in accordance with the conditions of its licence.
6. The Department would respectfully refer the Board to the observations made herein and to the detailed submissions made to the Minister.

ENDS



OIFIG AN PHRÍOMH-ATURNAE STÁIT
CHIEF STATE SOLICITOR'S OFFICE

3rd March 2020
Ms. Mary O'Hara
Secretary
Aquaculture Licences Appeals Board,
Kilminchy Court,
Dublin Road,
Portlaoise,
Co Laois.
R32 DTW5

Your Ref.: AP1/2019

Our Ref.: KH/2019/02589/

Contact: Kate Hoare
Direct Dial:
Kate_Hoare@csso.gov.ie

BY REGISTERED POST AND BY EMAIL
Email; Mary.Ohara@alab.ie.

Re: Appeal of Silver King Seafoods Ltd. T/A Mowi Ireland against the decision of the Minister for Agriculture Food and the Marine, dated 12 April 2019 relating to a site at Deenish, Co. Kerry to the Aquaculture Licences Appeals Board.
Your Ref: AP1/2019

Dear Ms O'Hara,

We refer to your letter on behalf of the Board to the Minister, dated 10 February 2020 and our letter of 25 February 2020.

Please find attached the detailed submissions/observations of the Minister in response to your request made pursuant to Section 46 of the Fisheries (Amendment) Act, 1997.

Yours faithfully,


MARIA BROWNE
CHIEF STATE SOLICITOR

**APPEAL OF SILVER KING SEAFOODS LTD. T/A MOWI IRELAND AGAINST
THE DECISION OF THE MINISTER FOR AGRICULTURE FOOD AND
MARINE, DATED 12 APRIL 2019 RELATING TO A SITE AT DEENISH, CO.
KERRY TO THE AQUACULTURE LICENCES APPEALS BOARD.**

**SUBMISSIONS OR OBSERVATIONS ON BEHALF OF THE MINISTER FOR
AGRICULTURE, FOOD AND THE MARINE PURSUANT TO SECTION 46 OF
THE FISHERIES (AMENDMENT) ACT 1997**

- 1 These submissions/observations are made in response to the letter of the Secretary to the Board to the Minister for Aquaculture Food and the Marine, dated 10 February 2020.
- 2 By that letter, the Secretary to the Board states: "It appears that the Minister's determination is not a decision of the Minister on an application for an Aquaculture licence or the revocation or amendment of an Aquaculture licence within the meaning of Section 40 of the Fisheries (Amendment Act) 1997 (the "1997 Act"), and that the Board does not, therefore, have jurisdiction to consider or determine the appeal".
- 3 The Board has not advised the Minister what led it to conclude that the Minister's determination is not a decision of the Minister on an application for an aquaculture licence or the revocation or amendment of an aquaculture licence, within the meaning of section 40 of the Fisheries (Amendment) Act 1997 (the "1997 Act"), and that the Board does not, in consequence, have jurisdiction to consider or determine the appeal.

- 4 The Minister respectfully disagrees with that statement on the part of the Board, and considers that the appeal of Silver King Seafoods Ltd. is a valid appeal for the purposes of Section 40 of the Fisheries (Amendment) Act 1997 which the Board has jurisdiction to consider and determine.
- 5 The appeal of Silver King Seafoods Ltd. is against the decision of the Minister conveyed by letter of 12 April 2019 to Jan Feenstra, the Chief Executive Officer of Mowi Ireland that by reason of a breach of Condition 2(e) attaching to the licence the Minister has determined that the entitlement of Silver King Seafoods Ltd continue Aquaculture operations at the Deenish site under Section 19(A) before the 1997 (Amendment) Act has ceased.
- 6 Condition 2(e) is to be found in the licence agreement between the Minister for the Marine and Gaelic Seafoods Ltd. of 30 January 1995 relating to the Deenish site. That licence was renewed on 4 August 2004 for the period to 15 February 2007. The applicant applied for a renewal of the licence on or about 29 January 2007.
- 7 The application for a renewal of the Aquaculture Licence has not been determined and is still pending for reasons of which the Aquaculture Licences Appeals Board are fully cognisant and which go back to the measures that have been necessitated in the wake of the judgment of the European Court of Justice in *Commission v Ireland KC-418/04* in 2007, in which it was held that Ireland was not compliant with the Directives on the Protection of Birds and Habitats. Silver King Seafoods Ltd. has continued to operate at the Deenish site, pursuant to its statutory entitlement under Section 19A(4) of the 1997 Act, the licence held by it and its application for a renewal of that licence.
- 8 Section 19A(4) of the 1997 Act as inserted by the Sea Fisheries and Maritime Jurisdiction Act 2006 is as follows:

A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue to aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application.

- 9 Section 19A(4) does not in itself contain a provision entitling the Minister to determine that the entitlement of the company in the position of Silver King Seafoods to continue Aquaculture operations under the provisions of Section 19A(4) or had ceased, but this arises by inference by virtue of the provisions of Section 68 of the Fisheries (Amendment) Act 1997, which entitles the Minister to revoke an Aquaculture Licence when satisfied that there had been a breach of any condition specified in the licence.
- 10 It is important to note that this interpretation of the legislation is consistent with the reasoning of the High Court in *Murphy's Seafood Ltd. and the Minister for Agriculture Food & the Marine* [2017] IEHC 353 of 1 June 2017. In that case, Ms Justice Baker did not accept the point made by the respondent that there was no power to revoke a licence under Section 19A (4), holding that the power of revocation of the Minister under Section 68 extended to those carrying on operations under Section 19A (4) subject to a compliance with the obligations to give reasons and the other statutory requirements of Section 68.
- 11 Having regard to the interpretation of the Act by the High Court in *Murphy's Irish Seafood v MAFM* it is clear that the Minister's determination to treat as discontinued the statutory entitlement of Silver King Seafoods Ltd. (a wholly owned Company of Comhlucht Iascaireacta Fanad Teoranta (Mowi Ireland)) to continue aquaculture operations under the provisions of Section 19A(4) of the 1997 Fisheries (Amendment) Act at a site at Deenish, Co. Kerry amounts to or is to be deemed a revocation for the purposes of Section 40 of the Act.

12 The judgment in *Murphy's Irish Seafood v MAFM* affirms the view that the Department has long held of the Minister's right to terminate an entitlement to continue Aquaculture or operations in relation to Aquaculture. The legal advice that the Minister has is consistent with the decision in *Murphy's Irish Seafood Ltd*. It has also long been the view of the Minister that an appeal would lie under Section 40 against the revocation of such an entitlement.

13 It is important to consider the provisions of Section 19A as a whole as well as the specific provisions of Section 19A(4). A licence does not cease to have effect on its expiration. Crucially, the aquaculture or operations in relation to aquaculture that are permitted by Section 19A(4) are those which are authorised by the licence which the person holding the licence has sought to renew, or further renew.

14 Section 40(1) is in itself broad terms.

"A person aggrieved by a decision of the Minister on an application for an aquaculture licence or by the revocation or amendment of an aquaculture licence may, before the expiration of a period of one month beginning on the date of publication in accordance with this Act of that decision, or the notification to the person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal."

15 A broad interpretation of Section 40(1) is further consistent with the references in sub-sections (4) and (6) to "the decision or action of the Minister".

16 The long title to the original Act: "An Act to amend and extend the laws relating to fisheries, to prohibit persons from engaging in Aquaculture except with and in accordance with a licence to establish a procedure for the granting, renewal, amendment and revocation of licences, to allow for appeals against *decisions relating to licences*, and for connected purposes". [Emphasis added].

- 17 Juxtaposing therefore Section 19A(4) on which the continued entitlement of many operators in relation to Aquaculture is predicated, and Section 40, it appears clear that an appeal does lie to the Aquaculture Licences Appeals Board in the circumstances here arising.
- 18 It may be relevant to point out that the Aquaculture Licences Appeals Board was the first named notice party to the judicial review proceedings instituted by Silver King Seafoods Ltd. (Record No. 2019JR 292). Silver King Seafoods Ltd.'s appeal to ALAB of 3 May 2019 featured prominently in the proceedings.
- 19 The appeal to the Board is referred to at paragraphs 33 and 64-69 of the statement of grounds of the applicant, and at paragraphs 59-62 of the grounding affidavit of Jan Feenstra sworn on 16 May 2019.
- 20 In the statement of opposition, it is specifically denied that ALAB does not have the power to determine an appeal in relation to a statutory entitlement under Section 19A (4); it is pleaded at paragraph 68 that the applicant has in the past appealed to ALAB in respect of Ministerial determination relating to its operation at Inishfarnard, which was operating under Section 19A(4) of the 1997 Act, an appeal that was not merely accepted, but actually granted by ALAB, which also amended the conditions to the licence as sought by Silver King Seafoods. Moreover, it is pleaded at paragraph 70 that ALAB had in the instant case accepted the applicant's appeal.
- 21 In the replying affidavit of John Quinlan, sworn 17 October 2019 on behalf of respondent, the Department set out its case that the appropriate remedy open to the applicant was by way of appeal to ALAB rather than judicial review, not least given the jurisdiction of ALAB to amend the licence (as it had been requested to do by the applicant as part of its appeal). It was pointed out at paragraph 88 of Mr

Quinlan's affidavit that Mowi (Ireland) had previously appealed the determination of the Minister to ALAB in respect of its Aquaculture licence at Inishfarnard, which at the time was operating under Section 19A (4) of the 1997 Act, an appeal in which the applicant was successful. The notice of appeal dated 8 January 2018 and the decision of ALAB dated 4 May 2018 were exhibited in Mr Quinlan's affidavit.

- 22 As pointed out in the Minister's opposition papers in the judicial review, and referred to above, on 1st May 2018 ALAB had upheld an appeal by Mowi against the decision of the Minister to amend the licence held by Mowi in respect of a site at Inishfarnard, Co. Cork. In this regard it should be noted that the Company's site at Inishfarnard was operating under the provisions of Section 19A(4) of the Act in precisely the same way as the site at Deenish. It is not clear, in the absence of any reasons adduced by the Board in its letter of 10th February 2020, why the appeal in respect of Deenish should be deemed by the Board not to fall within the scope of Section 40 of the Act having accepted that the appeal in respect of Inishfarnard did fall within the scope of Section 40.
- 23 The Department would also respectfully draw the Board's attention to the Determination of the Board dated 31st October 2012 to uphold the Minister's decision to grant a temporary amendment to the Deenish licence (which was operating in accordance with the provisions of Section 19A(4)). It will be seen therefore that ALAB has already accepted that a decision of the Minister in respect of this site while operating in accordance with the provisions of Section 19A(4) comes within the meaning of Section 40 of the 1997 Fisheries (Amendment) Act.

ENDS

OShea, Nicole

From: McManus, Catherine [Catherine.McManus@marineharvest.com]
Sent: 24 February 2017 15:41
To: OShea, Nicole
Cc: Feenstra, Jan C
Subject: RE: T6/202 - Deenish
Attachments: Deenish Harvest DW 2016.pdf

Dear Nicole,

Please find attached details of all harvest batches from Deenish T6/202 in 2016. Note that no fish were harvested from Deenish stocks in 2015.

The contents of the attached harvest summary submitted to Department of Agriculture, Food and the Marine (the "Department") are confidential and commercially sensitive. The document is provided to the Department on a confidential basis, and on the understanding that they will remain confidential.

The information contained in the document submitted, in its entirety, constitutes commercially sensitive information, the disclosure of which would prejudice and adversely affect the interests of Marine Harvest Ireland.

If, pursuant to section 12 of the Freedom of Information Act 2014, Regulation 6 of the Access to Information on Environment Regulations 2007 – 2014 or otherwise, the Department receives any requests for disclosure of information contained in this document submitted by Marine Harvest Ireland the Department should refuse to grant the request on the basis that the contents of the document (as mentioned) are confidential and commercially sensitive and exempt from disclosure. Without prejudice to the foregoing, we ask that we are notified of such request and that we are consulted and our comments taken into account and we are given an opportunity to redact any and all information as we deem appropriate before any action is taken. We also ask that you notify us of any appeal to the Office of the Information Commissioner, the Commissioner for Environmental Information or any other decision-making / judicial body that arises from any such request.

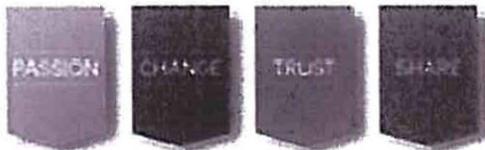
Best regards

Catherine McManus

Technical Manager
MARINE HARVEST IRELAND

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MAIL: catherine.mcmanus@marineharvest.com
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OFFICE: Rinmore, Ballylar P.O., Letterkenny
Co. Donegal
Ireland. F92 T677



From: OShea, Nicole [<mailto:Nicole.OShea@agriculture.gov.ie>]
Sent: 13 February 2017 15:15
To: McManus, Catherine
Cc: Quinlan, John; Hodnett, Kevin; Feenstra, Jan C
Subject: T6/202 - Deenish

Dear Catherine,

This is further to previous correspondence and discussion in relation to the above site. In order to facilitate the cross references of records, you are requested please to forward information in relation to the above site for the years 2015 and 2016. The details sought are as follows:

- Date of each harvest
- The tonnage (dead weight) per harvest

You are requested please to forward these to me as soon as possible and in any event not later than Monday 27th February.

Yours Sincerely,

Nicole O'Shea
Aquaculture & Foreshore Management Division
Department of Agriculture, Food and the Marine
National Seafood Centre,
Clonakilty
Co. Cork
023 8859507

Department of Agriculture, Food and the Marine

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An Roinn Talmhaíochta, Bia agus Mara

Tá an t-eolas san ríomhphost seo, agus in aon coanglán leis, faoi phribhléid agus faoi rún agus le h-aghaidh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a tháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeáil, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.

DEENISH HARVEST DATA 2016

Date	Batch	Pen No.	Dead WT Kg
02/10/2016	100211	15	51,964.39
04/10/2016	100218	15	54,757.43
05/10/2016	100215	15	54,743.00
06/10/2016	100221	15	26,545.06
06/10/2016	100224	7	10,017.57
09/10/2016	100227	3	56,081.94
10/10/2016	100228	3	51,183.49
12/10/2016	100231	3	56,441.96
13/10/2016	100237	1	51,816.48
16/10/2016	100239	1	40,539.95
17/10/2016	100242	1	52,596.24
18/10/2016	100244	10	40,644.31
18/10/2016	100249	1	6,987.52
19/10/2016	100246	10	50,326.73
20/10/2016	100248	10	48,992.78
24/10/2016	100253	10	50,262.43
25/10/2016	100255	13	41,802.40
26/10/2016	100257	13	43,698.64
27/10/2016	100259	13	42,139.83
13/12/2016	100345	5	34,406.39
14/12/2016	100346	5	26,587.00
15/12/2016	100348	5	37,599.17
18/12/2016	100350	5	48,880.30
19/12/2016	100352	5	32,308.56
19/12/2016	100355	13	17,732.27
20/12/2016	100353	13	48,242.40
21/12/2016	100354	13	31,609.12
TOTAL			1,108,907.36

From: McManus, Catherine <Catherine.McManus@mowi.com>
Sent: 24 June 2019 16:30
To: OSullivan, Diarmuid
Cc: Feenstra, Jan C
Subject: RE: Request for stocking figures, harvest figures and fish movements at the Deenish site - Ref. T6-202
Attachments: Deenish Stock & Movements 2017_May2019.xls

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hello Diarmuid,

Please see the attached stock data as requested.

Best regards

Catherine McManus

Technical Manager
MOWI IRELAND

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WEB: www.marineharvestireland.com

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Ireland. F92 T677

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From: OSullivan, Diarmuid <Diarmuid.OSullivan@agriculture.gov.ie>
Sent: 20 June 2019 14:49
To: McManus, Catherine <Catherine.McManus@mowi.com>
Cc: Feenstra, Jan C <Jan.Feenstra@mowi.com>
Subject: Request for stocking figures, harvest figures and fish movements at the Deenish site - Ref. T6-202

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Good Afternoon Catherine,

Please see below a request for stocking figures, harvest figures and fish movement numbers at the Deenish site.

Ref. T6-202

Can you please provide the following information:

- Detailed Monthly Stocking Reports for 2017, 2018 and the current year.
(Reports to include the following headings, Number, Weight & Biomass)
- Detailed Monthly Harvest Reports for 2017, 2018 and the current year.
(Reports to include the following headings, Number, Weight & Biomass)
- Details of all fish movements to and from the Deenish site for 2017, 2018 and the current year

Please note that this information should be forwarded no later than COB Tuesday 25th June 2019.

Best Regards,
Diarmuid O'Sullivan

Diarmuid O'Sullivan
Higher Executive Officer
Aquaculture & Foreshore Management Division
Department of Agriculture, Food and the Marine
National Seafood Centre
Clonakilty
Co. Cork
P85 TX47

Tel 023 8859488
Ext 55488

Disclaimer:

Department of Agriculture, Food and the Marine

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An Roinn Talmhaíochta, Bia agus Mara

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aghaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó
dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de,
a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an
seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.

Deenish, South West.

Month	Standing Stock			Harvest			
	Number	Av. Wt.(Kg)	Tot. Wt.(t)	Harvest Vessel	Number	Av. Wt.(Kg)	Tot. Wt.(t)
Jan-17	0				0		
Feb-17	0				0		
Mar-17	0				0		
Apr-17	558,819	0.09	50.29		0		
May-17	558,133	0.15	82.79		0		
Jun-17	556,408	0.25	139.07		0		
Jul-17	550,815	0.37	205.44		0		
Aug-17	542,586	0.54	290.81		0		
Sep-17	517,896	0.67	345.34		0		
Oct-17	515,344	0.87	448.36		0		
Nov-17	511,718	1.15	585.94		0		
Dec-17	508,986	1.45	739.43		0		
Jan-18	506,688	1.72	873.59		0		
Feb-18	502,802	1.96	983.13		0		
Mar-18	490,837	2.27	1114.52		0		
Apr-18	474,730	3.02	1434.75		0		
May-18	461,260	3.40	1569.63	Christina R	53,082	4.28	227.45
Jun-18	399,031	3.85	1536.94	Christina R	75,426	5.03	379.21
Jul-18	310,410	4.34	1345.70	Christina R	106,963	4.95	529.66
Aug-18	198,247	4.87	966.18	Christina R	14,537	5.10	74.21
Sep-18	179,532	5.33	956.51	Christina R	51,472	5.58	287.11
Oct-18	119,418	5.63	672.04	Christina R	112,750	5.88	663.49
Nov-18	6,027	6.42	38.72		0		
Dec-18	5,686	6.77	38.47		0		
Jan-19	0	0.00	0.00		0		
Feb-19	296,485	0.11	32.02		0		
Mar-19	389,789	0.14	53.79		0		
Apr-19	382,511	0.22	83.39		0		
May-19	379,451	0.35	133.19		0		

Movement Report

Site Name	From date	End date
Deenish	2017-01-01	2017-12-31

Date	Fish group	From Site	Transport	To Site/Pen	Count	Avg Weight(g)	Biomass (t)
2017-03-04	17S1	Pettigo	Grip Transporter	EDE - 0009	151,202	86.5	13.1
2017-03-16	17S1	Pettigo	Grip Transporter	EDE - 0004	71,867	64.6	4.6
2017-03-16	17S1	Pettigo	Grip Transporter	EDE - 0003	84,783	64.6	5.5
2017-03-16	17S1	Pettigo	Grip Transporter	EDE - 0001	80,580	86.5	7.0
2017-03-16	17S1	Pettigo	Grip Transporter	EDE - 0002	72,256	86.5	6.3
2017-03-04	17S1	Millbrook	Grip Transporter	EDE - 0007	102,900	79.0	8.1
					563,588	78.0	44.5

Site Name	From date	End date
Deenish	2018-01-01	2018-12-31

Date	Fish group	From Site/Pen	Transport	To Site	Count	Avg Weight(g)	Biomass (t)
2018-12-24	17S1	EDE - 0001	Grip Transporter	Millstone	5,367	7015.28	37.7

Site Name	From date	End date
Deenish	2019-01-01	2019-06-21

Date	Fish group	From Site	Transport	To Site/Pen	Count	Avg Weight(g)	Biomass(t)
2019-02-18	19S1	Altan	Grip Transporter	EDE - 0002	13,383	147.99	2.0
2019-02-18	19S1	Altan	Grip Transporter	EDE - 0003	13,383	147.99	2.0
2019-02-18	19S1	Altan	Grip Transporter	EDE - 0002	33,234	129.81	4.3
2019-02-18	19S1	Altan	Grip Transporter	EDE - 0003	33,235	129.81	4.3
2019-02-18	19S1	Altan	Grip Transporter	EDE - 0002	8,089	137.00	1.1
2019-02-18	19S1	Altan	Grip Transporter	EDE - 0003	8,088	137.00	1.1
2019-02-23	19S1	Millbrook	Callaghans T	EDE - 0004	95,719	86.07	8.2
2019-02-23	19S1	Pettigo	Grip Transporter	EDE - 0001	50,566	90.83	4.6
2019-02-23	19S1	Pettigo	Grip Transporter	EDE - 0005	48,961	90.83	4.4
2019-03-31	19S1	Pettigo	Grip Transporter	EDE - 0006	46,484	89.81	4.2
2019-03-31	19S1	Pettigo	Grip Transporter	EDE - 0007	56,426	108.80	6.1
					407,568	117.81	42

An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine



Ms. Mary O'Hara
Secretary to the Board
Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5

sent by registered post
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27 July 2020

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine under the provisions of Section 68(1) and Section 19(A)4 of the Fisheries (Amendment) Act 1997 (as amended), in respect of entitlement by Silver King Seafoods Limited t/a Mowi Ireland to continue aquaculture operations under the provisions of Section 19(A)4 of the Act for the culture of salmon in cages at a site east of Deenish Island, Ballinskelligs Bay, Co. Kerry, T06/202

Dear Mary,

The Department's letter of 21st July 2020 in response to specific questions put by the Board to the Department refers.

Following the issue of the Department's response to you on 21st July 2020 the attached correspondence was received from Mowi. You will note that in Mowi's correspondence to ALAB the Company persists with the view that harvesting did not take place from the Deenish site. You will be aware that this assertion is not accepted by the Department and you will note the detailed reasons in support of the Department's view set out in the documents previously forwarded to you including correspondence sent to ALAB in response to requests made under the provisions of Sections 43.(2) 44.(2) and 46 of the Fisheries (Amendment) Act, 1997, copies of the relevant submissions made to the Minister and the affidavit submitted to the Court by the Department as a result of the Mowi initiated Judicial Review proceedings.



It is also noted that Mowi has revised upwards the harvest figures for the Deenish site. You will be aware of the Department's consistent view that the removal of the Company's entitlement to operate at the Deenish site is entirely warranted and proportionate having regard to the harvest figures cited by the company at the time which amounted to an excess harvest of 121.78%. The current figures cited by the Company would seem to indicate an excess harvest in the order of 258%.

The latest harvest figures provided by Mowi would seem to underscore the correctness of the Minister's decision in this case.

I hope you find the above information helpful and if I can be of any further assistance please do not hesitate to contact me.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin Hodnett", written over a horizontal line.

Kevin Hodnett
Assistant Principal Officer

Aquaculture & Foreshore Management Division

COPY

Ms Nicola O'Shea
Aquaculture and Foreshore Management Division
Department of Agriculture, Food and the Marine
National Seafood Centre
Clonakilty
County Cork
By Email nicole.oshea@agriculture.gov.ie

23.07.2020

REF: 2020/07/23

Information request received from Department of Agriculture, Food and the Marine on 13 February 2017 | Site T6 / 202 - Deenish

Dear Ms O'Shea,

We refer to the above request and Mowi Ireland's response of 24 February 2017.

As you may be aware, Mowi Ireland has appealed to ALAB the Minister's Determination of 12 April 2019 regarding the Deenish licence and requested ALAB to:

1. Substitute for the Minister's Determination that there was a breach of condition 2(e) of the Licence, its own decision that there has been no such breach;
2. Substitute for the Minister's Determination to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site pursuant to Section 19(A)4 of the Fisheries Act, its own decision that Mowi Ireland's statutory entitlement is continuing; and
3. Substitute for the Minister's Determination to discontinue Mowi Ireland's statutory entitlement to continue aquaculture operations at the Deenish Site pursuant to Section 19(A)4 of the Fisheries Act, its own decision to amend the Licence to provide for the control of production by reference to a maximum Standing Stock Biomass, otherwise known as a Maximum Allowable Biomass.

In that appeal ALAB issued the enclosed request to Mowi Ireland pursuant to section 47(1)(a) of the Fisheries (Amendment) Act 1997 (as amended) on 24 June 2020 to provide:

"copies of all records retained by Mowi Ireland regarding the annual harvested tonnage produced at site T06/202 Deenish Island for the last 30 years or, if Mowi Ireland records do not subsist for that period, for such shorter period for which Mowi Ireland holds such records."

Mowi Ireland

Registered in Ireland as Comhlucht
Iascaireachta Fanad Teoranta, VAT No:
IE45307340: Registration No. 66929
Directors: Jan Feenstra, Pat Connors,
David Brennan

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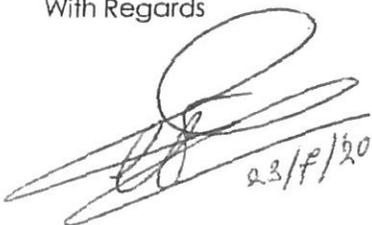
<http://mowi.com>

MOWI

When preparing its response to ALAB, Mowi Ireland discovered that it had, in response to the Department's request of 13 February 2017, incorrectly stated that 1,108.91 tonnes dead weight (HOG) was the pre-harvest batch from the Deenish site in 2016. That figure should have been 1,862.91 tonnes HOG. Due to human error, removals of fish from the Deenish site which took place before 2 October 2016 were inadvertently excluded from the data extracted and provided to the Department from the MERCATUS Farmer system (which Mowi Ireland uses to maintain its records).

Mowi Ireland has clarified the position in its response to ALAB. Given that the Minister's Determination of 12 April 2019 relates to 2016, we enclose a copy of Mowi Ireland's response to ALAB (including the enclosed records) to correct the record. Mowi Ireland regrets this error and is pleased to provide this correction to the Department at the earliest possible opportunity after becoming aware of the error.

With Regards



Jan Feenstra

MANAGING DIRECTOR

Enclosed – copy of correspondence to ALAB.

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