

An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Observations from DAFM

Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

Guthán/Telephone: 057 8631912 R-phost/Email: info@alab.ie

Láithreán Gréasáin/Website: www.alab.ie



OHara, Mary

From: Maher, EileenM
Sent: 23 April 2018 13:59
To: Alab, Info; Mary Ohara (Alab)
Cc: Kelleher Sheila; Foley, Gerry; Whelton, Batt
Subject: Lough Swilly Appeal Observations
Attachments: Lough Swilly Appeal Observations.pdf

Hi,

Please find attached Observations regarding Lough Swilly Appeals AP2-4/2018 and AP5/2018.

Kind Regards,

Eileen Maher
Aquaculture and Foreshore Management Division

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

Rannán Riaracháin an Iascaigh Mhara, An Cloichín, Cloch na Coillte, Co. Chorcaí. P85 TX47.
National Seafood Centre, Clogheen, Clonakilty, Cork, P85 TX47.

T +353 (0)23 885 9505
www.agriculture.gov.ie



Comments from the Department of Agriculture, Food and the Marine (Aquaculture and Foreshore Management Division (AFMD), scientific advisors (Marine Institute - MI) and technical advisors (Marine Engineering Division – MED))

Re: Appeal against the decision of the Minister to grant Aquaculture Licences to Lough Swilly Shellfish Growers Co-operative Ltd for the cultivation of Mussels and Pacific oysters at sites T12/37A1, A2, B2, B2, B3, B4, C in Lough Swilly.

AP2/2018

The appellant contends that the applicant was operating at the sites without a licence and was therefore acting illegally.

In 1994 Lough Swilly Shellfish Growers Co-operative Society Ltd were granted a 10 year foreshore licence for the cultivation of oysters and mussels under the Foreshore Act 1933 and were also granted a 10 year fish culture licence for the deposit, propagation, and harvesting of oysters and mussels under section 15 of the Fisheries (Consolidation) Act 1959.

The effect of section 75 of the Fisheries (Amendment) Act 1997 and section 3 of the Fisheries and Foreshore (Amendment) Act 1998 is that a foreshore licence granted under the Foreshore Act 1933 for aquaculture purposes and a fish culture licence granted under section 15 of the Fisheries (Consolidation) Act 1959 were deemed to be aquaculture licences granted under the 1997 Act. By virtue of section 19A(4) of the 1997 Act the Co-op is entitled to continue operating as if these licences, which were deemed by the 1997 and 1998 Act to be aquaculture licences, were still in force, pending a Ministerial determination of the renewal application.

The issue of licensing aquaculture activity in "Ostrea edulis dominated community" was fully considered and addressed in the AA report and it was acknowledged that "No aquaculture activities should be carried out in 'Ostrea edulis dominated community' as they are all considered disturbing to this habitat type. Recommendations presented in the AA report are a result of conclusions derived from interactions between aquaculture activities and information published in the Lough Swilly Conservation Objectives and supporting documents by NPWS. It is important to note that the habitat designation above appears in the Conservation Objectives set by NPWS. Subsequent references to this habitat type in the appeal should be considered in light of the conservation designations. The recommendations in the AA report relating to this particular community type identify that the implementation of the Fishery Natura Plan for the native oyster was consistent with the conservation objectives for this community type as well as the expansion and sustainable exploitation of this fishery resource. Furthermore, the Marine Institute is aware of the concerns of fishermen in the area that native oysters have been found outside of these particular habitat designations.

The epidemiological study conducted by the Marine Institute proposed that the greatest likelihood of importation of Bonamiasis into Lough Swilly was as a consequence of movement of stock (*Ostrea edulis* as hitchhikers on *Mytilus edulis*) from Lough Foyle. The risk of importation with *C.gigas* stock

from France was considered negligible. Additionally, it is important to note that the input of *C.gigas* seed requires a Fish Health Authorisation under Council Directive 2006/88/EC and that this be in place prior to the commencement of the aquaculture activities.

The appellant contends that “fishing of the Pacific oyster would detrimentally affect the native oyster because of it being highly sensitive to smothering and sensitive to organic enrichment and to activities associated with suspended culture”. Consistent with the mitigation measures set out in the Licensing Authority’s Conclusion Statement the draft Aquaculture Licence does not provide for the uncontained bottom culture of *C.gigas* on the seabed and therefore no fishing of this species is required as part of any aquaculture activity. The presence of naturalised populations of *C.gigas* in Lough Swilly was acknowledged and addressed in the AA report. The use of triploid *C.gigas* seed as a mitigation measure was proposed and the granting of the licence at site T12/037 is conditional on the use of triploid seed only. Additionally, the AA recommended that “No aquaculture activities should be carried out in ‘*Ostrea edulis* dominated community’, as they are all considered disturbing to this habitat type.

The appellant states that numerous areas including T12/37A1, T12/37B2 and T12/37C are least affected by Pacific Oysters and would make an ideal native oyster nursery and to introduce Pacific Oysters and mussel bottom culture would make this area unfeasible for the native oyster nursery and further diminish their stocks. The interaction of fisheries and aquaculture in Lough Swilly and the in-combination of these activities was considered and addressed in the AA report. Specific measures relating to aquaculture and fisheries activities that might ensure sustainable levels of both activities within the bay while allowing the Natura site to attain good conservation status were presented in the AA report.

EIA Screening was done by the Department for each Lough Swilly application advertised – the Swilly Screening Assessment outcomes are published on the Department’s website including for T12/37.

In revising the proposed sites for licensing there was no overlap permitted with *Ostrea Edulis* habitat areas defined in the Conservation Objectives by NPWS for the Lough Swilly SAC. Allowance has been made in the mapping of revised sites for T12/37 for no occupancy of *Ostrea Edulis* dominated community. Accordingly, this has reduced the overall area of foreshore to be licensed from 1470 ha to 450 ha in respect of T12/37.

AP3/2018

The appellant contends that the applicant is not a properly registered company and therefore cannot be granted a licence.

The Registrar of Friendly Societies deals with Industrial and Provident Societies which in the main consist of co-operatives. The legislation governing such societies is the Industrial and Provident

Societies Act, 1893 – 2014. It is our understanding that Lough Swilly Shellfish Growers Co-operative Society Ltd is on the register.

The appellant states that the “area already has a serious Gigas oyster IAS problem” but provides no evidence to support this. The presence of naturalised populations of *C.gigas* in Lough Swilly was acknowledged and addressed in the AA report. The use of triploid *C.gigas* seed as a mitigation measure was proposed and the granting of the licence at T12/037 is conditional on the use of triploid seed only. Additionally, the AA recommended that “No aquaculture activities should be carried out in ‘*Ostrea edulis* dominated community’, as they are all considered disturbing to this habitat type.

The appellant states that this area is not at GES (Natura site and under the WFD). We assume GES refers to Good Ecological Status which is a term used under the Marine Strategy Framework Directive (MSFD). The area in question is not within the area specifically covered by the MSFD programme but is within the area covered by the Water Framework Directive (WFD). Lough Swilly currently has a “High” classification status for the relevant biological elements under WFD.

AP4/2018

The appellant contends that the granting of aquaculture licences at site T12/037 would “abolish” his right to fish in the area and may be in breach of his constitutional rights. The area in question is ‘State Foreshore’ and the State has a right to manage its own resources.

AP5/2018

Comments on appeal against decision of the Minister to grant an Aquaculture Licence to Alan O’Sullivan for the cultivation of Pacific Oysters on site T12/343

The issue of licensing aquaculture activity in “*Ostrea edulis* dominated community” was fully considered and addressed in the AA report and it was acknowledged that “No aquaculture activities should be carried out in ‘*Ostrea edulis* dominated community’ as they are all considered disturbing to this habitat type. Recommendations presented in the AA report are a result of conclusions derived from interactions between aquaculture activities and information published in the Lough Swilly Conservation Objectives and supporting documents by NPWS. It is important to note that the habitat designation above appears in the Conservation Objectives set by NPWS. Subsequent references to this habitat type in the appeal should be considered in light of the conservation designations. The recommendations in the AA report relating to this particular community type identify that the implementation of the Fishery Natura Plan for the native oyster was consistent with

the conservation objectives for this community type as well as the expansion and sustainable exploitation of this fishery resource.

The use of triploid *C.gigas* seed as a mitigation measure was proposed and the granting of the licence at site T12/343 is conditional on the use of triploid seed only. In addition, the footprint of this site was reduced to 2.09 ha in order to avoid any overlap with 'native oyster' community.

EIA Screening was done by the Department for each Lough Swilly application advertised – the Swilly Screening Assessment outcomes are published on the Department's website including for T12/343.