

Progress update for the European Commission, June 2019

Judgment of the Court of Justice of the European Union
in

Case C 418/04 Commission v Ireland

“The Birds Case”

A Programme of measures by Ireland to ensure full
compliance with the Judgment of the Court of Justice
of the European Union

Management of Aquaculture Activities in Natura 2000 sites in Ireland

Progress update, June 2019

Background

In 2007 the European Court of Justice (ECJ) issued a negative judgment against Ireland for breaches of the EU Birds and Habitats Directives. A large element of the judgment concerned a failure by the State to put in place a system for data collection, definition of scientific interests and adequate assessment of aquaculture licence applications in Natura 2000 areas.

At the time of the ECJ Case national legislation was put in place to ensure that Irish aquaculture operations operating under pre-existing licences and who were seeking renewals could continue to operate under those licences until a determination could be made on their renewal applications in compliance with the Natura 2000 Directives.

In response to the negative ECJ judgment, Ireland has been working on bringing its aquaculture in Natura 2000 sites into full compliance with the Habitats and Birds Directives with the agreement of the European Commission. In the negotiations to address this ECJ judgment and to enable aquaculture to continue in Natura 2000 areas in the interim, a process was agreed with DG Environment and this is being implemented.

This process (agreed “Roadmap”) involves:

- i) Data collection in all relevant bays;
- ii) The setting of Conservation Objectives to be met in each Natura site by the National Parks and Wildlife Service;
- iii) Identifying the scientific interests to be protected in the bays;
- iv) Carrying out of Appropriate Assessments of the licence applications against the detailed Conservation Objectives and scientific interests;
- v) Appropriate Licensing Determinations taking account of, among other factors, Natura 2000 requirements.

The production of Appropriate Assessments for Article 6.3 of the Habitats Directive of aquaculture activities in Natura 2000 sites in Ireland was one of the key deliverables in the “Roadmap”.

The Court further found that Ireland had failed to comply with Article 6 (3) and (4) in regard to aquaculture licensing and concerns were raised about the management of aquaculture activities in Natura 2000 sites in Ireland. The judgment resulted in restrictions on the aquaculture industry due to the inability of the State to issue licences until the European Commission was satisfied that a rigorous system was in place to determine licence applications, supported by comprehensive ecological data on each Natura site.

The “Roadmap” to compliance which was agreed with the European Commission in 2009 put in place a comprehensive new regulatory system to achieve full compliance with this part of the judgment. It involved the Department of Agriculture, Food and the Marine, as the competent national authority for aquaculture, working closely with the Marine Institute, Bord Iascaigh Mhara and the Department of Culture, Heritage and the Gaeltacht.

The production of the Appropriate Assessments has been resource intensive and very time consuming not least because of tidal cycles and seasonality issues in relation to data gathering on bird migrations and other environmental constraints. In many cases multi-year time series data had to be collected. The sea beds in Natura 2000 areas also had to be mapped to identify conservation interests. In addition, profiling of aquaculture industry activities was carried out for all bays in order to define the likely interactions with conservation features of the sites. In many instances there were little data or published literature on likely interactions between aquaculture activities and conservation features. A number of targeted studies and reviews were commissioned to investigate responses of conservation features, e.g. birds and/or habitats to specific aquaculture activities. Many of these have subsequently been published in primary literature. All of this preliminary work to prepare the groundwork for the consideration of licensing was carried out from 2009 onwards.

Progress Update

Since the Appropriate Assessment process began it has been possible to engage in licensing in compliance with the Natura 2000 Directives and the ECJ Judgment. Since licensing commenced under the new system over 900 licensing determinations were made on aquaculture sites around the coast up to the end of 2018. Of these, 177 were determinations to refuse aquaculture licences primarily on environmental grounds.

Licensing projections for 2019 are based on the same procedures being applied to the remainder of the bays which are then subject to appropriate licensing.

The data collection, definition of scientific interests and the Appropriate Assessment process itself is substantially complete and Appropriate Assessment reports have been received by the Department from the Marine Institute in respect of thirty-two bays which constitute the bulk of aquaculture activity around the coast.

Full details of the Natura 2000 sites in which Appropriate Assessments have been completed are set out in the Table below:

Appropriate Assessments of Natura 2000 Sites to Mid-June 2019		
Natura 2000 Sites	Appropriate Assessment (AA) Status	Licensing Status
Dundalk Bay SAC and SPA	One AA complete, Updated AA pending	New Applications received to be assessed and determined
Castlemaine Harbour SAC and SPA	Three AAs complete	Licensing determinations made following two AAs, 2019 pending
Roaringwater Bay and Islands SAC	AA complete	Licensing determinations made following AA
Lough Swilly SAC and SPA	AA complete	Licensing determinations made following AA with a number pending
Donegal Bay (Murvagh) SAC and Donegal Bay SPA	One AA complete, Updated AA pending	Licensing determinations made following AA, new applications received to be assessed and determined
Dungarvan Harbour SPA	AA complete	Licensing determinations made following AA
Clew Bay Complex SAC	Two AAs complete	Licensing determinations made following first AA, 2019 pending
Valentia Harbour/Portmagee Channel SAC	One AA complete, Updated AA pending	Licensing determinations made following AA, new applications received to be assessed and determined
Ballycotton Bay SPA	AA complete	Licensing determinations made following AA
Galway Bay Complex SAC and Inner Galway Bay SPA	One AA complete, Second AA pending	Licensing determinations made following first AA, 2019 pending
Kenmare River SAC	AA complete	Licensing determinations pending in 2019
Drumcliff Bay/Cummeen Harbour (Sligo Bay) SAC and Drumcliff Bay SPA/Cummeen Strand SPA	AA complete	Licensing determinations made following AA

Kilkieran Bay and Islands SAC	AA complete	Licensing determinations pending
Trawbreaga Bay North Inishowen Coast SAC and Trawbreaga Bay SPA	One AA complete, Second AA pending	Licensing determinations made following first AA, 2019 pending
Gweedore Bay and Islands SAC	AA complete	Licensing determinations made following AA
Sheephaven SAC	AA complete	No aquaculture proposed currently
Waterford Harbour River Barrow and River Nore SAC	AA complete	Licensing determinations made following AA
Wexford Harbour and Slobs SPA, the Raven SPA, Slaney River Valley SAC and Raven Point Nature Reserve SAC	AA complete	Licensing determinations made following AA with a number pending
West of Ardara/Maas Road SAC	AA complete	Licensing determinations pending in 2019
Bannow Bay SAC and SPA	AA complete	Licensing determinations made following AA
Mulroy Bay SAC	AA complete	Licensing determinations made following AA
Mannin Bay Slyne Head Peninsula SAC	AA complete	Licensing determinations pending in 2019
Blacksod and Broadhaven Bays (Broadhaven Bay SAC/Blacksod Bay-Broadhaven SPA/Mullet-Blacksod Bay Complex SAC)	AA complete	Licensing determinations made following AA
Loughros Beg Bay/Slieve Tooley/Tormore Islands SAC	AA complete	Licensing determinations made following AA
Ballymacoda (Clonpriest and Pillmore) SAC and Ballymacoda Bay SPA	AA complete	Licensing determinations made following AA
Tralee Bay and Magharees Peninsula, West to Cloghane SAC and Tralee Bay Complex SPA	AA complete	Licensing determinations pending

Lower River Shannon SAC and River Shannon and Fergus Estuaries SPA	AA complete	Licensing determinations made following AA with a number pending
Ballyness Bay SAC	AA complete	Licensing determinations pending in 2019
Rutland Island and Sound SAC	AA complete	Licensing determinations pending in 2019
Carlingford Lough SPA and Carlingford Shore SAC	AA complete	Licensing determinations pending in 2019
Cork Harbour SPA	AA complete	Licensing determinations pending in 2019
Killala Bay/Moy Estuary SAC and SPA	AA complete	Licensing determinations pending in 2019

There are a number of Appropriate Assessment reports to be updated to reflect new aquaculture licence applications which have been received by the Department following the completion of earlier assessments.

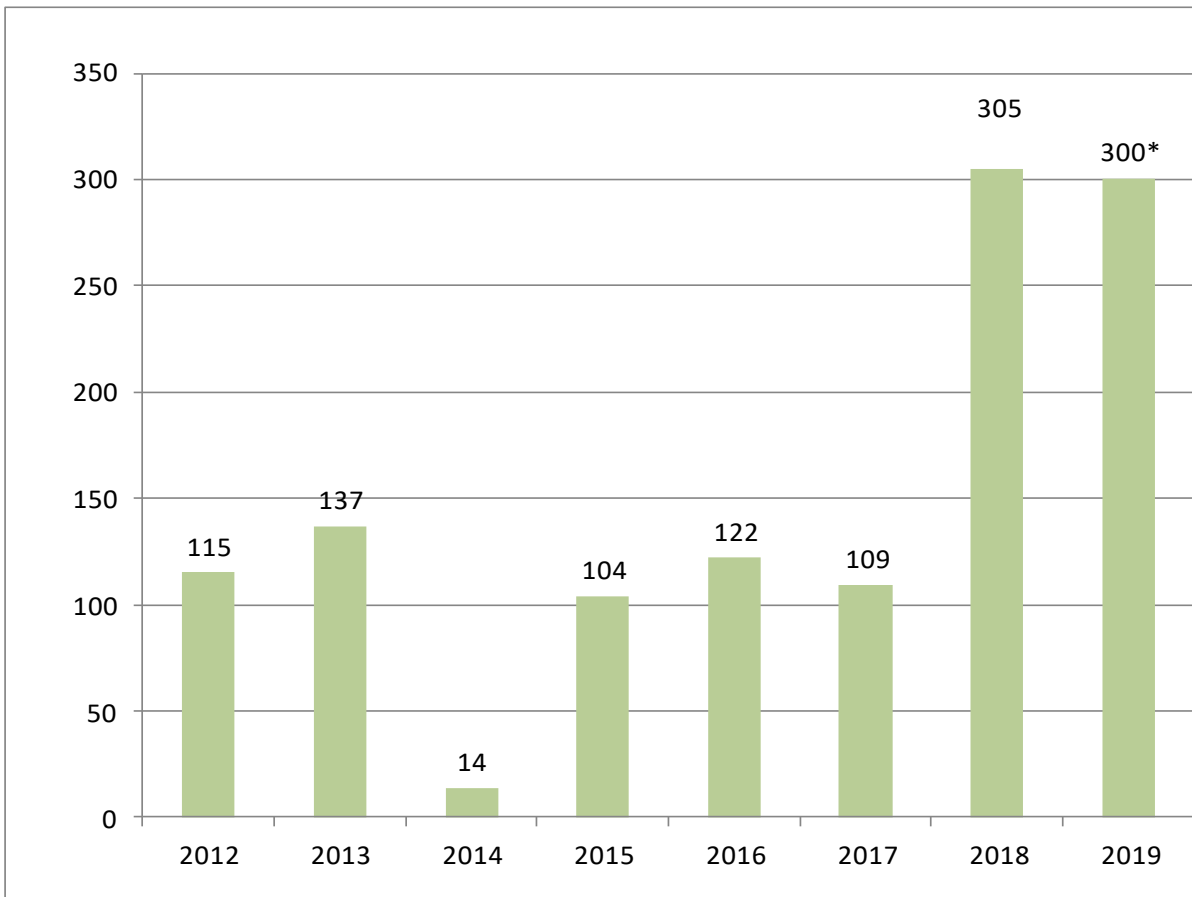
Essentially all bays with significant aquaculture have been appropriately assessed. There are in the region of six Natura sites containing approximately twelve proposed aquaculture sites which remain to be assessed and work is in progress in order to complete these reports.

Continuing progress is being made by the Department in achieving aquaculture licensing determinations in Natura 2000 areas. While the Appropriate Assessments are carried out on a bay by bay basis, each licence application within a bay must be assessed individually. The Department has put in place a two-year programme to eliminate the backlog of shellfish licence applications. This programme has involved the achievement of 305 licence determinations in 2018 and the Department is on target to achieve 300 further licence determinations in 2019. The process of carrying out further Appropriate Assessments as new aquaculture licence applications are received for Natura 2000 areas is ongoing and is an essential part of the licensing process before determinations can be made.

Aquaculture sites in bays which are adjacent or proximate to Natura 2000 areas are subject to Screenings which assess any likely interactions with Natura features and consider the likelihood of disturbing impacts from aquaculture activities on the relevant Natura sites. Natura Screening reports have been received by the Department from the Marine Institute in respect of sixteen bays around the coast.

The Graph below sets out the licence determinations made in accordance with the agreed “Roadmap” (the first Appropriate Assessments became available in 2011).

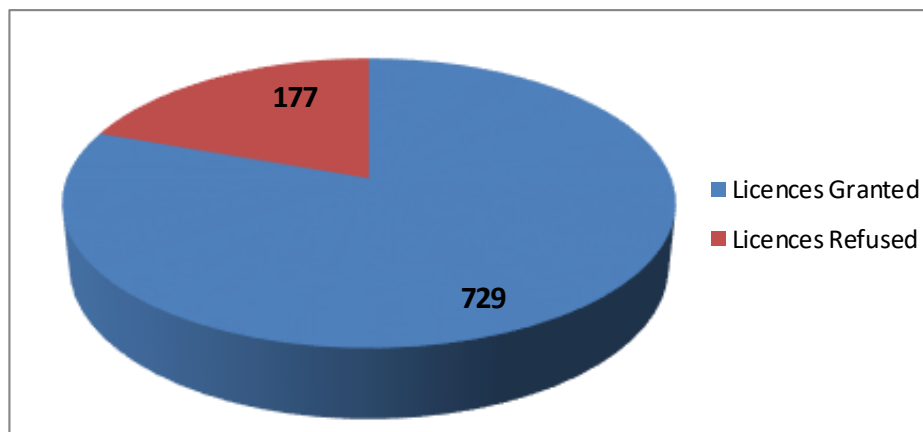
Aquaculture Licence Determinations 2012 - 2019



* Projected

The Pie Chart below gives a breakdown of the positive and negative licence determinations made from 2012 to the end of 2018.

Aquaculture Licence Determinations Breakdown 2012 - 2018



Conclusion

The Department of Agriculture, Food and the Marine has fully engaged with the “Roadmap” process and has progressed all licence applications (new and renewal) in accordance with the procedures agreed as part of the “Roadmap”. As will be seen from the above information the aquaculture licensing backlog is almost eliminated in the case of shellfish licensing which comprises the vast majority of licences. The Department will continue to engage closely with all stakeholders including the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht and the European Commission. As the process continues, the Department will be happy to provide any additional information requested and/or to meet with the Commission if this is considered necessary.

ENDS