

# SALMON WATCH IRELAND

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## **NATIONAL MARINE FRAMEWORK PLAN**



**SUBMISSION BY**

**SALMON WATCH IRELAND**



19 November 2018

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### **INTRODUCTION**

1. Salmon Watch Ireland is a voluntary non-governmental organisation which is concerned with the protection of wild Atlantic salmon and sea trout in Ireland. It is comprised of anglers, owners, and managers of game fisheries. In particular it is concerned with marine salmonid survival and the protection of their habitat and breeding areas. Our members have experienced at first hand the depletion of salmon and sea trout in Ireland for over 3 decades. This is due in a substantial part to the adverse impact of open pen salmon farms in the narrow bays and estuaries especially in the west of Ireland. This has caused considerable economic loss and social implications in many parts of the country, not least in the key area of tourism. In the absence of other economic activity, the loss of a substantial portion of the angling tourism sector has been very socially and economically damaging. Nor has it been compensated for by the limited employment opportunities provided in salmon farming and processing.
2. We welcome the opportunity to make a submission regarding the National Marine Framework Planning. We are optimistic that this planning framework, and the plan to be produced, may provide an opportunity to develop better governance of aquaculture, and the salmon farming sector in particular, which has had such an adverse

impact on wild Atlantic salmon and sea trout populations in Ireland over the past thirty years.

### **LICENSING, CONSENT PROCESS AND CRITERIA**

3. We are aware that marine based salmon farms often have adverse impacts on juvenile Atlantic salmon migrating through ambient waters for up to 30 kilometres, depending on the location of the site and prevailing conditions such as currents in that area. This is supported by Irish and international scientific research. Consequently, (and due to the fact that wild Atlantic salmon are an Annex2 protected species pursuant to the Habitats Directive (the Directive) which require specific management plans), the siting and licensing of salmon farms and installations require the utmost scrutiny, especially when they are in the vicinity of salmonid Special Areas of Conservation (SAC's). Such SAC's are common along the south and west coast of Ireland, and Atlantic salmon are designated as 'Qualifying Species' in many of those. A fundamental requirement for consent for licence applications derives from the legal provisions of Article 6.3 of the Directive . It specifies that plans or projects which are capable, individually or collectively, of having an impact on qualifying species or habitats of Special Areas of Conservation, must be subject to Appropriate Assessment. It is the view of Salmon Watch Ireland that such Appropriate Assessment is imperative in respect of all consents and grants of licences for projects such as salmon farms, and that this requirement must be specified clearly and embedded in the National Marine Plan currently being drawn up.

### **APPROPRIATE ASSESSMENT**

4. Article 6.3 of the Habitats Directive requires that an Appropriate Assessment must be carried out in relation to all possible impacts of any intended licensed operation, project, or installation, in respect of all qualifying interests, (including qualifying species), of SAC's. Such Appropriate Assessment must also have regard to impacts of pre-existing licenced installations or any other activities which are already taking place in the vicinity of Salmonid SAC's. Therefore, new projects, such as new salmon farms cannot be considered in isolation but must be

- assessed in conjunction with existing salmon farms which are already impacting on wild salmonids. We wish to highlight the fact that several salmonid SAC's in Ireland are vulnerable to adverse impacts from inappropriately sited salmon farms, where salmon and sea trout stocks have been decimated over the past 30 years, since salmon farming commenced. This has been mainly due to the parasitic predation of sea lice from such farms causing high mortality amongst juvenile salmon and sea trout.
5. Article 6.3 of the Habitats Directive has been interpreted by the Courts as necessitating an extensive Appropriate Assessment where screening identifies that there may be adverse effects on any of the flora and fauna which are protected and for which an area has been designated as an SAC. The test, which has been adopted by the Courts in Ireland, stipulates that consent may only be given for such projects where it is *established beyond all reasonable scientific doubt that there is certainty that no adverse impact on special areas of conservation and their qualifying interests or species of flora and fauna* can result from the project or installation being planned. This is of particular relevance to future applications for licence consents in relation to marine salmon farm licensing. The experience in Ireland and internationally has been of the negative impact of sea lice parasites resulting in significant mortality levels amongst juvenile salmonids, salmon and sea trout.
  6. Consequently, it has also been determined that the approach to the licensing of such installations in SAC settings, must be based on a *'Precautionary Approach'*, which necessitates the refusal of consent, in the absence of certainty that there will not be an adverse impact, if consent were given. Such certainty must be based on the *best scientific knowledge in the field*.
  7. The foregoing test for certainty required for the application of the *Precautionary Principle* has been evident in the Supreme Court in Ireland in the *Cromane Seafoods [2016]* decision, notably in the Judgments of Mr. Justice Clarke, and of Mr. Justice Charleton. These Judgments are also in keeping with the Judgments and jurisprudence of the European Court of Justice, including an Irish case, *Sweetman v. An Bord Pleanála [2013, para. 40]*, and in the *Waddenzee [2004]* case, which is the main authority at

European Court level for the test regarding consents in cases where projects may have an impact on qualifying species within SAC's or SPA's.

### **DESIGNATION OF NATURA MARINE SITES**

8. Salmon Watch Ireland is also concerned that the National Marine Framework Plan should include and take cognisance of sites which are yet to be awarded Natura status around Irish coasts. It seems desirable that the Natura sites along our coastline would be identified prior to further applications for development consents being considered in these sites, parts of sites, or in proximity to those sites. In the absence of identification and designation of such sites, and in the absence of the publication of site synopsis and plans, it would be difficult to proceed with decision-making in respect of any candidate marine Natura site. If a site synopsis is not available or where the candidacy of any particular site for inclusion as Marine Natura has yet to be determined, it is difficult to see how appropriate assessment or protection can be achieved. It may not be possible to make full appraisal of the protected features of the sites in question or of their protected flora or fauna in the absence of the site's characteristics and overall importance being identified and recorded. Such information should be available to all stakeholders in advance so that appropriate informed decisions are made.

### **PRELIMINARY REQUIREMENTS FOR A NATIONAL PLAN**

9. It is essential that the foregoing legal test for consent is incorporated into the core of the intended national marine plan. This legal test set out, in our view, needs to be firmly embedded from the outset. It needs to specify that any applications for development must meet the requirements and parameters of the aforementioned test, legal authorities, and obligations. Otherwise, there is real risk that projects could be advanced, involving considerable time and resources, in applications for consent which fail to meet the aforesaid test criteria. (The unsuccessful Bord Iascaigh Mhara application for a major 15,000 ton salmon Farm Licence in Galway Bay, withdrawn in 2015, is a case in point).
10. It is essential, therefore, that the new plan spells out the legal requirements that assessment of future marine projects must provide

certainty, beyond all reasonable scientific doubt, as to the absence of adverse impacts on flora and fauna within given SAC or Special Protection Areas.

11. It is also essential that the plan should clearly set out the criteria and the legal requirements necessary to obtain consents. Failure to do so will deprive applicants and indeed decision-makers of the very guidelines which will enable them to make the correct decisions. If these guidelines are not clearly spelled out, there is a risk that some projects may get through the net, and reach an advanced stage in the consent process, such as in the unsuccessful and costly Bord Iasaigh Mhara 'Galway Bay' licence application. Appeals can be anticipated from members of the public or groups in such circumstances. Legal challenges may be commenced which would not otherwise be necessary if projects were properly and comprehensively screened and assessed before reaching an advanced stage in the decision-making process. From a practical and legal point of view, spelling out the consent criteria, and emphasising the requirement for certainty beyond all reasonable scientific doubt, could save a great deal of time and energy by early elimination of potentially unsuccessful applications. Ultimately indeed this can aid consensus in this potentially contentious area.
  
12. Providing applicants with a clear statement of the legal guidelines could enable them to bring successful applications and obtain the consents they seek. The guidelines should also encourage stakeholders to advance proposals for improved emerging technologies so that the best available technologies can be used to ensure that projects have optimum prospects of success, with the minimum environmental impact. Clear overarching guidelines and objectives embedded in the Marine Plan can also enhance consensus and avoid futile adversarial and contentious challenges to future projects, thus enhancing the prospects of the plan achieving its goals and objectives.

**SALMON WATCH IRELAND**  
**19 NOVEMBER 2018**

