

Dept. of Environment, Community  
& Local Government

14 DEC 2018

Wexford

NATIONAL MARINE FRAMEWORK PLAN

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*Received*  
*10-30 am. A.S.*

SUBMISSION ON BEHALF OF  
WESTERN GAME FISHING ASSOCIATION

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**FOR SUBMISSION BY 14 DECEMBER 2018.  
PLEASE ACKNOWLEDGE RECEIPT**

NATIONAL MARINE FRAMEWORK PLAN

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**PRELIMINARY**

1. The Western Game Fishing Association is a voluntary non-governmental organisation which is concerned with the protection and conservation of wild Atlantic salmon and sea trout in Ireland. It is comprised of the owners and managers of game fisheries in Galway and Mayo. In particular it is concerned with marine salmonid survival and the protection of their habitats, including feeding and breeding grounds. Our members have experienced at first hand the depletion of wild salmon and sea trout stocks in the West of 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 common throughout the west of Ireland. This has caused considerable economic and social loss in this part of the country, not least in the key area of angling tourism. In the absence of other sustainable economic activity, the loss of a substantial portion of the angling tourism sector has been very damaging. Nor has it been compensated for by the limited seasonal employment provided by salmon farming or processing. Salmon farming has become increasingly automated in any case.

The group welcomes the opportunity to make a submission regarding the National Marine Framework Planning. It is 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**

2. This Association is aware that marine based salmon farms have adverse impacts on both juvenile and adult Atlantic salmon and sea trout migrating through ambient waters for up to 30 kilometres or more, depending on the location of the fish farm site and prevailing conditions such as tidal currents in that area. Open cage salmon farms are reservoirs for sea lice infestation. In addition fish farm escapees can interbreed with wild populations and spread disease. This is supported by both Irish and international scientific evidence. Consequently, (and due to the fact that wild Atlantic salmon are an annexed species pursuant to the Habitats Directive which require specific management plans), the siting and licensing of salmon farms and installations requires 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 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 Habitats Directive (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 this group 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

3. 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 or installation, on 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 occur in Galway and Mayo which 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 emanating from such farms causing high mortality amongst juvenile salmon and sea trout.
4. This provision of the Habitats Directive has been interpreted by the Courts to necessitate 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 farms. The experience of anglers, fishery owners & managers, and many scientists both in Ireland and internationally, has been of the negative impact of sea lice parasites in particular, resulting in significant mortality levels amongst juvenile wild salmon and sea trout.

5. Consequently, it has also been determined that the approach to the licensing of such installations must be based on a '*Precautionary Approach*' which is interpreted as necessitating the refusal of applications for 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*.
6. 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 Judgment of Mr. Justice Clarke, and that of Mr. Justice Charleton. These Judgments are also in keeping with the Judgments and jurisprudence of the European Court of Justice, including Irish cases amongst which are *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 adverse impact on qualifying species within SAC's or SPA's.

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

7. The Western Game Fishing Association 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 is 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**

8. It appears to the membership of this association that it will be essential to incorporate the foregoing legal test for consent into the core of the intended National Marine Plan. This legal test needs to be firmly embedded from the outset. It needs to specify that any applications for development must ensure conformity with 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 tonne salmon Farm Licence in Galway Bay, withdrawn in 2015, is a case in point).

9. It would be desirable therefore that the new National Maritime Plan will spell 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.
10. It is desirable 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 Bord Iascaigh 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 otherwise not 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 this can aid consensus in this potentially contentious area.
11. Providing applicants with a clear statement of the legal guidelines would 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 National 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.

### **STAKEHOLDER CONSENSUS BUILDING**

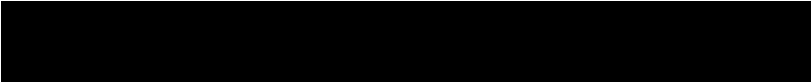
This association anticipates that the developing framework for marine planning may give rise to conflicting positions being adopted by different stakeholders. This is probably quite inevitable given the shared usage and divergent objectives of the users of marine facilities in Ireland. We believe that consideration should be given to the development of mediation or facilitation provisions and resources to resolve divergent positions between different

stakeholders. This would to build consensus and, where necessary, lead to modifications or moderation of applications and projects, aiding community building and cohesion in future marine development.

SIGNED:



Geoffrey Fitzjohn  
Honorary Secretary,



**WESTERN GAME FISHING ASSOCIATION**

**10.12.2018.**