TOOLBOX AQUACULTURE

Guidance Document - Review of Licensing and Regulatory Processes Tool

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This tool is developed in response to a survey of the aquaculture industry across EU member states. The top issues identified in the survey relate to legislation, regulation and licensing of the industry, in particular, the aquaculture consenting process which is perceived to be a bottleneck to blue growth.

Successful reviews have been summarised and the methods described have been complied by pooling best practice from these previous reviews. Analysis of EU led Multi-Annual National Plans highlight simplification of administrative procedures as a goal set by over 50% of EU member states. Several member states have outlined strategies to do this through review groups (inter-ministry) and taking the following actions:

- Review the applicable legislation
- Simplify applicable legislation
- Streamline application procedures
- Improve involvement of stakeholders in the decision-making process
- Simplification of access for applicants – creation of a one-stop-shop for licence applications
- Develop a single web portal for submission and follow-up of applications
- Guidelines to make the legislation and procedures more transparent, understandable and predictable

Such reviews and new measures have shown:

- Significant simplification of the licensing procedures
- Reduced time and costs for the investors
- Formally established time limits
- Clarity of roles and agencies involved in decision making
- Streamlining of licences and where possible incorporation of multiple permits

The methodology presented in this guidance document should equip users with the tools to achieve the following:

- Carry out a review of their aquaculture consenting process with the aim to identify the changes needed that will:
    - Ensure consenting decisions happen in a timely manner.
    - Create clarity and transparency in the consenting process.
    - Ensure it takes on board best practice and experience from other jurisdictions.
- Ensure the review provides clear, specific and actionable recommendations to provide a streamlined, transparent, efficient, fit for purpose and rational legislative framework and licensing system.
- Produce a specific and timed implementation plan for the recommendations of the review.

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Objectives of this tool

The objective of this tool is to set out the stepwise guidelines to review the current systems, this will provide an independent transparent overview of the system for all stakeholders. By completing this review member states can identify inefficiencies, duplication or unnecessary complexities within the current system. Efforts can be focused on exacting the most effective change; reduce complexity, streamlining the process and creating a logical, simplified pathway to efficiently guide decision makers through the process.

To achieve this objective this guidance document sets out key elements and steps to be taken in analysing current system with a view to achieving best practice.

Key objectives are to:

- Holistically review the aquaculture consenting process, legislative requirements and industry interactions
- Create an outline of the current process with emphasis on identification and avoidance of duplication, obstacles and complexities
- Consult with key industry stakeholders to collate issues and concerns
- Analyse the key issues and the factors contributing to the issues
- Examine the current constraints and identify opportunities for improvements in the system
- Recommend solutions to resolve identified issues or suggest alternative approaches to existing systems.

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Step 1 - Terms of Reference

This step focuses on structuring the project, defining the objectives, identifying the stakeholders involved and resources available. From here a pathway for the review can be established defining roles and responsibilities, work breakdown schedules and a timeline with key milestones.
Key considerations are:

a. To define the objectives of the review process.
    - Ensure the delivery of licence determinations in a timely manner
    - Support transparency in the process for all stakeholders
    - Support the actions of strategic plans (growth targets & industry goals)
    - Ensure the process provides for all national and EU legislation
    - Support the implementation of best practice across industry
b. To define the stakeholder groups considering all actors in the process
    - stakeholders can be further defined by their involvement in the industry as primary or tertiary stakeholders to help guide consultation
c. To establish a methodology for consultation with stakeholders
    - Interview, questionnaires, workshops, public consultation, forums, etc.
d. To design a consultation system.
    - Design submission portal and template for stakeholder submissions to the process
    - For collection of new data, design questionnaire with scope for quantitative and qualitative inputs
    - For detailed consultation consider a phased approach to allow for further scoping of issues identified.
e. When designing your review questions:
    - Define criteria to be included
    - Form the review question
    - Develop search strategy to locate studies
    - Select relevant studies
    - Extract data
    - Assess study quality
    - Plan analysis and interpretation of results
    - Create a plan to disseminate findings
f. To allocate sufficient time for each stage in the process, with specific deadlines
g. To design a specific timed implementation plan

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Step 2 Assessing the state of play

To provide context to the review an assessment of the current situation regarding the industry, policies and the licensing process should be carried out. This should provide information on:

- The current size of the industry.
- Plans and policies for the industry.
  - Regional policy.
  - National policy.
  - EU policy.
- Project growth within the sector.
  - Stated targets
- Legislation governing production.
- Legal enactments on the industry.
- The current licensing situation.
  - Types and numbers of licences/permits required.
  - Validity periods of each.
  - Cost of each.
- Funding and aid available to the industry.

An analysis of the current framework of the aquaculture licensing process should be carried out. This review should identify issues and areas for improvement.

- Outline the roles and responsibilities of authorities involved in aquaculture licensing
  - How many authorities/ agencies are involved in the decision making process?
  - Are the roles of agencies clearly defined?
- Identify where the licensing procedures are not simple or where administration is complex.
- Identify gaps or areas the legal framework that need to be improved upon.
- Identify where the framework is fragmented, in need of improvements to enhance efficiency and reduce complexity.
- Consider if administrative costs are appropriate and in line with best practise, and if they facilitate industry growth.
- Consider if current methods and standards are conforming to best practice
- Consider if the process supports and facilitates policy.

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Step 3 - Analysis of the consenting process

The analysis of consenting should be a comprehensive review of the current consenting process with a range of relevant stakeholders via submissions to the review group. Utilisation of consultations with relevant stakeholders is key to identifying issues and concerns, and to achieve a thorough understanding of the process, its issues and complexities.

Analyse the consenting process under the following headings:

The Aquaculture Licence:

- How many licences/permits are currently required?
- Can the number of licences be reduced or can licences be combined/linked?
- Can the licence term of differing licences/permits be synchronised to reduce administration on the producer?
- Is the term of the licence supportive of the sector?
- Are the legal constraints of the aquaculture licence supportive of the sector?

Processing Time:

- What is the current average time for a determination regarding a licence?
- Is there variation in time for decision making? Are the reasons for this clear?
- Is there a set formal timeline or period for reaching a determination? Is this sufficient? Is it regularly adhered to?
- Is there allowance for flexibility in the licence and is this used appropriately?
- Are all stakeholders aware of the process and timelines?
- How can the time between submission of an application and a determination be optimised?

Streamline Licensing

Is the legislative framework:

- Easy to follow and understand? Does it meet requirements?
- Is it transparent to all stakeholders? Do they understand and trust the framework and process?
- Does it provide a reliable determination in a timely manner?
- Does it learn from experience, best practice and from other jurisdictions?

Communication

- How many agencies are involved in the process?
- Are there efficient channels of communication for the applicant to contact the case officer?
- Are there formal and efficient channels of communication for agencies in the process to interact?

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- Are there efficient channels of communication within agencies, to communicate regarding the application?

Supporting Decision Making

In-house technical expertise:

- Are the required tools and knowledge available to decision makers, to weigh the benefits and costs of the proposal and make informed decisions?
- Are the decision making agencies adequately resourced?
- Is knowledge exchange and sharing of best practise facilitated? (nationally and internationally with regulators, researchers and stakeholders).

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Step 4 - Review of the regulatory framework

Reviewing the legislative and regulatory framework, will allow member states to draft clear, streamlined, transparent and efficient legislative framework, taking on board best practice and experience from other jurisdictions. The review should focus on EU and national legal instruments acting upon the industry, case law and governance of the operational sector.

Current legislation:

- What legislation is currently enacted?
    - What legal frameworks are in place?
    - What authorities govern regulation?
    - Are they fulfilling this to a high level?
- How was this legislation implemented?
    - EU guidance/ policy documents/ best practice etc.
- Is there variation, complexities and inconsistencies in transposing legislation compared with other jurisdictions?
- Does national interpretation of legislation fit with EU best practice?
- Does the implementation support expansion and development of the industry?
- Are there conflicting regulations?
- Can legislation in its current form be streamlined and simplified?
- Can regulatory frameworks be more efficient, transparent and workable?
- Is aquaculture considered as an ecosystem service provider as well as a pressure in the implementation of regulations?
- Does the legislation allow for multi-use of locations (e.g. windfarms and aquaculture)?
- Is the legislation flexible to adjust to new developments/technologies such as Integrated Multi Trophic Aquaculture (IMTA) and Recirculating Aquaculture Systems (RAS)?

Are aspects of legislation:

- Increasing administrative burden?
    - How many competent bodies are involved to conform to meet regulation?
- Time consuming to conform to under current implementation?
    - Level of administration can result in extended time needed to reach a decision
- Increasing operator expense to ensure compliance?
    - Level of information needed
    - Time to obtain information

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Step 5 - Comparative analysis

Once the regulatory framework is reviewed and the process has been outlined, this provides a basis for comparison against other consenting processes from different jurisdictions and different industries. This process helps to explore other consenting procedures that share the same characteristics to identify best practise and strategies that could be adopted and applied to the member state under review. The analysis can be carried out holistically, comparative analysis of different consenting schemes where sectors are similar, i.e. other aquaculture consenting processes, or comparative analysis of certain aspects of the current scheme with certain aspects of others, for example time scale to determine applications across multiple licensing areas, i.e. renewable energies, industry, planning.
The objective of this analysis is to highlight:

- What works in other systems
- Lessons learnt in other systems
- Benefits and challenges identified
- Specific themes that work in multiple areas
- Best practice that could be adopted from another member state.

The main comparative areas to consider:

- Number of licences (how many permits are required and what pre approvals do producers need, e.g. proven experience and scientific knowledge)
- Time taken to issue a licence
- Regulatory regime (agencies, governance, permitting)
- Stages in decision making process (is there a pre-application process)
    - Predictive models and tools
    - Environmental data needs
    - Production levels
    - Environmental impacts
    - Effect on natural environment
    - Effect on other users and stakeholders
    - Communication
    - Monitoring
    - Socio-economic benefits and costs
- Zoning (is there active zoning and management)
- Disease control (strategies for disease control and mitigating procedures)
- Environmental standards which are conformed to (establishing authority and monitoring body)
- Monitoring protocol
- Regulating body
- Public access to information

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Completed reviews

Country	Year of publication	Link
Ireland	2017	http://www.fishingnet.ie/media/fishingnet/content/ReviewoftheAquacultureLicensingProcess310517.pdf
Scotland	2016	https://www.gov.scot/publications/independent-review-scottish-aquaculture-consenting/
Canada	2016	https://sencanada.ca/content/sen/committee/421/POFO/reports/2016-06-22_POFO_AquacultureVolume1_Final_E.pdf https://sencanada.ca/content/sen/committee/421/POFO/reports/2016-06-22_POFO_AquacultureVolume2_Final_E.pdf https://sencanada.ca/content/sen/committee/421/POFO/reports/2016-06-22_POFO_AquacultureVolume3_Final_E.pdf
Australia (South Australia)	2016	http://www.pir.sa.gov.au/aquaculture/policy_and_legislation_for_aquaculture/aquaculture_regulation_review
Australia (Queensland)	2014	http://www.qca.org.au/getattachment/7c69a3db-3fe4-4803-bce9-85b8ae312172/CIE-Report-Comparative-Review-of-Aquaculture-Regul.aspx

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Step 6 - Identify issues

Using the data collected from steps 3, 4 and 5 (Analysis of consenting, Review of regulatory framework and Comparative analysis), the overarching issues will be apparent. This stage of the process is to analyse key issues for cross cutting themes, direct and indirect consequences of issues in all aspects of the process.

- Identify key issues outlined in consultation process
- Qualitatively analyse each issue raised by identifying main themes in the results
- Using quantitative analysis, the reoccurring themes can be ranked to identify priority areas

This analysis ensures best targeted solutions. These steps will highlight priority areas for finding solution and constructing recommendations. Issues should be considered with regard to suggestion potential solutions, and identifying preferred solutions

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Step 7 - Recommendations

The focus of recommendations is to:

- Simplify the process
- Minimise complexity
- Have detailed and clearly established methodologies
- Increase transparency and build trust in the regulatory system
- Reduce overlap
- Allow for long term business planning and investment opportunities
- Facilitate flexibility and adaptive management.

To create achievable recommendations, reviewers should consider the following:

- Each recommendation should link to a solution formed from the issues identified
- Each recommendation should be allocated a timescale for completion
- Each recommendation should be allocated a responsible agency for ensuring its completion
- Each recommendation should take into account solutions and best practise from other jurisdictions to provide potential solutions

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Case studies

Example: Reviewing the consenting process, Scotland

A comprehensive review of the Scottish Aquaculture Consenting was commissioned by Marine Scotland and the Crown Estate in 2016 which aimed to explore improvements to the current aquaculture consenting regime. The process analysed the regulatory regime for its issues and strengths to identify possible solutions and actions to improve. The review board utilised the application of SCOPE analysis:

- Core competencies – what are the core skills/key strengths we can draw on?
- Situation - Where are we coming from – current consenting regime/issues?
- Prospects – what are the key opportunities. How can we improve the regime we have?
- Expectations – What would we like to see as a consenting regime? What would constitute success? Future proofing?
- Obstacles – what are the main obstacles (perceived or actual) to the current regime/ alternatives?

The report was delivered in 4 months and identified a number of solutions, both quick-win solutions and some with a longer implementation time scale.

The steps taken in the process were:

1. A desk based research review of:
   - Consenting regimes and administrative processes.
   - Review regimes and processes elsewhere, including cross correlations between current consenting regimes.
   - Analysis of policy, strategies and existing initiatives.
2. Consultation

   Consultation with a wide variety of stakeholders (statutory and non-statutory consultees, producers, organisations, public bodies, regulators and NGOs) was undertaken, using various communication tools. Consultees were followed up with by a meeting with project consultants, allowing opportunity to clarify and discuss points arising.

3. Analysis

   Consultation analysis combined all responses and examined each, for strengths, key issues and suggested solutions. From the outputs of consultation, a series of alternative regimes was proposed and a SCOPE (Situation; Core competencies; Obstacles; Prospects and Expectations) analysis was completed to explore the potential opportunities and inform the recommendations.

4. Recommendations

   A series of recommendations, alternate consenting and quick wins were put forward. The examination of solutions to form quick wins, identified solutions that could be implemented on a short timescale with little associated effort and resources.

Example: Reviewing the consenting process, Ireland

In an attempt to identify changes required in the aquaculture licensing process, the Irish government established an independent review group tasked to assess the current licensing legislation and process and to consult with the public and stakeholders to compile a report recommending changes deliver a timely, transparent and robust aquaculture licensing process. Fourteen recommendations were outlined by the Review Group encompassing a complete legislative “root-and-branch” reform of the aquaculture licensing sector be completed as soon as possible.

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The steps taken in this process were:

1. Terms of Reference agreed
   Set out clear terms of reference for the review, with aims to deliver a timely, transparent and robust aquaculture licensing process.
2. Assessing the state of play
   A detailed analysis of the current state of aquaculture licensing and policy objectives for aquaculture, including the outline and emphasis of roles and responsibility and production targets.
3. Analysis of the current consenting process
   A comprehensive review of the consenting process with a range of relevant stakeholders via submissions to the review group.
   Consult with relevant stakeholders to identify issues and get an understanding of the process.
4. Review of the current regulatory framework
   A review of the legislative and regulatory framework governing, including the EU and national legal instruments acting upon the industry, case law and governance of the operational sector.
5. Comparative analysis
   A comparative analysis of consenting processes from different jurisdictions and industries with similar licensing process, to identify best practise.
   Explore other comparative consenting procedures that share the same characteristics.
6. Identify issues
   Identify the main themes, target areas or issues from the consultation and the analysis. Consider solutions and best practise from other jurisdictions to provide potential solutions.
7. Recommendations
   Compile the key issues and provide recommendations to facilitate improvements.

Example: Streamlining licensing and regulation, Greece

As one of the top five aquaculture producers in the EU, Greece set to reform its aquaculture legislative framework in 2014 in response to issues such as;

- The incomplete, fragmented, complicated legal framework
- Complex and bureaucratic licensing procedures
- Numerous authorities involved in the process
- Confusion and uncertainty for competent authorities & the applicants
- High administrative costs for administration services
- Large economic costs for investors.

The steps taken were to:

- Create and enact a single law for aquaculture.
- Set up a single licensing authority (one-stop shop), and
- Establish a new body for decision making, the National Aquaculture Council (NAC).

The specific roles of the NAC are to:

1. Describe procedures for leasing aquatic areas and for concession without an exchange (pilot units, experimental purposes).
2. Define the time for leasing (introduction of an increase to 20 years for marine areas).

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3. Define procedures for the pre-authorization for marine space leasing, as well as the competent authorities that give their input, regarding the suitability areas.
4. Specify the obligations, preconditions, time limits etc., for issuing a licence.
5. Granting rights for the administration and management of leased aquatic areas to the management bodies of the Organized Areas of Aquaculture.
6. Describe procedures for concession renewal, expansion and relocation of a unit.
7. Introduce procedures for temporary relocation of a unit for 3 years max (e.g. for fallowing).
8. Describe the determination of leasing rates.
9. Define lease attribution, directing regulation to the management bodies of the Organized Areas of Aquaculture.
10. Describes the procedures for the authorization of the establishment and operation license of aquaculture units in aquatic and terrestrial areas.
11. Defines the necessary documentation, including individual permits and licenses, like environmental licensing, veterinary license, water use permit etc.
12. Introduce a single licensing authority, (one-stop shop), which undertakes to process and complete the procedures, in collaboration with the co-responsible authorities. This is the Directorate of Rural Development of the local Decentralized Administration.
13. Describes the procedures for renewal, modification, recall and suspension of a licence.

The NAC provides advice to the Minister of Rural Development and Food. It is composed of ten members from the relevant specialities.
Overall, the new framework:

- Simplifies the licensing procedures
- Regulates matters for the management of Areas for Organized Aquaculture Development and
- Reduces time and costs for the investors.

As a result, there are now allowances for:

- Pre-authorization for the lease of aquatic areas
- Incorporated licences for veterinary and operational permits
- Abolishment of separate permits (i.e. water use) and incorporation in environmental licensing
- Formally established time limits
- Formally outlined roles of the competent authorities
- Increases in lease duration.

Example: Aquaculture Legislation, Norway

The Aquaculture Act (the Act) 2005, was established as the aquaculture sector called for legislation that promoted profitability and competitiveness in the sustainable development of the industry. The Act aimed:

- to create value on the coast,
- better future-orientated development of the industry and
- a modern framework of administration based on four specific areas:
    - Growth and innovation
    - simplification for industry and public administration

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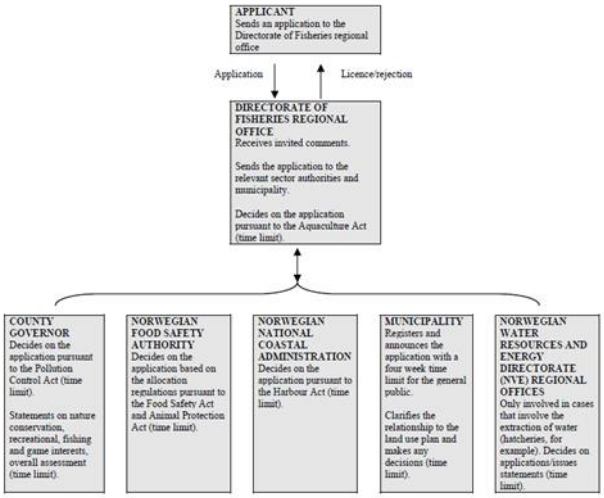
- modern and comprehensive environmental regimes
- facilitating efficient utilisation and better user relationships in the coastal zone.

The Act also introduced the right to transfer and mortgage licences in an effort to normalise the industry in relation to others.

Mandatory efficiency improvements and coordination between sector authorities were also introduced along with stipulated time limits for applications. The result is less resource demanding establishing a licensing system that covers environmental standards, land utilisation, registration, transfer and mortgaging of licences, as well as control and enforcement. The County Council are the single coordinating body for aquaculture licensing, whilst the ministry decides the number of licences to be allocated; the geographic



distribution of licenses; and prioritisation of criteria to determine application success and licence fees.

This framework of decision making in Norway details the 'One-Stop-Shop' approach. Applicants only deal with a single agency, the Directorate of Fisheries and this agency coordinates the decision making form receipt of application.

Since 2005, the Act has shown demonstrable reductions in the time taken to achieve licences. The adoption of a 'single-window' approach provides a clear and single point of contact for the industry. This 'one stop shop' approach is a possible route for improving the coordination of agencies and administrative authorities is the creation of inter-institutional agencies or 'one-stop-shops' that centralise, coordinate and process all the permits, licences and reports from the various agencies and authorities that have responsibilities for aquaculture, acting as the sole authority.

In 2017, regulatory reform set about establishing a new system based on the notion of production areas, which involved restructuring the coast from 7 regions to 13 production areas (Production Area Regulation 2017), in combination with an operational rule, known as the 'traffic light system'. The idea is that the cumulative impacts of sites in production areas will be assessed using proxy indicators. Particular production areas will be designated as 'green', 'yellow' or 'red', depending on their perceived condition. Whereas the previous system monitored environmental conditions and sea lice at each production site, the new model is structured around the combined footprint from all sites in one production area. An important element of the new model is to coordinate activities within each area, such as a fallowing period during the production cycle, as well as having 'buffer zones', i.e. areas free of aquaculture, to act as barriers to disease spread. Companies can be collectively obliged

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to reduce the maximum allowable biomass (MAB) associated with their licences, based on the environmental condition of the production areas. In order to provide for a just system, the government considers various exemptions from the general operational rules for the producers that are not contributing to the environmental problems. Exemptions are also made in order to secure the flexibility of producers active in several production areas.
The aquaculture licences stipulate the maximum allowable biomass (MAB) that its holder is allowed to produce and each site also has its own, site-specific MAB. A potential increase (or decrease) in the MAB of the production area does not affect the maximum allowable biomass of the sites. This creates issues with the new system because a company faced with the obligation to decrease the MAB of the licence in the production area may choose to just operate less sites, increasing farming density in these sites (provided there is capacity according to the MAB of the site).

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