



**Tithe an
Oireachtais**
**Houses of the
Oireachtas**

An Comhchoiste um Thalmhaíocht, Bia agus Muir

Grinnscrúdú Mionsonraithe ar an mBille um Iascach Oileáin (Ceadúnas
Oidhreachta) 2017

Samhain 2018

Joint Committee on Agriculture, Food and the Marine

Detailed Scrutiny of the Island Fisheries (Heritage Licence) Bill 2017

November 2018

Contents

Contents	1
Introduction	2
Provisions and Implications of the Bill	4
Consideration of Evidence to the Committee	10
Conclusions	14
Recommendations	15
Appendix 1: Orders of Reference	17
Appendix 2: Committee Membership	20
Appendix 3: Text of the Bill and Explanatory Memorandum	21

Introduction

The Island Fisheries (Heritage Licence) Bill 2017 (PMB) (the Bill) is a Private Members' Bill initiated in Dáil Éireann by Mr Martin Kenny TD, Mr Martin Ferris TD and Mr Pearse Doherty TD on 12 July 2017. The Bill was read a second time on 1 February and was referred to the Joint Committee on Agriculture, Food and the Marine which decided to undertake detailed scrutiny of the Bill.

Background to the Bill

The concept of a heritage licence has been proposed for a number of years. For example, the concept for extra assistance arose in a submission by Comhar na hOilean Teo to the European Commission as part of the last reform of the Common Fisheries Policy (CFP), calling for more flexibility in the granting of fishing licences to island fishers, and calling for island fishers to have exclusive fishing rights to the waters immediately surrounding their islands.¹ The heritage fisheries concept also referred to the need to support traditional fishing boats (currachs). Additionally, a number of reports have put forward the need for a 'heritage licence' to support disadvantaged coastal communities. The Joint Sub-Committee on Fisheries (of the then Joint Committee on Agriculture, Food and the Marine) examined the challenges for coastal and island fisheries. In its Report *Promoting sustainable rural coastal and island communities* (2014) the Sub-Committee made the following recommendation:

Promoting sustainable rural coastal and island communities, Recommendation 10

That the Government examine the feasibility of heritage licences to be issued by the Department for rural coastal and island fishing communities.

The 2014 Report followed the introduction of heritage measures generally. In 2012 the European Parliament sought preferential access for artisan fishers during reform of the CFP. This resulted in the inclusion of Recitals 19 and 20, calling for specific measures for coastal and island communities. In 2013, the reformed CFP introduced a concept of 'preferential access' for small-scale, artisanal or coastal fishers. This was included in Recital 19 to Regulation No. 1380/2013.

Recitals 19 and 20, Common Fisheries Policy (Regulation 1380/2013)

- (19) Existing rules restricting access to resources within the 12 nautical mile zones of Member States have operated satisfactorily, benefiting conservation by restricting fishing effort in the most sensitive part of Union waters. Those rules have also preserved the traditional fishing activities on which the social and economic development of certain coastal communities is highly dependent. Those rules should therefore continue to apply. Member States should endeavour to give preferential access for small-scale, artisanal or coastal fishermen.
- (20) Small offshore islands which are dependent on fishing should, where appropriate, be especially recognised and supported in order to enable them to survive and prosper.

¹ https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/comhar_na_noilean_en.pdf, accessed 1 November 2018

The Scrutiny Process

The Bill seeks to give effect to Recommendation 10 of the 2014 Report, while pursuing a heritage licence which also gives access to an additional quota for island fishers.

The Committee decided at its meeting of 17 April 2018 to seek a number of submissions from interested parties and had public hearings in order to explore the relevant issues and possible solutions on 1 May 2018 and 12 June 2018.

Summary of Evidence received In Public Hearings

Date	Organisation
<u>1 May 2018</u>	<p>Sponsors of the Bill</p> <ul style="list-style-type: none"> - Martin Kenny TD - Martin Ferris TD <p>Department of Agriculture, Food and the Marine</p> <ul style="list-style-type: none"> - Dr Cecil Beamish, Assistant Secretary - Mr Paschal Hayes, Principal Officer - Ms Josephine Kelly, Principal Officer
<u>12 June 2018</u>	<p>Low Impact Fishers of Europe (LIFE)</p> <ul style="list-style-type: none"> - Mr Jeremy Percy, Executive Director <p>Killybegs Fishermen's Organisation (KFO)</p> <ul style="list-style-type: none"> - Ms Norah M Parke, Project Coordinator <p>Irish Fish Producers Organisation (IFPO)</p> <ul style="list-style-type: none"> - Mr Francis O'Donnell, CEO - Mr John Kirwan, Chairman <p>Irish South & East Fish Producer's Organisation (ISEFPO)</p> <ul style="list-style-type: none"> - Mr Hugo Boyle, CEO <p>Irish South & West Fish Producers Organisation (ISWFPO)</p> <ul style="list-style-type: none"> - Mr Patrick Murphy, CEO - Mr Greg Casey, Consultant <p>Comhdháil Oileáin na hÉireann</p> <ul style="list-style-type: none"> - Mr Simon Murray, Chairman <p>Irish Islands Marine Resource Organisation (IIMRO)</p> <ul style="list-style-type: none"> - Mr Jerry Early, Arranmore Island, Chair of IIMRO - Mr Enda Conneely, Inis Oírr, IIMRO Committee Member <p>Trinity College Dublin</p> <ul style="list-style-type: none"> - Dr Ruth Brennan, Marine Social Scientist, Trinity Centre for Environmental Humanities

Provisions and Implications of the Bill

Objective of the Bill

The objective of the Bill is to provide a heritage licence to fishermen based on the islands, who use traditional and / or small-sized methods for fishing, so they may fish inshore waters. This supports island communities through the provision of an income stream through fishing.

One specific action is sought; a small allocation of quota to be set aside for fishermen who are resident on offshore islands. It is envisaged that this allocation would be in the region of 0.5% to 1% of the overall quota. The proposed mechanism is a heritage licence, which would entitle its holder to access this additional quota. In order to hold a heritage licence, one must already be licensed to fish as per the current regulations.

Definitions

The Bill defines:

- “island fisherman” as any person who is habitually resident on one of Ireland’s off shore islands and who is engaged in fishing to earn a livelihood; and
- “small-scale fishing” as fishing carried out by fishing vessels of an overall length of less than 12 metres and not using towed fishing gear as listed in Table 3 of Annex I to Commission Regulation EC 26/2004.

The Bill seeks to provide a heritage licence to island fishermen who are engaged in small-scale fishing.

The Policy Context

A number of reasons for this policy change were brought forward:

- Small scale fisheries are struggling across Europe. They are under threat from, among other things, large industrial fleets, internal competition and recreational users;
- Island fishers face particular challenges associated with their geography and related isolation;
- EU Regulations under the current CFP, recommend that small offshore islands dependent on fishing be especially recognised and preferential access be given to small-scale fisheries;
- Island fishers have fewer opportunities than the general population for income generation because they cannot commute to jobs as easily. These special circumstances are already recognised as needing additional support in other areas of Government policy;²
- Supports for small scale fishers include accessing funds under the European Maritime and Fisheries Fund (EMFF) and through the use of sustainable fishing methods such as Rights Based Management; and
- A number of international case studies point to successful initiatives where local communities have found ways to sustain their traditional fishing methods. These communities include the Shetland Islands, the Koster region in Sweden and Lira in Galicia, Spain.

² A particular example is the Areas of Natural Constraint (ANC) Scheme provided to farmers.

- The island fishing community itself consists of 30 offshore islands which have an overall population in the region of 2,700.³ Submissions to the Committee note a declining and aging population with high levels of economic deprivation.

Government Response

In his Second Stage speech, Mr Andrew Doyle TD, the Minister of State for Food, Forestry and Horticulture, detailed the Government response to the Bill. The Department has legal advice that the Bill is not compatible with EU law and the provisions of the CFP and accordingly, the Government does not support the Bill.

The value and importance of maintaining vibrant rural and coastal communities was also recognised as was the Government's long-standing policy that Ireland's fish quotas are a national asset. Lack of representation at policy implementation level in the past has been addressed in the introduction of the National Inshore Fisheries Forum (NIFF) and six regional Inshore Fisheries Forums (RIFFs).

The Minister also highlighted a range of schemes which have been launched under the EMFF 2014-2020 which aim to support Ireland's seafood industry and fishing communities. Funding is already available to small-scale fishers, in particular from the EMFF, for projects which support fishing communities proposed under:

- The Fisheries Local Action Group Schemes (FLAGS);
- The dedicated inshore fisheries conservation scheme (which supports the lobster v-notching scheme); and
- The Sustainable Fisheries Scheme

The Government's commitment to support and develop fishing communities was also restated, including the introduction of the fishers' tax credit in Budget for 2017 which will run for the years 2017-2021 inclusive.

The Bill proposes the Minister be responsible for issuing fishing licenses to island fishers. However, it is the Licensing Authority for Sea-fishing Boats which issues licenses on an independent basis. The Minister is legally precluded from exercising any power or control in individual or a group of cases.

It was also noted that there is no provision for an appeals procedure or review process and no provision for offences, sanctions or enforcement powers with regard to the proposed licensing regime. The need for clarification on certain terms such as "offshore islands" and how residency will be determined was also raised.

³ Department of Culture, Heritage and the Gaeltacht, based on the 2016 Census. Available at <https://www.chg.gov.ie/gaeltacht/islands/populated-off-shore-islands/>, accessed 5 November 2018.

Possible Implications

In undertaking the process of detailed scrutiny, the Committee considered a number of issues as follows:

Key Issues
1. Will the introduction of heritage licenses lead to an improvement in the livelihoods of island fishers or should alternative measures be introduced?
2. Will the introduction of heritage licenses cause adverse impacts on the marine environment and inshore fisheries?
3. Is the proposal aligned with Irish and European policy and is the proposal workable?
4. Is the sector embracing all aspects of funding and representation available to them?
5. Is further research required to support the introduction of heritage licences?
6. Does conferring an advantage (via additional allocations) on island communities disadvantage other communities?

National Policy and the Common Fisheries Policy

The CFP sets common rules for fisheries throughout the EU. A key feature of this is the application of a quota to particular species of fish, in order to ensure that stocks are not overfished, while allowing Member States to access each others waters.

Article 16 of the Regulation underpinning the CFP is stated as follows:

Each Member State shall decide how the fishing opportunities that are allocated to it, and which are not subject to a system of transferable fishing concessions, may be allocated to vessels flying its flag (e.g. by creating individual fishing opportunities). It shall inform the Commission of the allocation method.

The CFP acknowledges an aspiration to give specific supports to small offshore islands that are dependent on fishing, as provided for in Recital 20 of the CFP Regulation. There is also funding for the fishing industry and coastal communities through the EMFF under the current round of the CFP.

A key issue in the Committee's consideration of the Bill is the method in which quota is allocated under the CFP. Unlike other Member States, where quota is treated as a private resource that can be bought, sold and traded, Ireland treats quota as a national, communal resource.

The allocation and management of quota is performed by the Minister for Agriculture, Food and the Marine, who is advised by the Quota Management Advisory Committee (QMAC), which involves representatives of the fishing industry. Under this arrangement, the QMAC meets each month and makes recommendations to the Minister.

Of particular interest to the Committee is the provision for additional quotas that is already in place which demonstrate the potential for discretionary arrangements. According to the Department of Agriculture, Food and the Marine, the following arrangements are in place as "specific additional measures" pursuant to Article 17 of the CFP:

- Mackerel: Quota is set aside for under 18m Gill Net fishers to support artisanal Gill net fishers fishing from punts in inshore bays, as well as 400t set aside for hook and line fishermen operating from small boats primarily used in island communities;
- Herring: A small boat fishery is established to support artisanal draft ring-net fishing from small punts in inshore bays in the North West, as well as measures in place to restrict boats larger than 20m fishing the Dunmore Box, a herring spawning box off the Waterford coast; and
- Albacore Tuna: A portion of quota is set aside for surface longlining and mechanised trawling.⁴

The Irish approach to quota allocation seeks to avoid the privatisation of quotas and the concentration of opportunities in large international companies. This benefits coastal economies dependent on fishing. However, the Committee heard that there is an imbalance in how quota is allocated, with some of the greatest capacities held by a small number of vessels.

Irish Fishing Fleet

The Irish fishing fleet comprises five categories of vessel;

- Specific;
- Polyvalent;
- Beam trawler segment;
- Refrigerated seawater (RSW) pelagic segment; and
- Aquaculture segment.

The polyvalent category applies to small-scale island fishers, though vessels in this classification range in length overall (LOA), volume and engine power. Overall, there are 1,814 polyvalent vessels on the Irish fishing register.

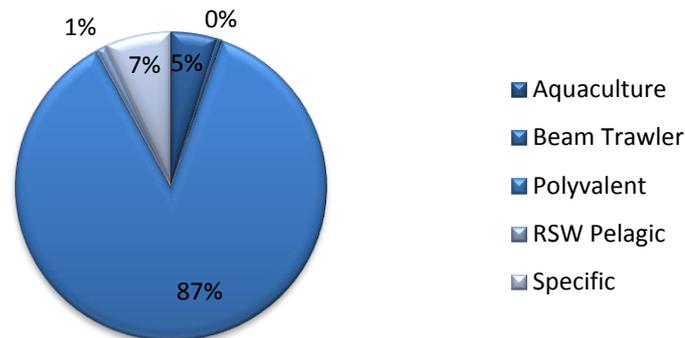
With aquaculture vessels excluded from the total number of vessels, the polyvalent fleet makes up 91% of the fishing fleet. With Aquaculture included, this is reduced to approximately 87%, but this percentage remains significant.

Breakdown of the Irish Fishing Fleet – 31 December 2016

	Number of Vessels	Gross Tonnage	Kilowatts
Specific	143	2,331	12,359
Polyvalent	1,814	32,329	118,198
Beam Trawler	11	1,059	2,745
RSW Pelagic	23	23,566	46,597
Aquaculture	101	3,496	10,445
TOTAL	2,092	62,781	190,344

⁴ Department of Agriculture, Food and the Marine, Fisheries Quota Management in Ireland, April 2016 available at <https://www.agriculture.gov.ie/seafood/seafoodpolicy/forms/>, accessed 30 October 2018.

Proportion of Vessels - Irish Fishing Fleet



These diagrams demonstrate how polyvalent vessels, while making up the vast majority of vessels overall (87%) account for just over half of the gross tonnage. Submissions presented to the Committee highlight a similar imbalance in terms of quota allocated, with most opportunities assigned to larger fishing vessels, leaving smaller vessels in a position where they cannot compete as they are not allocated quota.

Policy Implications of the Bill

The Committee considered four categories of policy implications:

i. Environmental

In terms of costs, small-scale fishing vessels are less fuel efficient than larger vessels, leading to increased GHG emissions. Also, many inshore fisheries are already threatened from over-fishing.

However, there are also a number of possible benefits. Small-scale fishing is considered to be less damaging to the marine environment (as the traditional boats do not tow trawls which can damage the seabed), and they do not catch fish in the quantities that larger boats do. Additionally, the promotion of traditional methods of fishing may stimulate awareness of environmentally sustainable methods of fishing, enhancing Ireland's reputation as a leader in sustainable fishing management. In turn, this could also enhance the position of islands as traditional fisheries and sustainable seafood destinations.

ii. Economic

There are a number of possible economic effects from the Bill, which can benefit the wider community, the local economy, consumers generally and the Exchequer.

There appear to be some costs, such as compliance and administration costs. However, there are a number of potential benefits for fishers from access to a higher quota including:

- higher sales and wages;
- a potential increase in employment, numbers of fishing vessels and added value of the catch; and
- the possibility of marketing catches as 'niche' or premium products.

Heritage fish may attract a premium label which may attach premium costs to the consumer. However, if profits are reinvested to sustain the sector, there would be long-term benefits for sustaining island and non-island rural coastal communities. Heritage fishing and the resulting produce may also enhance tourism on the islands.

iii. Social

The potential benefits include island communities remaining on the islands all year round, sustained by improved social networks and improved employment opportunities. There is also scope to support the continuance of a traditional way of life and raising awareness of sustainable fishing methods.

iv. Legal

As stated previously, the Committee notes that the Department has received legal advice. It is understood this advice indicates that the Bill is in conflict with the CFP and national legislation.

However, the Committee also notes the response of the European Commissioner on Fisheries, Mr Karmenu Vella, to a question asked in the European Parliament:

“Can the Commission clarify if EU regulations can provide for Member States such as Ireland to implement a licensing system that would allow for heritage licences to be issued to island fishermen conducting small-scale and artisanal ... in order to facilitate the continuance of traditional fishing practices on Ireland’s offshore islands, with specific reference to fishing within the six-mile territorial limit, including the baseline?”

Answer given by Mr Karmenu Vella on behalf of the European Commission⁵

In line with Article 6 (1) of Regulation (EU) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (Control Regulation), a Union fishing vessel may be used for commercial exploitation of marine biological resources only if it has a valid fishing licence.

Fishing licences referred to in Article 6 of the Control Regulation shall be issued, managed and withdrawn by Member States for their fishing vessels in accordance with this regulation.

Indeed, small-scale and artisanal fishing, including by island fishermen using traditional fishing practices on Ireland’s offshore islands, is to be considered commercial exploitation.

Therefore, it is up to Member States to decide whether they wish to put in place a licensing system such as mentioned by the Honourable Member. In any case, the issuing of licenses must comply with the ceilings set out in the Annex II and Article 23 of the Basic Regulation on the common fisheries policy.

These positions are not aligned and the apparent conflict should be reconciled.

⁵ European Commissioner for Environment, Maritime Affairs and Fisheries

Consideration of Evidence to the Committee

Of the submissions received by the Committee, the majority were in favour of the Bill. Others supported the Bill but maintained it was flawed, while others were opposed to the Bill and considered it to be discriminatory against mainland fishers. While the issue of discrimination and unequal treatment appears to be a significant issue, the point was also made by some submissions that mainland (rural coastal) communities face the same challenges as island communities.

Licensing System and the Allocation of Quota

Under the Irish system, quota is a public resource and allocated based on a system of licensing and capacity. This system manages the right to engage in commercial sea-fishing through the granting of licences. It should be noted that a licence **can only be granted to a vessel and not to an individual**.

Under the *Fisheries (Amendment) Act 2003* (as amended by the *Sea Fisheries and Maritime Jurisdiction Act 2006*), the licensing of sea-fishing boats is carried out by the licensing authority for sea-fishing boats. As well as hold a sea-fishing licence, a vessel must also be entered into the fishing boat register in order to engage in commercial sea-fishing activities. The current register was introduced in 1990.

In addition to the licensing system, a cap is placed on the size of the Irish fleet by EU fleet management rules. This is achieved by setting a cap on the total capacity of the fleet in gross tonnes and kilowatt hours.⁶ Unlike quotas, under the Irish system, capacity is a tradable commodity and privately owned, with the overall capacity in effect since 1 January 2014 set at 77,586 gross tonnes and 210,083 kilowatts.

Submissions made noted that quota can, under Irish law, only be allocated to fishing vessels and not to individuals. However, it was also noted that under Article 16 of the CFP, how a quota is allocated is entirely up to the Member State. It was also noted that in the United Kingdom, the High Court held that a Member State can decide not to allocate a quota. The Committee considers this to be an incidental matter and should not be a barrier to the allocation of quota through an additional licence

The issue of track record requirements was also raised in evidence to the Committee. It is understood that national quota is allocated with consideration to track records, and it may not be economically viable for island fishers to fish as they cannot compete in terms of track records and generating quotas when compared with other, larger vessels. If the provisions of the Bill were to be implemented, there would be scope to assist island fishers in developing an improved track record.

Inshore Fishing Sector and Conservation of Fish Stocks

The management of inshore fisheries is primarily governed by the *Sea Fisheries and Maritime Jurisdiction Act 2006*. The Irish inshore sector applies to vessels of 12m length overall (LOA) that are predominantly active within six nautical miles of the baselines of the State's territorial waters. As well as "small-scale coastal fisheries" as defined by the European Union, there are also a number of vessels using towed gear and other static gear such as pots and set nets.

⁶ Kilowatt hours are used in the context of engine power.

Much of the inshore fishing sector has access to quota stocks such as mackerel, herring and whitefish. However, it also comprises a number of non-quota species; including shellfish caught by pot (e.g. lobster, crab, cockle, clam and mussels) and species such as turbot, bait fish and some craw fish. Although these species do not have quotas, Member States are allowed to (and do) take non-discriminatory measures for the conservation and management of fish stocks and the maintenance or improvement of the conservation status of marine ecosystems within 12 nautical miles of its baselines.

In terms of conservation measures, the Committee heard that there is a general consensus that most inshore species are under threat, with the example of the v-notching conservation programme for lobsters highlighted as one particularly effective conservation measure. This process relates to female lobsters that are marked and returned to the sea after they are landed in order to enable them to breed. Lobsters are also subject to a minimum landing size and it is illegal to land v-notched lobsters.

Consultation on Issues Affecting Island Communities

The National Inshore Fisheries Forum (NIFF) and six Regional Inshore Fisheries Fora (RIFFs) were established in 2014 to assist with consultation on issues of concern. Some submissions noted however that the terms of reference of the NIFF preclude discussion of many topics relevant to island fishers, such as localised issues. While the Committee notes that the inshore sector consists of a diverse range of requirements depending on individual regions, the Committee believes that there is scope to improve the treatment of issues relating to island fishers in the NIFF, particularly issues of local concern.

Future Restrictions

The Committee notes the possibility certain non-commercial stocks, which are not subject to quotas and therefore fishable by small-scale fishermen may become commercial and subject to quotas in the future. In this scenario, island fishers may also be precluded from scaling-up to larger vessels or may not have access to developed harbours and land-based facilities such as processing. In considering this point, the Committee suggests that an element of flexibility be built into the process for granting a heritage licence.

Discrimination

As stated previously, submissions noted the potential for inequality within the fisheries sector between inshore fishers on the islands and inshore fishers on the mainland or rural coastal communities. However, the Committee heard that there is a distinction between equality and equity, with an analogy presented to the Committee by Dr Ruth Brennan of Trinity College Dublin:

Two people were trying to see a football match over a wall that blocked their view. Those two people were of different heights. One was tall and one was short but neither could see over the wall. They were given equal treatment and they were given two stools to stand on that were exactly the same height so they were raised up by the same amount. One person could now see over the wall but the other person could not. That is equal treatment. Equitable treatment means

that the person who is shorter is given a slightly taller stool, and now they are both able to see over the wall. That is why it is so important to use those terms precisely.⁷

The Committee believes that an equitable approach to fisheries quotas could be pursued in allowing for disadvantaged actors, such as the traditional fishing sector, to be accounted for in Ireland's quota system. This would include island fishers primarily, but could extend to particularly remote or rural coastal regions where practical opportunities are somewhat limited.

The heritage licence / permit may not be the only way of doing this. The Committee heard from the Department of Agriculture, Food and the Marine that in Ireland, quotas are managed by boat, rather than by fisherman, but that there are unallocated quotas which are not fully exploited by the Irish fishing fleet.

Tourism and Infrastructure

In the tourist sector, access to traditionally fished fresh produce may be easier for tourists travelling along the mainland e.g. the Wild Atlantic Way. From the perspective of islands, this may require additional funding opportunities and supports to be explored to improve connectivity and infrastructure for tourists, so the potential benefits of island fisheries can be fully utilised.

The Role of the Sea in Island Communities

The Committee heard that the Bill recognises and supports islanders' strong sense of belonging to the sea, with 'dúchas na mara' being highlighted. The Committee also heard that the knowledge of the sea among island communities is distinct from the knowledge obtained in formal education processes.

The Committee considers that maintaining this knowledge is integral to the support of island communities, their culture and their heritage. The Committee also notes that there are possible benefits to providing such support, including the role of a heritage fishing sector in driving new opportunities for the islands e.g. tourism.

The Committee heard that experiences in other parts of Europe have shown that the decline of a small number of boats can have a dramatic impact on the sustainability of tourism locally. In summary, the Committee believes that the cultural impact of declining island fisheries should not be underestimated.

Alternative Supports for Island Fishers

The issue of alternatives was also considered by the Committee and the Committee notes that:

- Under the sustainable fishing scheme, inshore vessels can avail of 70% supports for investment on board vessels to improve hygiene, quality, energy, efficiency, added value to catch and the purchase of more selective fishing gear;
- Under a fisheries conservation scheme for inshore vessels, there is a budget of €6 million, €900,000 of which is available this year; and

⁷ Dr Ruth Brennan, TCD, Evidence to the Committee, 12 June 2018

- FLAGS, which are similar to the LEADER programme in agriculture, have a budget of €12 million available to them. These groups operate in seven regions around the State and support small local inshore initiatives with €2.5 million awarded in 2017, €1.7 million of which has been drawn down, and a budget of €2.6 million in 2018.

The Committee believes that island fishing communities may be in a position to access further supports by applying for such funding and encourages island fishers to fully explore such opportunities. The Committee also believes that there is scope for specific supports to be factored into the quota management system for fisheries. Unlike the agri-food sector, this does not need to take the form of a subsidy, but may take the form of additional supports such as less restrictive quota access that would maximise the overall national catch, but have due regard to limits on sustainability, fish stocks etc.

Heritage Fishing Opportunity Licence (HFOL)

Under the CFP all commercial sea-fishing boats must be licensed. As such, this Bill could lead to duplication as island fishers must also apply for a second (heritage) licence. The Committee notes that the Bill relates to island fishers where the commercial activity of small-scale fishing in vessels of less than 12m LOA is carried out across Ireland's island communities as a way to earn a living. Noting this position, the Committee interprets the heritage licence itself as relating to an additional allocation of quota only, and suggests a design of a Heritage Fishing Opportunity Licence (HFOL) as a document relating to quota that is attached to an existing licence.

The Committee considers that as a requirement already exists for fishing vessels to be licensed, and that they must have such a licence in order to be allocated a Heritage Licence, the use of the word 'Licence' in the Bill may be a source for confusion. The Committee therefore suggests that in the interests of clarity, the sea-fishing licence be more clearly distinguished from the heritage licence, which is only to be granted with respect to an additional quota allocation for island communities.

The Committee notes the lack of reference to processes, procedures and provision for offences, sanctions and enforcement. However, given that holders of potential Heritage Permits must be licensed already. It seems that these functions (arising from the allocation of Heritage Permits) can be incorporated into the current licensing system.

Conclusions

The Committee acknowledges that the Bill has significant potential to improve the lives of island fishers and that there is scope for expansion to coastal fishers in extremely disadvantaged coastal regions (rural coastal fishers). The Committee also acknowledges that the traditional fishing sector has less of an impact on the marine environment and supporting this should be encouraged. However, the Bill should have due regard to the limits set by quotas under the CFP and suggests that additional quota allocations for islanders pursuant to existing initiatives, e.g. measures pursuant to Article 17 of the CFP, be explored.

The Committee believes that its recommendations provide a pathway for aligning the Bill with the overall policy objectives for fisheries at European and national level, as well as making some suggestions on how the wider policy framework for fisheries in Ireland can be improved to provide additional supports for island fishers. However, some wider questions remain as to the method of allocation of quota and the requirements in terms of licensing and capacity.

Recommendations

Recommendations on the Framework of the Bill

In concluding its detailed scrutiny of the Island Fisheries (Heritage Licence) Bill, the Committee recommends the following:

1. That consideration be given to renaming the proposed Heritage Licence. The Committee suggests that naming the instrument a Heritage Fishing Opportunity Licence (HFOL) may be more appropriate.
2. That an allocation of 0.5% to 1% of the national quota be set aside for heritage and traditional fishing, which can only be accessed through holding a HFOL.
3. That consideration is given to further detail regarding appeals procedures, review processes, and provision for offences, sanctions or enforcement powers. These points may be addressed by incorporating these aspects of the HFOL into the current Licensing System, recognising it as an additional instrument intended to allow access to additional quota.
4. Noting Recommendation 10 of the 2014 Joint Sub-Committee on Fisheries Report (2014), that the HFOL be introduced for island communities on a pilot basis.
5. That consideration be given to expanding the scope of the Bill to include certain coastal communities that experience particular disadvantages.
6. That the requirement for a vessel to be licensed and entered in the polyvalent register is continued. This protects the integrity of the register and the safety of the fleet.
7. That provision be made for requirements that relate to track record can be set aside for quotas allocated under the HFOL, but that similar requirements for ordinary quota remain in place.
8. That provision be made to allow for the transfer of the right to avail or benefit of a HFOL between a number of named beneficiaries, who are fishers who use the same licensed vessel.

Recommendations on Wider Policy Issues relevant to the Bill

1. That the current system for allocating quota is reviewed and evaluated in terms of the economic benefit of every fisher with a registered and licensed vessel. In particular, the Committee believes that a system where there is an imbalance in quota allocation must be avoided.
2. That consideration be given to placing a structure in place to ensuring specific issues may be addressed at a higher level, and that the need for consensus on issues at RIFF level is reviewed to account for island-specific issues.
3. That consideration be given to a cross-sectoral study of island communities, in order to understand the overall losses to island communities not just in terms of population and economic opportunity, but also in terms of cultural impacts and opportunities for sectors such as tourism and infrastructure.

The Committee is required to arrive at a recommendation on the overall progress of this Bill, but notes that additional amendment is required to ensure it accounts for both island and rural communities.

Recommendation on the Progress of the Bill

On completion of its Detailed Scrutiny of the Island Fisheries (Heritage Licence) Bill 2017, the Committee recommends that this Bill progresses to Third Stage, provided the scope is clarified to ensure that island and rural coastal communities are appropriately balanced. Additionally, the Committee notes the need for the text of the Bill to be reviewed from a legal perspective when all principles have been clarified.

Appendix 1: Orders of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:
 - (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both

- Houses and those made under the European Communities Acts 1972 to 2009,
- (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.
- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

Appendix 2: Committee Membership

<u>Chairman:</u>	Pat Deering (FG)
<u>Vice Chairman:</u>	Jackie Cahill (FF)
<u>Deputies:</u>	Marcella Corcoran Kennedy (FG) Martin Kenny (SF) Charlie McConalogue (FF) Willie Penrose (Lab) Thomas Pringle (I4C)
<u>Senators:</u>	Paul Daly (FF) Tim Lombard (FG) Rose Conway-Walsh (SF) Michelle Mulherin (FG)

Appendix 3: Text of the Bill and Explanatory Memorandum

AN BILLE UM IASCACH OILEÁIN (CEADÚNAS OIDHREACHTA), 2017 ISLAND FISHERIES (HERITAGE LICENCE) BILL 2017

Bill

entitled

An Act to provide for the issuing of heritage licences to island fishermen to facilitate the continuance of traditional fishing practices on Ireland's offshore islands; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“island fisherman” means any person who is habitually resident on one of Ireland's off shore islands and who is engaged in fishing to earn a livelihood;

“Minister” means the Minister for Agriculture Food and the Marine;

“small scale coastal fishing” means fishing carried out by fishing vessels of an overall length of less than 12 metres and not using towed fishing gear as listed in Table 3 of Annex I to Commission Regulation EC 26/2004.

Heritage licence for island fishermen

2. (1) The Minister may, if he or she thinks fit, grant to an island fisherman engaged in small scale coastal fishing, who when making the application makes a declaration in a form approved of for the purposes of this section by the Minister, a licence (operating in the manner specified in subsection (4)) to fish within the six mile territorial limit including the baseline, subject to the restrictions contained in this section.
- (2) In determining an application for a licence under subsection (1), the Minister shall have regard to the requirements of the EU Common Fisheries Policy and to the suitability of the applicant having regard to those requirements or to the purposes of this Act.
- (3) Notwithstanding the generality of subsection (2) a licence granted by the Minister under this section shall remain in force for so long as the island fisherman is engaged in fishing and shall operate to authorise the holder of the licence, for so long as the licence

is in force, to fish, within the six mile territorial limit including the baseline, of the island on which said fisherman ordinarily resides.

- (4) Any licence issued under this section shall be non-transferable and the holder of the licence shall not lease, sell or seek to transfer the licence and such licence only be operable when the licence holder is aboard the fishing vessel while fishing.
- (5) The Minister shall by regulations provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of the operation of this Act.
- (6) Without prejudice to the generality of subsection (5), regulations under this section shall make provision for the following:
 - (a) criteria for determining whether an applicant for a licence under this section meets the definition of an island fisherman;
 - (b) an appeals mechanism for fishermen refused a heritage licence under this section;
 - (c) the number of licences which shall be issued in respect of each offshore island;
 - (d) procedures for the extinguishing of licenses issued under this section;
 - (e) the introduction of a non-transferable community island quota;
 - (f) procedures for the co-management of the heritage licence system to ensure a partnership approach between island fishermen, state agencies and scientific experts.

Short title, collective citation and commencement

3. (1) This Act may be cited as the Island Fisheries (Heritage Licence) Act 2017.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Explanatory memorandum of:
Island Fisheries (Heritage Licence) Bill 2017**

Rationale for the bill:

The aim of the bill is to arrest the decline in island populations where fishing has been a central pillar of the economy. There is scope within the Common Fisheries Policy (CFP) for the recognition and support of islands to enable them to survive and prosper. There is also provision in the CFP for ring-fenced, non-transferable quota for islands.

The objective is to allocate quota and to provide for the issuing of heritage licences to island fishermen to facilitate the continuance of traditional fishing practices on Ireland's offshore islands.

All over Europe small-scale fisheries are under threat and in some cases measures such as marine reserves with preferential rights for local fishers and non-transferable community quotas -are being used to protect dwindling fishing communities.

These communities are under threat from large industrial fleets, super trawlers, internal competition for quota within the EU and even, in some cases, recreational fishers.

Sustainable fishing methods, such as the provision / introduction of heritage licences for small-scale island fishers, would be a significant support to these communities in the context of these threats and this is the context in which this Bill is proposed.

The Bill provides for the issuing of licences to island fishers, which is defined as people who are habitually resident on one of Ireland's offshore islands and who are engaged in small-scale coastal fishing to earn a livelihood.

Small scale coastal fishing is then defined as fishing from vessels less than 12 metres in length and not using towed fishing gear.

The licences would be non-transferrable and would only be in force when the holder of the licence is on board the vessel.

The enactment of the bill would involve the allocation of a non-transferrable community island quota (within the Common Fisheries Policy framework) to the islands concerned.

Current policy and legislative context:

[Research carried out by the Oireachtas Library and Research Service at the request of Martin Kenny TD's office](#) has been invaluable in the compilation of this memorandum.

<https://www.agriculture.gov.ie/seafood/seafisheriesadministration/fisheriesamendmentact2003no21/>

Context**Common Fisheries Policy**

The current Common Fisheries Policy (CFP) runs from 2014 to 2023. It is under this policy that the European Maritime and Fisheries Fund (EMFF) is administered, in the case of Ireland, by the Department of Agriculture, Food and the Marine (DAFM).

The size of the budget allocated to each member state is based on the size of the fishing industry in that state.¹ Each member state then draws up an operational programme setting out its intention regarding the expenditure of the funding. Once that is approved by the Commission, it is up to the national authorities to decide which projects will be funded, with the responsibility for implementation resting with the Commission and the national authorities.

The DAFM,ⁱⁱ puts it like this: *“Compared to the past, a greater focus is put on the sustainable use of resources, marine knowledge and preserving marine biodiversity, local-led development of fisheries and aquaculture areas, and shifting towards a low-carbon economy.”*

European Parliament report on allocation of access to fishing

The abstract for the European Parliament (2015) report, *Criteria for allocating access to fishing in the EU*ⁱⁱⁱ states that:

“This study proposes a set of criteria and indicators for the purpose of allocating fishing opportunities in EU Member States, which according to Article 17 of the new CFP should include those of an environmental, social and economic nature. The proposed criteria and indicators should be applicable in a wide range of circumstances therefore the term allocation in this study should be understood in a broad sense referring to any aspect of giving access to fishing opportunities.”

The same report also states:

“Furthermore, in view of the huge variety of allocation practices, recent studies (MRAG 2009) deemed necessary to develop a common understanding centred on the concept of Right Based Management (RBM), which ‘includes any system of allocating fishing rights to fishermen, fishing vessels, enterprises, cooperatives or fishing communities’.

“RBM also encompasses management based on rights to pursue fisheries. Those rights may be expressed in terms of access to fishing but also in terms of use, ownership and harvesting. The legal side of rights differs considerably among Member States and is out of the scope of this study.

“Regarding fisheries most of the rights are created on the basis of legal instruments (licenses or fishing permits) or procedures (registers or allocation systems). A system allocating participant’s share constitutes a first step in an RBM programme, brings stability and contributes to the programme objectives. It is worth noting that an allocation system is not the only fisheries management tool pursuing the sustainability of fisheries resources. In fact, the CFP includes a set of technical measures such as gear restrictions, minimum conservation size, fishing closures that complement the former tool as part of a wider overarching policy.”

This report (European Parliament, 2015) gives examples of preferential access for island communities, e.g.

“Furthermore, Australia signed a bilateral agreement with Papua New Guinea (the Torres Strait Treaty) granting, for the first time, preferential access to islanders (Grieve 2009).” Page 20

The report (European Parliament, 2015) also identifies places in the CFP where it references giving preferential access, e.g.

“The CFP shall ‘contribute to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects’. This recognizes the importance of small-scale, artisanal or coastal fishermen. MS are encouraged to provide coastal communities with preferential access to resources. Similarly, ‘coastal fishing activities’ shall be promoted, raising society’s awareness of the operators and their activity.” Page 29

Of particular relevance is this point from the same European Parliament report:

‘Small offshore islands which are dependent on fishing should, where appropriate, be especially recognised and supported in order to enable them to survive and prosper’. Page 32

Origin of the term “heritage licence”

The term originated in 2009 in a report commissioned by Comhar na nOileán Teo entitled: *A review of fisheries on Ireland’s offshore islands: sustaining islands’ livelihoods*.

The concept is described thus:

“To present a reasonable prospect of some of the suggestions being taken on board and receiving serious consideration, it must be shown that any special concessions afforded to island fishers will not cause displacement within the fleet. It is an inevitable consequence that the granting of special terms or conditions for any sector will tend to cause migration of vessels into that sector in order to piggy back on any concessions granted. Displacement can easily be prevented by designating a limited number of fishing licences (on an individual and specific island basis) as Heritage Licences – a one-time-only process that would establish a register of island fishing licences. An alternative proposal could aim to associate a Heritage Fishing Permit with an existing licence, with the Permit being owned by an island based Community organisation who may assign it to a particular island based and appropriately licensed fisher, subject to a standard set of conditions.

Once it became possible to distinguish island vessels through modifications to the licensing regime or through a permit system, appropriate development initiatives and regulatory derogations be devised and focused at island fishers, with the ultimate objective of securing the future of island based fishing livelihoods.”

Joint Oireachtas Committee report on Sustainable Rural Coastal and Island Communities (2014) ^{iv}

This widely referenced report recommends the establishment of heritage licences for exactly the same reasons as those cited above:

“Recommendation 10: The sub-Committee recommends that the Government examines the feasibility of ‘heritage licences’ to be issued by the Department for rural coastal and island communities. Such licences would, optimally facilitate traditional fishing practices in conjunction with the establishment of a producer organisation representing vessels under a certain LOA in these designated areas.”

Comhar na nOileán Teo

The Comhar na nOileán Teo (2009) *Submission on the Review of the CFP* made an argument for more flexible licenses in the special case of the islander fleet. It also proposed treating offshore fisheries as heritage fisheries (using traditional currachs to fish) and giving islanders exclusive fishing rights to the waters immediately surrounding their islands. This submission drew on the aforementioned report also.

Case studies:^v

There are numerous case studies on small-scale fisheries which have used policy options to help sustainable local coastal communities. A number of these are detailed in the Grieve (2009) report on *Environmental and social criteria for allocating access to fishery resources*.⁸

Three case studies from Europe are very briefly described below:

Koster-Vadero fjord, Sweden

“Sweden’s first national marine protected area and local trawling have found co-existence” – this is part of a government developed co-management initiative for managing Sweden’s inshore fisheries. Under the initiative continued access to northern shrimp, lobster and Norway lobster resources was allocated to a limited number of local fishers (Grieve 2009 pages 25-29). 200/ Feb 2017 *Shetland Islands*

⁸ https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/pew_annex1_en.pdf

The Shetland Islands, 150 miles off the coast of Scotland have traditionally been one of the most fisheries-dependent communities in Europe. In order to protect their way of life, they developed a Community Quota Scheme which includes ring fenced quotas and quota pools.

Lira Marine Reserve, Spain

In 2013, Spain had 20 MRFIs. Spanish marine reserves are primarily used as a fishery management tool, in order to allow sustainable artisanal fishing. Over the years, conservation of marine biodiversity in general also became one of the core objectives, but the primary focus remains on fisheries.

The most widely recognised Marine Protection Areas (MPAs) in Spain where fishermen are involved in the declaration and implementation of MPAs are in Lira (Os Miñarzos Marine Reserve) and Cedeira, both on the Atlantic coast of Galicia.

More have been proposed but are not yet approved due to the economic downturn (Perez de Oliva 2013).

Further information in Grieves 2009 (pages 36-40).

Financial implications

Since the quota allocation to island fishers would be less than one percent of the national quota, it would not have any serious financial implications.

There already exists within the Fisheries section of the Department of Agriculture, Food and the Marine, the structure and administrative facility to issue licences and inspect island fisheries, there should be no extra costs incurred. The identification of island dwellers already has a template in the allocation of the payments for Areas of Natural Constraint.

ⁱ https://ec.europa.eu/fisheries/cfp/emff_en

ⁱⁱ <https://www.agriculture.gov.ie/emff/>

ⁱⁱⁱ http://www.europarl.europa.eu/mwg-internal/de5fs23hu73ds/progress?id=9rIysZt61d7BowDBG3zN9_JDhhS2V3ogZazE5O2YdfY,

^{iv} <https://www.oireachtas.ie/parliament/media/Draft-3-Final-Report-on-Promoting-Sustainable-Rural-Coastal-and-Island-Communities.pdf>

^v L&RS [paper 2017/200](#)

