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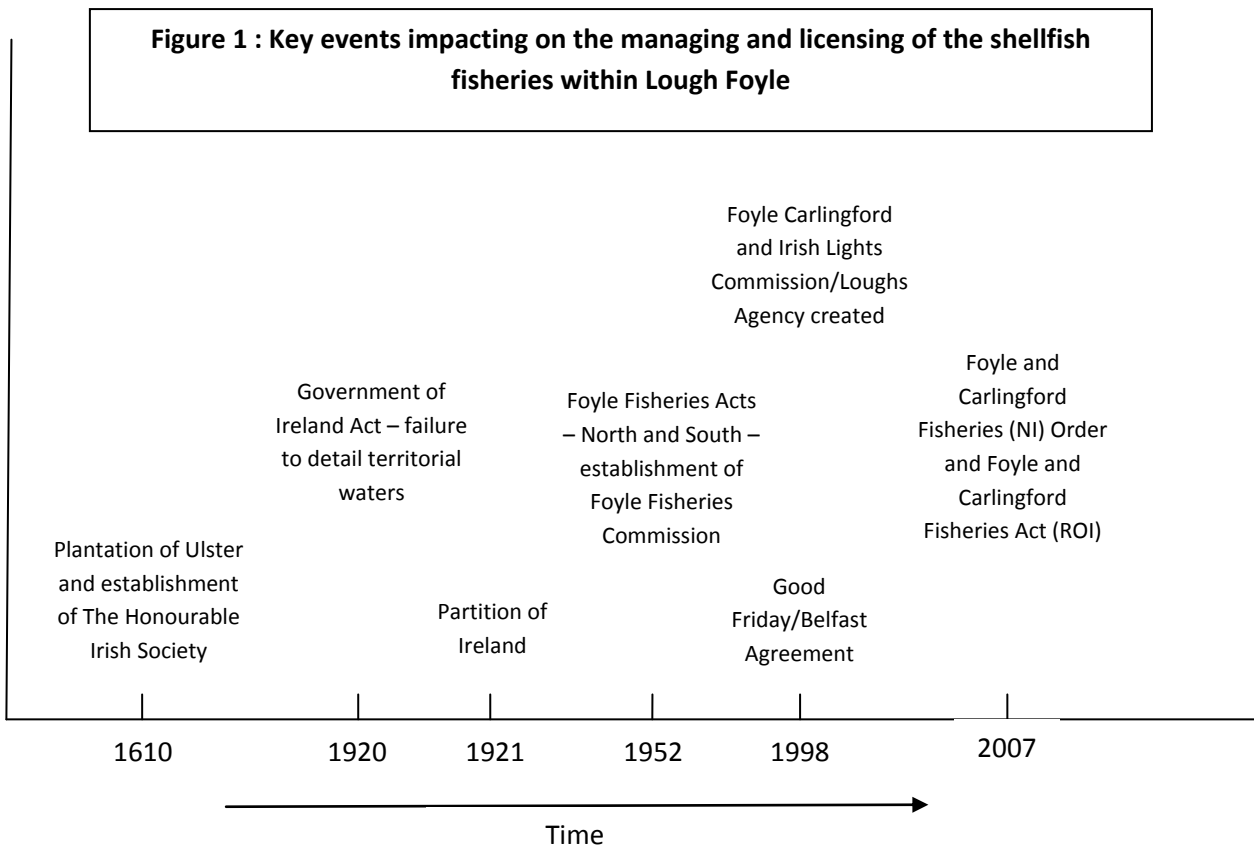
Lough Foyle – ownership, licensing, and levy issues relating to shellfish.

1 Background and Historical overview

Covering an area of approximately 186km² Lough Foyle is a shallow estuarine sea Lough straddling the border between Northern Ireland and the Republic of Ireland. The Lough has supported active salmon, oyster and mussel fisheries for hundreds of years and these fisheries continue to be important to the local economy on both sides of the border.

The management of fishing in Lough Foyle has been marked by a number of key developments and interventions (as highlighted in figure 1) including the establishment of **the Honourable Irish Society**¹ which took over ownership and management of most of the valuable fishing rights on Lough Foyle from the Irish Bishops in 1613 as part of the Plantation of Ulster. The only exceptions in 1613 were those fishing rights afforded to the Bishop of Londonderry which were subsequently purchased by the Honourable Irish Society in 1704.

¹ [Honourable Irish Society website](#)



The partition of Ireland in 1921 and the establishment of Northern Ireland resulted in particular confusion and debate around who owned the fishing rights within Lough Foyle. For the most part this debate was fuelled by the content, or more accurately, the lack of content of the 1920 Government of Ireland Act² on the issue of territorial waters. At partition it was envisaged that Northern Ireland and the new Southern Ireland would both remain as constituent parts of the UK. As a result, the **Government of Ireland Act, which was effectively the instrument of partition, failed to legislate on territorial waters as it was assumed that these would continue to be unified and under British control.** The creation of the Irish Free State and consequently the Republic of Ireland however broke this link with the UK, and ever since then the dispute over Irish and British territorial waters and where they extend to has vexed many people. As things currently stand this **dispute has yet to be successfully and finally resolved and this has had an obvious impact on the management of Lough Foyle and its fisheries.**

Set within this context the quality of the Fisheries and particularly the salmon fishery suffered during the 1930's and 1940's due to the impact of poaching and the lack of an agreed regulatory and licensing body on both sides of the border. As a result the two governments based in Stormont and Dáil Éireann introduced respective and complementary **Foyle Fisheries Acts³ in 1952.** A key mechanism created from these

² [Government of Ireland Act 1920](#)

³ [Foyle Fisheries Act, 1952, Oireachtas](#) and [Foyle Fisheries Act \(Northern Ireland\) 1952](#)

Acts was the **Foyle Fisheries Commission** which was staffed by civil servants from the two jurisdictions and which had a range of powers to manage, conserve, protect and improve the fisheries in the Foyle area. The Foyle Fisheries Commission effectively superseded the Honourable Irish Society role in relation to fishery management and all of the Society's fishing rights within Lough Foyle were purchased by the two governments under the auspices of the Commission for around £100,000.

The Foyle Fisheries Commission managed the fisheries, and particularly the salmon fishery, up until 1998 when it was superseded by the **Loughs Agency** which was formally set up as an agency of the **Foyle, Carlingford and Irish Lights Commission (FCILC)** which was established as a result of the Good Friday/Belfast Agreement in 1998.

The North/South Co operation (Implementation Bodies) (Northern Ireland) Order of 1999 in conjunction with British-Irish Agreement Acts of 1999 and 2002 form the legislative basis for the Foyle, Carlingford and Irish Lights Commission, and subsequently, the Loughs Agency. As a result, both the Loughs Agency and FCILC are answerable to, and required to report to, the North South Ministerial Council, with the DARD minister being the relevant minister in Northern Ireland and the Minister for Communications, Marine and Natural Resources being the relevant minister in Ireland.

2. Specific issues relating to the Lough Foyle Shellfish fishery

2.1 The nature of the shellfish resources

As mentioned previously the shellfish fisheries within Lough Foyle have existed for centuries, and have been historically dominated by fishing for mussels and oysters. The Lough however supports a wide range of species as established by a survey completed in the Lough during the 1930's which discovered that there were more than **118 different species of mollusc within Lough Foyle**⁴. According to a baseline survey of Shellfish resources published in 2007, the following shellfish species form an active part of the current fishery on the Lough:

- Native Oyster;
- Pacific Oyster;
- Mussel – wild and cultivated;
- Periwinkle;
- Whelk;
- Cockle;
- Clam;

⁴ MacDonald, R. and McMillan, N.F. 1951, The Natural History of Lough Foyle, Northern Ireland. Proceedings of the Royal Irish Academy, 54B: 67-96

- Lobster;
- Spider crab
- Green crab; and
- Velvet crab.

A baseline survey of the shellfish resources in Lough Foyle completed published in 2007, by Cefas revealed that based upon a dredge survey the **Lough was supporting 530 tonnes of oysters and 22,382 tonnes of mussels between May and September 2006**⁵ (when the sampling was completed). Mussels and Oysters currently make up the major and most economically attractive shellfish resources that Lough Foyle contains. The significance of these fisheries on a wider basis should not be underestimated given that according to other surveys Lough Foyle has both the '*largest blue mussel fishery of any Irish estuary*'⁶ and the '*oyster fishery is one of the last remaining productive native oyster fisheries in Europe*'.⁷

From the available evidence it is also clear that **Lough Foyle and the shellfish within it are a valuable resource that could be further and sustainably exploited to the benefit of the local economy.**

2.2 The legislative situation

For the most part, the **regulation and licensing of shellfish fisheries has not been formally addressed until recent years.** The aforementioned 1952 Foyle Fisheries Acts, north and south for example, focussed on the licensing and regulation of the salmon and trout fisheries on the Lough and made no specific reference to shellfish.

The Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 and the Foyle and Carlingford Fisheries Act (ROI) 2007 both provided, for the first time on Lough Foyle, a new aquaculture regulatory and proposed licensing system.

These two pieces of legislation also covered the transfer of existing aquaculture licensing provisions from the Department of Agriculture and Rural Development (DARD) in the north and the Department of Communications, Energy, and Natural Resources in the south. These new powers came under the auspices of the Foyle, Carlingford and Irish Lights Commission (FCILC) and by default the Loughs Agency. According to the FCILC an

'...aquaculture licence defines the position and limits of the licensed area and may contain conditions as the FCILC may determine. An aquaculture licence authorises the holder to engage in aquaculture within the area specified in the licence and in accordance with the conditions of the licence. The licence enables the holder to do

⁵ [Baseline Survey of Shellfish Resources in Lough Foyle, CEFAS report for the Loughs Agency, Final report, December 2007](#)

⁶ Crowley, M., McDaid, P. and Briggs, R.P 1982. Survey of mussel resources in Lough Foyle. Fisheries Research Centre Report.

⁷ [Lough Foyle Native Oyster Survey, Foyle, Carlingford and Irish Lights Commission/Lough Agency, Report Reference LA/0Y0808, page 3](#)

*anything authorised by the licence and confers on the holder the ownership of any species farmed or cultivated under the licence.*⁸

It should however be noted that to date no actual aquaculture licenses have been issued for Lough Foyle by the Loughs Agency due to issues around jurisdiction and ownership. On the basis of a telephone conversation with Mr Barry Fox⁹, the Aquaculture Director within the Loughs Agency, it is clear that these issues around jurisdiction and ownership of Lough Foyle are between the Irish Department of Agriculture, Fisheries, and Food (DAFF) and the Crown Estates Commission within Northern Ireland. **The Abercorn Estate has no rights or ownership with regards to any of the shellfish resources within Lough Foyle.**

As part of its property portfolio the Crown Estate claims ownership of the foreshore and seabed around Northern Ireland out to a distance of 12 nautical miles¹⁰. As a result of this claim the Crown Estate currently issues leases to shellfish operators, largely operating within Strangford and Belfast Loughs in conjunction with DARD¹¹. **The overall annual revenue that the Crown Estate collected within Northern Ireland was put at £1million at year end on the 31st March 2010.** A telephone conversation with Mr Fraser McConnell from McConnell Chartered Surveyors Ltd, the managing agent for the Crown Estate in Northern Ireland, revealed that the **average shellfish seabed lease fee collected in Strangford and Belfast Loughs equated to around £35 per hectare per annum, based upon a 15 year lease**¹². Mr McConnell emphasised that this figure was subject to variation and would be lower for leases covering a larger area and higher for small lease areas. There can also be variations in the cost due to the nature of the aquacultural activity, with oyster fishing for example, accruing higher lease costs due to the additional seabed infrastructure required to grow oysters. These lease fees and an additional administrative set up cost are the only sources of income that the Crown Estate collects in relation to shellfish aquaculture in Strangford and Belfast Loughs.

2.3 The way ahead – next steps

As things currently stand the Loughs Agency is party to **ongoing negotiations between the Irish Department of Agriculture, Fisheries, and Food (DAFF) and the Crown Estates Commission with regard to the level of fee or lease charge that would be associated with an aquaculture licence for Lough Foyle.** In effect these negotiations are at an advanced stage with the priority being the **establishment of a management agreement between the interested parties.** Upon the completion of just such an agreement, and the associated completion of a public consultation, and

⁸ [Minutes of the 51st meeting of the Foyle Carlingfords and Irish Lights Commission, 1 November 2008](#)

⁹ Telephone conversation with Mr Barry Fox, Aquaculture Director, Loughs Agency, 7th December 2010.

¹⁰ [Northern Ireland Financial Highlights for the year ended 31 March 2010, The Crown Estate, 2010.](#)

¹¹ [Northern Ireland Financial Highlights for the year ended 31 March 2010, The Crown Estate, 2010.](#)

¹² Telephone conversation with Mr Fraser McConnell, McConnell Chartered Surveyors Ltd, 17th December 2010.

development of a regulation for aquaculture licensing, it is likely that the **Loughs Agency would effectively administer the system and distribute a percentage of any fees collected for licences/leases collected to either DAFF or the Crown Estate.**