

AQUACULTURE LICENCES APPEALS BOARD

Oral Hearings Guidelines (Rev 17 October 2014)

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GENERAL

The following sections outline the Board's procedures for arranging and conducting oral hearings on appeals being considered by the Board.

1. DECISION TO HOLD AN ORAL HEARING AND NOTIFICATION

- a) The Board may decide to hold an oral hearing, either of its own motion or at the request of a party. The decision to hold an oral hearing is at the absolute discretion of the Board (s. 49(1) of the Fisheries (Amendment) Act, 1997 (as amended) ("the Act")).
- b) In deciding whether to grant an oral hearing the Board will take into consideration whether -
 - (i) the appeal relates to projects of significant public importance;
 - (ii) the appeal involves complex matters
 - (iii) there is conflicting technical information on relevant and significant aspects of the appeal and where the Board would be assisted in having the relevant technical submissions or observations presented at a hearing;
 - (iv) where there are disputed issues of fact in relation to significant issues of the appeal; or
 - (v) the Board otherwise considers in its absolute discretion that it is appropriate to hold an oral hearing.
- c) Where the Board is requested to hold an oral hearing of an appeal and decides to determine the appeal without an oral hearing, it will serve notice of its decision on the person who requested the hearing, on each other party to the appeal and on each person who has made submissions or observations to the Board in relation to the appeal (see section 49(5) of the Act).
- d) Where the Board decides to hold an oral hearing, it may decide to appoint a Chairperson for the purposes of conducting the hearing and may also appoint an Authorised pPerson to assist with technical or other issues.
- e) In the event that it decides to hold an oral hearing, the Board will in so far as practicable endeavour to give all participants a minimum of 4 weeks' written notice of the date and venue for the oral hearing in any particular case.
- f) the Board may issue an agenda to all attendees in advance of the oral hearing.

2. LEGAL PROVISIONS FOR ORAL HEARINGS

The main provisions for Oral Hearings of the Aquaculture Licences Appeals Board (hereinafter known as the Board) are contained in Sections 49, 50, 57 and 59 of the Act. (See Appendix 1)

3. WHO CARRIES OUT AN ORAL HEARING

Section 49 (2) of the Act states that an oral hearing may be conducted on behalf of the Board by one or more Board members, or other persons authorised by the Board for that purpose. The Board may also appoint an authorised person to assist with technical or other issues arising, where it considers this appropriate. Where the oral hearing is conducted by the Board, the oral hearing shall be chaired by the Chairperson of the Board or such other Board member as shall be agreed by the Board. Where the oral hearing is conducted by a person or persons authorised by the Board, the oral hearing will be chaired by that person or by such one of those persons as the Board directs. In either case, such person is hereafter referred to as the Chairperson for the purposes of these Guidelines.

4. WHO MAY BE INVITED OR REQUESTED TO ATTEND AN ORAL HEARING

The following persons will be invited to attend the Oral Hearing:

- Applicant
- Appellant(s)
- Persons who have made submissions or observations in relation to the appeal in accordance with sections 44(2), 45(1), and 46(1)
- Representatives of the Department of Agriculture, Food and the Marine

An oral hearing is intended to inform the Board in relation to matters of relevance to the appeal and the Chairperson may, in accordance with fair procedures and the powers given to it under the Act, restrict the evidence to be given or submissions or observations to be made to avoid repetition, to ensure that only relevant matters are addressed or where otherwise necessary.

Subject to Section 57 of the Act, the Board, in conducting an oral hearing of an appeal may, by notice in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the oral hearing or to produce documents which relate to the appeal.

5. NON-ATTENDANCE OF ANY PARTY OR OTHER PERSON

An oral hearing may proceed notwithstanding that any party or other relevant person has failed to attend or leaves the hearing.

6. WHO MAY SPEAK/MAKE A SUBMISSION AT THE ORAL HEARING

- a) Parties and other persons who have made submissions in relation to the appeal in accordance with the provisions of the Act and/or other persons representing them, and
- b) Persons to whom a notice requiring them to attend the oral hearing has been issued in accordance with Section 57 of the Act; and
- c) Representatives of the Department of Agriculture, Food and the Marine

7. CONDUCT OF THE HEARING

- a) The Chairperson has discretion as to the conduct of the oral hearing. He/she shall endeavour to conduct the hearing expeditiously and without undue formality.
- b) In hearings which are attended by a significant number of persons, a greater degree of formality may be necessary to ensure that the hearing proceeds in an ordered and efficient manner. In such cases, the order of presentation of submissions will be determined by the Chairperson, and this may be notified to the parties and other persons who have made submissions in relation to the appeal in advance of the hearing.
- c) Parties or relevant persons making submissions or giving evidence to the hearing may be requested to stand so that they may be identified and heard.
- d) Where questioning of persons or witnesses who have made submissions or given evidence is permitted, this will be in a manner to be determined by the Chairperson.
- e) Whilst giving participants an adequate opportunity to make submissions or furnish evidence to the hearing, the Chairperson, on behalf of all concerned, will be seeking to obtain the necessary level of information and views, without undue waste of time or

repetition of submissions previously made or evidence previously given, either orally or in writing.

- f) The Chairperson may question the relevance of certain lines of evidence or limit arguments or submissions in relation to particular topics.
- g) Where a significant number of observers or participants are likely to express similar views, the Chairperson may request that they combine to be represented by one or more spokespersons.
- h) The Chairperson may refuse to hear submissions or observations, or evidence where it is not relevant to the hearing or to avoid undue repetition by the same or other witnesses.
- i) A Chairperson may allow a brief adjournment of an oral hearing where this is considered necessary and, in particular, where fair procedures so requires. The length of the adjournment will be at the discretion of the Chairperson.
- j) It will be the objective of the Chairperson that the oral hearing is completed in an expeditious manner and in a reasonable time scale.

8. STANDARDS OF BEHAVIOUR/ OFFENCES

- a) Proper standards of behaviour are expected from all persons attending oral hearings. This will include maintaining a polite and courteous approach at all times.
- b) It is expected that the ruling of the Chairperson in relation to the conduct of the hearing, including the order of speakers, the manner of questioning of witnesses, the time allowed to individual speakers and any other relevant matters will be respected by all participants.
- c) Oral hearings should be conducted in a business-like manner and the standard of behaviour of participants is expected to be professional. This assists all concerned in having the hearing conducted in an effective and efficient manner.

9. ORDER OF SPEAKERS/ SUBMISSIONS

The conduct of the hearing and the order of speakers is at the absolute discretion of the Chairperson. However, the following is offered as a general guide to the order of submissions.

- a) Prior to the oral hearing the Chairperson may issue to all attendees an overall agenda for the proceedings.
- b) In opening the hearing and taking note of the appearance of relevant persons, the Chairperson may give a brief summary of the development proposed, the notice of appeal submitted and the observations received. The Chairperson will also indicate the order of presentations and consider any particular requests concerning this order.
- c) In applicant (first party) appeals, the applicant will generally be heard first, then the licensing authority i.e. the Department of Agriculture, Food and the Marine, and then other appellants and observers, if any.
- d) The Chairperson may, irrespective of the general order of appearance, ask the applicant to make a brief opening statement or presentation in order to facilitate the understanding of the development proposed.

- e) On conclusion of all evidence and of the questioning of witnesses, parties will be permitted a short summing up, usually in reverse order to the order of submissions. The summing up should not introduce any new evidence, raise any new points, issues or legal arguments.
- f) The Chairperson may vary the above indicative order of presentation in any particular case. Questioning of certain speakers, particularly expert witnesses, may be allowed immediately after such speakers have given their evidence. However, the Chairperson may determine that such questioning should be left to the end of the full submission of the relevant party or, alternatively, until after all the parties, and observers (if any) have presented their submissions, on the basis that possible questions are frequently answered during the submissions of other witnesses.
- g) In complex cases, the Chairperson may determine that the presentations can be subdivided into a number of identified separate issues or modules and, in such cases, the above procedure would apply to each separate issue or module in turn with concluding statements being allowed at the end of the oral hearing.

10. WHO MAY QUESTION A WITNESS AND HOW

- a) Where the oral hearing is being conducted by the Board, any member of the Board may ask questions. Any authorised person may ask questions, where the Chairperson considers this is necessary or desirable.
- b) Where the oral hearing is being conducted by a person authorised by the Board to conduct the oral hearing on its behalf, the Chairperson may also invite any authorised person to ask questions directly of the persons presenting evidence or submissions to the hearing.
- c) The Chairperson will normally invite parties to an appeal to ask questions directly of the person/s presenting a submission.
- d) Other persons in attendance may ask questions of the presenters of a submission but the Chairperson has a discretion to require that these should be directed through the Chairperson.
- e) In accordance with the provisions of Section 57(4) of the Act, evidence may be taken on oath.
- f) The degree and intensity of questioning will be controlled by the Chairperson to elicit an acceptable level of information and views without harassment of the witness or inappropriate questions being asked.
- (f) Expert witnesses giving technical evidence should indicate their professional qualifications and relevant experience.
- (g) Cross-questioning should not be used by participants to make statements of their case, but is intended to allow the participants to examine the relevance of matters raised in the submissions.

11. SUBMISSIONS OF DOCUMENTS/EVIDENCE

- a) All relevant documentation submitted to the Board in relation to the appeal will be made available for inspection at the offices of the Board at least 7 days prior to the opening of the oral hearing. In addition, this documentation will also be available for inspection at

the oral hearing for its duration. As the written submissions from all relevant persons shall be available for advance inspection, these should be taken as read.

- b) The Board may not accept information which he/she is requested to keep confidential from other parties.
- c) Persons are not permitted to speak to the Chairperson in relation to the case on a one-to-one basis or to make arrangements to give him/her further information other than at the oral hearing.

12. BOARD OF ALAB REQUESTING WITNESSES OR INFORMATION

- a) Section 57(1) provides that the Board, in conducting an oral hearing, may require an officer of the Minister or an Officer of the Marine Institute to give the Board such information in relation to the appeal as the Board may reasonably require and the officer shall comply with the requirements.
- b) Section 57(5) of the Act provides the Board with the powers to request any person to attend the oral hearing to give evidence in relation to any matter in question at the hearing or to produce any documents in his/her possession, custody or control that relate to the matter. These powers are to be exercised subject to section 57(6) of the Act.

13. RECORDING OF THE PROCEEDINGS

- a) Private video recording, sound recording and recording of proceedings by a professional stenographer will be prohibited during the hearing except in exceptional cases.
- b) The Board may arrange for the recording of the oral hearing by a professional stenographer or by audio tape/CD. Such recording is to facilitate and aid the Chairperson and the Board, and will not be made available to the parties during the hearing. In certain oral hearings, a public address facility may be arranged.

14. DETERMINATION OF THE APPEAL

- a) Following the conclusion of the oral hearing, where the oral hearing has been conducted on behalf of the Board by one or more Board members, or other persons authorised by the Board for that purpose, such person or persons shall make a report (including a recommendation) to the Board who will then consider the report and recommendation and determine the appeal. While the Board is obliged to have regard to the report and recommendation it is not obliged to accept the recommendation.
- b) Where a Board member or members have conducted the oral hearing on behalf of the Board, such Board member or members shall not participate in the determination of the appeal.
- c) Where the oral hearing is conducted by the Board, no report or recommendation shall be prepared and the Board will determine the appeal.

Appendix 1

Extracts from the Act (as amended)

Section 49

- (1) *Subject to subsections (2) and (3), the Board of its own motion or at the request of a party, shall have an absolute discretion to hold an oral hearing of an appeal under this Chapter.*
- (2) *An oral hearing may be conducted on behalf of the Board by one or more members of the Board, or other persons, authorised by the Board for that purpose.*
- (3) *A request by a party for an oral hearing of an appeal –*
 - (a) *shall be made in writing to the Board and shall be accompanied by such fee, if any, as may be payable in respect of such request in accordance with regulations under section 63;*
 - (b) *if not accompanied by that fee, if any, shall not be considered by the Board;*
 - (c) *subject to paragraph (d), shall be made within the period of one month referred to in section 40(1); or*
 - (d) *in the case where the party is not the appellant, shall be made within the period referred to in section 44(2).*
- (4) *The Board shall not consider a request for an oral hearing of an appeal received later than the time referred to in subsection (3)(c) or (d) for making a request.*
- (5) *Where the Board is requested to hold an oral hearing of an appeal and decides to determine the appeal without an oral hearing, it shall serve notice of its decision on the person who requested the hearing, on each other party to the appeal and on each person who, in accordance with section 45, made submissions or observations to the Board in relation to the appeal.*

Section 50

- (1) *The Board, in determining an appeal, may take into account matters other than those raised by the parties or by any person who has made submissions or observations to the Board in accordance with section 45, if the matters are matters which, under section 61, it may have regard.*
- (2) *The Board shall give notice in writing to each of the parties and to each of the persons who have made submissions or observations in relation to the appeal, of the matters it proposes to take into account under subsection (1) and shall indicate in the notice-*
 - (a) *in a case where it proposes to hold an oral hearing of the appeal or where an oral hearing of the appeal has been concluded and it considers it expedient to re-open the hearing, that submissions in*

relation to the matters may be made in writing to the person or persons conducting the hearing, or

- (b) in a case where it does not propose to hold an oral hearing of the appeal or where an oral hearing of the appeal has been concluded and it does not consider it expedient to re-open the hearing, that submissions or observations in relation to the matters may be made in writing to the Board,*

within a period specified in the notice, being not less than 14 or more than 28 days beginning on the date of service of the notice.

- (3) Submissions or observations received by the Board after the expiration of the period specified in the notice referred to in sub-section (2) shall not be considered by the Board.*
- (4) Without prejudice to section 46, where a party or a person referred to in subsection (1) makes submissions or observations to the Board in accordance with subsection (2), he or she shall not be entitled to elaborate in writing on those submissions or observations, or make further submissions or observations in writing in relation to the matters referred to in subsection (1), and any such elaboration or further submissions or observations shall not be considered by the Board.*

Section 57

- 1. In conducting an oral hearing of an appeal, the Board may require any officer of the Minister or an officer of the Marine Institute to give to the Board such information in relation to the appeal as the Board may reasonably require, and the officer shall comply with the requirement.*
- 4. The Board, in conducting an oral hearing of an appeal, may take evidence on oath and for that purpose may administer oaths, and a person giving evidence of an oral hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.*
- 5. Subject to subsection (6), the Board in conducting an oral hearing of an appeal may, by notice in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the hearing or to produce any books, deeds, contracts, accounts, vouchers, maps, plans or other documents in his or her possession, custody or control which relate to the matter.*
- 6. The following provisions shall have effect for the purposes of subsection (5):*
 - (a) it shall not be necessary for a person to attend in compliance with a notice at a place more than 10 miles from his or her ordinary place of residence unless an amount of money sufficient to cover the reasonable and necessary expenses of the attendance has been paid or tendered to the person;*
 - (b) the Board shall pay or tender to any person whose attendance is required such amount of money as it considers will cover the reasonable and necessary expenses of the attendance;*

(c) *the Board shall pay to any person who in compliance with a notice has attended at any place all reasonable and necessary expenses of the attendance which have not already been paid to the person and in default of such payment by the Board the expenses shall be recoverable as a simple contract debt in a court of competent jurisdiction;*

(d) *every person to whom a notice has been given who –*

(i) refused or wilfully neglects to attend in accordance with the notice;

(ii) wilfully alters, suppresses, conceals or destroys any document to which the notice relates, or

(iii) having so attended, refused to give evidence or refuses or wilfully fails to produce any document to which the notice relates,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €600.

(5) *In this section "the Board" includes a consultant or adviser engaged under section 35(1) or an employee of the Board or a person of whose services the Board has availed itself pursuant to section 35(c) by the Board to conduct an oral hearing on its behalf.*

Section 57A

(1) *The Board or a consultant or adviser engaged under section 35(1) or an employee of the Board or a person of whose services the Board has availed itself pursuant to section 35C to carry out an inspection on its behalf as referred to in section 59 may visit and inspect any land, foreshore or area or water to which an appeal under this Chapter relates, whether or not the appeal is the subject of an oral hearing.*

(2) *A person who obstructs the Board or a consultant or adviser engaged by the Board in the performance of the Board's or that consultant's or adviser's or employee's or person's functions under subsection (1) shall be guilty of an offence.*

Section 59

Where in connection with the performance by the Board of its functions an inspection is carried out, or an oral hearing is conducted, on behalf of the Board by a consultant or adviser engaged under section 35(1) for the purpose of the inspection or oral hearing or an employee of the Board or a person of whose services the Board has availed itself pursuant to section 35C, the consultant, adviser, employee or person shall make to the Board a written report on the inspection or hearing, and shall include in the report a recommendation relating to the appeal with which the inspection or hearing was concerned, and the Board shall, before determining the appeal, consider the report and any recommendation contained in the report.

