

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board**



FISHERIES (AMENDMENT) ACT 1997 (AS AMENDED AND SUBSTITUTED)

Appeal Reference Number: **AP 11/2019**

**DETERMINATION**

**WHEREAS** an appeal having been made to the Aquaculture Licences Appeals Board (**"the Board"**) pursuant to Section 40 of the Fisheries (Amendment) Act, 1997 (as amended) (**"the Act"**) by Moyasta Oysters Limited (**"the Appellant"**) against the decision of the Minister for Agriculture, Food and the Marine (**"the Minister"**) to refuse a Licence to Moyasta Oysters Limited (**"the Applicant"**) for the cultivation of Pacific Oysters and Native Oysters using bags and trestles / hanging baskets and trestle on site numbers T08/106B, T08/106C and T08/106D (**"the Sites"**) on the foreshore at Poulnasherry Bay, Shannon Estuary, Co Clare pursuant to an application for Aquaculture Licence made by the Applicant (**"the Application for an Aquaculture Licence"**).

**AND WHEREAS** the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the Notices issued by the Board pursuant to section 47(1) of the Act to the Minister, the Marine Institute, the Natural Resources and Waste Policy Section and the Inland Fisheries Division of the Department of the Environment, Climate and Communications, Inland Fisheries Ireland and Clare County Council, and their respective responses; the reports of the Board's technical advisors, and the matters set out at Section 61 of the Act (as amended and substituted), including the following:-

- (a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,
- (b) other beneficial uses, existing or potential, of the place or waters concerned,
- (c) the statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,
- (d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,
- (e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and

- (f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on-
  - (i) on the foreshore, or
  - (ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and
- (g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.

The Board considered the appeal at its meetings on 14 November 2019, 10 December 2019, 31 January 2020, 26 February 2020, 19 March 2020, 22 April 2020, 6 August 2020, 10 September 2020, 19 August 2021, 21 September 2021, 21 October 2021, 25 November 2021, 13 January 2022, 10 February 2022 and 16 March 2022.

## **ENVIRONMENTAL IMPACT ASSESSMENT**

The Board considered the project proposed in the Application for an Aquaculture Licence was not likely to have significant effects on the environment by virtue of their size, nature or location and so does not require an environmental impact assessment report under the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012.

## **APPROPRIATE ASSESSMENT**

The Board noted that the Sites are within the Lower River Shannon Special Area of Conservation (“SAC”, Site Code: 002165) and the River Shannon and River Fergus Estuaries Special Protection Area (“SPA”, Site Code: 004077) and noted the following reports: Appropriate Assessment Report of Aquaculture in: Lower River Shannon SAC (Site code: 002165) and River Shannon and Fergus Estuaries SPA (Site Code: 004077); Marine Institute, Galway, Ireland 2018; Report Supporting the Appropriate Assessment of Aquaculture in the Lower River Shannon SAC (Site Code: 002165); Marine Institute, Galway, Ireland 2019; and Annex II Marine Institute Bird Studies River Shannon and River Fergus Estuaries SPA: Appropriate Assessment of Aquaculture, May 2019, and adopted same.

The Board also had regard to bird survey reports commissioned by the Marine Institute entitled “Marine Institute Poulnasherry Bay Waterbird Survey Winter 2018-19 Bird Survey Report”, “Marine Institute Poulnasherry Bay Waterbird Survey Winter 2019-20 Bird Survey Report” and “Marine Institute Poulnasherry Bay Waterbird Survey Winter 2020-21 Bird Survey Report”.

Having regard to all of the foregoing, the Board was satisfied that the proposed activity at the Sites, for the reasons more particularly detailed in section (a) of the Determination below,

**has the potential for significant effects** and is likely to have a significant deleterious effect, either individually, or in combination with other plans or projects, on Special Conservation Interest (“SCI”) species or conservation objectives for the SPA site concerned and as such, will adversely affect the integrity of the SPA site concerned either individually or in combination with other plans or projects.

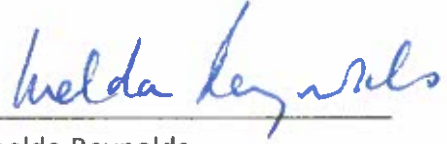
## **DETERMINATION**

- (a) The Sites are **deemed unsuitable** for the proposed activity because of the potential disturbance and displacement impact on SCI species within the River Shannon and River Fergus Estuaries Special Protection Area as outlined in the previous section entitled “Appropriate Assessment”. Site **T08/106B** is in an area where the potential disturbance impacts on SCI species are unknown and therefore, the precautionary principle must be applied. The area in which the Site **T08/106C** is located corresponds with the area found to be the most important for both low tide and high tide usage for a number of SCI species. Site **T08/106D** partially overlaps with an area found to be important for a number of SCI species. The close proximity of the remainder of this Site to this area would also increase the disturbance risk. The remainder of the Site is in an area where the potential disturbance impacts on SCI species are unknown and therefore, the precautionary principle must be applied.
- (b) The Sites are **expected to have a negative impact** on the statutory status of the area, as outlined in the previous section entitled “Appropriate Assessment” and in Section (a) of this Determination.
- (c) The Sites are **expected to have a negative ecological impact** as outlined in the previous section entitled “Appropriate Assessment” and in Section (a) of this Determination.

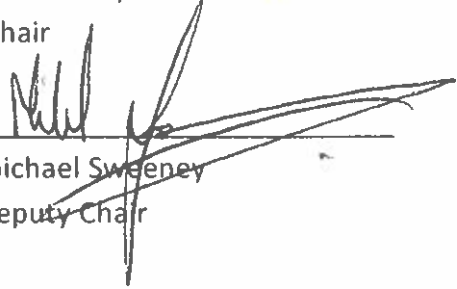
Having considered all the foregoing, the Board determined at its meeting on 16 March 2022, pursuant to Section 40 (4) (a) of the Act, to **CONFIRM** the decision of the Minister to **REFUSE** an Aquaculture Licence to the Applicant for the Sites.

Dated this 30<sup>th</sup> day of March 2022

The affixing of the Seal of the  
**AQUACULTURE LICENCES APPEALS BOARD**  
was authenticated by: -



Imelda Reynolds  
Chair



Michael Sweeney  
Deputy Chair