

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



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

Appeal Reference Number: **AP 18/2019**

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 Ross Shellfish Limited, Carl Daly and Shamrock Shellfish Limited ("**the Appellant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to grant a Licence for the cultivation of mussels using longlines at Site T06/360A ("**the Site**") on the foreshore in Kilmackilloge Harbour, Co. Kerry to Kush Seafarms Limited ("**the Applicant**")

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, submissions received under section 44 (2) of the Act, the Notices issued by the Board pursuant to section 47(1) of the Act to the Marine Institute and Bord Iascaigh Mhara and their respective responses, the reports of the Board's technical advisors, namely Report dated 8 August 2022 of Aster Environmental Consultants Limited ("**the Aster Report**") and Supplementary Technical Advisor's Report of the Board's Technical Advisor dated 11 October 2022 ("**the Supplemental Report**"), the Appropriate Assessment screening report of the Board's technical advisor 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 the 14 November 2019, 10 December 2019, 31 January 2020, 26 February 2020, 22 April 2020, 15 May 2020, 2 March 2021, 1 April 2021, 29 April 2021, 28 May 2021, 24 June 2021, 22 July 2021, 19 August 2021, 21 September 2021, 21 October 2021, 25 November 2021, 13 January 2022, 10 February 2022, 16 March 2022, 14 April 2022, 12 May 2022, 14 July 2022, 25 August 2022 and 6 October 2022.

GROUNDINGS OF APPEAL

The grounds of the appeal are summarised as follows:

1. The Appellant questioned the fairness of licencing in the harbour and granting of a licence to another operator when it had been farmed by someone else for a number of years.

ENVIRONMENTAL IMPACT ASSESSMENT

The Board considered the project proposed in the Application for an Aquaculture Licence under the requirements of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 and the EIA Directive (2011/92/EU). The Board

determined that the project was not likely to have significant effects on the environment by virtue of its size, nature or location.

Therefore, the Board is satisfied that the project was not likely to have significant direct and indirect effects at the Site on the following factors:

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in points (a) to (d) will not have significant effects on the environment, including the factors listed in (a) to (d) by virtue of, inter alia, its nature, size or location.

The Board has concluded that the proposed project is unlikely to have significant effects on the environment by virtue of its 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 also considered the project proposed in the Application for an Aquaculture Licence under the requirements of the European Communities (Birds and Natural Habitats) Regulations 2011 and the Habitats and Birds Directives (2009/147/EC and 92/43/EEC). The Board noted the Report supporting Appropriate Assessment of Aquaculture and Fisheries Risk Assessment in Kenmare River SAC (Site Code: 02158) prepared by the Marine Institute in 2019 and the Appropriate Assessment Conclusion Statement by Licensing Authority for Aquaculture Activities in Kenmare River Special Area of Conservation (SAC) (Site Code 2158) 2019 from the Department of Agriculture, Food and the Marine and adopted same.

The Board noted there was no equivalent Appropriate Assessment Screening available for Aquaculture Activities in Kilmackilloge Harbour in relation to Special Protected Areas (“SPA”). The Board’s technical advisor undertook a screening exercise which included consideration of Beara Peninsula SPA (Site Code: 004155), Sheep's Head to Toe Head SPA (Site Code: 004156), Puffin Island SPA (Site Code: 004003), Skelligs SPA (Site Code: 004007), The Bull and The Cow Rocks SPA (Site Code: 004066), Iveragh Peninsula SPA

(Site Code: 004154) and Deenish Island and Scariff Island SPA (Site Code: 004175). A finding of no significant effects was recorded for each SPA considered.

Having regard to all of the foregoing, the Board is satisfied that the proposed activity at the Site has no potential for significant effects and it is not likely to have any significant deleterious effect, either individually, or in combination with other plans or projects, on SCI species or conservation objectives for any SPA and SAC sites concerned and as such, will not adversely affect the integrity of any SPA and SAC sites concerned either individually or in combination with other plans or projects.

DETERMINATION

The Board has determined the appeal on the grounds that:

(a) The Site **may have a significant negative impact on other users** of the harbour, in this case, other operators of mussel aquaculture sites. The technical advice to ALAB at this time is that any new mussel aquaculture developments in Kilmackilloge Harbour do not go ahead at this time given the current gaps in the data relating to the carrying capacity of the Harbour.

(b) The Site **may have a significant negative ecological and environmental effect** on the surrounding area. The technical advice to ALAB at this time is that any new mussel aquaculture developments in Kilmackilloge Harbour do not go ahead at this time given the current gaps in the data relating to the carrying capacity of the harbour, which could impact on the ecology of the harbour also.

The Board noted that while they could not comment on previous assessments, the assessments carried out resulting in the Aster Report and the Supplemental Report were conducted in an impartial manner following the requirements laid down by relevant legislation.

Having considered all the foregoing, the Board determined at its meeting on 6 October 2022 pursuant to Section 40 (4) (b) of the Act, to **ANNUL** the decision of the Minister and to **REFUSE** an Aquaculture Licence to the Applicant for the Site T06/360A.

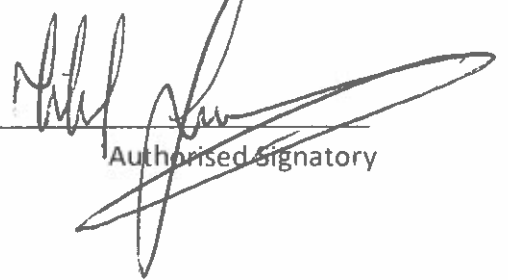
Dated this 26th day of October 2022

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



Welda Key-Scott

Chairperson



Authorized Signatory