An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board

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

Appeal Reference Number: **AP3/4/2021**

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 the **National Inshore Fishermen's Association CLG (NIFA)** (**"the Appellant"**) against the decision of the Minister for Agriculture, Food and the Marine (**"the Minister"**) to **grant** a Licence for the cultivation of seaweeds using longlines at site T06/519A (**"the Site"**) on the foreshore at Ballinskelligs Bay, Co. Kerry to Michael J. O'Driscoll and Laura O'Donovan, T/A Ballinskelligs Sea Farms (**"the Applicant"**).

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, submission received under section 44(2) of the Act, the Notice issued by the Board pursuant to section 47(1) of the Act to the Sea-Fisheries Protection Authority and their response, the report of the Board's technical advisor, 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 **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.**

GROUNDS OF APPEAL

The grounds of the appeal are summarised as follows:

1. The Appellant disputes the Minister's assertion that there will be no significant effects on wild fisheries and references correspondence in the Minister's file from the SFPA which they say concurs with their claim. Two of the Appellant's members use this area regularly and apparently rely on it for the majority of their earnings. It is also traditionally used for shelter during times of unsettled weather.
2. They dispute the Minister's assertion that the proposed development will have a positive impact on the local economy, as they fear it will negatively impact on an existing fishing ground used by some of their members.
3. They express concerns regarding the safety of the Site for year-round use, especially during the wintertime when it does not provide shelter from the prevailing winds, although it is a suitable area for shelter for approximately nine months of the year.
4. The Appellant highlights the existence of a scallop bed in the area.

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 or 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 Marine Institute's "Appropriate Assessment Screening for aquaculture activity at Sites T06/519A and T06/520A in Ballinskelligs Bay" of May 2020 and adopted same.

The Board noted there was no equivalent Appropriate Assessment Screening available for Aquaculture Activities in Ballinskelligs in relation to Special Protected Areas ("**SPA**") outside of a 15 km limit. The Board's technical advisor undertook a screening exercise which included consideration of Special Conservation Interest species in the following SPAs: Sheep's Head to Toe Head SPA 004156, Beara Peninsula SPA 004155, Iveragh

Peninsula SPA 004154, Deenish Island and Scariff Island SPA 004175, The Bull and The Cow Rocks SPA 004066, Puffin Island SPA 004003, Skelligs SPA 004007 and Blasket Islands SPA 004008.

Having regard to all of the foregoing, the Board was 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) This Site is **not suitable** for the proposed development for the following reasons:

- It would appear the Site is regularly used by local fishermen. Therefore, the Site is already in use by a number of other users.
- The timeframe for both the current and proposed activities would appear to overlap for at least part of the year, given the wide range of seaweed species applied for and their growing periods, along with the timing of the potting and gill netting seasons.
- An attempt to carry out both seaweed aquaculture and potting/fishing in such a small area is likely to cause an unnecessary health and safety hazard and lead to a significant loss of fishing grounds.

(b) The proposed development would overall have **a significant adverse impact** on the possible other uses or users of the area.

(c) Overall, this development is likely to have **a negative economic impact** on existing users of the Site.

It should be noted that the technical advisor's report found that the appropriate procedures were followed regarding public consultation by the Minister. A full assessment of the appeal issues raised is given in Section 7 of the technical advisor's report.

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.

Dated this 26th day of October 2022

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

Chairperson

Authorised Signatory