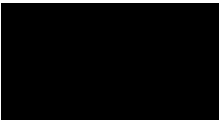


**An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board**



**NOTICE THAT FURTHER INFORMATION IS REQUIRED PURSUANT
TO REGULATION 42(3) OF THE HABITATS REGULATIONS**

FAO: Messrs Edward & Paul O'Brien



4 August 2023

Our Ref: AP5/2020
Site Ref: T12/409B

Re: Appeal by Save Ballyness Bay S.AC. Action Group, [REDACTED] against the decision of the Minister for Agriculture, Food and the Marine to grant a variation of Aquaculture/Foreshore Licences to Edward & Paul O'Brien for authorisation to cultivate Clams on wooden trays under mesh and Pacific Oyster using bags and trestles on the inter-tidal/sub-tidal foreshore in Ballyness Bay, County Donegal

Dear Sirs,

I refer to the above Appeal and to the Appropriate Assessment Report prepared by the Marine Institute dated February 2019 (the "AA Report") in respect of Aquaculture Activities in Ballyness Bay including application site ref T12/409B (the "project"). The AA Report and Conclusion Statement can be found on the ALAB website at:

<https://alab.ie/activeappeals/appealsyearsreceived/appealsreceivedin2020/ap52020/#d.en.186900>

The AA Report has been considered by the Aquaculture Licences Appeals Board ("the Board") and found to be insufficient in a number of areas. Therefore, it is not possible at this time to rule out potential significant adverse impacts resulting from the proposed project on the Special Area of Conservation ("SAC") in which the application site is located, on protected species from nearby SACs and in respect of Special Protected Areas ("SPA") in the region and their associated bird species of conservation interest ("SCI"). The Board considers that there was:

1) Insufficient assessment and screening of potential impacts on Special Conservation Interests (SCI) of SPAs in the region. Two examples of this are that no evidence was shown of an attempt to assess the potential impact on species listed as SCIs of SPAs whose feeding range overlaps with Ballyness Bay, as is required. Disturbance of SCI species in SPAs adjoining the Sites or proposed access routes was also not assessed. This is not a complete list, and a full and complete assessment must be carried out. In the interests of clarity, the Board has not determined that an Appropriate Assessment is necessarily required in respect of any SPA. However, further information and assessment is required to enable the Board to determine whether it can be excluded, on the basis of objective scientific information following screening, that the project, individually or in combination with other plans or projects, will have a significant effect on any SPA in the region.

2) Insufficient assessment of potential impacts of developments on Annex II species, grey seal *Halichoerus grypus*. It was found that grey seals had not been sufficiently assessed in this case, and that negative impacts on populations in the nearby Horn Head and Rinclevan SAC (000147) could not be ruled out. No data was presented on the populations of seals using Ballyness Bay as a haul-out site, not even in terms of identifying animals to species level.

3) Lack of in-combination effects assessment, including, but not limited to potential impacts due to salmon and sea trout angling occurring in the Bay, along with potential impacts on the fish species themselves and the other proposed aquaculture activities the subject of Appeals to ALAB Refs. AP3-16/2020.

You are accordingly hereby directed, pursuant to Regulations 42(3) and 42(5) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended (the “2011 Regulations”) Regulations to furnish a supplementary Natura Impact Statement (“NIS”) to include, but not limited to, the following information/data:

1) an assessment of potential impacts on those SCI species of SPAs in the region whose feeding range overlaps with Ballyness Bay or whose SPA area adjoins the proposed project and access routes.

2) an assessment of seal species using Ballyness Bay and potential for disturbance due to the proposed project on protected grey seal populations. A request for any information held on grey seals in the region has been sent to the NPWS. A copy of this notice is available on the ALAB website under Information Requests at:

<https://alab.ie/activeappeals/appealsyearsreceived/appealsreceivedin2020/ap52020/#d.en.186900>

Any information received as a result of this request will be circulated to all applicants.

3) an assessment of in combination impacts, to include an assessment of the existing salmonid fishery and the other proposed aquaculture projects within the bay.

4) an assessment of the implications of any changes in the area since 2019, and any further information, to ensure that the assessment of the potential impacts of the project is up to date.

The Board considers that this information/data is necessary to enable it to ascertain if the project will affect the integrity of the relevant European Sites.

In this respect, the Board notes that the AA Report addressed the effects of a number of aquaculture activities within Ballyness Bay by way of a single report. The Minister decided to grant licences at 14 sites in Ballyness Bay, the subject of the AA Report, all of which have been appealed to the Board (Appeal Refs. AP3-16/2020) including the decision to grant a licence for the project (AP5/2020, T12/409B). The Board is issuing similar Notices to the other licence applicants whose decisions have been appealed to the Board. For the purposes of complying with this Notice, the Board would accept a single Supplementary NIS addressing the above matters in respect of all 14 sites, if you wish to explore this option with the other licence applicants as an alternative to each applicant preparing individual Supplementary NIS.

The Supplementary NIS is to be submitted to the Board within 6 (six) months of the date of this notice not later than **5th February 2024**.

You are hereby given notice that, pursuant to Regulation 42(4) of the 2011 Regulations, unless the Board otherwise directs, where an applicant for consent for a project who, having been directed in accordance with Regulation 42(3) of the 2011 Regulations, fails to furnish a Natura Impact Statement within the period specified in the notice, or any additional period that may be agreed by the Board, the application shall be deemed to be withdrawn.

Should you require further time to prepare the Supplementary NIS, please contact the Board to provide a timeframe for compliance with this Notice and the Board will consider whether to agree to an extension of time.

Finally, please note that the Marine Institute responded to the Section 47 Notice issued in this Appeal on 24 March 2023 (and copied to you) advising that it was not in a position to respond to the notice as the information requested does not currently exist. This response, and the response of the Board is available on the ALAB website under Information Requests at:

<https://alab.ie/activeappeals/appealsyearsreceived/appealsreceivedin2020/ap52020/#d.en.186900>

Yours faithfully



Margaret Carton
Secretary to the Board