

Margaret Carton,
Secretary to the Board,
Aquaculture Licences Appeals Board,
Kilminchy Court,
Dublin Road,
Portlaoise,
Co. Laois,
R32 DTW5.

29th September 2023

Sent by email to info@alab.ie

Re: Appeals against decisions of the Minister for Agriculture, Food and the Marine to grant (with variations) Licences to bottom cultivate mussels at sites on the foreshore at Wexford Harbour, Co. Wexford

Dear Secretary,

With reference to your letter of 29 June, An Taisce agrees with ALAB's conclusion that it is not appropriate to address the deficiencies in the scientific data in the context of the present appeal where a 4 year programme of investigations is required.

An Taisce notes that, where there is a lack of certainty as to absence of adverse effects on SAC and SPA sites, consent for a project cannot lawfully be granted. It therefore submits that ALAB should determine the matter by refusing to grant a licence, as proposed in its letter of 29 June 2023.

It is noted that the reference on the letter includes all of the licence applications which An Taisce sought to appeal; and it is presumed this implies that ALAB will rescind its rejection of the appeals, admit them, and determine them all as if made to it in the first instance (as per S40(4)(b) of the 1997 Act) by refusing a licence. If this were not done, the import of the report's finding, which applies to the entire Wexford Harbour area, might not operate to prevent the issue of a licence in all cases, contrary to Article 6(3) of the Habitats Directive. An Taisce understands that the Minister's decisions have not yet been converted into licences, so it is not too late to correct the position at this point.

Should ALAB envisage any procedural difficulty in this respect, attention is drawn to the judgment in Case C-378/17 Workplace Relations Commission which confirms that a competent authority must set aside any rule which would prevent it giving full effect to a requirement of European Union law. However, as no licence has yet been granted, and as the former rejection of An Taisce's appeal is still subject to judicial review, no such difficulty should arise.

An Taisce will facilitate the making of an appropriate court order in its ongoing proceedings if required to allow the formal admission of the appeals prior to licence refusal by ALAB.

An Taisce assumes that the letter sent to it has also been sent to the licence applicants. If and insofar as they may seek to assert that ALAB should determine the appeals notwithstanding the contents of its letter, or leave the appeals in existence while the necessary research is conducted, this would be unlawful, especially in respect of activities which may be continuing on foot of expired licences. An Taisce would ask for the opportunity to respond to any such submission. To take any other course of action would be inconsistent with the requirements of the EIA Directive and the Habitats Directive that the necessary assessment must precede the activities for which authorisation is sought. As stated by the CJEU in Case C 258/11 para 28 "*Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site*".

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elaine McGoff', written in a cursive style.

Dr. Elaine McGoff
Head of Advocacy, An Taisce-The National Trust for Ireland