

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

Appeal Reference Number: **AP 1/2023**

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 **Peter Sweetman on behalf of Wild Ireland Defence clg (“the Appellant”)** against the decision of the Minister for Agriculture, Food and the Marine (“**the Minister**”) to **Grant** a Licence for the cultivation of blue mussels on longlines on the sub-tidal foreshore at site T09/524A (“**the Site**”) on the north shore at Cleggan Bay, Co. Galway to **Conor O’Malley (“the Applicant”)**.

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the report of the Board’s technical advisor dated the 22 January 2024, the Appropriate Assessment Screening Reports of the Board’s technical advisor, dated the 26 September 2023 and 22 January 2024, the Board’s own Appropriate Assessment Conclusion Statement dated the 6 February 2024, the Appropriate Assessment Screening Report of the Marine Institute, dated November 2021, the Minister’s Appropriate Assessment Conclusion statement dated July 2022 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 **26 January 2023, 2 March 2023, 6 April 2023, 25 May 2023, 23 June 2023, 28 July 2023, 31 August 2023, 28 September 2023, 23 November 2023, 14 December 2023 and 26 January 2024.**

GROUND OF APPEALS

The grounds of the appeals are summarised as follows:

1. Legislative The Appellant states that decision of the Minister is not in accordance with the requirements of the Habitats Directive as the development has not been assessed as required.

ENVIRONMENTAL IMPACT ASSESSMENT

An Environmental Impact Assessment (EIA) must be carried out by the Board in respect of an appeal of:

- (a) aquaculture of a class specified in Regulations 5(1)(a), (b), (c) or (d) of the Aquaculture (Licence Application) Regulations 1998 as amended ("the Application Regulations").
- (b) intensive fish farming of a class specified in Annex II of the EIA Directive 2011/92/EU as amended by Directive 2014/52/EU which the Board determines would be likely to have significant effects on the environment.

The proposed aquaculture the subject of the appeal is not of a class specified in Regulations 5(1)(a), (b), (c) or (d) of the Application Regulations.

In addition, it is not "intensive fish farming" for the purposes of Annex II of the EIA Directive.

As the proposed aquaculture is not a class of project specified either the Application Regulations or in Annex II of the EIA Directive, there is no requirement to carry out a screening for EIA or an EIA.

APPROPRIATE ASSESSMENT

The Board 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 Birds and Habitats Directives"). The Board noted the Appropriate Assessment Screening Report of the Marine Institute, dated November 2021, and the Minister's Appropriate Assessment Conclusion statement dated July 2022.

The Board considered that the Appropriate Assessment Screening carried out by the Marine Institute for Aquaculture Activities in Cleggan Bay in relation to Special Protected Areas ("SPA"), and to Special Areas of Conservation ("SAC") were incomplete. The Board's technical advisor undertook a screening exercise to remedy these oversights, the results of which are presented in the Appropriate Assessment Screening Report of the Board's technical advisor dated the 26 September 2023 and Updated Appropriate Assessment Screening Report of 22 January 2024. The Board then agreed its own Appropriate Assessment Conclusion Statement, dated 6 February 2024.

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:

- The proposed activity at the Site has not been found to contravene the statutory status, including the local Galway County Development Plan or considerations of the Birds and Habitats Directives.
- The proposed activity is located in a suitable area of Cleggan bay, beside existing aquaculture, and none of the statutory consultees had concerns regarding impacts such as navigation or maritime safety.
- The location of the proposed development and its low profile in the water means the Board finds it would not be visually intrusive.
- The Site has not been found to have a negative impact on other users, such as inshore fishing or tourism activities in the area, including shore angling or other recreational use.
- The Site will have a positive impact on the local economy.

- The Site will not have a significant negative ecological or environmental impact.
- The Site will not have a negative impact on the man-made heritage of the area.

Having considered all the foregoing, the Board determined at its meeting on 26 January 2024 pursuant to Section 40 (4) (a) of the Act, to **UPHOLD** the decision of the Minister to **GRANT** a Licence for cultivation of blue mussels on the sub-tidal foreshore to the **Applicant** at **site T09/524A**.



ALAB

An Bord Achomhairc Um
Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board

Dated this 15 day of February 2024

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



Melda Reynolds
Chairperson

P. Sullivan
Authorised Signatory