AP2-14-26

The Aquaculture Licences Appeals Board (ALAB)
Kilminchy Court
Dublin Road
Portlaoise
Co Laois.
R32 DTW5

AQUACULTURE LICENCES
APPEALS BOARD
28 SEP 2026
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Appeal against a decision of the Minister of Agriculture, Food and the Marine in respect of application for renewal of salmon aquaculture licence T06/202 AQ199 in Ballinskelligs Bay, Co. Kerry.

EIA Portal ID Number 2021027

A Chara

Friends of the Irish Environment CLG (registered address [redacted] wishes to appeal the decision of the Minister in respect of this application by MOWI Ireland to amend and renew an aquaculture licence. The appeal is accompanied by the required fee of €150 which is paid by way of electronic funds transfer.

FIE are greatly concerned by the timing of the Minister's decision. FIE brought judicial review proceedings (*Friends of the Irish Environment CLG v. ALAB & Ors* (2025/1858 JR)) challenging a decision of ALAB which relates to the same site and salmon farming operation carried out by MOWI. ALAB has consented to *certiorari* of its decision in those proceedings. The question of remittal is yet to be determined and final orders have not yet been made.

Those proceedings raise fundamental questions regarding MOWI's entitlement to continue operating pursuant to section 19A(4) of the Fisheries (Amendment) Act 1997 and the status of its licence. The Minister determined that MOWI had breached its licence conditions regarding stocking rates, and therefore could no longer continue operating on the basis of section 19A(4). ALAB agreed that MOWI had breached the conditions of its licence but concluded that section 19A(4) could continue to apply.

Notwithstanding FIE's view that section 19A(4) is itself invalid, and thus cannot be relied upon to continue operations where a licence as expired, it has the effect that it simply ceases to apply when there was a breach of a condition of an expired licence. The licence in this case had

expired: the site here was licensed under various regimes (the first in 1991) which fell to be treated as an aquaculture licence under s. 75 of the 1997 Act. That licence expired in February 2007. A new application was submitted at that time which has yet to be determined by the Minister, over 19 years later. The present application was made in 2023.

To add further to the complexity, the Minister's determination that section 19A(4) ceased to apply is also the subject of judicial review proceedings brought by MOWI. Those proceedings are yet to be determined. The proceedings are effectively dormant having been adjourned generally in December 2019. A stay on the effect of the Minister's determination is ongoing pending the determination of the proceedings. Notwithstanding this, FIE's position is that section 19A(4) ceased to apply by operation of law – it does not require a decision of the Minister.

As noted above, FIE's view is that section 19A(4) is contrary to EU law and is invalid. This is put beyond doubt by the recent judgment of the Court of Justice of the European Union in Case C-151/25 *Viaudret*, which concluded that it would be contrary to the objective pursued by Article 6 of the Aarhus Convention to allow a decision to extend the duration of an authorisation without allowing for public participation. Section 19A(4) does not even require a decision to allow for an extension of duration, never mind allowing for public participation.

As is apparent from the foregoing synopsis, the factual and legal matrix applicable to MOWI's operations at this site are complex. However, rather than wait for the fundamental issues raised in the judicial review proceedings to be resolved, the Minister has introduced further confusion and procedural chaos by prematurely purporting to amend and renew the licence. It is astounding that the Minister thought it was appropriate to determine the present application pending the determination of the judicial review proceedings.

FIE submit that the only way to bring clarity and legal certainty to this situation is for ALAB to exercise its power to refer questions of law to the High Court to determine whether MOWI continues to benefit from section 19A(4) of the 1997 Act, whether it was entitled to make the present application to amend and renew its licence and whether the Minister had jurisdiction to determine the application. These issues can only achieve finality by decision of the High Court following referral by ALAB.

If, by **9 November 2026**, ALAB decides not to exercise its power under section 58, or has not reached a decision in that regard, FIE will be compelled to challenge the decision of the Minister by way of judicial review proceedings. FIE will rely on the exceptions to the

requirement to exhaust administrative remedies identified in the judgment of the Supreme Court (Donnelly J.) in *Amariei v. The Chief Appeals Officer & Ors* [2026] IESC 22, in particular, that an appeal to ALAB does not constitute an adequate alternative remedy and that there is a particular exigency in the interests of justice which requires judicial review to lie.

Yours faithfully

Friends of the Irish Environment CLG

Dearbhail Devally
on behalf of
Friends of the Irish Environment CLG