

An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



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

Appeal Reference Number: **AP 23/2020**

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 Aoife Buckley (“**the Applicant**”) against the decision of the Minister for Agriculture, Food and the Marine (“**the Minister**”) to **Refuse** to grant a Licence for the cultivation of Native and Pacific Oysters using bags and trestles, floats and bags, moulded baskets and longlines at Site T08/115A (“**the Site**”) on the foreshore at Aughinish Peninsula, Co. Clare

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the Notice issued by the Board pursuant to section 46(1) of the Act to the Applicant and her response; the Notices issued by the Board pursuant to section 47(1) of the Act to the Applicant and to the Minister, and their respective responses; the Interim report of the Board's technical advisor, the addendum to same, the Appropriate Assessment conclusion report of the Board's technical advisor relating to Site T08/115 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 10 December 2020, 12 January 2021, 5 February 2021, 2 March 2021, 1 April 2021, 29 April 2021, 28 May 2021, 24 June 2021, 22 July 2021, 19 August 2021, 21 September 2021, 21 October 2021, 25 November 2021, 13 January 2022, 10 February 2022, 16 March 2022 and 14 April 2022.

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 their size, nature or location and so does not require an environmental impact assessment report under the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012.

Therefore, the Board is satisfied that the direct and indirect effects of the proposed activity 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.

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 that the Site is within the bounds of the Galway Bay Complex Special Area of Conservation (“SAC”), Site Code: 000268) and Inner Galway Bay Special Protected Area (“SPA”), Site Code: 004031). The Board noted and adopted the Appropriate Assessment (MI, 2019; Atkins, 2019) and Appropriate Assessment Conclusion Statement (DAFM, 2020) produced by the Minister in relation to aquaculture activities in both the Galway Bay SAC and SPA. The Board also noted the Technical Advisor Interim Report produced by Eco Eireann, the Addendum to the Technical Advisor’s Report produced by its own technical advisor and adopted the updated Appropriate Assessment Conclusion Statement produced by its own technical advisor relating to the Site. This found no significant impact of the Site on the conservation objectives of the Galway Bay Complex SAC given the suggested mitigation measures relating to the control of non-native species. It also found no significant impact on the conservation impacts of the Inner Galway Bay SPA given the updated disturbance effects calculated in the Interim Technical Advisor's Report.

Having regard to all of the foregoing, the Board was satisfied that the proposed activity at the Site does not have the potential for significant effects and is not likely to have a significant deleterious effect, either individually, or in combination with other plans or projects, on Special Conservation Interest (“SCI”) species or conservation objectives for the SPA site and the habitats and species of the SAC site and as such, will not adversely affect the integrity of the SPA or SAC site concerned either individually or in combination with other plans or projects.

DETERMINATION

- (a) The Site is **deemed suitable** for the following reasons: It is located in an area with other existing shellfish culture, it is adjacent to a designated shellfish area and it is a low-density development.

The Site is **deemed potentially unsuitable** for the proposed activity because of the existence of numerous rocks throughout the Site which may impede the proposed development progressing as indicated in the application for the aquaculture licence. However, this will be mitigated by the licence conditions outlined below. Overall, the Board determined **the Site is deemed suitable for the proposed development.**

- (b) The proposed aquaculture activity would not be expected to significantly impact on the scenic landscape of the region and the Site is bordering a designated shellfish waters area with limited inshore fishing and harvesting.

The Site may have a potentially adverse impact on other uses or users of the area as it would reduce the area accessible for local seaweed harvesters with traditional rights. Considerable attention was given to this aspect by the Board during the appeal process, but as no appeals or submissions at either application or appeal stage were received from existing users, the Board determined that the Site was not deemed to have a significant impact on existing users. Potential negative impact on users has been considered and the Board is granting a Variation Site of reduced size,

which reduces the potential impact on traditional seaweed harvesting in the bay. Overall, the Board determined the impact on other users would not be significant.

- (c) The statutory status of the area will not be negatively impacted by the licencing of this Site. Both the Galway and Clare County Development Plans have objectives that support the development of the aquaculture sector in their respective counties, provided development adheres to environmental regulations and sustainable practices.

The Site does not have the potential to significantly negatively impact on the conservation objectives of Natura 2000 sites as outlined on the previous section titled “Appropriate Assessment”

- (d) The Site is likely to have a positive economic effect. Given the conditions imposed, it is not expected that the Site will have a negative impact on the other users in the area.
- (e) The Site will not have a significant ecological effect on the Site itself or the surrounding area, given the conditions imposed.
- (f) The Site will not have a significant ecological effect on the Site itself or the surrounding area, given the conditions imposed.
- (g) The Site will not significantly impact on man-made heritage of the area, given the conditions imposed.

Having considered all the foregoing, the Board determined at its meeting on 14 April 2022 pursuant to Section 40 (4) (b) of the Act, to **OVERTURN** the decision of the Minister and determined the application for the licence as if the application had been made to the Board in the first instance and to **GRANT** an Aquaculture Licence to the Applicant for a variation of the Site with the following conditions:


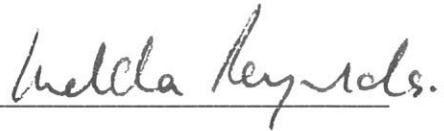
1. The Applicant shall provide ALAB with an updated Site map and corresponding Site layout plan for approval before a licence is issued, using updated Site co-ordinates provided by ALAB as follows:

Variation Site Co-ordinates			
Latitude	Longitude	ITM	
		X	Y
53.163085	-9.05433	529496	713029
53.161625	-9.054277	529497	712867
53.162214	-9.048706	529870	712927
53.161210	-9.044677	530138	712811
53.163825	-9.046144	530044	713104

2. The revised Site layout plan shall show the location of all proposed trestles and longlines for supporting baskets, in the same ratio of trestles to longlines as proposed in the original Site plan applied for, along with one clearly marked access route, which is to be the sole access route to the Site;
3. The Licence shall include a prohibition on moving existing natural physical structures (i.e., rocks and boulders) within the Site;
4. The Applicant shall adhere to best practice relating to the control of non-native species *Didemnum* sp. in Galway Bay, and the Licence shall include a condition requiring that any biofouling must be dealt with and disposed of in a responsible manner such that it is removed from the marine environment and does not pose a risk to the conservation features of the Site;
5. In relation to Pacific Oysters, triploid seed only can be used on the Site;
6. The Licence shall include a condition prohibiting the re-laying of stock at other sites in Galway Bay SAC in order to reduce the potential spread of non-native species.
7. The Applicant shall comply with any Code of Practice developed in agreement with NPWS or any other relevant State bodies pertaining to Galway Bay SAC/Inner Galway Bay SPA.

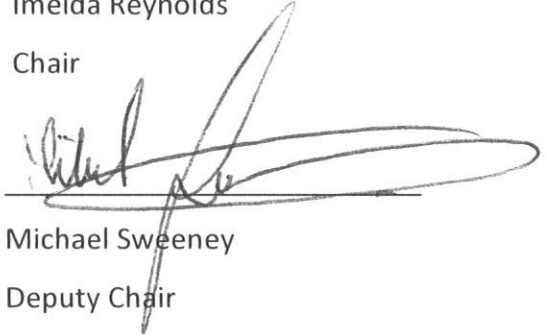
Dated this 28 April 2022

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

Imelda Reynolds

Chair



Michael Sweeney

Deputy Chair