

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

Appeal Reference Number: **AP 3/2023**

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 Foylantic Ltd. ("**the Appellant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") Marine to **REFUSE to grant** an Aquaculture Licence to Foylantic Ltd. for the cultivation of Pacific Oysters using bags and trestles on Site T12/572A on the inter-tidal foreshore in Trawbreaga Bay, Co. Donegal.

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the Report "Appropriate Assessment of Aquaculture Trawbreaga Bay SPA" by Atkins, dated 06 August 2021 ("**the SPA AA Report**"), the "Report Supporting Appropriate Assessment of Aquaculture in the North Inishowen Coast SAC (Site code: 002012)" by the Marine Institute dated August 2021 ("**the SAC AA Report**"), the Appropriate Assessment Conclusion Statement by the Department of Agriculture, Food and the Marine titled "Final Appropriate Assessment Conclusion Statement by Licensing Authority for aquaculture activities in North Inishowen Coast Special Area of Conservation (SAC) (Natura 2000 Site Code: 002012), and Trawbreaga Bay Special Protection Area (SPA) (Natura 2000 Site Code: 004034)", dated July 2022 ("**the AA Conclusion Statement**"), the report of the Board's external scientific consultant, Aster Ltd, dated 20 March 2024 ("**the Aster Report**") 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 **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, 26 January 2024, 1 March 2024 and 28 March 2024.**

GROUNDINGS OF APPEAL

The grounds of the appeal are summarised as follows:

- The applicant expresses dissatisfaction with the decision-making process regarding their application, claiming it is unjust to base decisions on “factors that cannot be discounted”.
- They question the lack of supporting evidence for the refusal. Additionally, they raise discrepancies in bird count data, seeking clarification.
- The applicant emphasises the positive impact of their sustainable business in generating employment and aiding the local economy and highlight the need for additional space for product preparation.
- They propose mitigating concerns about access by reducing site size and state that given the small relative site size that “little to no visual impact applies”.
- Overall, they advocate for a fair assessment of their application based on substantial evidence.

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 (2014/52/EU). The Board determined that the project as proposed falls outside the requirements for conducting an environmental impact assessment as this type of aquaculture is not deemed “intensive”.

Therefore, the Board is satisfied that the project was not likely to have significant direct or indirect effects 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.

The Board has concluded that the proposed project falls outside the requirements for conducting an environmental impact assessment as this type of aquaculture is not deemed “intensive” so does not require an environmental impact assessment report under the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012.

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 SAC AA Report, the SPA AA Report and the AA Conclusion Statement.

The Board found that the SAC AA Report the SPA AA report and the AA Conclusion Statement did not prove beyond scientific doubt that there would be no potential negative effects on Special Conservation Interest (SCI) species or conservation objectives of the Trawbreaga Bay SPA.

Having regard to all of the foregoing, the Board finds that the proposed activity at the Site has the potential for significant effects and it may have a significant deleterious effect, either individually, or in combination with other plans or projects, on SCI species or conservation objectives of the Trawbreaga Bay SPA, Inishowen North Coast SAC and nearby Natura sites and as such, could adversely affect the integrity of the SPA site concerned either individually or in combination with other plans or projects.

DETERMINATION

The Board has determined the appeal on the grounds that:

The **Site is not suitable** for this development in terms of Statutory Status, Ecological Impacts, Environmental Effects and under Appropriate Assessment, as outlined in the Aster report, due to the finding of a population decline in relation to Brent Geese in Trawbreaga Bay SPA. The available information to date does not rule out a negative impact on this SCI species due to the development of this site in Trawbreaga Bay, and therefore, under the requirements of the Birds and Habitats Directive, this site is not suitable for development.

Having considered all the foregoing, the Board determined at its meeting on 28 March 2024 pursuant to Section 40 (4) (a) of the Act, to **CONFIRM** the decision of the Minister to **REFUSE** an Aquaculture Licence for the cultivation of Pacific Oysters using bags and trestles on the inter-tidal foreshore to the **Appellant** at **Site T12/572A**.



ALAB

An Bord Achomhairc Um
Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board

Dated this 4th day of April 2024

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



Michael J. Bunnato

Deputy Chairperson

Margaret Cullen

Authorised Signatory