

Our Ref 026533.0001.CL/GHJ
Your Ref AP47/2019
Site Ref T03/052A, T03/052B

29 September 2023

By post and email (info@alab.ie)

Secretary to the Board
Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTWS

Re: Appeals against decisions of the Minister for Agriculture, Food and the Marine to grant with variations an Aquaculture Licence to WD Shellfish Limited for the bottom cultivation of mussels on Sites T03/052A and T03/052B on the foreshore at Wexford Harbour

Dear Secretary

On behalf of our client, WD Shellfish Limited, we wish to respond to your letter dated 29 June 2023.

In this letter, you refer to a report submitted to ALAB on 1 June 2023 by KRC Ecological Ltd regarding an assessment of available waterbird data for Wexford Harbour and Slobs. As you know, this report was commissioned by ALAB for the purposes of your appropriate assessment of AP47/2019 including the above appeal(s). This report concludes that there are significant data gaps and uncertainties such that it is not possible to assess the potential impacts of the relevant aquaculture activities. You have stated that ALAB is therefore unable to complete an appropriate assessment at this time.

As you know, Article 7 of the EU's Habitats Directive (as implemented into Irish law) extends the scope of its Article 6(2), 6(3) and 6(4) to the EU's Birds Directive. Therefore, any plan or project that is likely to have a significant effect on a special protection area such as Wexford Harbour and Slobs SPA must be subject to appropriate assessment under Article 6(3) of the Habitats Directive. Competent authorities, such as ALAB, may only agree to a plan or project after having ascertained that it will not have a significant impact on the integrity of the relevant SPA.

As identified in your 29 June letter, certain additional information and analysis is apparently required to complete an appropriate assessment. Indeed, you note that a timeframe of up to four years is required to do the necessary work before an appropriate assessment may be completed. You also note the need to involve other stakeholders such as the National Parks & Wildlife Service in the relevant preparatory work.

Given the relevant timelines allied to the nature and extent of the work required to address the relevant deficiencies in the scientific data, ALAB notes that it would be premature to review the grant of a licence at this time. However, in line with our client's public participation rights under EU Law, we expect that

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our client will be provided with all documentation and information which is gathered as part of the intended analysis and that our client will have a full opportunity to consider same and provide a complete response, to be taken into account in the conducting of an appropriate assessment.

Our client notes the contents of your letter including the requirement for further background work. That said, in accordance with the spirit of Section 46(1) of the Fisheries (Amendment) Act 1997, our client expressly reserves its right to respond to the findings of any further work before ALAB ultimately determines the relevant appeals, including by way of its own experts being engaged to review those findings.

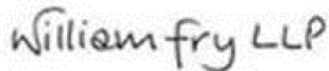
If the opportunity to make submissions/observations is denied to our client, it expressly reserves its rights to seek the appropriate remedies including before the Courts.

Our client therefore looks forward to engaging with ALAB at the relevant time.

Noting that ALAB has not yet decided whether to hold an oral hearing, our client re-iterates its request for such a hearing, but it would appear that any such hearing would be premature at this time, in view of the further surveys to be conducted.

Please contact Cormac Little SC (cormac.little@williamfry.com) of this office if you have any further queries, or in the alternative, Gerard James (gerard.james@williamfry.com). Please note that Eoin O'Cuilleain has left this Firm and as such, no further correspondence in this matter should issue for his attention.

Yours faithfully

A handwritten signature in dark ink that reads "William fry LLP". The signature is written in a cursive, slightly informal style.

William Fry LLP